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BALANCED GROWTH

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Connecticut State Legislature
Planning & Development Committee
Public Hearing
Legislative Office Building
Hartford, Connecticut
February 25, 2008

SB-39 An Act Concerning Responsible Growth

To: Honorable Senator Eric Colman
Honorable Representative Art Feltman

From: Donald J. Poland, AICP
Executive Director & CEO

Thank you for the opportunity to testify on SB-39 An Act Concerning Responsible Growth.

The Connecticut Partnership for Balanced Growth (CPBG) believes that Connecticut needs an aggressive growth policy to ensure our economic competitiveness and to maintain our high quality of life. If Connecticut is going to compete in the global economy we need to be clear about need to grow and to encourage growth.

The Connecticut Partnership for Balanced Growth does not oppose responsible growth policies so long as the policies promote growth. Unfortunately, **CPBG opposes SB-39 as proposed**. While SB-39 may be well intended, it does little or nothing to promote economic growth and many of the policies proposed in the bill will make it even more difficult for Connecticut to grow.

The following pages will provide a detailed analysis of the proposed bill by section. In addition, as part of our analysis CPBG will provide recommendations on how this bill can be improved.

The Connecticut Partnership for Balanced Growth is willing to work with the Planning and Development Committee, the Legislature as whole, and all other interested parties in creating Responsible growth policies that will ensure a growing Connecticut that balances the need for development with conservation and preservation.

Section 1. Responsible Growth Principles

Responsible Growth Principles are defined in this bill as, “the use of land and resources in ways that enhance the long-term quality of life for current citizens of the state and future generations and that maximize previous investments in existing infrastructure while preserving distinctive landscapes, historic structures, landmarks and villages.” CPBG has a number of concerns with this definition:

1. This definition does not claim that Connecticut needs to grow (population, homes, businesses, and jobs).
2. The definition is very subjective to interpretation.
3. The definition places a greater emphasis on preservation then growth.
4. When the definition is combined with the recommendations in the following section (Section 2) of the bill, the definition conflicts with the Growth Management Principles that already exist in the State Plan of Conservation and Development.

CPBG Recommendations – Section 1.

CPBG recommends that legislature adopt policies that are consistent with the States existing policies and utilize the existing Growth Management Principles in the State Plan of Conservation and Development as the definition and criteria of responsible growth principles. Creating an additional definition will only cause confusion and create conflicting state policies.

Section 2. Responsible Growth Cabinet

This section of the bill creates a Responsible Growth Cabinet and provides the cabinet the authority to advise the Governor on policies and initiatives related to:

- (1) Address issues raised by economic growth and real estate development;
- (2) support and encourage sound land use;
- (3) protect open space, farmlands and historic sites;
- (4) clean up and reuse valuable properties located in urban areas;
- (5) steer growth and real estate development to appropriate areas of our state; and
- (6) revitalize cities, preserve the unique charm of our state and build livable, economically strong communities while protecting our natural resources for the enjoyment of future generations.

CPBG has a number of significant concerns with this section:

1. How is the Responsible Growth Cabinet different then the Responsible Growth Committee established by the Governor’s Executive Order 15? Are efforts being duplicated? Is there a potential for conflicts between the two entities.
2. Item one above (from the bill) does not encourage growth but implies growth and development create issues. Starting with the assumption that growth and development is bad is not responsible and does not encourage growth and development.

3. Item two states “support and encourage sound land use” but does not define what “sound land use” is or means. What is “sound land use” and determines what is “sound?”
4. Item four identifies “valuable properties.” What is valuable? Most of the abandoned and blighted properties in our urban areas have little or no value. This is why they are abandoned and blighted. Does this mean we don’t clean-up and reuse properties that are determined to not be valuable?
5. Item five recommends that growth and development be steered to “appropriate areas of our state.” What is an appropriate area? By whose definition is an area appropriate?

CPBG Recommendations – Section 2.

CPBG recommends that there is not a duplication of entities that deal with responsible growth. There should be only one Responsible Growth “Cabinet or Committee” exist. We also recommend that responsible growth policies be approach from that perspective that growth and development are good. We should not approach responsible growth from the perspective that growth and development are bad or create issues. And last, we recommend that the state avoid developing policies based value judgments, emotions, and terms that are not defined and left to interpretation. Doing so creates opportunities for conflicts, opposing perspectives, and misinterpretations of well intended policies.

Section 3. Development of Regional Significance

This section defines a “development of regional significance” and requires that when such developments receive financial assistance more than \$500,000 that the development be referred to the Responsible Growth Cabinet. CPBG has a number of concerns with this section:

1. The threshold of 250,000 square feet may be too low.
2. It is not clear if the financial assistance of more than \$500,000 is referring to state financial assistance.
3. The Responsible Growth Cabinet decision is based on “consistency of the development with responsible growth principles.” What principles are these? Is it the definition in Section 1? What about the State Plan of Conservation and Development, its policies, and the six Growth Management Principles that already exist in the State Plan of Conservation and Development?
4. The bill says, “the cabinet shall submit a report of its findings and recommendations concerning the consistency...to the state agency.” Then what? Is the cabinet decision final or binding on the agency? Can the agency ignore the cabinet report?

CPBG Recommendations – Section 3.

CPBG recommends that the threshold be raised to 500,000 square feet. A site with just a Home Depot and a BJ’s Wholesale Club could exceed the 250,000 square foot threshold and it is hard to believe that such a development is regionally significant. CPBG recommend that the bill clearly states “developments of regional significance” that receive state funding of more than \$500,000. We also recommend that the Responsible Growth Cabinet decision be based on the policies within the State Plan of Conservation and Development and the six Growth Management Principles. The very purpose of the State Plan of Conservation and Development is to provide guidance to state agencies related to funding of projects. And last, we recommend that the bill clearly define the process, authority, and

impact of the cabinet report on the proposal. This should include timelines for action as is the case with land use applications.

Section 4, 5, and 6. Regulations that are Inconsistent with the Local Plan

These three sections of the bill amend the zoning, subdivision, and wetlands statutes with the following statements, "No regulation that is inconsistent with such plan shall be effective unless the legislative body of the municipality approves such regulation." The phrase "such plan" refers to the municipal Plan of Conservation and Development. CPBG has significant issues with this provision:

1. "Inconsistent" is not defined. Who determines that a regulation is "inconsistent" with the plan? The Planning Commission who adopts the plan or regulatory commission that adopts the regulations? Does this provision apply generally to the regulations or to every specific provision of the regulations? If a Plan recommends that a community preserve more open space, how do we determine that the regulations are consistent with the Plan? If the Plan recommends an area be zoned commercial, but it is dependent on a sewer extension, at what point in time do the regulations need to be consistent? Today or in 5 years when sewer extension occurs?
2. If this provision is codified in statute, at the point in time when it becomes effective, do all zoning, subdivision, and wetland regulations may be "inconsistent" become "ineffective" until the legislative body approves the regulations?
3. How about the approximately 38 communities that have outdated plans (older than 10 years)? Do the zoning, subdivision, and wetlands regulations that are "inconsistent" with the outdated Plan also become "ineffective?"
4. The "legislative body" is the town meeting form of government exists in 108 communities in Connecticut. Therefore, we are requiring the general public, who have little or not experience (compared to a land use commission) to determine and vote on "inconsistent" regulations and plans?
5. What happens if the "legislative body" does not vote on the issue? Do the regulations remain ineffective?
6. If a regulation is "inconsistent" and not "effective" does that mean a property owner can do whatever they want because there is no "effective" regulations on their property? Or is the opposite true and they can't anything with there land?

CPBG Recommendations – Section 4, 5, and 6.

CPBG believe that this provision is a recipe for disaster that could create a regulatory perogatory for both property owners and land use commissions. CPBG strongly recommend that legislature remove this provision from this bill. It is also evident that those who recommend consistency between Plans of Conservation and Development and land use regulations do not understand the role of a plan and the difference between planning and regulations. CPBG has submitted a document with our testimony that will aid in educating policies makers on planning and the role of a Plan of Conservation and Development.

Section 7. Community Benefit Agreements

This section of the bill allows for municipalities and developers to enter into what is called “community benefit agreements.” The proposed bill allows the developer to provide real property or financial resources to for the purpose of mitigating the impacts of the development related to, but not limited to, environment, traffic, parking and noise. CPBG has many concerns with this provision:

1. “Community benefit agreements” are more commonly known as contract zoning. Contract zoning, till as proposed now, has been illegal in Connecticut due to issues and concerns associated with it.
2. This is a significant change in Connecticut land use law and policy and should not be authorized without further study and consideration.
3. Such agreements open the doors for abuse of such provisions and corruption.
4. Local boards and commissions could extort developers into providing such agreements. In addition, real property and financial resources that go well beyond “reasonable” or “related” to the impacts could be extorted from developers.
5. Such agreements, even if legally entered into, will further increase the cost of development. This in State that already has some of the highest development costs in country. Such cost will further undermine our ability to compete with other states and regions for much needed growth and development. For residential development these higher costs will result in higher housing costs, furthering our housing affordability issues. For commercial and industrial development, such agreements may undermine the economics of projects and force such development to go to lower cost areas out-of-state. This will cost Connecticut jobs and future tax revenues.
6. The bill allows any municipality and developer to enter into such agreements “in connection with a real estate or industrial development.” What does this mean? Only industrial developments? This provision is not clear at to its intent.

CPBG Recommendations – Section 7.

CPBG strongly recommend that legislature remove this provision from the bill. We recommend that if the legislature wish to consider “community benefit agreements” as a land use tool, then a task force be created to study this specific concept before such a provision is considered. The task force report should include both positive and negative outcomes for such a provisions, estimates for additional cost of development, and provisions to ensure that “community benefit agreements” are not abused. This concept should not be taken lightly.

Section 8. State Funding of Projects

This section of the bill requires that two per cent of the total cost of any project that receives state fund shall be used for pedestrian and nonmotorized transportation and that such provision may be waived by OPM. CPBG has a few concerns with this proposal:

1. This will add costs to projects and require more state spending and will need additional tax revenue.
2. It blanket requirement for these alternatives is an arbitrary provision.
3. The criteria for OPM to waive such a provision are also arbitrary.

CPBG Recommendations – Section 8.

CPBG recommend that the proposal be changed to require projects apply for state funds to consider “pedestrian and nonmotorized transportation alternatives” and if such alternatives can not be provided, then the project must demonstrate why it is not feasible. This is a more responsible approach.

Section 9. The Responsible Growth Incentive Fund

This section requires that projects funded through the Responsible Growth Incentive Fund “meet the responsible growth principles, as defined in section 1 of this act.”

CPBG is once again is concerned that this provision conflicts with the policies in the State Plan of Conservation and Development and the existing Growth Management Principles contained within the State Plan of Conservation and Development.

CPBG Recommendations – Section 9.

CPBG recommend that the State Plan of Conservation and Development and the existing Growth Management Principles contained within the Plan be utilized here.



CONNECTICUT PARTNERSHIP FOR
BALANCED GROWTH

Consistency between Plans of Conservation and Development and Local Land Use Regulations

What are local Plans of Conservation and Development?

A Plan of Conservation and Development is a tool for guiding the future of a community. The Plan is based on a visioning process where the community builds consensus on a vision for the future of the community.

What is planning?

Planning is a comprehensive process of predicting the future with risk of being wrong. The planning process utilizing public input, research and analysis of past and current conditions and trends, and develops strategies to achieve the vision for the community. Plans are long-term visions covering 10 to 20 years

However, the planning process, predicting the future, recognizes the risk of being wrong, because many other factors exist that are beyond abilities and control of the planning process. For example, changes in market conditions, supply and demand for certain land uses, unforeseen events, and even a change (over time) in vision for the community held by the community.

This risk of being wrong is a critical reason why local Plans of Conservation and Development can not be controlling on local land use regulations. Planning is NOT zoning and zoning is NOT planning.

Planning is an ongoing and fluid process that adjusts to changes. This is why plans are required to be updated by statute every 10 years. In addition, a progressive community will review and revise its Plan every two or three years.

What are land use regulations?

Land use regulations are regulatory documents designed to protect the public healthy safety and general welfare. They include zoning, subdivision, and inland wetland regulations and each regulation has it own unique and specific purposes. Zoning regulations regulate the use of land, subdivision regulations regulate the creation of lots, streets, and associated public infrastructure, and wetland regulations regulate development activities that may impact wetlands.

Land use regulations are significant tools in aiding in the implementation of a local Plan of Conservation and Development. However, they are not the only tools. Local government policies, ordinances, budgets, Capitol Improvement Plans are a few examples of other means of implementing Plans of Conservation and Development.

Forcing local land use regulations to be consistent with the local Plan of Conservation and Development does NOT ensure that the vision and desired outcomes proposed in Plan of C & D will be achieved. In addition, forcing consistency may create greater problems and issues.

Plans of Conservation and Development are a general guide to conservation and development policies at a community scale. Local land use regulations regulate conservation and development activities at a site specific scale. These differences in scale are an additional reason why strict consistency between local Plans of Conservation and Development and local land use regulations should not be required.

Planning for the future, today or tomorrow?

The very fact that planning is a fluid and ongoing process is the very reason why consistency should not be required between Plans of Conservation and Development and local land use regulations. A policy or recommendation in a Plan may require a long-term strategy, a change in market conditions, and incremental implementation over five or ten years. The concept of consistency can accommodate these factors. Shall the regulations be consistent with the Plan today? Or should they be consistent tomorrow? If they must be consistent today, why plan for tomorrow? There would be no need for planning if we made all regulations consistent with the Plan today. We would cast the Plan in stone, regardless of changes and regardless of the risk of being wrong about future conditions. Land use regulations are regulatory documents designed to protect the public healthy safety and general welfare. They include zoning, subdivision, and inland wetland regulations and each regulation has it own unique and specific purposes. Zoning regulations regulate the use of land,

Recommendation

If the legislature wants to make plans more meaningful they should provide communities with incentives to facilitate the planning process. Incentives, in the form of resources should be provided to encourage communities to update their Plans of Conservation and Development at least once every 10 years. In addition, incentives, resources, should also be provided to encourage communities to complete comprehensive updates to their land use regulations upon completion of comprehensive updates to their Plan of Conservation and Development.

Plans of Conservation and Development often recommended that specific topics, issues, or areas of a community will require further investigation and/or planning process to develop the appropriate policies, strategies, and often regulations. The State should fund a grant program for municipalities to conduct specialized plans for these complex topics, issues, and areas.

These incentives would ensure more comprehensive planning, more meaningful planning, and greater implementations of plans through regulatory updates.

Conclusion

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Overview

East Windsor is at a crossroad and must take steps now to ensure that the community's future is as bright as its past. Implementation of the recommendations of this Plan will provide East Windsor with the tools necessary to face the challenges and opportunities before the Town.

This Plan of Conservation and Development has identified a series of strategies and action steps to achieve the basic goals identified as Plan Visions. These visions are

- 1. The rural, village, and business character that define East Windsor must be preserved to keep the Town an attractive place to live and do business.**
- 2. Residential and village area development must be carefully guided to ensure compatibility with community character and allow East Windsor to prepare for the impacts of future growth.**
- 3. Economic development must be retained and expanded to support the community with services, jobs, and taxes, while remaining sensitive to the community's environment and quality of life.**

Plan Consistency

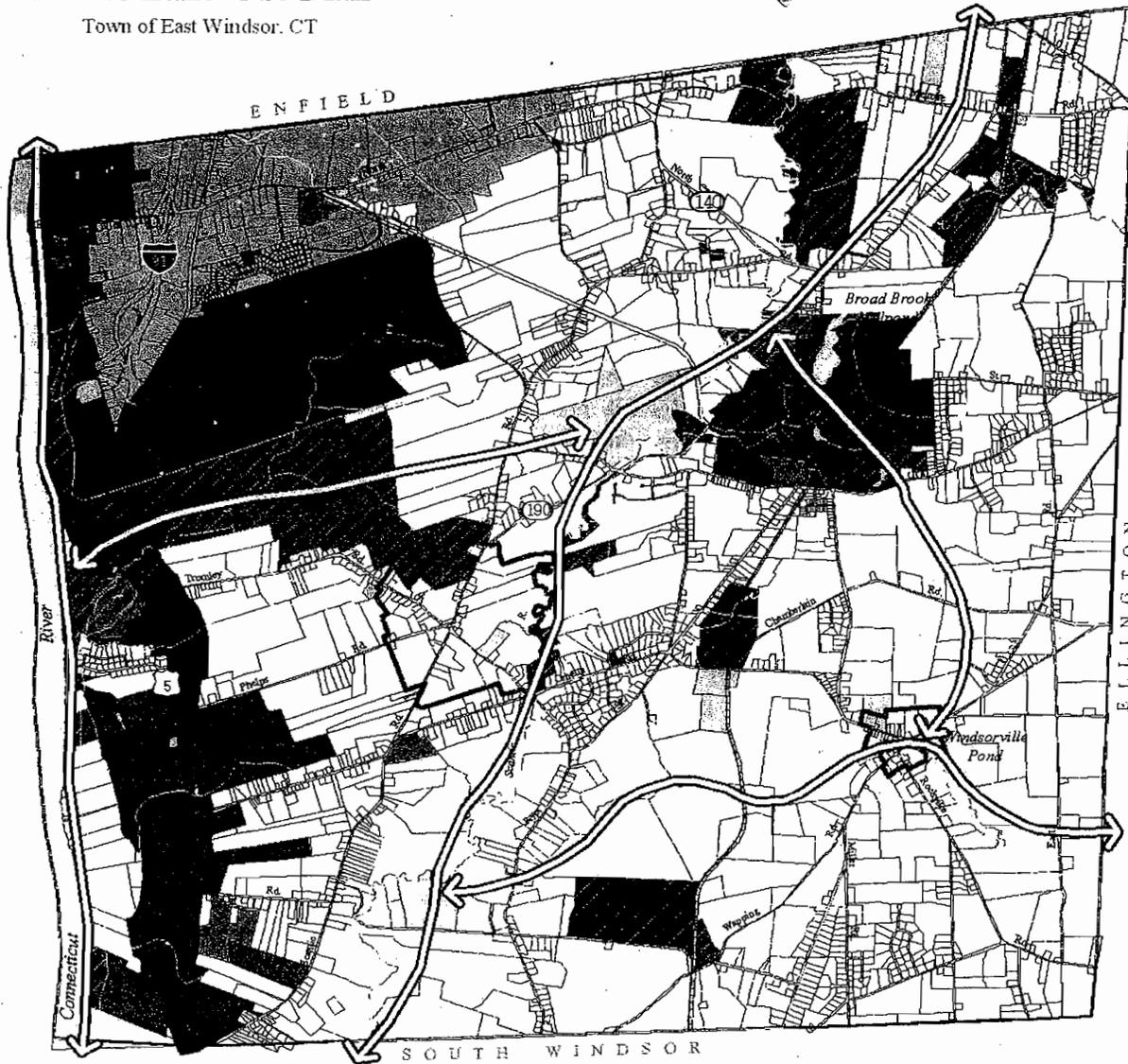
The State Plan of Conservation and Development, in Draft form at the time of this writing, and the CRCOG Regional Plan of Conservation and Development were reviewed to determine consistency of the East Windsor Plan with the policies of the State and Regional Plans. The zoning recommendations, development strategies, and conservation priorities in the East Windsor Plan do not include any inconsistencies with the Draft State Plan or the Regional Plan.

Future Land Use Plan

The map on the following page is a graphic representation of the structural, zoning, and land use issues and strategies presented in this Plan. While this does not, alone, constitute the Town's Plan, nor is it a recommended zoning map, it provides an overview of some of the critical issues that may be illustrated by categories on such a map. It is expected that this map will evolve and develop, as the Community proceeds through the recommended implementation process.

Future Land Use Plan

Town of East Windsor, CT



Legend

- | | | |
|----------------------------|--|-----------------------------------|
| Rural Village | Dedicated Open Space & Preserved Agriculture | Conceptual Open Space Connections |
| District Village | Managed Open Space | Conceptual Open Space Corridors |
| Central Business Corridor | Municipal and Private Community Facility | Water |
| Northern Business Corridor | Residential | |
| Core Industrial | | |
| Southern Business | | |
| Railroad Industrial Area | | |

0 3000 Feet

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