

Planning and Development Committee

Testimony of Mark K. Branse Regarding

Raised Bill No. 5320

I am an attorney representing municipalities, private developers, and community groups and have been involved in land use as a town planner, a municipal commission member, or an attorney for the past 41 years. I currently represent one or more municipal agencies in more than 20 towns, and I wish to share my experience with this Committee concerning Raised Bill No. 5320.

This Bill would correct some of the worst errors of Public Act 11-79—an Act which stands as a testament to poorly crafted legislation. PA 11-79 ended up harming the very developers it was intended to help, while damaging a municipality's ability to protect the public interest. I commend you for facing this grievous error and trying to fix it. Let's do it *right* this time. There are two flaws in this Bill, one the result of bad policy and the other the result of bad drafting.

Bad policy: The Bill would restrict bonding in site plan approvals to only "erosion and sedimentation controls" and "site improvements that will be conveyed to or controlled by the municipality." In fact, legitimate bonding should cover more than that. Many improvements are required to be conveyed to a community association or land trust, not the municipality. Besides erosion and sedimentation controls, most site plans include water quality measures, such as detention ponds, dry wells, rain gardens, centrifugal catch basins, and bio-filters. Bonding should also cover the amenities that developers promise but aren't essential to occupancy, such as landscaping, pedestrian walkways, recreation facilities, and benches. The text should read:

... to ensure (A) the timely and adequate completion of any site improvements that will be conveyed to or controlled by the municipality or any community association or other entity required by the approval, and (B) the implementation of any erosion and sediment controls required during construction activities, and any permanent water quality or environmental protection measures depicted on the approved site plan or otherwise required by the site plan approval, and (C) landscaping, street furniture, recreation facilities, and other amenities depicted on the site plan or otherwise required by the site plan approval.

Bad drafting: Section 3 requires the issuance of building permits for "any building or structure on a site plan approved pursuant to subsection (g) of section 8-3, as amended by this act, or in a subdivision approved pursuant to section 8-25, as amended by this act." This language ignores the fact that both site plans and subdivisions *expire by operation of law*. The effect of Section 3 is to create an irreconcilable conflict in the statutes, and to extend, in perpetuity, the life of site plans and subdivisions when the statutes mandate a "sunset" by which such approvals become void. The language should read:

... any building or structure on a site plan approved pursuant to subsection (g) of section 8-3, as amended by this act, provided such site plan shall not have expired in accordance with subsection (i) of section 8-; or in a subdivision approved pursuant to section 8-25, as amended by this act, provided such subdivision shall not have expired in accordance with section 8-26c."

This Committee would save time for both itself and the stakeholders in land use if it refused to consider any bills that had not been at least reviewed (if not agreed to) by the Connecticut Homebuilders Association, the Connecticut Association of Zoning Enforcement Officials, the Connecticut Conference of Municipalities, and the Connecticut Chapter of the American Planning Association. Together, we can provide you with much better legislation than any of us can create in isolation. There is no reason to believe that public and private interests are always going to be at odds. A little dialogue would demonstrate that, if you demanded it.