



HOME BUILDERS & REMODELERS ASSOCIATION
OF CONNECTICUT, INC.

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*Your Home
Is Our
Business*

February 13, 2013

To: Senator Steve Cassano, Co-Chairman
Representative Jason Rojas, Co-Chairman
Members of the Planning and Development Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Proposed Bill 5966, AA Authorizing Fees in Lieu of Sidewalk Construction**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year.

We are strongly opposed to HB 5966 (and to HB 5242, which you voted to draft). The proposed bill violates the Constitution's takings clause, is not supported by CT case law and violates fundamental notions of fairness and responsibility.

Under the guise of "allowing" developers to pay a fee in-lieu-of constructing sidewalks in their subdivisions and then authorizing municipalities to use the funds for sidewalks elsewhere, the bill imposes responsibility on those who should not suffer it. The question is not whether sidewalks are a vital part of a transportation system; the question is who should pay for them. If a municipality needs sidewalks in a new subdivision, then requiring them there is certainly permissible and we accept the obligation to construct them. Of course, construction standards should be reasonable. **But if sidewalks are not appropriate or necessary in a particular new subdivision, the only appropriate thing for the municipality to do is waive the requirement.** Such waiver authority should be in the applicable subdivision regulations and many towns already do this. **If a particular planning and zoning commission or municipal leader does not want to grant or exercise that waiver authority, we ask you to not turn their failure to be reasonable into an industry-wide, statewide problem by enabling them to extract more money out of developers and new home buyers for a public benefit the need for which they did not create.**

We are aware of the proponent's statement that this legislation imposes **no new costs** on developers. While true as the bill is drafted, with all due respect, we also understand **responsibility**. We are willing to pay the costs for things for which we are responsible, i.e., sidewalks that serve our new home customers. Yet, despite the superficial attractiveness of imposing "no new costs on developers" this bill destroys fundamental concepts of fairness and sets a dangerous precedent we urge you not to start.

If you allow this fee for financing sidewalks anywhere in town, why stop there?

Why not require new home owners to pay for roads on the other side of town, or to fund the town's new public pool, new windows for town hall, or new roof for a school in another district? The abuse would be boundless.

No doubt, some developers would pay this fee as a way of buying their needed approval. It would likely be less expensive than litigating an illegal and unfair fee. **But it doesn't make it right.** Taking money from buyers of new homes to pay for public needs elsewhere in a municipality creates one more barrier to producing homes at a reasonable cost. It should not be condoned by the legislature, as it surely would not be by the courts.¹

Even if there were a constitutionally-required, demonstrated "essential nexus" between a new development and a public need for sidewalks elsewhere, you need to determine if it is right to charge only new home buyers in a town for general public costs, or spread those costs over the entire public (which, of course, also includes the new home buyers). We understand there are few options for financing infrastructure, the burden on the property tax and the pressure on municipal leaders' political futures caused by bonding and special assessments, but **paying for government services by any means short of the Constitutional and fair way should not be tolerated.**

We respectfully urge the committee to not pass this fee in-lieu-of sidewalk proposal.

Rather, we suggest that the proposed bill should amend 8-25 to read: "When considering an application for the subdivision of land, if such commission determines that sidewalks or any other development requirement would not serve a substantial purpose and provide an essential benefit to such subdivision, such requirement shall be waived by the commission or its agent." This would be the right thing to do.

Thank you for considering our views on this important matter.

¹ **We firmly believe the authorization in this bill violates the United States Constitution's Takings Clause** since there would be no required "essential nexus" between the need for sidewalks or trails in one part of town to a burden created by a new development elsewhere in town. We would enjoy reviewing any argument that purportedly demonstrates this required nexus in this sidewalk situation. We refer you to one of the seminal regulatory takings cases from the U.S. Supreme Court, Dolan v. City of Tigard, 512 U.S. 374, 391 (1994), in which Chief Justice Rehnquist, speaking for the Court, stated, "We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." We believe this Constitutional minimum standard of an "essential nexus," "rough proportionality" and "individualized determination" applies to both exactions of land and fees imposed on new developments.

Connecticut courts appear to hold to an even higher standard on these matters. See Property Group, Inc. v. Tolland Planning & Zoning Commission, 226 Conn. 684, 693 (1993), stating, "We have 'long accepted [the] view that a developer can be required to contribute land for a road network *within* the subdivision.' . . . In such instance, however, the exacted property must 'satisfy a need "uniquely and solely attributable" to the subdivision' under consideration."