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Planning and Development Committee
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Finance, Revenue & Bonding Committee
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**Re: <u>OPPOSITION</u> TO H.B. 6107, H.B. 6611, H.B. 6612, H.B. 6613, S.B. 171, S.B. 172, S.B. 1024, S.B. 1026, S.B. 1027, and S.B. 1068**

**<u>NO</u> TO MANSION TAX AND STATE-MANDATED ZONING AND <u>YES</u> TO MAINTAINING LOCAL CONTROL AND MUNICIPAL HOME RULE**

Dear Committee Members:

Thank you for the opportunity to submit this testimony in **<u>opposition</u>** to H.B. 6107, H.B. 6611, H.B. 6612, H.B. 6613, S.B. 171, S.B. 172, S.B. 1024, S.B. 1026, S.B. 1027, and S.B. 1068.

By way of background, I have lived and practiced land use law in Connecticut since 2003, including affordable housing matters. I am a former member of the Canton Board of Selectmen and currently serve as a member (alternate) of the Canton Planning and Zoning Commission.[1] The aforementioned Bills are an affront to municipal home rule and local control over land use decisions uniquely impacting each municipality. I vehemently oppose state-mandated zoning and land use control. Local decision-making on individual land use applications, particularly zoning applications, must remain with the respective municipalities and their commissions. The proverbial "one size fits all" approach under these Bills to remedy alleged affordable housing and other issues is ill-conceived and fraught with unintended consequences. Please defend and local zoning and home rule, protect the environment and open space, and stop overdevelopment. For these reasons, as discussed below, the Bills must be denied.[2]

[1] I submit this testimony on my own behalf and do not express any views of the Canton Planning and Zoning Commission.

[2] Certain positions adapted from the Connecticut Senate Republicans' PDC Public Hearing Talking Points, available at: https://ctsenaterepublicans.com/wp-content/uploads/2021/03/03.13.2021-PD-Public-Hearing-Talking-Points.pdf (last visited March 14, 2021). These Talking Points are hereby incorporated by reference as if fully set forth herein.

Preliminarily, and as a matter of housekeeping, I take umbrage with the notion of cramming 10 plus Bills with the hope that one "passes." I also take umbrage with the fact that the Legislature turned away almost 70% of the people that signed-up to testify on similar zoning legislation.[3] The lack of transparency and stripping of due process rights via the right to be heard is antithetical to democracy and just shameful.[4]

**H.B. No. 6107** (RAISED) AN ACT CONCERNING THE REORGANIZATION OF THE ZONING ENABLING ACT AND THE PROMOTION OF MUNICIPAL COMPLIANCE

H.B. 6107 is problematic for a multitude of reasons. First, it creates a slippery slope that paves the way for greater state oversight and control over local zoning including, for example, the significant erosion or elimination of zoning altogether.[5] Second, by removing the "character" reference as a basis for a zoning commission to deny a development, the bill strips the municipality of the right to maintain and preserve its unique identity, including the "New England village character." Third, it mandates numbers/percentages of affordable housing that are not achievable in all municipalities for numerous reasons (e.g., density challenges, public transportation access). Fourth, the bill significantly burden (fiscal/time) already fiscally strained towns and their elected officials and staff by, among other things, requiring the submittal of a Fair Housing Plan/Plan of Conservation every five years, and requiring municipalities to post their draft affordable housing plans to their town websites. Fifth, and perhaps most significant, this bill is effectively compulsory zoning, which eliminates the local residents' voices and assumes that municipalities have no desire to improve housing opportunities absent state intervention. As a former member of my town's Board of Selectmen and current member of my town's planning and zoning commission, I take extreme umbrage to the suggestion that local land use bodies are either incapable of or ill-equipped to make the best land use decisions for their respective towns.

**H.B. No. 6611** (RAISED) AN ACT CONCERNING A NEEDS ASSESSMENT AND OTHER POLICIES REGARDING AFFORDABLE HOUSING AND DEVELOPMENT

There is nothing "fair" about the fair share housing plan proposed under H.B. 6611. First, the State will determine the "fair share" affordable housing plan for reach region and a "fair share base" for each municipality, thereby wresting control of local decision making as discussed above. Second, it vests substantial discretion in the Secretary of OPM to allocate obligation among municipalities above and beyond calculations based on the municipal grand list and census data. Third, it imposes significant time and fiscal burdens on already cash-strapped towns including: (1) identifying specific parcels to locate "fair share" housing and fund same if

[3] *See* https://ctsenaterepublicans.com/2021/03/ct-democrats-turn-away-public-from-testifying-on-zoning-bills/ (last visited Mar. 22, 2021).

[4] "If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter." George Washington.

[5] For example, envision the scenario where the claim is made that there are not enough low income jobs in a community such that industrial and/or commercial zones should be expanded and melded into residential zoning to allow for greater business and thus job opportunities, and thus a single or reduced number of zones.

other subsidies are not available; (2) funding expansion of sewer and other infrastructure to allow affordable housing development; (3) filing a lawsuit to affirmatively prove the town has created a viable "fair share" program to avoid force approval of affordable housing development applications, and where that was not done it allows a court to order the town to pay the aggrieved party's attorneys' fees, costs and other relief; and (4) retaining attorneys draft and revise fair housing plans inclusive of the bill's requirements, in addition to defending lawsuits for allegedly failing to satisfy their "fair housing plan" obligations.

**H.B. No. 6612** (RAISED) AN ACT CONCERNING PROTECTIONS FOR FAMILY CHILD CARE HOMES AND THE ZONING ENABLING ACT

Like the above Bills, H.B. 6612 makes multiple language changes from options to obligatory mandates. The bill also proposes that municipalities handle family child care homes consistent with single or multifamily dwellings. Lastly, it requires landlords to allow tenants to operate child care homes in any lease properties. This last point is legally untenable and effectively usurps private property rights and the right to contract (e.g., landlord/tenant) the parties' rights, duties and obligations. That aside, it would allow daycare facilities anywhere in town wherever the subject property is leased. Absent contractual agreement, a landlord should not be shackled with the unintended consequences of a leased property being used as a daycare by a tenant, including personal injury and other liability/tort issues.

**H.B. No. 6613** (RAISED) AN ACT CONCERNING ACCESSORY APARTMENTS, MIDDLE HOUSING AND MULTIFAMILY HOUSING

H.B. 6613 is another form of compulsory, state-mandated zoning. It removes local authority over multifamily developments, and instead makes it as-of-right. Moreover, it provides that non-compliance by October 1, 2021 renders local regulations null and void. This arbitrary and impossible deadline is remarkable. Additionally, enabling as-of-right multifamily housing on at least 50% of all land within 1/4 mile of the primary commercial center in any town with a population of $\geq$ 7,500 (most municipalities in the State) is both arbitrary and unnecessary. It also prohibits correction of nonconforming uses, which is antithetical to longstanding zoning principles to eliminate nonconformities. These as-of-right privileges will forever change the landscape of downtown areas.

**S.B. No. 171** (RAISED) AN ACT ESTABLISHING A STATE-WIDE TAX ON REAL PROPERTY

S.B. 171, the so-called "Mansion Tax," seeks to add yet another tax on the middle class and commercial property owners. The tax would be imposed on homes with an assessed value of more than $300,000, which is the equivalent of property with a $430,000 market value (based on 70% market value assessment). Regrettably, the proponents of this bill gloss over the fact that it is yet another unnecessary tax that will inevitably impact the middle class. Moreover, in Fairfield County and along the Connecticut shoreline, a home with a $430,000 market value is not considered a "mansion" or high end property, largely due to the proximity to New York City and Long Island Sound. This new tax will not help the Connecticut housing market, especially in Fairfield County and the shoreline, and will in fact burden already struggling taxpayers. It

will also stifle incoming folks to the State and will drive others out to more tax friendly (southern) states. Finally, the new tax will apply to commercial properties. Fiscal restraint in lieu of new or increased taxes should be endorsed by the State, especially during the pandemic and uncertain economic times when residents and businesses are leaving the State.

**S.B. No. 172** (RAISED) AN ACT ESTABLISHING STATE-WIDE ASSESSMENT TO ENCOURAGE AFFORDABLE HOUSING IN THE STATE

S.B. 172 represents yet another tax and government forced mandate. S.B. 172 seeks to establish a State-wide tax on commercial and residential real property based on the percentage of affordable housing located in the municipality, all under the guise of promoting affordable housing. S.B. 172 is just another tax and effort to steal municipal home rule and zoning from the State's municipalities.

**S.B. No. 1024** (RAISED) AN ACT CONCERNING ZONING AUTHORITY, CERTAIN DESIGN GUIDELINES, QUALIFICATIONS OF CERTAIN LAND USE OFFICIALS AND CERTAIN SEWAGE DISPOSAL SYSTEMS

S.B. 1024 is problematic for a myriad of reasons. First, it imposes strict and onerous rules on municipal development insofar as it, among other things: (1) requires consideration of development impact to affordable housing and combatting discrimination and segregation; (2) requires consideration of energy efficiency including use of green energy sources (e.g., solar, wind); and (3) creates designated locations where accessory apartments are allowed (and sets lot size, setbacks, frontage and floor area). Second, it would control the kinds of zoning commissions can or cannot charge. Third, it limits the reasons development projects may be denied, including changing "character" to "physical site characteristics and architectural context," reducing the minimum floor area for a unit, and removing the cap on the number of units that constitute multifamily housing over 4 units, middle housing or mixed-use development. Fourth, as of October 1, 2021, all as-of-right dwelling units (mixed-use or multifamily) will have no minimum parking requirements. Fifth, it requires the usage "vehicle miles traveled instead of traffic calculations and requires strategies to reduce off-street parking an increase bike paths/racks and bus shelters. Creating higher density with less off-street parking will create more parking issues, traffic concerns and pedestrian safety issues. Sixth, it implements onerous training on land use commissioners and prohibits those who have not satisfied the training from voting on land use applications.

**S.B. No. 1026** (RAISED) AN ACT CONCERNING TRAINING FOR CERTAIN PLANNING AND ZONING OFFICIALS

S.B. 1026 allows municipalities to require 4 or more hours of training each year for all zoning board and commission members. This is a very onerous requirement to demand of voluntary members of the community that already dedicate countless hours and days drafting and revising regulations, participating in committees and subcommittees, reviewing and analyzing applications and participating in monthly special and regular meetings (most of which typically start in the evening and last 3-5 hours).

**S.B. No. 1027** (RAISED) AN ACT CONCERNING ACCESSORY DWELLING UNITS AND ZONING REGULATIONS

S.B. 1027 is also problematic for numerous reasons. First, it reduces the current 2/3 vote to a simple majority vote to adopt a protested zoning regulation or zoning district change. This goes beyond affordable housing and would make it easier to site any objectionable use (e.g., crematory, service station, factory) near residential properties. Second, it prevents municipalities from partially assessing construction of multi-family housing developments until they are completed, which will inevitably deprive tax revenue. Third, it sets parameters under which accessory dwelling units will be required as-of-right may be counted towards the § 8-30g requirement.

**S.B. No. 1068** (RAISED) AN ACT CONCERNING PROPERTY TAXES AND AFFORDABLE HOUSING

S.B. 1068 is equally very troublesome. S.B. 1068 would levy an additional property tax on certain homes in municipalities that do not satisfy the current 10% requirements on affordable housing. S.B. 1068 mirrors S.B. 172 and just another example of additional taxing and stripping of home rule and zoning under the guise of affordable housing. This Bill should be rejected.

For the above reasons, I respectfully **oppose** **H.B. 6107, H.B. 6611, H.B. 6612, H.B. 6613, S.B. 171, S.B. 172, S.B. 1024, S.B. 1026, S.B. 1027, and S.B. 1068**, and all other legislation that gives local land use decision-making to the State or regional body or otherwise seeks to fundamentally alter home rule. Please add my written testimony to the files as part of these Bills.

Respectfully submitted,

*/s/ Thomas C. Blatchley, Esq.*
Resident – Canton, CT
Land Use Attorney
Canton PZC Member (Alternate)
Former Canton BOS Member