



CCM 2015 Testimony

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PLANNING & DEVELOPMENT COMMITTEE

February 27, 2015

Good Afternoon, my name is Leo Paul, First Selectman of the Town of Litchfield. I am also member of the Connecticut Conference of Municipalities Board of Directors. CCM is Connecticut's statewide association of 156 towns and cities - our members represent over 95% of Connecticut's population.

I am speaking in opposition to **HB 5092 - *An Act Concerning the Discontinuance of Highways and Private Ways by Municipalities.***

This bill attempts to clarify the process applicable to municipal discontinuance of highways or private rights of way – in doing so rewrites the highway discontinuance statute which has been on the books since at least 1838. This proposal is also the same as HB 6637 which was considered during 2013 legislative session, and HB 5448 that was considered last year.

C.G.S. §13a-49 currently authorizes a Board of Selectmen, with the approval of a town meeting, to discontinue all or a portion of a public highway which is not used or needed for public travel.

When a highway is discontinued, the public's right to use the highway is terminated. C.G.S. §13a-55 preserves an abutting property owner's right to continue to use the roadbed of the highway for access and utility service as a private right-of-way in common with other abutting owners. That statute was enacted in 1959 to relieve municipalities of lawsuits for damages by property owners when highways were discontinued.

In discontinuing a public highway, the selectmen act as agents of the law and must strictly follow statutory procedure. If not, the discontinuance will fail, resulting in legal liability for the town.

Highway discontinuances are necessary because:

1. Municipalities can be held responsible under C.G.S. §13a-149 for injury to persons or damage to motor vehicles caused by highway defects. Most of the highways which are discontinued are narrow, winding, unimproved dirt roads which are dangerous to travel and expensive to maintain.
2. Many of these highways pass through large parcels of undeveloped land which attract developers who then go to court to force the municipality to open the road and improve it to today's safety standards so they can subdivide and sell lots.

3. Many of these roads are not passable for use by fire trucks, ambulances or school busses and should not be open to development at the town's expense.

HB 5448 however makes drastic changes to current practice by shifting the burden of determining the location and limits of an unimproved highway to the municipality. It adds the obligation to notify each abutting property owner of any meeting to discuss the discontinuance.

This bill enlarges the existing right to appeal to Superior Court under C.G.S. §13a-62 for failure to receive notice of discontinuance. This section of the law applies to the layout out of a new public highway which is rarely done by a municipality. It will now be used by developers to leverage municipal improvements to highways which the town no longer uses and would otherwise discontinue.

There already are adequate public safeguards in the present law to protect property owners which have worked well for many years, such as:

1. The Board of Selectmen must refer the discontinuance to the Planning Commission for a review and report under the town plan of conservation and development.
2. The Board of Selectmen must refer the discontinuance to a legally noticed public town meeting where every voter and property has a say.
3. Then the Board of Selectmen must vote whether or not to discontinue the highway and record notice in the Town Clerk's office.
4. Property owners have statutory rights of access and utility service under C.G.S. § 13a-55 and are thereby protected.
5. The municipality is relieved of liability for highway maintenance defects and unwanted development in remote areas, and is not subjected to lawsuits for highway discontinuances.

This bill takes the law in the wrong direction by creating an unfunded mandate and expanding municipal liability.

For these reasons, **CCM asks the Committee to oppose HB 5092.**

Thank you.



If you have any questions, please contact Mike Muszynski, Senior Legislative Associate, at mmuszynski@ccm-ct.org or (203) 500-7556.