

**PUBLIC COMMENT ON
RAISED BILL NO. 5486, LCO NO. 2197**

By: Sara C. Bronin

Professor of Law &
Faculty Director, Center for Energy & Environmental Law
University of Connecticut School of Law

via email at pdtestimony@cga.ct.gov

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Thank you to the Planning & Development Committee for providing the opportunity to provide public comment on this important land use bill.

I am a licensed architect and a tenured law professor at the University of Connecticut School of Law, and I serve as the faculty director for the Center for Energy and Environmental Law. I am the co-author of *Land Use Law* (a nationally recognized casebook), *Rathkopf's The Law of Planning & Zoning* (the leading treatise on zoning law), and over a dozen articles on land use and related topics. I also chair Hartford's Planning & Zoning Commission. I should note at the outset that my views do not necessarily represent the views of the University of Connecticut or its Law School, or the City of Hartford or its Planning & Zoning Commission.

Today, I would like to urge you to **reject** the current language for Raised Bill No. 5486. As written, this bill would prohibit local zoning commissions from requiring nonconforming uses to obtain a special exception or special permit. Although it would not affect the City of Hartford's zoning scheme (since we do not take this approach anyway), this seems like an unnecessary restriction.

However, this bill provides a vehicle for an opportunity for **amendment and new language** to Conn. Gen. Stat. § 8-2 which would help to achieve the goals of cities like Hartford in improving the way our city works and making life better for residents, businesses, and property owners. Specifically, **I would encourage the adoption of language that would allow cities to amortize nonconforming land uses.**

Why? Other states, including New York State, have allowed localities to “phase out,” or “amortize” nonconforming uses over a reasonable period of time, where such nonconforming uses have had a negative effect on their environment. As just one example, the amortization power allowed Mayor Rudy Giuliani to phase out, over a period of several years, adult theaters and other X-rated establishments in Times Square—and paved the way for the renaissance of that neighborhood.

Unfortunately, Connecticut does not allow for local governments to wield the same power. The result in a city like Hartford is that we lack the tools to amortize land uses with spillover effects that do real damage to our community.

Here is the language I would suggest:

§ 8-2(a) ... Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations, provided, however, that the regulations may provide for the amortization of nonconforming uses pursuant to section 8-2o. Such regulations shall not provide for the termination ...”

§ 8-2o. Amortization of Nonconforming Uses.

To preserve and protect property values and facilitate more orderly planning and development, zoning commissions shall have power to amortize nonconforming uses by providing a period of time within which a property owner must terminate a nonconforming use. Before authorizing amortization, the zoning commission must have a public hearing pursuant to section 8-7d during which it must make a determination that a reasonable expectation of a public need or public benefit outweighs the individual rights of the affected property owner whose nonconforming use or uses are being amortized. The zoning commission must set a reasonable period for amortization after weighing various factors such as the nature of the nonconforming use, the impact of the nonconforming use on neighboring property owners, the initial cost of the nonconforming use or structure, the present depreciated value of the nonconforming, the remaining useful life, the realization of investment in the nonconforming use to date, and the foreseeable prospects for developing the area. Once the zoning commission makes a determination of amortization, the burden shifts to the property owner to show the decision was unreasonable.

In a nutshell, this language balances property owners’ rights with the need for cities to rationally plan their towns and protect property owners from negative spillover effects from land uses that under current law are protected in perpetuity. Courts and legislatures around the country have recognized the importance of empowering local governments with the ability to amortize land uses. I would urge Connecticut to do the same.

Thank you for considering this amendment.