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Land Use, Growth & Taxes: What To Do

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Our current land use system has become intolerable for housing and business growth. Landowners, businesses and builders are increasingly faced with moratoriums on new developments, growing lists of onerous permit conditions, higher fees, burdensome regulations designed to stop or slow economic and housing development and staggering permit delays, most imposed by a growing multiplicity of citizen review boards. Connecticut must restore a reasonable level of certainty to our land use system to restore Connecticut's hope for future growth and the welfare of all of its citizens.

New land use and growth management policies should be created after thoughtful debate by all stakeholders on what we need to do to grow smart – but grow we must. In fact, growth is how we can pay for both property tax and land use reform. With leadership that takes risks and embraces the ideas presented here, we can balance new development needs with environmental health and community character so that all of Connecticut's citizens can prosper and enjoy where they live, work, shop and play.

Guiding Principles

Three guiding principles lead us to 16 recommendations on what Connecticut must do:

- I. More economic development, jobs and housing will provide greater tax revenues for both state and local governments. These greater tax revenues can pay for both property tax relief and the preservation of important environmental resources. But the answer to promoting economic development, jobs and housing is not more regulation or the creation of even greater uncertainty. Rather, a wholesale change in our outdated and complex land use review and approval processes is required.
- II. Policy makers need to understand the relationship between land use planning and free markets. Where people want to live and the homes they want to live in are very personal decisions that land use planning can do little to control. At best, land use plans are blunt instruments that may or may not have their desired effects over time. If people are denied the choices they desire in Connecticut they will go elsewhere. Our economy will then suffer more. Therefore, state and local governments should facilitate greater choices in housing and other land uses while protecting important environmental and quality of life values.
- III. Where future development occurs and the form it takes is critical to preserving our environmental health and community character and meeting the demands of the marketplace. For example, focusing on open space preservation without also actively promoting housing and other economic development will create communities with no place that our children can afford to live. We are convinced that these competing goals can be balanced. But we need to do so without more layers of controls and bureaucracy. Rather, Connecticut requires a new, streamlined land use regulatory system that both plans appropriately for all of society's needs and provides certainty for development applicants and the general public.

What Connecticut Must Do

Some of the recommendations that follow would be significant changes to the current land use framework, while others can be done in the context of our existing framework. No priority is suggested by the order of these recommendations:

1. To reduce our land use bureaucracy, streamline the land use process for all constituents and better coordinate planning with regulatory implementation, **consolidate all existing land use boards into only three new land use boards in each municipality, as follows:** A “Land Use Commission” to write the plan of conservation and development (“PCD”) and all land use regulations and maps, such as planning, subdivision, zoning, inland wetlands and other regulations; a “Development Review Board” to review all applications for specific projects, from the home owner’s deck to the largest developments and to take in comments from all other officials and the public; and a “Land Use Appeals Board” to grant variances from the regulations where necessary to avoid the inevitable hardships not created by the applicant. Phasing in the Land Use Commission prior to the Development Review Board by a year or two would be appropriate, and rotating cross memberships on these bodies is necessary to ensure rationale administration. **This change would have multiple benefits and solve many land use issues about which advocates from all sides have complained, such as:**
 - a. Ensuring that all land use regulations are drafted to implement the PCD because they will be written by the same commission (see also recommendation 3. below);
 - b. Ensuring that all local land use regulations are coordinated, eliminating conflicting provisions, because they will be written by the same commission into a single regulatory structure;
 - c. Providing a single responsible entity for creating a vision of a community, planning its land uses and facilitating the public’s involvement in this process;
 - d. Eliminating unnecessary permit processing delays by doing away with the “ping pong” game often played in the current land use process with applicant referrals to other boards and commissions for approvals;
 - e. Creating a single, one-stop entity for all applications, with the Development Review Board having the responsibility to ensure an application complies with all applicable regulations;
 - f. This new system should be created to empower citizens to better plan and design their community at the front end while removing some of the adversarial tension on individual applications at the back end by limiting review to compliance with the regulations.
2. **Require that all local land use board members be educated** about the laws and regulations they are charged with implementing, or hire professional, paid decision-makers and eliminate volunteer boards. All land use board members should be provided with balanced information so that they understand their statutory responsibilities and limitations, are comfortable in delegating more administrative decisions to their paid, professional staff, and do not come to the table to implement personal agendas regardless of what the law authorizes them to do.
3. **Rethink the topic of “consistency” with land use plans of C&D.** There has been much disagreement over whether local, regional and state plans of C&D should be consistent with each other (i.e., **vertical consistency**) and whether local zoning and planning regulations should be consistent with local plans of C&D (i.e., **horizontal consistency**). To date, no one has offered a rational explanation of how this consistency will achieve smart growth objectives.

To address consistency between state, regions and municipalities, we suggest the following solution: The current statutory authorities for local, regional and state plans of

C&D are different. It is impossible to force consistency between plans at these different levels of government when they are charged with different functions. Therefore, addressing vertical consistency must begin with the enabling statutes. The authority for local plans of C&D, Conn. Gen. Stat. section 8-23, is a good, well-balanced, well-drafted statute. The problem lies in that many local governments do not follow its letter or spirit, particularly in regards to housing matters. Therefore, appropriate review or enforcement provisions must be added to 8-23 to ensure all municipalities comply with the letter and spirit of the statute. Then, Connecticut must duplicate that authority for both regional plans (8-35a) and the state plan (16a-24 to 16a-33) so that they will be working from the same page. Trying to force consistency between these different government levels without fixing the underlying statutes will greatly complicate the current land use process and backfire on economic and municipal development efforts.

Once this is done, the plan writing process must balance municipal control over its own character and needs while reserving major issues of statewide or regional impact to be controlled more through either regional cooperation or mandates. Regional or statewide planning control should be reserved for only the most significant of regional or statewide issues. The state, through a new office of conservation and development planning, should draft a statewide plan pursuant to the new planning statute described above, noting only the major items delegated to it by the legislature, such as an outline of major highways and transportation systems, major utility systems, power plants, specific areas of statewide or regional environmental significance. Regional plans, if necessary, then would fill in more of the skeleton related to only items of regional significance and then local governments filling in the majority of the plan with all the detail around the skeleton (e.g., designation of local land uses, local street layout, local open spaces, town centers, village districts). The plans would then be complete after local governments fill in their details. The process outlined here gives local governments primacy while recognizing that there are regional and statewide land use planning issues that must be addressed at those levels. The real issue is how much of society's needs do we want planned locally versus regionally (e.g., consider the debates that surround the extent of authority of the state siting council).

Mandating consistency between local zoning and other land use regulations with local plans of C&D must not be required within the existing statutory framework. This has been a very controversial issue for a variety of reasons. For example, requiring zoning regulations to be consistent with a poorly drafted local plan of C&D or one that does not comply with 8-23 is not sound land use policy. Our separate policy statement on this consistency issue explains in more detail why we oppose horizontal consistency under the current land use system. However, adopting the new administrative structure in recommendation 1. above would largely solve these issues.

4. **Establish a specialized land use court** to handle all land use and environmental appeals. A court dedicated to handling these issues will build more judicial expertise and a more consistent body of law. This will lead to even more predictability and certainty in our land use system. For appeals, the courts should encourage the parties to utilize the relatively new land use mediation statute. Also, for certain types of appeals, an immediate show-cause hearing should be required in order to prevent appeals from being used merely as a delaying tactic and to ensure only legitimate appeals proceed to a full hearing.
5. **Authorize all municipalities to adopt land value taxation** for specific areas chosen by local government to encourage development as the municipality chooses. This method of property taxation has been used successfully in other jurisdictions. It allows a municipality to tax vacant or unoccupied land at a higher rate than land that is developed (or tax land at a higher rate than buildings on the land), producing an incentive for owners to develop or redevelop

the property. However, unlike proposals in prior legislative sessions that limit this authority to only cities or targeted investment communities, it should be provided to all municipalities so they can use it as they wish;

6. **Adopt comprehensive and complete brownfield liability relief for innocent purchasers** of land to encourage cleanup and reuse of contaminated areas;
7. **Adopt tax credits** for developments meeting smart design criteria or in areas where local governments want to encourage development, but these tax credits must be simply drafted with clear guiding principles and requirements and avoid any bureaucracy that weakens their utility;
8. **Authorize or mandate density bonuses** for cluster and conservation subdivision designs;
9. **Prohibit large lot zoning or provide incentives to rezone to smaller lots.** Minimum lot sizes should be tied to well and septic requirements in non public utility areas or to capacity availability in public utility areas while allowing larger lots if that's what the market demands. If a town wants larger minimum lots than the public health code would require, it should have to justify the larger lots on other public health or safety grounds. It is the proliferation of larger lots, not more housing units, that creates fiscal stress on property tax payers because with larger lots there are fewer homes paying for an even greater infrastructure maintenance cost;
10. **Prohibit development moratoria** except for legitimate, demonstrated public health or safety emergencies. Moratoria on developments should not be imposed on land owners, builders, new home owners and businesses just because a town needs more time to write regulations or draft plans. Moratoria are a direct assault on property rights and the needs of the marketplace;
11. **Remove the discretion that has crept into "as-of-right" development approvals.** Even these "as of right" approvals (i.e., subdivision and site plan applications), were designed by state statutes to be quick and certain reviews of proposed projects that meet the adopted regulations of a municipality, but they are routinely delayed to death by too many communities. The regulations are purposely written with vague language or catch-all provisions to thwart the "as of right" intention of the legislature;
12. **Provide extra approval assurance** for higher density, pedestrian friendly communities by adopting **pre-approved development areas** for not only industrial and commercial development but also residential developments fitting "smart design" criteria, or at least make smart design land development plans and cluster and conservation subdivisions "as-of-right" rather than fully discretionary under special exception, special permit or "floating zone" rules. Other areas that could benefit from this pre-approved process are "grey fields" – i.e., old shopping centers or other areas with abundant asphalt that need to be redeveloped;
13. **Require each municipality to anticipate and plan for growth and to adopt a long-term but flexible infrastructure development plan.** Plans of C&D and infrastructure development plans must meet both the current and projected future demand for business and housing. Amendments to these plans should be required as marketplace changes occur. Land use plans and regulations must be used as tools to encourage development where a community would like it to go, but not as rigid blueprints to control – and eventually stifle – the free market. Municipalities should be required to fund infrastructure development through equitable, broad-based revenue sources so as not to pit existing residents against future residents or households with children against households with no children (i.e., don't saddle new development with fees and taxes). Development-sponsored tax districts should be

authorized by the legislature as long as the enabling legislation is structured so that it serves the smaller builders and developers that make up the vast majority of our industry in Connecticut.

14. To help facilitate the improved planning that must be done, the new **satellite land cover data** compiled by UCONN should be utilized and the state should fund a coordinated **geographic information system (“GIS”)** that can be used by all communities. However, until the mindset about the need for balanced growth changes, we do not support using **build-out analyses**, which make assessments as to how a municipality would look if it built itself according to zoning and other land use regulations at the time of the study. These studies have proven to not serve as useful, objective tools in the hands of some land use commissions and have led to policies that limit the growth a build-out analysis suggests rather than create smarter ways to accommodate future growth. And build-out analyses by their nature, which look out twenty-five or more years as to what can be built, quickly become inaccurate as soon as any land use regulation in a community changes. If adopted, funding build-out analyses should be tied to requirements to accommodate expected growth in the smartest way possible.
15. **Revitalize our urban areas and correct inequities in both education grants and our property tax system.** Cities need to take care of crime, improve education systems, reform city bureaucracies and budgets and upgrade existing housing stock to attract more people to the cities and reduce the flight from them. Suburban sprawl is not the cause of urban decline, but urban problems do lead to more growth further out as cities become less of an option for the marketplace. Understanding this strongly suggests that the plight of our cities can be fixed without limiting growth in the suburbs. Conversely, limiting growth in the suburbs will not force people to choose the cities if they remain unviable options. Reform of our land use planning and regulatory system across the state as we have recommended here will lead to greater economic revival but cities need to be able to fix their non land use problems if they hope to participate in it. Accordingly, to assist municipalities in this goal, we need to fix the cross inequities between city and suburb of a) the education cost sharing system (which penalizes wealthier suburbs), b) the payment in lieu of tax (“pilot”) system and state road maintenance practices (which penalize cities), c) the lack of a system for city and suburb to share in public safety burdens, and d) address the real service cost drivers, such as unfunded state and federal mandates, Davis-Bacon laws and public employee pension and other costs.
16. Failing adopting recommendation 1. above, **coordinate and make uniform our myriad local land use permit processes.** Public Act 03-177, effective Oct. 1, 2003, helped with this goal, but much more coordination and streamlining of the process must be accomplished. We need to adopt a process for determining the completeness of development applications to start the processing clock ticking, perhaps in conjunction with the voluntary pre-application review meetings authorized by the legislature in 2003 (PA 03-184). **Individual communities can also choose to streamline their permit processes** without waiting for the state legislature to do it for them. Connecticut’s statutes must take on the difficult task of **encouraging more public involvement on the front end** of creating plans of C&D, zoning maps and regulations, subdivision regulations and inland wetland regulations, but **discourage public involvement on the back end** of approving specific developments complying with adopted plans and regulations, especially for “as-of-right” applications. State and local governments also need to foster public education on the benefits of smart design, cluster and conservation subdivision developments;