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*Your Home  
Is Our  
Business*

February 25, 2008

To: Senator Eric Coleman, Co-Chairman  
Representative Art Feltman, Co-Chairman  
Members of the Planning & Development Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 39, An Act Concerning Responsible Growth**

**The HBA of Connecticut opposes RB 39 as written.** The HBACT is a professional trade association with over one thousand five hundred (1,500+) member firms statewide employing tens of thousands of Connecticut's citizens. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We also created and administer the Connecticut Developers Council, a professional forum for the land development industry in the state.

RB 39 brings together a number of different concepts that have circled around smart growth discussions. Unfortunately, as an industry with extensive, daily experience working in the land use system at the local and state level, each section of this bill gives us serious concerns.

Rather than put all our testimony in this memo, I have attached a copy of the bill with our comments indented and in italics for easier reference to the legislation.

In our comments, we reference an article that is on our web site at [www.hbact.org](http://www.hbact.org). We also urge you to review this article, **Smart Growth Myths**, as you deliberate smart growth or responsible growth policies.

**For all of the reasons we make in the attached mark up of the bill, we urge you to not pass RB 39 as written.**

Thank you for considering our comments on this legislation.

Please note: On Monday, 2/25, I need to be in Cromwell for an important HBA meeting at 4:00. If I am unable to testify before you at the public hearing, please call or email me to discuss any questions you might have regarding our comments.

**Raised Bill No. 39, AN ACT CONCERNING RESPONSIBLE GROWTH.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2008*) As used in section 3 of this act, subdivision (2) of subsection (a) of section 13 of public act 07-7 of the June special session, as amended by this act, and subdivision (2) of subsection (a) of section 32 of public act 07-7 of the June special session, as amended by this act, "responsible growth principles" means 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.

*[As a broad principle, this sounds fine, but because it's so broad and vague, it can and will mean many different things to different people. Also, we always hear about maximizing previous investments in existing infrastructure, but what exactly are these investments. Every residential development that's done, it's the developer who builds and pays for the infrastructure, from roads, sewers, water, telephone, electric and cable lines. Also, to the extent there is infrastructure (e.g., sewers, roads) that goes unutilized, two countervailing principles must be considered. First, it is often very difficult and more expensive to develop properties on existing infrastructure because the infrastructure is inadequate or needs to be rebuilt. Problems with obtaining easements and disruptions to current infrastructure users exist. And, utilizing existing infrastructure means convincing existing users that increased density is in their best interest – an extremely difficult hurdle for a developer in most places. Second, maximizing infrastructure use will lead to bottlenecks and increased congestion and backups as the natural ebb and flow of infrastructure users go through their peak periods and nears or exceeds capacity.]*

Sec. 2. (NEW) (*Effective July 1, 2008*) (a) There shall be a Responsible Growth Cabinet which shall consist of the Secretary of the Office of Policy and Management, the Commissioners of Economic and Community Development, Environmental Protection, Agriculture, Transportation and Public Health, or their designees; the executive directors of the Connecticut Housing Finance Authority, Connecticut Innovations, Inc., Connecticut Development Authority, Commission on Culture and Tourism, or their designees; and the president of the Office of Workforce Competitiveness, or the president's designee. The Secretary of the Office of Policy and Management, or the designee of the secretary, shall be the chairperson of the cabinet.

(b) The cabinet shall advise the Governor on policies and initiatives to: (1) Address issues raised by economic growth and real estate development; (2) support and encourage sound land use; (3) protect open space, farmlands

*[We're already doing this; and contrary to popular belief we're not losing our farmland. Farmland loss is a myth – On our web site at [www.hbact.org](http://www.hbact.org), click on the HBA of CT's **Smart Growth Myths** document for this and other myths about CT's growth, development and housing]*

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;

*[How are we not developing appropriately now? Again, click on HBA of CT's **Smart Growth Myths** on our web site for facts about how we really have developed CT. What government land use planners and the RG Cabinet think is appropriate is very likely not what the marketplace will think is appropriate. If the government gets it wrong, the marketplace leaves CT or doesn't come here. We've had so much government planning and intervention in development decisions that it is one of the key reasons we're so far behind other states. It's the reason why investors, developers, and companies from across the nation see CT as such an unfriendly place to get approvals and to get things done. Do we really want to risk more of this?]*

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

*[Sounds good as a general principle, but no details; what does this mean?]*

Sec. 3. (NEW) (Effective January 1, 2009) (a) As used in this section, "development of regional significance" means a construction project that is planned to create, or a renovation or expansion project that is planned to result in, (1) more than two hundred fifty thousand square feet of indoor commercial or industrial space, (2) more than five hundred residential housing units, or (3) more than one thousand parking spaces.

*[These thresholds for defining a project of regional significance are fine and get to developments that truly might have some regional significance.]*

(b) Before issuing a permit or providing financial assistance of more than five hundred thousand dollars in connection with a development of regional significance, a state agency shall refer the development to the Responsible Growth Cabinet established under section 2 of this act for review. The cabinet shall invite the developer to attend the next meeting of the cabinet to make a presentation and to answer questions asked by the members of the cabinet. The cabinet shall submit a report of its findings and recommendations concerning the consistency of the development with responsible growth principles to the state agency.

*[Holding up permits until the developer can go before the RG Cabinet will add substantial delays. Often, there are multiple permits required from different agencies and at different points in the development process. Does each agency make a referral to the RG Cabinet for each permit? How many times would the developer then have to go before the RG Cabinet?*

*We would suggest that for projects of regional significance the RG Cabinet (provided it is balanced with real estate development and land use expertise – see comments above) be the first point of contact for the developer and to get a binding determination from the RG Cabinet that the project complies with (or not) the state plan of C&D. If it doesn't, that could effectively kill the project and the developer doesn't have to waste time and money applying for permits. If it is consistent with the state plan, that determination should be included with any permit application and should be binding on the permitting agency. This still requires another step (i.e., going to the RG Cabinet) but solves a major issue of DEP, OPM and possibly other agencies making inconsistent and erroneous determinations about consistency with the state plan of C&D. Also, this process works only if the RG Cabinet sets up a process to meet on a regular basis to receive these plan determination requests and makes timely decisions.]*

Sec. 4. Subsection (a) of section 8-2 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2008):

*[The following comment applies to sections 4, 5 and 6. Section 4 involves zoning regulations, section 5 concerns subdivision regulations and section 6 concerns wetland and watercourse regulations. All three sections require that any of these regulations that are inconsistent with the local plan of C&D must be approved by the municipality's legislative body. There are serious and multiple problems with this requirement. These sections clearly highlight a misunderstanding about the relationship of land use planning versus regulations and the development application process. First, it means that any development that requires a regulatory change, and often regulatory changes do accompany a development proposal, will not get approved because you would have to take the additional step of going to the legislative body, which is a town meeting in many towns. You might just as well impose a requirement to have a referendum on an application to develop property, a process that will surely kill most developments – certainly most housing and large retail.*

*Even if the step was limited to the board of selectmen or city council, this additional layer of application and delay sends a horrible message to any company considering CT as a place to do business. This proposal does not recognize that plans of C&D are not written like regulations. It is extremely difficult if not impossible to make a definitive determination on whether a zoning, subdivision or inland wetland regulation is consistent with the plan. You're comparing apples and oranges. Also, plans of C&D are ten year plans. What if circumstances or the market changes (which they always do)? Regulatory changes are the only mechanism to adjust to marketplace and technology changes, which is why many developments are accompanied by regulatory changes, yet this would require another level of bureaucracy (and a difficult one at that) to get something done?*

*Further, who makes the original determination on consistency with the plan that sends the application to the legislative body? Right or wrong on that determination, how is the legislative body, board of selectmen or town/city council to make that determination when they are neither trained nor experienced in land use matters? Isn't it bad enough that many land use and wetlands boards don't know what they're doing now? If you have an anti-development zoning or planning commission or inland wetland agency and they want to create more delay than they are allowed by law, this gives them another way to delay the application. Just say it's inconsistent with some aspect of the plan of C&D and the applicant loses months in the process at best.*

*Also, right or wrong on the determination, or regardless of whether the determination is that a regulation is consistent with the plan or it's not consistent with the plan, this requirement creates another claim on appeal, another basis to bring an appeal of a commission's decision, delaying further final resolution of an application.]*

(a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses as defined in section 22a-93, and the height, size and location of advertising signs and billboards. Such bulk regulations may allow for cluster development as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23 of the 2008 supplement to the general statutes. No regulation that is inconsistent with the plan shall be effective unless the legislative body of the municipality approves such regulation. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote

health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the housing plan prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25 of the 2008 supplement to the general statutes, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family day care home or group day care home

in a residential zone. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

Sec. 5. Subsection (a) of section 22a-42a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2008*):

(a) The inland wetlands agencies authorized in section 22a-42 shall through regulation provide for (1) the manner in which the boundaries of inland wetland and watercourse areas in their respective municipalities shall be established and amended or changed, (2) the form for an application to conduct regulated activities, (3) notice and publication requirements, (4) criteria and procedures for the review of applications, and (5) administration and enforcement. No regulation that is inconsistent with the municipal plan of conservation and development, adopted under section 8-23, as amended, shall be effective unless the legislative body of the municipality approves such regulation.

Sec. 6. Subsection (a) of section 8-25 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2008*):

(a) No subdivision of land shall be made until a plan for such subdivision has been approved by the commission. Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than five hundred dollars for each lot sold or offered for sale or so

subdivided. Any plan for subdivision shall, upon approval, or when taken as approved by reason of the failure of the commission to act, be filed or recorded by the applicant in the office of the town clerk not later than ninety days after the expiration of the appeal period under section 8-8 of the 2008 supplement to the general statutes, or in the case of an appeal, not later than ninety days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant but, if it is a plan for subdivision wholly or partially within a district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan not so filed or recorded within the prescribed time shall become null and void, except that the commission may extend the time for such filing for two additional periods of ninety days and the plan shall remain valid until the expiration of such extended time. All such plans shall be delivered to the applicant for filing or recording not more than thirty days after the time for taking an appeal from the action of the commission has elapsed or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later, and in the event of an appeal, not more than thirty days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later. No such plan shall be recorded or filed by the town clerk or district clerk or other officer authorized to record or file plans until its approval has been endorsed thereon by the chairman or secretary of the commission, and the filing or recording of a subdivision plan without such approval shall be void. Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land. No such regulations shall become effective until after a public hearing held in accordance with the provisions of section 8-7d of the 2008 supplement to the general statutes. Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, sewerage and drainage, including the upgrading of any downstream ditch, culvert or other drainage structure which, through the introduction of additional drainage due to such subdivision, becomes undersized and creates the potential for flooding on a state highway, and, in areas contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal flooding, that proper provision shall be made for protective flood control measures and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of conservation and development as described in section 8-23 of the 2008 supplement to the general statutes, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to provide an adequate and convenient system for present and prospective traffic needs. No regulation that is inconsistent with

such plan shall be effective unless the legislative body of the municipality approves such regulation. Such regulations shall also provide that the commission may require the provision of open spaces, parks and playgrounds when, and in places, deemed proper by the planning commission, which open spaces, parks and playgrounds shall be shown on the subdivision plan. Such regulations may, with the approval of the commission, authorize the applicant to pay a fee to the municipality or pay a fee to the municipality and transfer land to the municipality in lieu of any requirement to provide open spaces. Such payment or combination of payment and the fair market value of land transferred shall be equal to not more than ten per cent of the fair market value of the land to be subdivided prior to the approval of the subdivision. The fair market value shall be determined by an appraiser jointly selected by the commission and the applicant. A fraction of such payment the numerator of which is one and the denominator of which is the number of approved parcels in the subdivision shall be made at the time of the sale of each approved parcel of land in the subdivision and placed in a fund in accordance with the provisions of section 8-25b. The open space requirements of this section shall not apply if the transfer of all land in a subdivision of less than five parcels is to a parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration, or if the subdivision is to contain affordable housing, as defined in section 8-39a, equal to twenty per cent or more of the total housing to be constructed in such subdivision. Such regulations, on and after July 1, 1985, shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. The commission may also prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided and, in lieu of the completion of such work and installations previous to the final approval of a plan, the commission may accept a bond in an amount and with surety and conditions satisfactory to it securing to the municipality the actual construction, maintenance and installation of such improvements and utilities within a period specified in the bond. Such regulations may provide, in lieu of the completion of the work and installations above referred to, previous to the

final approval of a plan, for an assessment or other method whereby the municipality is put in an assured position to do such work and make such installations at the expense of the owners of the property within the subdivision. Such regulations may provide that in lieu of either the completion of the work or the furnishing of a bond as provided in this section, the commission may authorize the filing of a plan with a conditional approval endorsed thereon. Such approval shall be conditioned on (1) the actual construction, maintenance and installation of any improvements or utilities prescribed by the commission, or (2) the provision of a bond as provided in this section. Upon the occurrence of either of such events, the commission shall cause a final approval to be endorsed thereon in the manner provided by this section. Any such conditional approval shall lapse five years from the date it is granted, provided the applicant may apply for and the commission may, in its discretion, grant a renewal of such conditional approval for an additional period of five years at the end of any five-year period, except that the commission may, by regulation, provide for a shorter period of conditional approval or renewal of such approval. Any person who enters into a contract for the purchase of any lot subdivided pursuant to a conditional approval may rescind such contract by delivering a written notice of rescission to the seller not later than three days after receipt of written notice of final approval if such final approval has additional amendments or any conditions that were not included in the conditional approval and are unacceptable to the buyer. Any person, firm or corporation who, prior to such final approval, transfers title to any lot subdivided pursuant to a conditional approval shall be fined not more than one thousand dollars for each lot transferred. Nothing in this subsection shall be construed to authorize the marketing of any lot prior to the granting of conditional approval or renewal of such conditional approval.

Sec. 7. (NEW) (*Effective July 1, 2008*) (a) As used in this section, "community benefit agreement" means a written agreement entered into by a municipality and an owner or developer of real property whereby the owner or developer agrees to develop real property or provide financial resources for the purpose of the mitigation, in whole or in part, of impacts reasonably connected to a real estate or industrial development project, including, but not limited to, impacts on the environment, traffic, parking and noise, and "mitigation" includes on-site and off-site improvements.

*[Community benefit agreements will benefit the community at the expense of the individual development. This is a recipe for extortion by a municipal zoning, planning or wetland commission or the legislative body to demand all sorts of money, concessions, land, and whatever other goodies the towns/cities can think up. Apparently, some advocates think there is a lot of backroom dealing taking place between developers and municipalities. However, none of that takes place now. In fact, developers are extremely conscious of the fact that procedural irregularities, like*

*back room dealing, can kill a project faster than anything else. This community benefits agreement authority institutionalizes backroom dealing. And, only the most well-healed and largest developments will be able to pay their way through this system to get what they need. The vast majority of developments, particularly housing, done by small businesses, will lose.]*

(b) Any municipality, owner or developer may voluntarily enter into a community benefit agreement in connection with a real estate or industrial development.

*[Making these agreements "voluntary" ignores the creativeness and depth of desire of municipality's thirst for extracting stuff from for-profit, private developers. Virginia has voluntary "proffers" whereby a developer can proffer money or other things to the government as a condition of obtaining approval, a system very akin to these agreements. But the system evolved very quickly to become a mandatory government-take-what-we-want system because it became known that governments there would not treat your application very kindly unless you came in with a sufficient "voluntary" proffer.]*

Sec. 8. (NEW) (Effective July 1, 2008) Any development of real property that receives state financial assistance under any provision of the general statutes or any public or special act shall allocate not less than two per cent of the total costs of the development to pedestrian and other nonmotorized transportation improvements. The Secretary of the Office of Policy and Management may waive the application of this section upon a finding that the nature, scope or location of the project is not appropriate for such improvement.

*[Unfortunately, the OPM waiver will be of little value because it will likely be delegated to OPM planners who have demonstrated little understanding of the impact of their decisions relative to the state plan of C&D and have not recognized on the ground realities. Therefore, most projects will likely require that two percent of the total costs of development be spent on walking and biking. That seems like a very high price to pay for pedestrian and bicycle improvements or amenities in a development.]*

Sec. 9. Subdivision (2) of subsection (a) of section 13 of public act 07-7 of the June special session is repealed and the following is substituted in lieu thereof (Effective from passage):

(2) For the Responsible Growth Incentive Fund, not exceeding \$5,000,000, provided any project receiving any funding under this subdivision shall meet responsible growth principles, as defined in section 1 of this act.

*[Again, the principles in section 1 are broad, open-ended and vague and will mean whatever someone wants them to mean. Lack of certainty in the development process means disinvestment in CT.]*

Sec. 10. Subdivision (2) of subsection (a) of section 32 of public act 07-7 of the June special session is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) For the Responsible Growth Incentive Fund, not exceeding \$10,000,000, provided up to \$ 5,000,000 shall be used for grants-in-aid of up to \$ 1,000,000 each to participating municipalities or regional planning organizations for implementation of transit-oriented plans and strategies in designated pilot program areas, provided any project receiving any funding under this subdivision shall meet responsible growth principles, as defined in section 1 of this act.

[*Same comment as previous section.*]