

Legislative History for Connecticut Act

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HB 7270	PA 311	1989
House	<u>10572-10690</u>	(119)
Senate	890, <u>4045-4077</u>	(34)
Planning and Development 227-234, 244-247, 249-250, 252-261, 280, 281-282, 282-283, 284, 286-287, (290-291) 293-297, 298-308, 316-319, 322-323, 324-327, 331-337, (170) 338-339, 341		
		Total-223 P.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
and House of Representatives Proceedings

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HOUSE

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1989

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10340-10697

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The Clerk please take a tally.

The Clerk please announce the tally.

CLERK:

HB5096, as amended by House Amendment  
Schedule "A".

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	142
Those voting Nay	4
Those absent and not Voting	5

SPEAKER BALDUCCI:

The bill as amended is passed.

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Migliaro, for what purpose do you  
rise?

REP. MIGLIARO: (80th)

I missed the vote. Would the Transcript please  
show that I would have voted for the bill had I been  
here in the affirmative.

SPEAKER BALDUCCI:

The Transcript will so note.

CLERK:

Page 3, Calendar 489, Substitute for HB7270. AN

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ACT ESTABLISHING A STATE AFFORDABLE HOUSING LAND USE  
APPEALS PROCEDURE AND CONCERNING THE EFFECT OF CHANGES  
IN ZONING OR INLAND WETLANDS REGULATIONS ON PREVIOUSLY  
FILED APPLICATIONS.

Favorable Report of the Committee on JUDICIARY.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint  
Committee's Favorable Report and passage of the bill.

SPEAKER BALDUCCI:

The question is on passage. Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker, the Clerk has an amendment,  
LC07992 and I ask permission to summarize.

SPEAKER BALDUCCI:

Would the Clerk please call LC07992, designated  
House "A".

CLERK:

LC07992, designated House Amendment Schedule "A",  
offered by Representative Cibes, 39th District and  
Representative Tulisano, 29th District.

SPEAKER BALDUCCI:

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The question is on summarization. Is there objection? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, the file copy -- I'm sorry, Mr. Speaker, the amendment basically is a -- substitutes the file copy. It modifies it in principle that the decision of the board must be sufficient, rather than substantial. It must protect substantial public interest rather than the file copy. It is language vital and it is clearly, rather than substantially outweighs the housing interests and there is no longer any reference to regional housing interests in the bill after this amendment should be adopted.

The exemptions are also expanded to count CHFA single family mortgages as well as elderly housing instead of site housing. There's also a new procedure developed which allows modifications to be viewed -- to be reviewed before a final rejection may occur or could occur, allowing a developer to respond to the needs of the community and the definition of affordable housing is narrowed by households below 80% of the area median.

Mr. Speaker, as I indicated, these changes, together with replication of the full language, again, become the file copy and I move for adoption of the

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amendment and then we can debate the bill.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark further on the adoption of House "A"?

REP. RADCLIFFE: (123rd)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Radcliffe of the 123rd.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker, through you, to the proponent of the amendment.

SPEAKER BALDUCCI:

Please proceed, sir.

REP. RADCLIFFE: (123rd)

First of all, Representative Tulisano, in Section B of the amendment, it indicates that appeals under this section will be taken under Sections 8-8-9, etc., of the General Statutes, but under Section C we're told in the next line that the appeal is taken on evidence in the record before the commission. Now as I understand Section 8-8 of the General Statutes that allows a court to take evidence outside the record if a court deems that such evidence is necessary for a fair determination of the issues.

It seems to me there's a conflict here between

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Sections B and C. Are we going to allow a court to take evidence outside the record or is this appeal going to strictly be limited to the record compiled before the commission, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, through you, Mr. Speaker, I believe in Section B, the reference being line 52, 53, I think that's what the Representative is making reference to, that talks about using the same time periods in that sections and not necessarily the same standards. The same standards, I believe, however, the standard which outlined in pages -- on lines 67 through 81, does not indicate one way or the other whether or not additional evidence may be taken if the record is not complete and I would -- it would be my -- I would believe that the judge may take additional evidence as is currently done in zoning hearings should he believe he needs additional evidence that is not in the record provided for, you note that line 68 says the burden to prove is based upon the evidence in the record, the judge to make his own decision with -- the commission's burden is on the record, but not anything else -- it does not prohibit the taking of other language -- I'm sorry,

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other testimony.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, I was referring to lines 65 and 66 where it says, "The appeal shall proceed in conformance with the provisions of Section 8-8." I would assume that "in conformance with" would mean that evidence outside the record could be taken. I was not referring to lines 53 and 54, if that helps the Chairman of the Judiciary Committee, through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I just saw that other line that he was referring to and note further that they may also still do it under those sections. Not limited, the only limit is on what has to be on the record is what the commission is required to prove is based on the record, but the judge, that's the one limitation on it, otherwise everything else that -- otherwise anything else that is provided for in those sections is allowable.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, then I go back to my initial question as to whether that section, which I believe Representative Tulisano has just indicated would allow for additional evidence outside the record

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to be taken or to be ordered by a judge under certain circumstances. Is that not in conflict with Section C which states that the burden on the municipality, the burden shifting that takes place, is based upon evidence and I'm quoting, "in the record compiled before the commission." Through you, Mr. Speaker, is the to meet its burden only on the record before the commission or will it have to confront facts which are developed on evidence at trial under Section 8-8, through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, on the record, and as I even understand even Section 8-8, that is not a new trial de novo. That is evidence to clarify that is used by the judge to clarify the record. It is designed to make sure there is no trial de novo.

REP. RADCLIFFE: (123rd)

Thank you. Through you, again, Mr. Speaker, in Section 5, again, I know what fair preponderance of the evidence is or clear and convincing evidence is. I wonder if Representative Tulisano can give me an idea what sufficient evidence is. Is that a particular test? Has that been developed? Is there any precedent as to what sufficient evidence is? In Section 1, in Section C we're told that decisions must

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be supported by sufficient evidence in the record.

What is sufficient evidence?

REP. TULISANO: (29th)

Enough evidence for one to reach a particular conclusion.

REP. RADCLIFFE: (123rd)

Well, is it a fair preponderance? Is it more probable than not?

REP. TULISANO: (29th)

Through you, Mr. Speaker, there's enough evidence to reach a particular conclusion. It is in fact a new system we're developing here today. It is none of the three and, through you, Mr. Speaker, as the body knows, that court decisions have in fact left it to the findings or the findings of the Boards of Planning and Zoning Commissions to reach these conclusions and particularly with evidence of -- I'm trying to think of the word, belief, rather than any hard evidence and I think that they will have to have something on the record that third parties can look at in an objective manner and reach the same conclusion.

It is not a very high standard whatsoever, and so I think the Representative is correct that is just a matter of fact that something has to be there and they will have sustained their burden. It is in fact a very

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easy thing to do.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, as I read Section C and then I think it's a correct reading, the municipality would have the burden of going to court and proving by sufficient evidence that standard that's developed in the record that these several factors are met, that is, decisions necessary to protect health, safety and welfare, public interest, should outweigh the need for affordable housing.

The record at a zoning hearing, as I understand it, at least every zoning hearing I've ever attended, is made by the proponent and by different citizens groups or opponents of a particular project.

Through you, to Representative Tulisano, does the municipality have an opportunity in such a proceeding to present evidence in the record to justify a decision which has not, at that time, actually been made? What if the opponents or the proponents fail to provide certain evidence? Is the municipality still limited to the record, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, Section 87e, Sub E of our

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General -- I'm sorry Section 8-8, Sub E of our Zoning Statutes make it clear that if it's an incomplete record that additional evidence can be brought in and that was the question that the Representative cited earlier, wanting to know the procedure. Now it seems to me that in this file copy before us, we also set up a system -- on line 82 that we have the -- allow the commission, an applicant to provide the commission a proposed modification, responding to objections and restrictions articulated by the commission and their denial or their intent to deny and by that you will have on the record what that evidence is that they have articulated and ability to respond.

I will give you an example. Should there have been for a particular size unit a zone that required, say, only 30 units and you proposed 80, and the commission would say that the max you should allow ever on there is 62 because you should have so many square feet of open space on it and that's what the national standard is. They would have met their burden.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, I recognize in Section D the second bite of the apple that the developer is given in this particular scheme of things. I'm still concerned about the original hearing, however, and what

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the municipality has to do or has to accomplish. It seems to me that when you have a board or a commission making a decision, sitting at least in a quasi-judicial capacity, they'll be advised by counsel as to what rules to follow procedurally, substantively and otherwise.

Through you, Mr. Speaker, does the Chairman of the Judiciary Committee envision that the municipality should also have an ombudsman present or someone to place evidence in the record to substantiate its decision.

REP. TULISANO: (29th)

Through you, Mr. Speaker, Section D, I think has to be read in conjunction with that because Section D, this is a part of the record that is being created. This is in fact part of the record that is being created and they, in their decision making will have to cite reasons why they deny and then the response made there to.

Now presumably, they will be acting through their staff to develop those things that they do now, such as town engineers and town planners.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, I understand that they have to set forth reasons and conclusions as to

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what the Board may have found after hearing, but their decision, it seems to me by both the clear reading of Section C and Section D is based upon what is actually in the record before it.

Through you, Mr. Speaker, then they would go to court, as I understand it, and have the burden of sustaining their decision. Are they to be limited, rather, to sustaining the decision of the board based upon a record that they in fact had no part in creating, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, as I indicated, the Section D is a part in which they play in creating that record. That is on part of the record, as the scheme of this is laid out and they do create that by the dialogue, by the ability to create questions and to present what they believe is the appropriate response from the town right then and there so that the court will in fact have something to look at and that is the reason why D is here, is an attempt to deal with the exact issues that the Representative had just raised.

REP. RADCLIFFE: (123rd)

Thank you. Thank you, Mr. Speaker. Am I reading Section D incorrectly when I read it as allowing the developer an option to proceed a second time. It's my

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understanding with Section D that once an application has been rejected by a commission, the applicant may, within the period of time filing submit to the commissioner a proposed modification. If in fact the developer fails to submit a proposed modification and it seems to be at his option and not at the option of the municipality, is this municipality then prevented from having any input in the record on which it must substantiate his decision on appeal, through you, Mr. Speaker? I read that as permissive. Am I misreading it, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, you are correct in that it is permissive on the applicant's part, but on the other hand, since this does allow -- this procedure also now allows for a remand and allows for this procedure. It would be, as a practical effect, incumbent upon any developer before who wanted to claim that the town acted without due reliance when they set out why they were denying an application, that I had an opportunity to respond to that and in that situation I think, as a practical effect, most people will make use of Section D and, secondly, if it was failed to be used, I would think a judge would remand for that kind of dialogue.

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REP. RADCLIFFE: (123rd)

Well, I agree, through you, Mr. Speaker, that certainly a developer would be well-advised to make use of Section D, submitting initially a proposal which may be blatantly and patently unreasonably, although perhaps reasonable when considered in light of this burden shifting that we're about to adopt and then would come in with a second proposal which would be equally outrageous, but might seem very modest and reasonable as against the first proposal, but I think the answer to my questions was that unless the developer takes the second bite of the apple, unless the developer submits this information or the court chooses to remand, the municipality might not have any input into this particular decision, even though we are providing two bites of the apple.

Through you, Mr. Speaker, on Section B or Section C, rather, I just have one question concerning the burden shifting which seems to be somewhat unprecedented in this. Can the Chairman of the Judiciary Committee, through you, Mr. Speaker, cite any other agency, municipal agency or state agency which enters a court with a presumption that its decision is not entitled to great weight in the judicial scheme of things, through you, Mr. Speaker?

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REP. TULISANO: (29th)

Through you, Mr. Speaker, not yet.

REP. RADCLIFFE: (123rd)

So then, through you, Mr. Speaker, I take it that this would be a new rule of law not applicable to any other state or municipal agency and certainly not consistent with the Administrative Procedure Act, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, absolutely true, Mr. Speaker, that this is new procedure and it should be very clear that that is a new procedure and it is designed for the narrow area of the housing matters.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Mr. Speaker, I also wonder, I know I have an hour's drive up here every day and perhaps it wouldn't be as inconvenient for Mr. Tulisano, to Representative Tulisano to go from Rocky Hill, but the court, in Section B, that's to make this decision, this judicial oligarchy of philosopher kinds in black robes who are now going to be zoning body for the State of Connecticut. Why are they going to be judges in Hartford and New Britain? Don't we have judges in Danbury and Bridgeport and New London who also have the ability to decide cases in their own

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communities, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, it had been suggested by the Judicial Department at least initially that they would only have one person, one or two people up here and they may very well ride circuit and in fact I had a suggestion, through you, Mr. Speaker, that it may very well they'd have to ride circuit and I think we'll be working on that, but they, just because they have just one person available and that person will be located here to do it. There is no, I think hopefully in the very near future, we'll shift that and allow those people to travel to the area, although it will be filed in Hartford-New Britain.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, is it envisioned, however, because -- and I'm only reading in Section B where the case must be returnable to the Judicial District of Hartford-New Britain, so I would wonder if Representative Tulisano is indicating that this panel of judges, this Zoning Board in black robes, are going to travel the State of Connecticut why then would we only have the writs returnable to Hartford-New Britain,

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through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, this panel of judges who will find justice and review the facts and the law as applied by Zoning Boards and is not a black robed zoning panel by any means or else they would be judging the initial application, will hopefully -- they'll probably be located here and the court has just asked they be filed here for purposes of one place where they will all come and then be distributed, not distributed, assigned more, with more ease in terms of administration to the appropriate judges because there are going to be a limited number of judges who will be handling it this way and it will be my hope, frankly, that they are then assigned to people who actually hear them, they go down and hear them in the area. That would be my hope.

REP. RADCLIFFE: (123rd)

Thank you. I would also hope that they would at least have to drive through the community that their decisions are going to have to affect at one time or another, but be that as it may, Mr. Speaker, the Representative indicated that this was not a Zoning Board. They did not make the initial decision. The burden is on the Zoning Board to justify its decision

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and, again, in Section B, don't they have the right, through you, Mr. Speaker, to make a decision on their own, to make a decision based on evidence which they can take from the record, which they can take from additional evidence? How else shall I read the phrase, "To wholly or partly revise, modify, remand, reverse, modify." I assume they can modify a decision from which the appeal was taken in a manner consistent with the evidence and I think we've already established that they can provide for additional testimony to in fact supplement the record and provide for additional evidence.

How is that different than making the initial decision, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Tulisano.

REP. TULISANO: (29th)

In the same manner in which current judges will hear these appeals. I think you will find them basically relying on precedent and if one was arbitrary or capricious, they could then overturn a board and that happens today. I happen to have had that experience once against my own Town of Rocky Hill

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in which they were ordered to do something, though I find that to be a rare occasion and expect such procedure will continue in the future.

I expect since this is such a divergence from the general rule that it be narrowly construed and narrowly applied.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Mr. Speaker, just one final question. In Section B we're told that this case shall be a privileged case and also zoning cases are privileged cases. Through you, Mr. Speaker, as I understand it, there are only two categories at this point in cases privileged and non-privileged cases. Is that correct, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, that's correct and this is just reciting that it is a zoning case and it's a privileged zoning case, but it would really go to the special judges.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, then if this is merely to be a privileged cases, to what construction am I to give the words, "to be heard by the court as soon is practicable after the return date." Doesn't that set up a special class of privileged cases in this

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situation, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, I think I did indicate it as a privileged case, but also within this particular procedures, which will be heard by special judges and I suppose if you want to distinguish among privileged cases, are there some that get special treatment. The answer in that case would be yes. It doesn't distinguish something other than privileged "A" and "B". There is within the privileged cases of zoning those which deal with housing matters who will have special judges to hear those and within that I gather I guess you can call it a special kind of a special privileged case, but we haven't labeled it as such.

REP. RADCLIFFE: (123rd)

So I guess, through you, Mr. Speaker, not only are we establishing a special rule of law by which this municipal agency or state agency enters the court having to prove that its decision is to be justified, we're also establishing regular cases, privileged cases and I guess privileged cases that must be determined shortly after the return date. Is this the second precedencing nature in this amendment, through you, Mr. Speaker?

REP. TULISANO: (29th)

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Through you, Mr. Speaker, I guess the answer would be yes and I thank you for the opportunity now of not having to explain the whole bill and tell you what's in it since we've just created the dialogue.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Mr. Speaker, going back to Section B again on the judges, this special panel of judges that's going to sit in Hartford and New Britain and hear these cases and presumably if the Judicial Department allows, will travel to the hinterlands and also listen to the people in those areas who are being affected by these decisions, what types of particular expertise are these judges to have? Do you know of any other situation in which judges, now I know judges sit in Housing Court, may have particular expertise, but do know of any other statute which has indicated that cases of the Superior Court should be decided only by judges with a particular expertise in one area, through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, the representatives did cite one, that's Housing Court. First of all, the appointment would have been for one who wanted to do housing matters and then it would be people who were developing the expertise and they became experts, that

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was one of them. The other, although we don't call them judges, the family support magistrates, who is a -- I call a quasi-judge or a three-third, three-quarters of a judge and they have a desire to have a special expertise in that area. Let's see, and I will disclose to you that by next year I hope there's a couple of other experts that we have in certain kinds of administrative cases.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, the law of zoning doesn't appear to be particularly complicated. You're not dealing with complicated, scientific, medical or technological issues in this case or these types of cases. You're dealing basically with an administrative decision and a record and you're having to make a decision.

What types of expertise are these philosopher kings supposed to have? An engineering background? Expertise in land use planning? Just what type of expertise do you envision, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, as I've just indicated, that one area where we have developed expertise in people with learning and concern have been those with major issues of social impact in which we must very

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well make quick decisions and decisions affecting not only the application of law, but affecting great numbers of people and I don't think they necessarily have to have an engineering degree behind it, not do they have to have a degree in sociology, but it certainly would be, one, a desire to deal in land use planning, someone who has heard a number of cases in the past, understands the current law and someone who has had maybe some background before they're appointed the bench in either defending either a town attorney who had done that in the past or someone who has sat as a town attorney or did a number of zoning appeals in the past who has a feel for the law. I guess Professor Tondrow could be appointed some day and have that done to him, though I would probably not like that. There's a few others I could think of.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker, just one final question. I'll go to Section 3 of the bill. I note that this deals both with zoning and with wetlands appeals. Zoning appeals, of course, deal with land use planning. Wetlands appeals, I know it's not fashionable to quote preambles, but the preamble to the Wetlands Act has always been one of my favorites because it states that the wetlands of this state are indispensable,

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irreplaceable and fragile natural resources designed to be preserved.

In treating them as simply a part of the zoning process, through you, Mr. Speaker, is this type of preservationist bias in the legislative preamble of that act compromised, through you, Mr. Speaker?

REP. TULISANO: (29th)

Through you, Mr. Speaker, for a resolute response to that question and I would like permission to yield to Representative Wollenberg, our resident expert on inland-wetland matters.

SPEAKER BALDUCCI:

Representative Wollenberg, do you accept the yield?

REP. WOLLENBERG: (21st)

Yes, thank you, Mr. Speaker. This has been around awhile and it results from a case called Avon and McCallum. A few years ago a case was taken or an appeal was taken from a wetlands decision as to whether or not a structure could be built within 40 feet of a brook, a stream, watercourse or a wetland. Now at that time, the Avon inland-wetlands regulations said that the wetlands boundaries, as established by the map and the watercourse boundaries, as established by the map on file, were the limit.

This building was to be built outside of that

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limit. After two years of court time, and just before a decision was to be made in court, in the Supreme Court of the State of Connecticut, the Town of Avon changed their regulations to say that you couldn't build if you were closer than 70 feet from a wetland. So two years had been lost. It was strictly a bootstrap operation. The town, by changing their regulations at that late moment thwarted the case and the judge said, "It's moot, you have to go all the way back. They've changed the regulations." Now it seems to me -- and that can happen in zoning, too. That Section 2 has to do with zoning.

You deleted it? I'm not on the amendment. Maybe we ought to yield to Representative Tulisano to find out what we're doing?

REP. RADCLIFFE: (123rd)

I appreciate the answer. I received the answer.

REP. WOLLENBERG: (21st)

Am I finished, through you?

SPEAKER BALDUCCI:

I think you are, Representative Wollenberg.

REP. WOLLENBERG: (21st)

Thank you.

SPEAKER BALDUCCI:

Representative Radcliffe.

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REP. RADCLIFFE: (123rd)

I have no further questions at this point, Mr. Speaker. I think I strayed a little bit from the amendment. That portion is Section 3 in the bill. It is not included in the amendment that's properly before us right now.

SPEAKER BALDUCCI:

Will you remark further on the amendment?

REP. CIBES: (39th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Cibes of the 39th.

REP. CIBES: (39th)

Thank you, Mr. Speaker. This is an important amendment and an important bill and I want to rise -- I hope to make it clear to the members how important this whole topic is. We have a, if not a crisis of affordable housing in this state, a very definite problem. We have areas of the state where kids of families living in those towns cannot buy housing, cannot afford a place to live in those towns.

We have towns in this state where the municipal employees of those towns cannot afford housing within the boundaries of the town. We have, with respect to firefighters and police officers and teachers,

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basically cannot afford places to live in those towns. The infrastructure of this state is at risk because in certain areas of the state the towns cannot find employees within a certain driving distance in order to work in the infrastructure, at the infrastructure.

In fact, Mr. Speaker, and members of the General Assembly, we have areas of the state where business cannot find employees within driving distance of the job because there is not affordable housing in that area. A number of organizations have recognized this fact and have accordingly urged us to move forward with this bill, and after this amendment has been drafted, to move forward with the amendment.

The Southwest Area Chamber of Commerce Association, SACCA, has, I think, written to members of this legislature expressing their support for this bill. SACCA strongly supports the establishment of a housing appeals procedure, it said, to permit developers of affordable housing to appeal unreasonable rejections of their projects. The legislation, SACCA says, would not threaten local zoning because it allows for full review and consideration by local agencies and so I think Representative Radcliffe's characterization of this situation as a bunch of judges acting as philosopher kings is simply out of line based on the language of

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this amendment and certainly from the perspective of respected organizations like SACCA.

CBIA supports this legislation because of the need to find affordable housing for industries in this state to continue to provide jobs for the citizens. The Council of Small Towns supports this bill as amended by this amendment. CCM supports this bill, as amended by this amendment. The Connecticut Association of Realtors supports this bill as amended by this amendment.

The broad range, I think, of lobbying groups and those who are concerned about not killing the goose in this state, support this amendment and this bill because of the need to find affordable housing, and as Representative Tulisano has indicated, there has been a long effort to find the appropriate language which strikes a balance between overriding willy-nilly every local zoning decision and one which targets a very narrow class of cases.

This particular language in this amendment does the latter. It's very narrow. This particular procedure, which does in fact ratchet up the burden of responsibility which towns must demonstrate in order to justify their actions, this procedure applies to only a very narrow class of cases. Those instance in which

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before the appropriate commissions are proposals to build affordable housing, housing built with some form of governmental assistance and housing with no governmental assistance, but with a provision for some affordable units within at least 20% within the unit, basically those projects which are eligible for assistance under PRIME, the innovative program that we adopted last year.

Moreover, this procedure is narrowed to the extent that it recognizes that a lot of towns which have met their responsibility, in terms of providing affordable housing, are exempt from this special procedure. So there is not a blanket attempt to override zoning. Indeed, it is a form of judicial review of land use decisions, which merely extends the judicial review, which is already in place.

The amendment and the bill builds on the existing system of judicial review and it is supported, as I indicated, by a wide spectrum of organizations which recognize our responsibility to provide affordable housing. There are, to be sure, some individuals in this state who believe that we don't need anything like this.

I was given this afternoon a column by a couple of individuals who say, and I quote, "There is no housing

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crisis. The affordability problem arises not from a housing shortage, but from an income shortage. People paying more than 30% of their income for housing already have a dwelling. They do not need another. Basically, if they need anything, it is a supplement to their income."

Well, this appears to me, Ladies and Gentlemen, an incredibly callous approach to all of those municipal workers and kids of people who can afford houses and rental units, who can't themselves, the kids and the municipal employees, can't themselves afford rental units and other units of housing. This is a very narrow procedure. It is applicable only to a narrow range of cases. It is applicable not to all towns because there are some towns that have met their responsibilities.

Given this narrowness, I believe that this amendment merits your support and ultimately, I believe, the bill merits your support. I would urge strongly that you adopt this amendment and then move on to adopt the bill.

If you have any question, it would appear to me clear that this amendment is superior to the bill. It modifies. It cuts back. It lowers the burden of proof. If anything, there should be no question at all

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about adoption of this amendment and the Chamber should adopt the amendment, I believe, unanimously. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on the adoption of House "A"? Will you remark?  
Representative Paul Munns of the 9th.

REP. MUNNS: (9th)

Thank you, Mr. Speaker. A question to Representative Cibes, through you please.  
Representative Cibes, would you please go over the -- more specifically the criteria you just mentioned that would make towns not subject to this -- the judgments?

DEPUTY SPEAKER SMOKO:

Would you care to respond, Representative Cibes.

REP. CIBES: (39th)

Yes, through you, Mr. Speaker, the particular criteria which exempt towns are specified in Subsection F of the amendment, starting in lines 113, which specifies that if the real property which is the subject of the application, is located in the municipality of which at least 10% of all dwelling units in the municipality are, (1) assisted housing, or (2) currently financed by CHFA mortgages, or (3) subject to deeds containing covenants or

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restrictions which would preserve the units as affordable housing. Those three categories basically exempt about 30, 27 towns within the state and basically believe assisted housing is about 32 towns.

REP. MUNNS: (9th)

Thank you. Mr. Speaker, another question.

DEPUTY SPEAKER SMOKO:

Proceed, sir.

REP. MUNNS: (9th)

Exactly what is assisted housing?

REP. CIBES: (39th)

Assisted housing is defined in line 33 of the amendment. Assisted housing means housing which is receiving or will receive financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing and any housing occupied by persons receiving rental assistance under Chapter 138a of the General Statutes of Section 14-37f of Title 42 of the United States code.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. MUNNS: (9th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

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You're quite welcome, sir. Will you remark further on House "A"? Will you remark? Representative Bob Farr of the 19th.

REP. FARR: (19th)

Mr. Speaker, through you, a question to Representative Cibes.

DEPUTY SPEAKER SMOKO:

Frame your question.

REP. FARR: (19th)

First of all, I'm surprised at all the groups that support this amendment in the sense that I have not seen this amendment other than about ten minutes ago. I wasn't even aware this was available to the Chamber until very recently and I wonder, through you, to Representative Cibes, how long has this amendment been available, through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Would you care to respond, sir?

REP. CIBES: (39th)

Through you, Mr. Speaker, a version of this amendment, as it has been reworked, has been available since late last week in the form of LCO81 -- no, LCO7649 and there has been gradual modification of the amendment as it has evolved through negotiations with a variety of interested parties.

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REP. FARR: (19th)

Through you, to Representative Cibes, Mr. Speaker, the amendment talks about in Section 2 means an application made to a commission. I don't see, and maybe I'm missing it, any definition of the term "commission." Could you show me where that's defined?

REP. CIBES: (39th)

Through you, Mr. Speaker, yes. In line 40 of the amendment commission means a Zoning Commission, Planning Commission, Planning and Zoning Commission, Zoning Board of Appeals or municipal agency exercising zoning or planning authority.

REP. FARR: (19th)

Then, through you, Mr. Speaker, to Representative Cibes, that would not be an Inland-Wetlands Commission?

REP. CIBES: (39th)

Through you, Mr. Speaker, that's correct.

REP. FARR: (19th)

Through you, just some questions concerning the intent in Subsection C where we talk about the appeal, if the commission denies the application because it's inconsistent with the state plan of conservation and development, is that in itself sufficient to sustain the commission's finding upon appeal?

DEPUTY SPEAKER SMOKO:

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Would you care to respond, sir?

REP. CIBES: (39th)

Through you, Mr. Speaker, I do not believe that's the case and I would ask Members of the Planning & Development Committee for further enlightenment in this regard, but my understanding is that the state plan for conservation development applies only to decisions made by the state regarding its expenditure of money or exercise of its authority and so I think it's a bit farfetched to suggest that that would a ground for rejecting any private application.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. FARR: (19th)

Well, just to comment on that response, the state plan of conservation and development in fact has a map which shows the areas of urban conservation, urban growth, rural conservation. It does in fact show those areas that the state has planned for preservation and again, through you, Mr. Speaker, to Representative Cibes, if the plan was inconsistent with that would that in itself be grounds for sustaining the commission's decision?

DEPUTY SPEAKER SMOKO:

If you care to respond?

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REP. CIBES: (39th)

Through you, Mr. Speaker, again, to reiterate, I do not believe that would be the case. There have been efforts in the past. Indeed, I have made some of those efforts, to have the statewide plan of conservation and development applicable to private decisions, but my efforts and efforts of others have failed and for that reason, I don't think that it would be legitimate for a local commission to reject a particular application by a private developer for being inconsistent with the statewide plan.

REP. FARR: (19th)

Through you, Mr. Speaker, to Representative Cibes, if the proposed development was inconsistent with the municipality's plan of development, would that in itself be grounds, sufficient grounds for denial upon appeal?

DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. CIBES: (39th)

Through you, Mr. Speaker, that, I think, would not be the case. The various reasons for -- which might underly the reasons advanced to rationalize the municipality's plan of development, might be advanced in terms of rejecting a particular application, but I

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think per se, the incompatibility of a particular developer with the municipality's plan of development would not be a reason. You would have to look at the underlying rationale and the commission would have to advance those reasons.

REP. FARR: (19th)

Through you, to Representative Cibes, if the proposed plan called for a substantial change in the longstanding zoning in the area of the community, would that in itself be sufficient grounds for the denial?

DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. FARR: (19th)

Or to give you a better example, an area that's zoned single-family has got some vacant land and now the proposal is to put up multi-family, would that in itself be a basis for the denial?

REP. CIBES: (39th)

Through you, Mr. Speaker, the answer is no, not per se. The municipality might have very good grounds for not having multifamily dwellings in the particular area. The soil type, the capacity of the infrastructure, various reasons such as that might have been a reason for the municipality not to adopt a particular zone for that particular area, but per se,

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there would not -- it would not a reason for rejecting this application.

REP. FARR: (19th)

Through you, to Representative Cibes, if the municipality denied the application because it would result in increased traffic in a single-family area and there was strong objection by that area, would that in itself be the grounds for -- sufficient grounds for denying the appeal?

DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. CIBES: (39th)

Through you, Mr. Speaker, that in itself, I think, would probably not, but we're getting now into the realm of matters, which I think would be reasons which a commission could advance as a valid reason for rejecting a particular development, so I think that might well be one of the matters which was demonstrated by evidence in the record is a reason for rejecting a particular application.

I think probably not in and of itself, although if the traffic so generated is, say, generates, to take an extreme example, 20,000 cars a day and moves through a single-family area with very narrow streets, I would think that that rises to the level of the substantial

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public interest level of the substantial in terms of public interest and health and safety particularly which the -- which the commission must demonstrate.

DEPUTY SPEAKER SMOKO:

You still have the floor, sir.

REP. FARR: (19th)

Thank you. I just comment, the problem I have with that whole Section C is that is clearly has not well-defined what the commission in fact, excuse me, the Appeal Court is in fact going to have to find in order to substantiate the decision, sustain a decision of the commission. The problem with the whole bill and the amendment is that it's a back door approach.

We have a history in this state of developing plans of development and zoning law and what we have now before us is a proposal that says notwithstanding the longstanding plans of that community or the zoning of that community. Any developer who wants to come in and develop can in fact put the burden upon the municipality to show that he ought to be -- that the proposal to change that longstanding zoning ought to be denied.

I think if we want to develop affordable housing we ought to do it in a planned process. We ought to examine plans of development communities and make

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communities develop in a rational basis, but to come in and say that the plan of development no longer means anything and the zoning law no longer means anything and that if the developer is turned down for 100 units of housing because it's not appropriate to that community, if he comes in and asks for a 200 units and puts in 20 of them as subsidized units, he now puts the burden on the community, I don't think that's the appropriate way to go.

I think the solution in itself causes more problems. Thank you.

DEPUTY SPEAKER SMOKO:

Will you remark further? Will you remark?

Representative Robert Maddox.

REP. MADDOX: (66th)

Thank you, Mr. Speaker. I'd first like to start by asking a questions of Representative Cibes, obviously the sponsor of the amendment and the proponent of this bill.

DEPUTY SPEAKER SMOKO:

Frame your question.

REP. MADDOX: (66th)

Through you, Mr. Speaker, Representative Cibes, in the city that you represent of New London is there an affordable housing shortage, through you, Mr. Speaker?

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DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. CIBES: (39th)

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER SMOKO:

Representative Maddox.

REP. MADDOX: (66th)

And if I may, then, through you, Mr. Speaker, I notice that New London is exempt from the 10%. Using New London as an example, do you feel that New London should be exempt, through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Do you care to respond?

REP. CIBES: (39th)

Through you, Mr. Speaker, I think that New London has at least made a reasonable effort to provide affordable housing, which as evidenced by the fact that, say, 23% of the units in the town are classified as affordable, which I believe is the second highest in the state, which other towns -- third highest in the state -- which in fact other towns have not made the -- have not made the effort.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Maddox.

REP. MADDOX: (66th)

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Thank you. I guess I would like to point out what I foresee as some problems with this amendment. This amendment has been called the great compromise. Well, I view it -- it's kind of like the file copy I would relate to having AIDS and the amendment as having terminal cancer. Which would you prefer to die from? I don't like either one of them.

Some problems that I see in this, to point out to people, the first thing, it does not take into account, Ladies and Gentlemen, what I would call non-subsidized private, affordable housing units. To give you a specific example, yesterday I was over a friend of mine's house in the Town of Litchfield and those of you who have been there have probably seen the huge white houses. Well, guess what, he's renting a small house for \$200 a month. It would be counted on this 10% set aside because it's not privately -- it's a private house. It's not governmentally subsidized. There's no CHFA mortgage involved. There's no nothing involved. I think there are thousands of units like this throughout the State of Connecticut.

Secondly, the 10% threshold level, to be exempted out, if you will, doesn't take into account the community's need for moderately priced housing units. As Representative Cibes said earlier, the City of

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New London has 23% affordable housing units. I think that's good, that they've gone and have obviously made an effort. I don't know if they've made an effort or just it occurred there, but I'm going to assume that the demand for affordable stock is 23%, whereas in the towns that I represent, I can tell you, Ladies and Gentlemen, if we had 10% affordable units, we couldn't fill them up. We just do not have the demand.

The beginning of Representative Cibes' remarks, I agreed with everything he said about the need for affordable housing and we must address this problem. What this bill does and what the amendment does is it addresses the symptom, and I happen to have sheets here if anyone's interested and free free to walk over to my desk to see where your town would fall, if you get to the way bottom, you see the Town of Roxbury. They have zero elderly units, zero family units, zero CHFA loans, zero FMHA ownership loans. By this definition they have no affordable housing in Roxbury.

Well, let me tell you, I don't represent Roxbury. It borders my district. I know a little bit about it. There are some affordable housing units, the accessory apartments that are in Roxbury. If you want to build affordable housing in Roxbury, you can change the zoning all you want, but they have no infrastructure

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there. They have no sewer. They have no water and unless you're willing to start giving up some bonding projects, you know, like the Convention Center or something, to put \$130 million and build some sewer and water out in Northwest Connecticut, it's not going to occur. You need at least an acre of land, minimum in Roxbury to build a house.

Well, that acre of land, Ladies and Gentlemen, costs you \$125,000. There's no two ways about it. You spend \$125,000 for land, now let's suppose you go out and we put a mobile manufactured home. Well, what's it going to cost? \$30,000? You're going to put a well on. It's going to cost \$5,000. You're going to put a septic system in. That's \$5,000. We're up to \$150,000 for a house. Is that affordable? It isn't.

What we have to do is we have to subsidize the cost of land. Over the past ten years the price of land has gone up and it's caused this affordable housing situation. I believe in very few cases that we have seen zoning go out there and cause that. Certain communities, the community I represent, the Town of Washington, by the way, that has enacted inclusion -- mandatory inclusionary zoning on a condominium complex, went to court over it. The town won. They have, in a couple parts of town, five-acre zoning. You say,

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"Well, how intrusive could they be? Five acres."

Well, guess what. It's the first acre that costs the money. The first acre is \$125,000. Each additional acre is about \$8,000, but they don't have the infrastructure there to put it up. Without an infrastructure you cannot go and built massive amounts of housing.

Should you support the amendment? It depends on your way of looking at it. I think it's two ways. To be very honest, I hope everyone understands what the amendment does. The amendment takes 15 towns out. If you think that this bill and the concept of the bill is a good idea, you should oppose the amendment. It lets another 15 towns opt out and not build, quote, "Their fair share of affordable housing."

If you don't like the concept, as I do, I don't know -- it doesn't really make any difference. It's either half full or half empty. You can do what you want on the amendment. I'm not going to -- well, I'll save my remarks later for the bill and I do have an amendment later on I'll be offering to hopefully clean up this bill a little bit, but take a look at what it does, Ladies and Gentlemen. Realize that this is well-meaning, well-intentioned, but it doesn't address the problem. If anything, all it's going to do is cause

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our municipalities more litigation, and in my opinion, what it's going to do is cause more encroachment on certain vital natural resources, such as wetlands.

Thank you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Thank you. Will you remark further on House "A"? Will you remark? Representative Bowden.

REP. BOWDEN: (31st)

Mr. Speaker. Thank you very much. I rise only to correct an impression left in the earlier remarks by Representative Cibes. Representative Cibes made the comment that certain town employees, notably police and teachers, could not afford to live in the town in which they're teaching. My observation from many years of local government and education is that the police and teachers, by and large, that is to say, most of them, prefer not to live in the town in which they work or teach because they prefer more privacy than might be obtained if they worked and live there.

The police would to live out of town. They even have requested no addresses being given out to the public. Phone numbers are always unavailable. Teachers are the same. They don't want to hear from parents and kids at night and choose to live in surrounding towns, so I wanted to correct that in case

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that's a decision making factor for anybody here.

Thank you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further?

REP. NICKERSON: (149th)

Yes, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Will you remark? Representative Nickerson of the 149th.

REP. NICKERSON: (149th)

Thank you very much, Mr. Speaker. Mr. Speaker, I would like, if I may, to ask the proponent of the amendment, Representative Cibes, some questions that pertain to Subsection C which is the key or a key to the concepts embodied in the file before us because it sets out the burdens that the municipality must meet, and if I may, I'd like to ask Representative Cibes to walk with me as we lay the file copy on one side, the amendment on the other side and determine what the effects of the changes are.

DEPUTY SPEAKER SMOKO:

Please frame your first question, sir.

REP. NICKERSON: (149th)

Thank you, Mr. Speaker. Subsection C, starting with clause 1 in lines 70 and 71, as I read that, the

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change in the file copy is substitution of the word "sufficient" which appears in line 71 for the word "substantial" which appeared in line 52 of the file. Have I got that right, namely, is that the main change in clause 1, and if so, what is the effect of that change?

REP. CIBES: (39th)

Through you, Mr. Speaker, as I believe Representative Tulisano explained well, it lowers the level which must be satisfied.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Nickerson.

REP. NICKERSON: (149th)

That sufficient evidence would be a lower standard than substantial evidence, is that correct?

REP. CIBES: (39th)

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. NICKERSON: (149th)

The determination as to what is sufficient if we adopt the amendment or substantial if we adopt the file unamended, though, would be in the hands of the Appeals Court, not in the municipal body making the initial decision, is that correct, through you, Mr. Speaker?

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DEPUTY SPEAKER SMOKO:

If you care to respond.

REP. CIBES: (39th)

Through you, Mr. Speaker, that is correct.

REP. NICKERSON: (149th)

Okay, thank you. Moving on then to clause 2, which deals with the interest to be protected, line 73 uses the word "substantial," this would contrast, as I see it, with the word "vital," which would appear in line 53 of the file and what would be the change effectuated by moving from vital in the file to substantial in the amendment?

REP. CIBES: (39th)

Through you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Proceed.

REP. CIBES: (39th)

The intention is to lower the burden of proof for the community, to lower the level of interest which is required.

DEPUTY SPEAKER SMOKO:

You still have the floor, sir.

REP. NICKERSON: (149th)

Yes, I pause then to observe, this puzzles me, the word "substantial" was used in the file copy when

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dealing with the level of evidence requested. Excuse me, the word "substantial" was used in the file in dealing with the level of evidentiary proof which the commission was required to meet. Under clause 1, that was a high standard.

Now the word "substantial" appears in clause 2 with regard to the level of public interest and now "substantial" is deemed to be not so high. I'm not sure I follow how "substantial" is high in one case and not high in the other, through you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Would you care to respond, Representative Cibes?

REP. CIBES: (39th)

Through you, Mr. Speaker, as Representative Nickerson well knows, the intent here is to ratchet down the level of interest that is required for the commission to demonstrate that it is correct.

DEPUTY SPEAKER SMOKO:

You still have the floor, sir.

REP. NICKERSON: (149th)

Okay, thank you. And clause 3, then, line 75, the commission is now required to meet the burden that the interest clearly outweighs -- I guess I won't ask the question. I'll ask it rhetorically and he can waive if I'm wrong, 75 says "clearly outweigh, the file copy

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said substantially outweigh" and I'm sure that he would indicate that the attempt has been made to again ratchet down the standard.

Let me though, I think, deal with what I see is the key change in the burden of proof and that would be at the end of line 75 or rather at the absence of the end of line 75 which reads, "outweigh the need for affordable housing;" ending there vis a vis the file which deal, which on line 58 dealt with the need for affordable housing and went on to specify, "that need shall be judged in the context of the region in which the affordable housing development shall be located as such need is determined by the regional planning agency for such region in accordance with the general provisions of" and it cites a section. What would be the effect of deleting that phrase, namely, in the region, etc., that I quoted -- moving from the file to the amendment, through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

I thought we were being rhetorical, sir, but apparently not.

REP. NICKERSON: (149th)

No, it's just a correction. I was rhetorical with regard to the word "clearly" on line 75, but not with regard to the regional question at the end of line 75.

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DEPUTY SPEAKER SMOKO:

Would you care to respond, Representative Cibes.

REP. CIBES: (39th)

Thank you, Mr. Speaker, through you, sir, the intent is to make very clear that it is the municipality's responsibility to care for the housing needs of its citizens and not some broader community.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. NICKERSON: (149th)

Thank you. So that the effect of the amendment would read the same if it were to say after the words "affordable housing" if it were to say, though it doesn't say, "in the town in question" that would put the same meaning on the amendment as does the amendment before us without those words. Is that correct, through you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Would you care to respond.

REP. CIBES: (39th)

Through you, Mr. Speaker, I think that is generally the intent.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. NICKERSON: (149th)

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I have no further questions, Mr. Speaker. Thank you, sir.

DEPUTY SPEAKER SMOKO:

Thank you. Will you remark further on House "A"? Will you remark? Representative Fleming.

REP. FLEMING: (16th)

Yes, thank you, Mr. Speaker. Mr. Speaker, if I might also ask some questions and actually I'd like to address them to the Chairman of the Committee where this bill originated, give Representative Cibes a little bit of a break.

DEPUTY SPEAKER SMOKO:

That would be Representative McNally. If you would prepare yourself to respond, sir. Please frame your first question.

REP. FLEMING: (16th)

Mr. Speaker, through you, my first question concerns in the amendment when we're talking about in line 29 the area where the -- where the median income is going to be applicable to this, "less than or equal to 80% of the area median income." By area, can you tell me geographically what that would mean? For instance, to the Town of Simsbury, would that be Hartford County, would that be the CROG towns.

DEPUTY SPEAKER SMOKO:

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If you care to respond, sir.

REP. MCNALLY: (47th)

Mr. Speaker, through you, my belief is that it would be not just your community, but the surrounding communities in your region as defined by the regional planning agency.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Fleming.

REP. FLEMING: (16th)

Okay, thank you, Mr. Speaker. So just so I understand because it doesn't -- maybe I missed it -- it's the area as defined by the regional planning agency and that, for example, would be the Capital Regional Council of Government's area. Is that correct, Mr. Speaker, through you?

DEPUTY SPEAKER SMOKO:

If you care to respond.

REP. MCNALLY: (47th)

Yes.

DEPUTY SPEAKER SMOKO:

Representative Fleming.

REP. FLEMING: (16th)

Mr. Speaker, through you, can you tell me, Representative McNally, why you choose the areas defined as the regional planning authority versus, for

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instance, the Town of Simsbury is located in the 8th Senatorial District. Why did we not use Senatorial Districts?

DEPUTY SPEAKER SMOKO:

If you care to respond.

REP. MCNALLY: (47th)

Mr. Speaker, through you, the definition was due to the availability of data. We have regional planning agencies that compile this data on an annual basis for us and rather than having to reinvent the wheel and seek a whole new data base, we thought it was best to use what existed.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. FLEMING: (16th)

Yes, thank you, Mr. Speaker. Another question that I had concerns the -- I guess it's sort of a hypothetical question just so I can better understand the bill, if a developer goes before a Zoning Commission and states that he's going to build affordable housing as defined in this proposed statute and at some future point in time he finds out that he can't sell the housing for some reason at those prices or some of what Representative Maddox was saying, you can't find people to occupy them. If he had gone to

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court and the court and the court had ordered the overriding of the local zoning decision, what penalties would the developer be subject to if he did not in fact sell the housing as affordable as defined in this statute?

DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. MCNALLY: (47th)

Mr. Speaker, to be best of my knowledge, there are no penalties in this bill.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Fleming.

REP. FLEMING: (16th)

Yes, thank you, Mr. Speaker. That's one of the concerns I have about the bill. There may be penalties somewhere else, but my concern is, is I think that although this bill is being proposed, is trying to help out the affordable housing problem in the State of Connecticut, at the same time I think it's probably going to do a whole lot for some of the developers around this state that daily go before our Planning and Zoning Commissions and look for every possible way to build additional housing or get around some of our wetlands statutes or generally to try and make a lot of money by building a lot of houses and I don't have a

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particular problem with that, but my concern is we have had instances in my town where developers have come in and said that they were going to build senior housing. They had trouble selling it as senior housing. In a matter of days sold it to another corporation and that corporation turned around and sold it just to the general public, so under the guise of building affordable housing, developers have, at least in my town, have been able to get around some of what might have been a little bit more stringent review by our Zoning Commission and I wouldn't want to see the same thing happen in the case of this bill and I think that that's possible.

REP. MCNALLY: (47th)

Mr. Speaker, if I could respond to that.

DEPUTY SPEAKER SMOKO:

Were you posing a question to Representative McNally?

REP. FLEMING: (16th)

Fine, yes.

REP. MCNALLY: (47th)

Mr. Speaker, through you, to my distinguished colleague, on lines 22 through 25 the amendment defines assisted housing as that which will -- dwelling units will be conveyed by deeds containing covenants and

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restrictions that shall require that such dwelling units be sold at or rendered below prices which preserve the units as affordable housing, so I think that is taken care of in the amendment.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Fleming.

REP. FLEMING: (16th)

Yes, thank you, Representative McNally. I guess my concern still remains the same. If a developer, once the court has ordered the overriding of local zoning, decides not to do that, I don't understand what it is that the town can do short of perhaps going back to court and probably fighting a lengthy battle over these types of structures which were built. I don't think that the town is going to be in a position to go to the developer and say, "Okay, they're not affordable anymore. I want you to tear them down." I don't think that's going to happen.

So I think that although this bill may do something to help out the affordable housing problems in the state, I think it will go a lot further to aid developers as they run around the state trying to build their projects, which we all hear about on a local level and for that reason I think that these types of decisions really are best left up to our locally

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elected zoning officials who I think have just as much concern for the needs of affordable housing in this state and the 151 members of this legislative body and on that basis I suppose the amendment is probably better than what's in the file, but I have a lot of trouble with the concept of overriding local zoning even when it's touted as trying to do something for affordable housing. Thank you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on House "A"? Will you remark further? Representative Jones of the 141st District.

REP. JONES: (141st)

Thank you, Mr. Speaker. I'm not a lawyer and if this amendment is an improvement over the file copy, I guess it's in nuances and shadings that it would take some legal expertise to understand. I'd like to tell a little story about this in my district and hopefully if the proponents of this amendment might hear this, if they would have some comments that would help me when I get through to understand better what we're about to embark on.

I come from a town where the First Selectman, who happens to be a Democrat, has worked long and hard to persuade her board and others in the leadership of the

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local community to build affordable housing. The affordable housing need is clear. We believe it's clear in my district and a great deal of effort over some opposition, including a referendum vote, has been taken to try to build affordable housing, both for the elderly and for municipal workers, teachers, local volunteer firemen and so forth.

When I read this amendment, sir, it seems to me that it's a bad neighbor policy, that this bill essentially is stepping in the role that up until this moment we had hoped to have accomplishments through the Connecticut Housing Partnership Act and other incentives that would encourage local citizens to accept the need for affordable housing, to persuade their own neighbors and friends to the advantages of building affordable housing in our local communities in this state.

My great concern is that if this amendment and then bill become law, that it will change the whole character of the local interest in connection with affordable housing. It will make it a matter of warfare between state courts and local complainers that will frustrate our real objectives and our good neighbor policy desires with respect to housing development in Connecticut.

It seems to me that this amendment is an admission

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of defeat, an admission that under traditional procedures in our state we have been unable to meet the needs for affordable housing.

Let me tell you some of the things that concern me. First of all, as far as I know, our legal procedures in this state have been such that when someone files an appeal, the burden is on that person to demonstrate the validity of the legal appeal. Apparently, by virtue of this amendment, we're suggesting that that is no longer the case, that the burden of proof rests with the local commission or zoning board, which in its normal course of business was acting as a judge on a hearing without realizing that it should also be its own defense attorney in that hearing procedure.

It seems to me unusual, although I'm not an attorney, to ask a local commission to be both the jury and the defendant lawyer in a proceeding before it in anticipation of some subsequent legal procedure. The burden that this will place on Zoning Boards and commissions just seem to me, in my own naive understanding, to be substantially different from the legal obligation that board or commission had when it was formed.

Next, it appears the next step is to require that board or commission to present substantial evidence,

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whatever word you use, "sufficient, vital, substantial" those are nuances I can't explain to you, but it seems to me that at that time the board has to present all of this evidence in the public interest, etc., when it may not even have had the evidence before it in the original case.

Finally, if I may be so bold, I don't understand why only certain judges in our legal system can sit and hear these cases. Is there some frailty in the other judges that they can't interpret planning and zoning law or is it assumed that they will have some particular interest in the case? If in fact one of these interested judges is not available and other judge is assigned to my case, is that grounds that I can appeal above that judge because he or she is not an expert in the Hartford-New Britain District?

Frankly, I find this very confusing, confusing in terms of the system of juris prudence which has developed and been honored and respected in this state for many years, confusing in terms of the objective of encouraging local towns and communities to build affordable housing, confusing in the role that it places Planning and Zoning Commissions and Zoning Boards in and confusing in the confusion that it will create among the citizens of Connecticut and the

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reactions we can expect at least in 137 towns and cities in this state, for there are only 32 who are exempted from the provisions of this bill, 137 are going to have to interpret these very significant changes that have been offered in this amendment.

I believe that in interpreting them, Ladies and Gentlemen, we will create a bad neighbor policy. We will pit neighbor against neighbor, town against town, town against state.

I don't believe that if we want affordable housing in Connecticut, in the long run, that this type of legislation, which now turns us 180 degrees away from partnerships and encouragements through our Department of Housing and our policies today. I don't believe that turning that corner is going to be in the long run interest of anybody, developers, lawyers, people who need affordable housing or all the rest of us. Thank you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Thank you. Will you remark further on House "A"? Will you remark? Representative Meyer.

REP. MEYER: (135th)

Thank you. Some questions, through you, Mr. Speaker, to the proponent of the amendment.

DEPUTY SPEAKER SMOKO:

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Please frame your question, Madam.

REP. MEYER: (135th)

Representative Cibes.

DEPUTY SPEAKER SMOKO:

Pride of authorship. Representative Cibes, if you would prepare yourself.

REP. MEYER: (135th)

I wonder if you would explain further, this amendment is supposed to be helpful and do many things which our lobbying groups, not necessarily our towns, but our lobbying groups think would make this a better bill. Among them in Section G, lines 134, 135, could you explain to me exactly how this is going to work and what advantage there really is to belonging to the Connecticut Housing Partnership or a Fair Housing Compact?

DEPUTY SPEAKER SMOKO:

Would you care to respond, sir?

REP. CIBES: (39th)

Through you, Mr. Speaker, what lines 134, 135 do is specify that, and one would read further to find out a little bit more about the certification in line 135, that if a municipality has completed an eligible housing development, pursuant to Section 8-386 and 8-387, which create at least one percent, which create

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affordable dwelling units equal to at least one percent of all dwelling units in the municipality and the municipality is actively involved in the Connecticut Housing Partnership Program, then they would be exempt from this procedure set forth for a period of one year.

DEPUTY SPEAKER SMOKO:

You still have the floor, Madam.

REP. MEYER: (135th)

Thank you, Mr. Speaker. Through you, this is what I find very confusing. In other words, you have to have completed housing under the program, you still have to be a member of the program and even if that is so, it's only for a one year period and you still have to meet a qualification of the number of dwelling units, so that I cannot see where this really is an encouragement to people to join the Connecticut Housing Partnership or Regional Fair Housing Compact.

DEPUTY SPEAKER SMOKO:

Would you care to respond, Representative Cibes?

REP. CIBES: (39th)

Through you, Mr. Speaker, I believe that from my perspective, that would -- if it's attractive not to be subject to this procedure, then there would be some benefit to joining the partnership and producing housing. Moreover, I would add that the benefits of

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joining this housing partnership and building housing would thus be available to all citizens in the municipality and we achieve our end of creating affordable housing, which is, after all, the ultimate benefit and not just to have a procedure or escape a procedure, which is established here.

The benefit really is in creating additional units of affordable housing for members of the community.

DEPUTY SPEAKER SMOKO:

You still have the floor, Madam.

REP. MEYER: (135th)

Thank you. As I read it, however, you would have to go through all the Connecticut Partnership Program which takes a couple of years to really get it settled, then you would actually have to build and have certified that you have built, during all this time, that community would still be subject to what I call unwarranted intrusion by allowing developers to bring you to court on all of this and then after you have suffered through all that, you would have only a one year period, which I think is rather a difficult, complicated situation.

Through you, Mr. Speaker, there was another question that I was concerned about and --.

DEPUTY SPEAKER SMOKO:

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Proceed.

REP. MEYER: (135th)

And if I may proceed with that. In the listing of the communities that would have the 10% to exempt them, you have listed the first thing as assisted housing and then you go on to CHFA mortgages and the like. My question, through you, Mr. Speaker, is why do we exempt those communities of which there are many, especially in the smaller towns, that do have affordable housing, as defined in Section 8-39a? You do not give these towns any credit for this affordable housing, which might be units of accessory apartments and the like.

DEPUTY SPEAKER SMOKO:

Would you care to respond, sir?

REP. CIBES: (39th)

Through you, Mr. Speaker, I believe that in fact this amendment does in fact provide a procedure for counting accessory apartments. If Representative Meyer will look at Subsection 3 of Sub F, starting in line 120, if individuals who provide accessory apartments have -- want to come forward and place in a deed or dealing a covenant or restriction which specifies that that accessory apartment will be sold at or rented at, particularly in the case of accessory apartments, prices which will preserve the units as

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affordable housing, then those units can in fact be counted pursuant with regulations that the Commissioner of Housing will adopt which are specified in lines 125 through 130, so that in fact I think this amendment does in fact provide for such a procedure, as Representative Meyer desire.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. MEYER: (135th)

Thank you. I would like to comment on that. I think when you have accessory apartments, a small apartment in a private house, that people are certainly not going to go into covenants for 20 some odd years that they're going to do this in particular ways and I think many, many of our communities have provided nice apartments for our elderly and for our young people and not to take this into consideration, I think, is one of the biggest flaws in this particular amendment.

I think the amendment has certainly tried to do a better job than was done previously, but I am still most concerned with this bill and will speak to it at a later time. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you, Madam. Will you remark further? Will you remark? Representative David Lavine of the 100th

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District.

REP. LAVINE: (100th)

Mr. Speaker, Ladies and Gentlemen, there are bills which come along from time to time which really vex your mind where you find yourself trying to make a decision based on the debate that's in the Chamber. I represent two towns, Middletown, which is substantially over the 10%, the Town of Durham, which is at 6.2%. I am aware, as are many of you in this Chamber, that there are towns which do not make any attempt to provide affordable housing in their community. My own town of Durham is in the Connecticut Partnership making efforts to expand its effort currently.

Having said all that, there are still some elements of the bill that give me considerable pause, one of which is that I know my town, which has been forced into increasing litigation over the years on its planning and zoning decisions will be forced into still more litigation with this, if this amendment is enacted and the bill is passed.

There are several concerns, and I have had a previous discussion with Representative Cibes and I would now like to put on the record some of the questions which I had posed to him and, through you, I would like to pose these questions.

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DEPUTY SPEAKER SMOKO:

Please proceed, sir.

REP. LAVINE: (100th)

Representative Cibes, what guidance would I give my town in that it is a town which does not have sewers and does not have a public water supply other than one which has 14 homes and has failed? What would I -- what guidance would I give them in terms of viewing this and how the section which talks to lines 72, 73, 74, 75 where they try and wrestle with the health and safety issues when they get a project before them which requires a certain degree of density which may not be profitable if one doesn't have sewer or water, through you, sir?

DEPUTY SPEAKER SMOKO:

If you care to respond.

REP. CIBES: (39th)

Through you, Mr. Speaker, the intent here is to ensure that the town does in fact have a substantial public interest in maintaining public health or safety or other matters which it may legally consider and those matters are largely set out in Section 8-2 of the General Statute, the zoning enabling statute which lists those things which a Zoning Commission can legitimately look at.

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It seems to me certainly reasonable to say that if a town does not have sewers or does not have water, that the protection of the health of its inhabitants might well preclude the construction of, say, 600 units of affordable housing on a 20 acre piece of land, that is, it does seem to me that the protection of health is in many ways related to the capacity to dispose of waste and to provide for water and I think that the town would in fact be able to demonstrate a substantial public interest in its health of its inhabitants by denying permission to construct, say, that kind of excessive development on a few acres.

On the other hand, if a town were trying to deny, say, the construction of three units of housing on a two-acre parcel, then it might not be able to demonstrate such a substantial interest in preserving the inhabitants' health. I think it's relative. I think that as the judicial decisions develop, we will learn more and more about what substantial public interests are judged by legitimate judicial criteria to be.

DEPUTY SPEAKER SMOKO:

You still have the floor.

REP. LAVINE: (100th)

Thank you. I understand and we've had the colloquy

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before about the potential for a zone change to be ordered if that zone change is either restricted or does not meet the needs of the application under certain circumstances, but let me try a more difficult issue and let me try the issue of water.

In the Town of Durham we have, as I have indicated, no public water supply. We do have a rather large aquifer in town. Would it be possible for a judge in reviewing an application to order a municipal public water supply system to be formed for the purpose of dealing with the application before it?

DEPUTY SPEAKER SMOKO:

Would you care to respond, sir?

REP. CIBES: (39th)

Through you, Mr. Speaker, I do not believe that that would be a legitimate thing for the court to do. The Section 8-2 talks about one of the legitimate public interests being the avoidance of undue concentration of population and facilitating the adequate provision for transportation, water, sewage, schools, parks and other public requirements, that is, it seems to me that a commission might well consider the general lack of availability of water in terms of decided to approve or deny a particular application.

I do not think it could go so far as a judge

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ordering, say, the construction of a dam and the provision of a reservoir or even going as far as you suggest to the provision of a municipal water supply based on a aquifer. In my judgment, sir, that would not be a legitimate thing for the court to go so far in doing.

REP. LAVINE: (100th)

Thank you very much. I just want to try you on one more because I think it's important to establish this in the record. We have a sewer system that exists within the Town of Middlefield. It is, I think at its closest point, four or five miles from the Town of Durham. That is the closest sewer system. I'm not even going to deal with the desirability of a sewer system in the town, but just let me raise the issue, would you think the court would have the authority to order the extension of a sewer system through one town or a hookup in the event it was brought closer to a town with an application before it.

DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. CIBES: (39th)

Through you, Mr. Speaker, no, I do not believe the court would have such authority and let me further call the gentleman's attention to a further provision of

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Section 8-2, which says that the zoning regulations shall encourage the development of housing opportunities for all citizens of the municipality consistent with soil types, terrain and infrastructure capacity.

In my view, Representative Lavine, if the infrastructure capacity is not there, if the infrastructure capacity is present in the Town of Middlefield, but not in the Town of Durham, the court would not be on firm ground in saying that the Zoning Commission had enacted improperly.

REP. LAVINE: (100th)

Mr. Speaker, thank you. Those answers are ones that I appreciate and which do cast additional light on this subject. I think it is clear that there are many towns which in fact are not doing their share, not sharing their burden in the State of Connecticut and we are poised at a most difficult issue and I do appreciate the gentleman's answers.

DEPUTY SPEAKER SMOKO:

Will you remark further? Will you remark?  
Representative Edward Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I have one question for Representative Cibes and then I'd like to make a

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comment.

DEPUTY SPEAKER SMOKO:

Frame your question, sir.

REP. KRAWIECKI: (78th)

Representative Cibes, I'm looking at Section C of the amendment and it lists four items that the burden of proof on the commission has to prove and I'm wondering -- well, let me ask this, is it the intention of the sponsor of the amendment that the commission must show all four of those items? Is the burden on them to do all four of those items, through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

If you care to respond.

REP. CIBES: (39th)

Through you, Mr. Speaker, since -- yes, the answer is yes, since we are connected here by "and."

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I was afraid that was your answer. I'm going to rise in opposition to the amendment and I've sat here listening to the debate and I think, like Representative Lavine, I was somewhat intrigued by this since I gather I'm one of the -- I represent one of those communities that's exempted out, or whatever the term is that's being used on the floor

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today. According to this list that doesn't really exist that I've seen floating around the Chamber today, Bristol has 12.4% population that is in subsidized housing and we have spent an awfully large amount of time attempting to increase and improve our low income housing in our community.

I also am an attorney who represents developers and I'm going to tell you that this is going to give a new definition to the shoe horn theory that we use regularly in going before our land use boards and that is that in a community like Bristol, which has very little open space left, we have some under 2,000 acres of open land that is not in wetlands available in our community. What will happen is developers will go out and look for any kind of location that they can produce, and by the way, we have sewers and we have water and we have all the requisite city utility, so we don't have the problem that you've been listening to for the last few hours.

We have everything that municipalities need to provide, but what's going to happen is, developers, in my opinion, and I've seen it even with my own clients on occasion, and I guess I shouldn't admit to that, who will come in with an application. They will clearly not provide all of the information required under

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Section 8-2 of the state statutes on purpose. They will not come in with that. They will come in with overinflated figures for the number of units that they would like to get in a quarter acre, half acre, acre or, you know, depending on the size of the parcel of land that they're coming in on. They will indicate that of the number of units that they are going to provide, "x" number, depending on the number of units they want to get, will be for low and moderate income housing and that's already a practice in Bristol, they do it all the time, and what will happen now is our boards and commissions, looking at 8-2, are probably going to deny the application because they're going to say that you didn't do all the things that are required under 8-2.

The way I read this amendment, it indicates that the municipality -- and by the way, we have a new concept, the burden is no longer on the applicant who wants something to be changed. The burden is now flipped, and I like that too, representing developers because now I don't have to worry about the burden. The burden is on the municipality. They've got to prove, No. 1, that the decision from which the appeal is taken and the reasons cited for such decisions are supported by sufficient evidence in the record. In

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other words, if I don't provide all the information that's required, they clearly have to indicate that I didn't do that, but on the other hand, 2, 3 and 4, they must also prove and very often they will be unable to indicate that the public health and safety, based on the discussion that's occurred in this Chamber today is being adversely affected. They, frankly, can't do it in municipalities that have sewers and water and all the other requisite items that are needed for a development and one of the largest concerns that we have at this point is that we're giving up all of the open space that might be available in our community and I think all of you who represent larger cities have to agree that that's a problem.

So while I agree that we have a need for affordable housing, I think that this is not the way to go. I think I probably would have been a whole lot more satisfied with the proposal if the burden had been left with the applicant. I think they should clearly always carry the burden, approving that the application should have been granted and should have been granted and should have been granted for these various reasons, whatever they may be.

Under this proposal we are creating an entirely new concept and I challenge you to go through the zoning

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wetland planning, you name it, the statute you want to go through and show me another place where the commission has the burden of proving that this kind of procedure did not occur. It's a unique way of doing business and I think that this is probably the camel crawling with his nose under the tent and next year the whole camel will be sitting in the tent with you and I'm not all that sure that that's where we want to be in the future and I suppose intelligent people can differ on how this is going to be implemented. I just think that I will have a good time on July 1 with a whole lot of clients and I appreciate the fact that this is going to be probably before us unless this Chamber using its intuitive abilities and probably votes this down and come back if you must next year with something that's, in my opinion, a little more tightly written, and by the way, I don't know that this proposal has been floating around all that long and I didn't read it in the Hartford Courant over the last two months and I'm not all that sure that all of us know that this was exactly one of the proposal that was going to be offered and I would challenge you to simply take this home to your local boards and commissions and see what they think about it, not only the ones from the rural areas that clearly have a different set of

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problems, but those of us that are from the larger communities of the state. I think we're going to have even more problems than we imagine as we sit here today.

DEPUTY SPEAKER SMOKO:

Will you remark further? Will you remark?  
Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. I also rise to oppose the amendment and I will, frankly, say it's also really speaking to the file because we seem to be debating the amendment, which for all practical purposes, will become the file, so I'm not speaking to the differences between this and the file, but to the real concept because I don't see this just as a shifting of the burden. I see it really as throwing out the basic concept of zoning altogether. It says that a town should not set up its town into certain zones, decide what should be built in what zone and what should be built in another. You file the application. You have the four things that you have to meet, which essentially throws out all of the zoning. Your town becomes one large floating zone for something called "affordable housing" and how do you decide if it's affordable housing? The measurement today is was there

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government money in the project, not is it truly affordable, not are the condominiums that would maybe be sold in that community would meet by common sense definitions in that area what is affordable and are they in fact not even being sold today for a variety of reasons and in fact today prices are dropping on a number of them.

We don't look at that as a definition of affordable. We say is there government money in the project. Sure, we throw a little sop in there to say is there something in the deeds which restricts a certain percentage, but we all know that that's never really been done before in a large degree in the state, so that really doesn't apply. Do you meet it today? It means that there are government projects there. I don't think that's an appropriate definition of affordable.

We then go on to say if you're going to build it new and the developer comes in and promises to hold 20% to a definition of affordable, he can build darn near anything he wants, any place he wants in your town and I would say to you as I read these definitions, if there's sewers and city water, they build whatever they want wherever they want. Your town may allow four-story buildings. Well, the first guy that gets in

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there with a 40-story building, I think he's going to get an approval for it is the way this is defined. That's what I believe this file in fact does or this amendment does with that.

Yes, if there's no sewers and no city water, there's going to be some density problems because I think that clearly goes without saying. I will tell you, in my community there's a dispute now as to whether in some areas sewers should be extended and for many of the people there sewers make sense. The state, in fact, is considering ordering that severe be put there and some members of the community support it, an equal number are opposed to it.

When this bill passes, nobody will want the sewer there because they believe that will totally take away any control the town will have. I also think that the bill suggests that all of the planning and zoning people throughout the state have no interest in providing affordable housing. I don't see that to be the case in my community. I think they have become more and more receptive to affordable housing, but they want some reasonable input as to where it's built within the community, the size of particular projects within that community so that things can be dispersed without the community. This bill throws that out. It

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says your planning and zoning people throughout the state, unless you're in one of the 32 towns that are exempt and the probably buys you some votes on the bill, if you're not in one of those 32 your people have always acted in bad faith and I represent a community that doesn't have four and five acre zoning except in one area where there's a reservoir. Beyond that it's mostly one acre and some of it less than that, which provides in all but one adjacent community, is lower priced than most of the other communities in that area, but this says, forget out your planning and zoning. They have no important role to play. The application comes in, as Representative Krawiecki said, incomplete, inaccurate. The judge then -- it goes to a special judge, and talk about judge shopping. I know what's going to happen. Those that really want to see the projects pushed are going to get on the phone to Judge Ment and insist they get a judge to hear these, that's going to be leaning philosophically to that way of looking because you're going to try and restrict it to one or two judges throughout the state, consistent body of law, it's judge shopping, just reduced to a different level, brought to a higher level instead of the lawyer hoping it'll get sent to a judge he likes. We're going to judge shop on a different level. That's

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what this is going to do.

I think it really is a mistake. It says your local people are acting in bad faith. It's giving too much power to developers to override legitimate local concerns. The amendment should be rejected and the bill should be rejected.

DEPUTY SPEAKER SMOKO:

Will you remark further?

REP. MCNALLY: (47th)

Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Representative Shaun McNally.

REP. MCNALLY: (47th)

Mr. Speaker, through you, just to clear up a couple of points that were made by previous speakers. First, a comment made by the distinguished colleague from Bristol. Under the provisions of this bill there shall be no special procedure for those communities that have at least 10% of all dwelling units that are assisted housing or otherwise defined, one of those 32 communities. Bristol is one of those 32 communities and so are all the other major urban areas of the state by and large, those communities that have for the most part the water and sewer and the other things that my colleague spoke of.

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Secondly, I would also point out that in the proposal before us, on line 72, 73 and 74, the town has the authority to make a decision which is necessary to protection the substantial public health, interest, safety and other matters which the commission may legally consider. As earlier pointed out, other legally considered factors are all those outlined in Section 8-2 of the Connecticut General Statutes. That includes height and number of stories of buildings and a whole range of other factors. Those things shall be considered. So to say that this is going to be a willy-nilly situation of local overrides I think is inaccurate. I want to make that point before we vote. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you. Will you remark further? Will you remark further? Representative John Savage of the 50th.

REP. SAVAGE: (50th)

Thank you, Mr. Speaker. I've followed this debate with quite a little interest, and as some of you know, I represent eight towns. I have two on this list that seem to have done things right, but the very strange thing that I find, I have two towns with no zoning, never have had any zoning and they've done things

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wrong. They have not done things right under this bill, under this amendment. It just doesn't make any sense. I content that my town, with no zoning, has quite a lot of affordable housing coming in. We have no restrictions on the size of the house. The only restrictions we have is to protect the community on septic systems and the like and wells.

I only have one town that's sewerred. It hasn't done things right either. It's to my mind, not a bill that at this point I can support. I also have a letter from the Northeast Connecticut Council of Governments. They oppose the bill and for several reasons. One of the things that stands out is the burden of proof rests totally with the town, the town commission involved. Passage of this bill will mean a great deal more of expenditure on the part of our local communities. I cannot in good faith vote for this, as I said earlier.

We have towns that have made quite an effort, really, to have affordable housing. We're a very poor section of the state, and yet these towns, for some reason, are listed as those that don't comply.

DEPUTY SPEAKER SMOKO:

Will you remark further on House "A"? Will you remark? Representative Edward Krawiecki.

REP. KRAWIECKI: (78th)

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Thank you, Mr. Speaker, I just wanted to perhaps recapsulate what I had said and what I had mean to say. I think Representative McNally misconstrued my comments and perhaps in his comments led the Chamber to understand that there is in fact an opted out list at present. To the best of my knowledge, there is no such animal right now as a list of anybody who is in or out of the game, so the commissioner, in his infinite wisdom, absent our wisdom, might in fact decide that you need to have 15% or 20% or any other number. I don't know what the number would be.

I represent it to the Chamber that based on the list that I had seen, Bristol has 12.4%. I'm not sure that's accurate even, but 12.4%. The surroundings communities to mine very often have a lower level of subsidized housing than even that number, but even so, it ranges in the vicinity of eight and a half to twelve and a half percent. Those communities, I daresay, are maxed out on how much that they can dump into those communities. It doesn't work as smoothly as the proponents I think today want to have us talking about. I also made reference to the camel with his nose under the tent.

My reference was meant to say that today we are told that this is what the bill shall be. There's a

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very long effective date and I daresay without knowing the reasons behind the proponents that that leaves ample opportunity to come back to this Chamber and fine tune this little camel's nose and my guess is that the whole camel will be in the tent next year and my final comment, I described to you the shoe horn theory and those of you -- I don't know how many attorneys are in the Chamber, this is one time where you better listen to an attorney who does some practice in the zoning and land use area and there are others who do even more than that in this Chamber. I am telling you that our clients are going to love this concept. Don't leave this Chamber thinking that that isn't going to happen. There are going to be an awful lot of people who are going to love this concept and if that's one of the considerations that you have on how they do it our various communities, I would suggest that perhaps you ought to vote no today, study the issue over the interim and come back next year with a proposal that's a little more fine tuned and my last comment would be I really can't believe that in such a casual fashion, in an offhanded fashion, we are requiring the municipalities to bear the burden of proving that an applicant who comes in before them with a blatantly flawed application has the burden of showing why they

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shouldn't have granted the application. That's crazy. I never heard anything so stupid.

The applicant should have the burden throughout the entire process. If they get turned down for some reasons, they ought to show where the commission was wrong in its reasoning and they ought to be able win on the merits. That's how the system should work. This is backwards. This, we flipped the game halfway through. The only thing the applicant has to do is come in and say, "Hey, look, I want to do 200 units on this one acre piece and you have all the requisite," you know, maybe it's the highrise that Representative Ward was talking about and I understand that 8-2 has some other restrictions, but I've got to tell you, when you take a look at this amendment that's before you and they use loose terms like reasonable -- if it can be done in -- reasonable changes to make affordable housing.

I certainly don't know what that means and I think any judge or any commission might have different points of view on the issue at any given point in time. I also have to tell you, the person who can bring the appeal is any person who can show that there is a substantial adverse impact on the viability, whatever in the world that might be, of the affordable housing

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development. I don't know what it means. I think it's loosely written and I think it gives an awful lot of flexibility and I just -- please don't misconstrue me. I come from a town that has a whole lot of subsidized housing. I can see the need for it. We go out of our way to try and produce as much as we can.

This is not the answer to the problem, however, and if we go this way, we are making, in my opinion, a fatal mistake.

DEPUTY SPEAKER SMOKO:

Will you remark further? Will you remark?

Representative William Cibes.

REP. CIBES: (39th)

Thank you, Mr. Speaker, for the second time on the amendment. First of all, before I get head-up and launching into a disposition I would like first of all to request a roll call vote when this vote is taken.

DEPUTY SPEAKER SMOKO:

The question is on a roll call. All those in favor of a roll call please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER SMOKO:

Without a doubt the 20% rule has been satisfied and it will be ordered. Representative Cibes, you shall

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have the floor, sir.

REP. CIBES: (39th)

Thank you, Mr. Speaker. Mr. Speaker, I admire Representative Krawiecki's effort to make the analogy of a camel's nose under the tent. I would prefer, however, to use the analogy of burying one's head in the sand.

We do have a problem in providing affordable housing in this state and I don't think anybody in this Chamber can bury one's head deep enough in the sand to fail to recognize that that's the case. Largely, that is a result of the fact that the land to build affordable housing, which is available, which formerly was available in cities, is no longer so available. The land for housing increasingly has to be regarded as being out of the central cities and, unfortunately, many of our brethren, many of the towns have not recognized their responsibility, which is already listed in 8-2 of the General Statutes, to provide affordable housing, to provide housing opportunities for all citizens of the municipality consistent with soil types terrain and infrastructure capacity.

No one is saying, no one is suggesting that we're going to build a 20-story high rise on two acres of land out in Roxbury. That just isn't going to happen

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and I think it's ludicrous to suggest that it's going to happen. No one is suggesting that we're going to build 600 units of housing on land where there is no sewage or water infrastructure capacity, but, Ladies and Gentlemen, we do have a housing problem in this state. We do not provide enough units of affordable housing and until we recognize that, we are going to continue to keep our heads buried in the sand and what we're suggesting in this amendment and in this bill is that we get enough people here to recognize that and stand up and provide some support for a bill which will ameliorate the situation.

I don't suggest that this is the final solution to any of these problems, but I think it's a step forward and I do think it's a step forward in terms of avoiding a more catastrophic solution which will clearly be less acceptable to many of the members of this Chamber and that is that a judicial body, such as the Supreme Court of the state or a federal district judge decides to take the bit between his teeth and do a Mount Laurel decision in this state.

This is a step forward. It provides some meaningful standards. It is within the constraints of the existing zoning statute. It is a narrow procedure which is available only to a few kinds of developers,

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developers who propose to build affordable housing and I think that it is important that we recognize this and recognize the limited nature of this action.

It is for that reason that I strongly urge you to support this amendment which weakens the file copy, frankly, but then go forward to support the bill. Thank you very much.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on House "A"? Will you remark? Representative Oskar of the 67th District.

REP. ROGG: (67th)

Mr. Speaker, I rise in opposition to this amendment and the bill. We really discuss the bill in that amendment. I hear a lot about affordable housing and housing crisis. There's no question that we have a housing crisis. Very few people will question this. I think the question is how do we best solve the problem. We have been told that there are many communities in this state where there are firemen, policemen and teachers can't live in their towns. There is nothing whatever. There is no law, no rule, whatever, that keeps those communities from changing their zoning and land use regulations in order to bring about the construction of higher density housing.

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I have been a member of the local Planning Commission for the last 17 or 18 years. We have tried to provide housing for all income brackets in that process. We have tried to change our land use regulations to account for changed conditions. I see nothing in this bill that would give us credit for all the work we have done because we have managed to have condominiums sold at a price where the so-called lower income could still afford to either buy them or rent them, but since because we have not used, in most cases, state or federal money on mortgage assistance, we don't get any credit for it.

I think there are many reasons for this crisis before us and we have heard before the camel getting the nose underneath the tent. I happen to agree with that particular theory. I think we need to look at what we have done over the last 15 years or so. We have removed tremendous acreages from the market, so to speak. We have spent multimillion dollars to buy development rights, at laudable cost, but it has removed a substantial amount of land from the market.

Some of our towns which are complaining at this very moment that their teachers and firemen can't live in their town have spent hundreds of thousands of dollars of state, federal and some of their local money

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to buy up open space so it's open space so people can't live there and then on top of that we have three and four acre zoning. So we be surprised that they can't afford to live there? No, but there is nothing in their regulations that they can't change it, so we don't need to tell them how to do this.

Then we go on, I think Representative Krawiecki has represented the point of the applicant before the commission. My own experience has been on the other side of the table. We have got to remember that most of those land use commissioners are lay people. They're volunteers. They're advised by their lawyers what they can and cannot do. Thus far, if you go to court, as long as you acted reasonably, as long as you acted in accordance with your regulations before you, you won because he had to prove, the applicant had to prove that you were unreasonable and, as a result, I have found most decisions, if not all, and we have been hauled to court when I became chairman and at one time I had five cases against this -- the first six months I was chairman. We won them all simply because we followed the rules.

Under this thing no one really can -- no lawyer can tell you ahead of time what the rules are because the rules depend on the interpretation of a couple of

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selected judges. We have furthermore, somehow I find most objectionable on this whole equation, the notion that there are only a couple of judges qualified to judge this thing, people who are accused for murder and all sorts of other heinous crimes, they have -- the judge is selected at random. Justice is supposed to be blind. Burden of proof is supposed to be on the state. Here we are reversing this whole process. Once again, we are under the guise of an emergency. We are now again chopping away one more little bit of what we call freedom, what we call the rule of the law and the equality of the blind justice that is supposed to be there.

There is nothing at this very moment in this state that keeps any one community who complaints that teachers can't live there to change their rules because any town, any town in this state has a couple pieces of land which can stand a higher density than one, two, three, four or eight acres per building lot. So because I have seen a great many development which went up 30 years ago where houses which were sold for 15,000 and roughly half and three-quarters of an acre, I haven't seen any real problem with health, so it can't be done, but we don't need the state to dictate and throw a long established case law out of the window.

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The only people that will gain under this thing really is the lawyers because a great many more cases will go to court. The town's legal expenses will skyrocket and a couple of years from now we'll be exactly where we are because this law will not do the job. I ask you to oppose the amendment and the bill.

DEPUTY SPEAKER SMOKO:

Thank you very much. Will you remark further? Will you remark? Representative Sally Bolster of the 137th District.

REP. BOLSTER: (137th)

Thank you, Mr. Speaker. I've got a couple of questions that I would like to direct to the proponent of this amendment.

DEPUTY SPEAKER SMOKO:

Please frame your first question, Madam.

REP. BOLSTER: (137th)

Representative Cibes, according to the amendment, at least the way I understand it, and I have been wrestling with this whole bill and this whole idea for a long time. A judge could indicate that somebody had made an application and that the Zoning Board or what have you had not acted properly in turning it down. What are we going to do for the communities that want to provide enough affordable housing, but have not yet

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been able to get assistance through the State Department of Housing.

DEPUTY SPEAKER SMOKO:

Excuse me, Madam. I think private conversation is getting a tad too animated. If you could keep it down a little bit. It's very difficult to conduct debate. Representative Bolster, if you would like to reframe your question or --?

REP. BOLSTER: (137th)

Through you, Mr. Speaker, what are towns going to do if they are trying to provide additional affordable housing, but have had problems in getting assistance through the state?

DEPUTY SPEAKER SMOKO:

If you care to respond, sir.

REP. CIBES: (39th)

Through you, Mr. Speaker, the town would not be confronted with any problem unless and first of all it turned down a proposal for the construction of affordable housing, that is, what we have here is a situation where a developer comes forward and offers with the assistance of governmental support, presumably already, which is an indication that they would receive that, has asked for permission to construct affordable housing or alternatively has taken a look at the

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economics of the situation and has planned a project in which at least 20% of the units are affordable and have guaranteed to be affordable for 20 years, so what we have here is a situation where there are people who have developers who are proposing to help the town meet its responsibilities.

Moreover, if this is not regarded as a sufficient answer, and frankly, I think it is because what we have here is a situation where the developers are coming forward, otherwise we wouldn't have any opportunity for this procedure to be employed, there are other procedures which a town can employ to try to increase its stock of affordable housing. It could join a reasonable Fair Housing Compact. It could join the Connecticut Housing Partnership. It could point developers in the direction of a PRIME Program as we authorized last year. It could authorize by ordinance the use of density bonuses to encourage developers to move forward on projects and so there are in fact a number of opportunities which are available to towns to take advantage of the opportunity to construct affordable housing.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Bolster.

REP. BOLSTER: (137th)

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Thank you, Mr. Speaker. I hate to disagree with anybody with the esteem and respect that is bestowed upon Representative Cibes, but I come from a town that has inclusionary zoning. It's had it for some time. I come from a town where private entities and the Housing Authority have attempted to get state money in order to obtain affordable units and either we're told that the housing is too expensive, the land is too expensive, something isn't right and I've got a lot of problems. I've spent 11 years working to try to provide adequate affordable housing, for safe, sanitary housing for the people certainly in Southwestern Fairfield County and I've had some successes, but it isn't easy and it isn't easy when you come from Southwestern Fairfield County where everything is overpriced. Some of it's coming down and we might be able to pick up a few and I've wrestled with this bill and I've wrestled with this bill and I can see some developer trying to come in and nail my own community to the wall because they want to put up something that's going to be highrise. I will say we don't like highrise in our town, and highrise, most people will agree, doesn't make very good housing, especially not family housing, but somehow I'm just not sure that this is really going to do what we want.

What we really want is we want affordable housing

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that meets the needs of a community and also fits in and it doesn't stick out like a sore thumb or it isn't the thing that everybody passes by and says, "That's where they made us do it." And I really wrestled with this for a long, long time and I'm not sure that this is going to resolve our problems, much as I've tried to hope it would and I'm not sure I'm going to be able to support it. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you, Madam. Will you remark further? Will you remark? Representative Miles Rapoport of the 18th.

REP. RAPOPORT: (18th)

Mr. Speaker, I think in order to put tonight's bill and the amendment in proper perspective, I think we have to go back a little ways to the work of the Blue Ribbon Commission on Housing that was appointed by the Governor and by this Chamber several years ago. That commission was not a group of tenants or a group of housing advocates. That commission was the best that the Governor and the legislature could find of people with knowledge in the housing area drawn from a broad segment from the Housing Commissioner, to people involved in private industry, the municipal officials, people involved in housing in general.

The primary conclusion of the Blue Ribbon

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Commission was that the issue that we are grappling with now was the single largest obstacle to the building and creation of affordable housing in the State of Connecticut and that was the availability of affordable land and overcoming the resistance of communities who do not want to have affordable housing in those towns.

The bill that's before us today was not the original proposal of the Blue Ribbon Commission and certainly not of the subcommittees of the commission that worked on it. The original proposal was a much stronger proposal. To hear some of the rhetoric directed at today's, at this bill, and in particular, at this amendment, you'd think that we were proposing a state authority with the power to override Zoning Board decisions. That kind of body in fact exists in Massachusetts and in fact was seriously considered by the Blue Ribbon Commission, but rejected as something that here in the land of steady habits would be too strong and too much of a departure from our ways and so the proposal got watered down just to a body that could be appealed to and then watered down further to judicial review with a small change from current law that the burden of proof for the denial of an affordable housing project rests with the town as

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opposed to with the people who want to build affordable housing.

It seems to me that this is the smallest step that we can take. It is hardly a major departure from constitutional norms or from the freedom of choice that exists for towns. It is a small step in putting forward that the towns have to be able to show that they have considered and rejected the need for affordable housing before they make a decision. I don't think that's very much of a burden to ask.

I represent a town that recently had a debate over affordable housing. A proposal came forward from a coalition of churches and synagogues in the community to build a grand total of four units, not one, not two, not three, but not five, four units near the center of town. After several community hearings of 300 and 400 people with opposition show, the Town Council, acting as the Zoning Board of Appeals, had to make a decision and we worried and wondered, those of us who cared about affordable housing, what decision that Town Council would make and in the end it decided on a vote of eight to nothing to accept the units, but they were motivated only by a sense of good will and a sense of justice and a sense of the need for affordable housing.

I think it would have been appropriate for that

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council to have been motivated in addition by the understand that if they turned that proposal down, whether because people in the neighborhood said, "Well, we don't necessarily want this level of density," -- I'm talking about a four unit building on about a half an acre lot, I think it would have been good for them to have to consider the fact that that decision might be overturned by a justice and they, not that they wouldn't be able to show that they had acted in good faith, but that the burden of proof should have been on the town to do that.

Mr. Speaker, let me just say that I think that if we're going to reject this amendment, and I hope and believe that we are not, but if we're going to reject this amendment or reject this bill, then we might as well say to ourselves so that we understand it, what our actions will say to the people of Connecticut who believe and want affordable housing and that is that when push comes to shove, it really doesn't matter to us that the sacred right of a community to decide exactly who and what kind of housing far overshadows in our view the demonstrated, amply demonstrated crisis and I do believe it's a crisis that we have in this state for affordable housing and if we're not prepared to make this very small, severally watered down

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proposal, if we're not prepared to enact this into law, then shame on us. I think that we ought to admit that the affordable housing issue really isn't an issue to us and it'll take a court order or it will take some other kind of crisis before we move forward and, in closing, let me just say that many of the same people who are standing up so eloquently in opposition to this proposal tonight, when we get to discussing the issue of desegregation in our schools, we'll say equally eloquently and why should our schools bear the burden? Why should social experimentation be done on our children.

The real issue isn't segregation of the schools. That's not planned. The real issue is housing and until we do something about the issue of housing, then we won't be able to do anything to the issue of schools and tonight we have an opportunity to do something about the issue of housing, which in turn will have an effect on the schools, and I must say, Mr. Speaker, that I'm deeply distressed at the level of rhetoric and indifference to this crisis that is being shown in some of the comments that are being made tonight and I would strongly urge that we adopt the amendment which makes more moderate, even, the bill and then go ahead and proceed and vote the bill and take this one small

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step towards affordable housing and show the people in Connecticut that the state legislature does care and it is not going to close its eyes to this tremendous need. Thank you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on House "A"? Will you remark? Representative Alice Meyer of the 135th District for the second time.

REP. MEYER: (135th)

Thank you, Mr. Speaker. As many of you know, in the years that I've been up here, I have really worked to achieve affordable housing. Two years ago we passed legislation which I think was excellent. The idea was to give carrots to encourage our communities to build affordable housing, to do this in a way that you would let the local people do it in the way they felt was best for their local communities.

We passed a Connecticut Partnership Act. The regulations were only developed last August and yet your Housing Commissioner, in his report, which all of you I hope have read, says that some 88 towns are in some stage of participating in this voluntary way of setting up affordable housing. We set up two pilot programs, regional Fair Housing Compacts, the two programs, one went to the Bridgeport area and one went

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to the Hartford are. This brings in close to another 30 towns. All of these towns are currently working.

I am quoting from the Bridgeport Post of last week, The Selectmen of one of our small towns there working on this compact said, "When we first sat down I could not imagine us coming to an agreement" referring to the very diversity represented by the participating towns and yet right now these towns have a tentative agreement with each of the towns pledged to do a certain amount of affordable housing within the next six years.

Now you take a look at this amendment, which is almost worse than the original bill, you find not one bit of credit is given to the towns that are all working so hard to make these two programs which we, in the General Assembly set up, really work. All I can think of is, you know, you hand the carrot to the horse. The horse is just starting to nibble on that carrot and suddenly you hit him with a stick and he drops the carrot and what I fear with something like this is that you are going to completely discourage towns that are just starting to move forward and doing it on their own with the good will of the people in the way in which we, in a Democracy, should be working and that you are going to hit them with this stick and

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therefore they are going to say, "All right, why should we do the voluntary thing when even if we do, we're still going to be hit with the stick." Think of the horse and let him enjoy that carrot. Vote against the amendment and the bill as a whole.

DEPUTY SPEAKER SMOKO:

Will you remark further on House "A"? Will you remark? Representative Peter Fusscas of the 55th District.

REP. FUSSCAS: (55th)

Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen, 80% of the median income in my district is \$20,400 a year. The median income is \$26,000 a year. Through you, Mr. Speaker, a question to Representative Cibes.

DEPUTY SPEAKER SMOKO:

Frame your question, sir.

REP. FUSSCAS: (55th)

Is this affordable housing designed to help the young professionals, the police officers, the firemen, the young schoolteacher, the young tradesmen that are living in the community, young professionals, children of the people in the community, through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

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If you care to respond.

REP. CIBES: (39th)

Through you, Mr. Speaker, I think I missed the first couple of interrogatories. Could Representative Fusscas repeat that?

DEPUTY SPEAKER SMOKO:

Representative Fusscas, if you would restate your question, sir.

REP. FUSSCAS: (55th)

Thank you. Mr. Speaker, what I said was that at least the last time I looked the median income in my area is \$26,000 a year and 80% of that brings the qualifying income to \$20,400 a year.

Now my question is, is this affordable housing designed as it was represented on the floor of the House here, to assist the communities in providing affordable housing to our children or young professionals or firemen or teachers and so on and so forth. Through you, that's the question.

DEPUTY SPEAKER SMOKO:

Would you care to respond?

REP. CIBES: (39th)

Through you, Mr. Speaker, the answer is it is and depending on your perspective on this, in some communities that level at, say, \$20,400 and I haven't

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done the computation as Representative Fusscas has done, but if that level is met, if housing is affordable to people at that level, then presumably that would free some housing at lower levels for people who are less affluent than that.

So increasing the housing supply for individuals which is affordable to them would be conducive in the end to responding to the needs of the individuals Representative Fusscas mentioned.

DEPUTY SPEAKER SMOKO:

You still have the floor, Representative Fusscas.

REP. FUSSCAS: (55th)

Thank you, Mr. Speaker, Ladies and Gentlemen, I submit to you that this so-called affordable housing will do nothing for my district. I may for yours, but it will do nothing for mine because a beginning schoolteacher, even if the other spouse doesn't work, does not qualify for this housing and that a state trooper, right out of the academy, even if his wife did not work, would not qualify for this housing, and thirdly, if a young couple both working at MacDonald's would not qualify for this housing, so if you're suggesting to me, Representative Cibes, that this is going to be a great benefit to the children of my district, the young working families, I suggest to you

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that is not the case.

DEPUTY SPEAKER SMOKO:

Will you remark further on House "A"? Will you remark? If not, will all staff and guests please come to the well of the House. Staff and guests to the well. The machine will be opened.

CLERK:

The House of Representatives is voting by roll.  
Members to the Chamber please. Members to the Chamber please as the House is voting by roll call.

DEPUTY SPEAKER SMOKO:

Have all the members voted? Please check the roll call machine to be sure your vote is accurately recorded. If all the members have voted, the machine will be locked. The Clerk will take a tally.

The Clerk please announce the tally.

CLERK:

House Amendment "A" to HB7270.

Total Number Voting	145
Necessary for Adoption	73
Those voting Yea	79
Those voting Nay	66
Those absent and not Voting	6

DEPUTY SPEAKER SMOKO:

House "A" is adopted and ruled technical.

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## House Amendment Schedule "A".

Delete lines 1 to 93, inclusive, in their entirety and insert the following in lieu thereof:

"Section 1. (NEW) (a) As used in this section: (1) "Affordable housing development" means a proposed housing development (a) which is assisted housing or (B) in which not less than twenty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in section 8-39a of the general statutes, for persons and families whose income is less than or equal to eighty per cent of the area median income, for at least twenty years after the initial occupation of the proposed development; (2) "affordable housing application" means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing; (3) "assisted housing" means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 138a of the general statutes or section 1437f of title 42 of the United States Code; (4) "commission" means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority; and (5) "municipality" means any town, city or borough, whether consolidated or unconsolidated.

(b) Any person whose affordable housing application is denied or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, specified in subparagraph (B) of subdivision (1) of subsection (a) of this section, contained in the affordable housing development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in sections 8-8, 8-9, 8-28, 8-30, or 8-30a of the general statutes, as applicable, and shall be made returnable to the superior court for the judicial district of Hartford-New Britain. Affordable housing appeals shall be heard by a judge

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assigned by the chief court administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges so that a consistent body of expertise can be developed. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said sections 8-8, 8-9, 8-28, 8-30, or 8-30a, as applicable.

(c) Upon an appeal taken under subsection (b) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that (1) the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record; (2) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (3) such public interests clearly outweigh the need for affordable housing; and (4) such public interests cannot be protected by reasonable changes to the affordable housing development. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

(d) Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The filing of such a proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. The commission may hold a public hearing and shall render a decision on the proposed modification within forty-five days of the receipt of such proposed modification. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said forty-five days shall constitute a rejection of the

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proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in sections 8-8, 8-9, 8-28, 8-30, or 8-30a of the general statutes, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

(e) Nothing in this section shall be deemed to preclude any right of appeal under the provisions of sections 8-8, 8-9, 8-28, 8-30, or 8-30a of the general statutes.

(f) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a municipality in which at least ten per cent of all dwelling units in the municipality are (1) assisted housing or (2) currently financed by Connecticut Housing Finance Authority mortgages or (3) subject to deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in section 8-39a of the general statutes, for persons and families whose income is less than or equal to eighty per cent of the area median income. The commissioner of housing shall, pursuant to regulations adopted under the provisions of chapter 54 of the general statutes, promulgate a list of municipalities which satisfy the criteria contained in this subsection and shall update such list not less than annually.

(g) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, the affordable housing appeals procedure shall not be applicable to an affordable housing application filed with a commission during the one-year period after a certification of affordable housing project completion issued by the commissioner of housing is published in the Connecticut Law Journal. The commissioner of housing shall issue a certification of affordable housing project completion for the purposes of this subsection upon finding that (1) the municipality has completed an initial eligible housing development or developments pursuant to section 8-336f or sections 8-386 and 8-387 of the general

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statutes which create affordable dwelling units equal to at least one per cent of all dwelling units in the municipality and (2) the municipality is actively involved in the Connecticut housing partnership program or the regional fair housing compact pilot program under said sections. The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after such one-year period, except as otherwise provided in subsection (f) of this section."

After line 127, insert the following:

"Sec. 4. This act shall take effect October 1, 1989, except that section 1 of this act shall take effect July 1, 1990."

DEPUTY SPEAKER SMOKO:

Will you remark further on this bill as amended by House "A"? Will you remark? Representative Mary Mushinsky of the 85th District.

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. The Clerk has an amendment, LCO6092. Will the Clerk please call and may I summarize.

DEPUTY SPEAKER SMOKO:

Representative Mushinsky, the Clerk is not in possession of LCO6092. Could you indicate when it was filed with the House Clerk?

REP. MUSHINSKY: (85th)

Earlier this evening, Mr. Speaker. It's a substitute for LCO6972 which has a one-word typo.

DEPUTY SPEAKER SMOKO:

I would simply reiterate, Representative Mushinsky,

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that the Clerk is not in possession of LCO6092. We could perhaps --. Will you remark further on this bill as amended by House "A"? Will you remark further? Will you remark further?

REP. MUSHINSKY: (85th)

Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Representative Mushinsky.

REP. MUSHINSKY: (85th)

It's all right with me, Mr. Speaker, if you wish, to pass over this amendment and call a different amendment and come back to me.

DEPUTY SPEAKER SMOKO:

I don't see a lot of the membership trying to get the Speaker's attention to comment or offer additional amendments, but we'll try again. Will you remark further on this bill as amended by House "A"?

Representative Emmons.

REP. EMMONS: (101st)

Just one very quick comment after listening to the other people talk. I think that one part that does bother me about this amendment is that in determining the 10% on 117, you only take in the assisted housing or CHFA housing. If I go along the communities, I would say just using Rocky Hill, there are a number of

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private apartments, private apartment buildings. If you go down -- if you down into Clinton there are.

There have also been condos done in what I consider \$70,000 to \$100,000 are one- and two-bedroom condos, so I think that the bill, in a sense, should have given an option or opened the window so that you could count the units because basically I don't think we need or want everything to be done under a program like this. You really want a community to say allow a good cluster development that has low road costs and low infrastructure.

So, Mr. Speaker, while I think the intent is laudable, I think it really does not go and give any good carrot to a community when you don't count those. If you look at the list of communities that would be under these guise of assisted houses, they are almost, you know, half of the communities are less than 2% or 3%. They'll never make 10%.

So, Mr. Speaker, I think the amendment is really -- which is now the bill -- I think the criteria is not appropriate.

DEPUTY SPEAKER SMOKO:

Thank you, Madam. Will you remark further on this bill as amended? Will you remark? If not, will all staff and guests please come to the well of the House.

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Staff and guests to the well. The machine will be opened.

CLERK:

The House of Representatives is now voting by roll.  
Members please report to the Chamber. The House is taking a roll call vote. Members report to the Chamber please.

The House of Representatives is voting by roll. Members please report to the Chamber. The House is voting by roll call. Members report to the Chamber please.

DEPUTY SPEAKER SMOKO:

Have all the members voted? Please check the roll call machine to be sure your vote is accurately recorded. If all the members have voted, the machine will be locked. The Clerk will take a tally.

Representative David Lavine of the 100th.

Will the Clerk please record Representative Lavine in the affirmative of the 100th District.

The Clerk please announce the tally.

CLERK:

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HB7270, as amended by House "A".

Total Number Voting 146

Necessary for Passage 74

Those voting Yea 76

Those voting Nay 70

Those absent and not Voting 5

DEPUTY SPEAKER SMOKO:

The bill as amended is passed.

SPEAKER BALDUCCI:

Are there any announcements or Points of Personal Privilege at this time?

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Frankel.

REP. FRANKEL: (121st)

Mr. Speaker, Members of the House, it's our intention to complete our business in terms of action on bills momentarily. It's our intention not to adjourn, but to recess solely for the purpose of receiving bills that we expect to be getting from the Senate, so the members are free to leave and go home.

We will be reconvening for a regular session tomorrow at 10:00 a.m. That's a regular session tomorrow at 10:00 a.m. Members should be prepared to

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1989

VOL. 32  
PART 3  
741-1136

WEDNESDAY  
March 29, 1989

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abs

REFERRED TO: JUDICIARY

5. BUSINESS FROM THE HOUSE:

HOUSE BILLS FAVORABLY REPORTED WITH A CHANGE OF  
REFERENCE - to be referred to committee indicated

HOUSING. HB6007 (COMM) AN ACT CONCERNING STATE  
ASSISTANCE FOR THE DEVELOPMENT OF CONGREGATE HOUSING  
FOR THE ELDERLY.

The bill was then referred to the Committee on  
Planning and Development.

HOUSING. Substitute HB6016 (COMM) AN ACT  
EXEMPTING HOUSING LAND TRUSTS FROM THE RULE AGAINST  
PERPETUITIES.

The bill was then referred to the Committee on  
Planning and Development.

HOUSING. HB7215 AN ACT CONCERNING TOWN-AID GRANTS  
UNDER THE HOUSING PARTNERSHIP PROGRAM.

The bill was then referred to the Committee on  
Planning and Development.

PLANNING AND DEVELOPMENT. Substitute HB7270  
(RAISED) AN ACT ESTABLISHING A STATE AFFORDABLE  
HOUSING LAND USE APPEALS PROCEDURE.

The bill was then referred to the Committee on  
Judiciary.

HOUSING. Substitute HB7358 (RAISED) AN ACT  
CONCERNING CONDOMINIUM CONVERSIONS.

JOINT  
STANDING  
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Today you are hearing four bills as a result of direction from the recommendations the Blue-Ribbon Commission made this past year and I am here to speak in support of them.

Specifically, I would like to support HB6507, AN ACT CREATING A LAND USE EDUCATION COUNCIL AND AN OFFICE OF LAND USE EDUCATION; HB6813, AN ACT CONCERNING AUTOMATIC RIGHTS OF APPEAL IN CERTAIN LAND USE CASES; HB7269, AN ACT CONCERNING THE APPROVAL OF PERMITS TO CONDUCT REGULATED ACTIVITIES UPON INLAND WETLANDS AND WATERCOURSES; and HB7270, AN ACT ESTABLISHING A STATE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE.

In the interest of saving time as well as to focus your attention more fully on the issue that I see at the Blue Ribbon Commission and at the Department of Housing, that I would submit is the State's number one priority, and that is HB7270, land use appeals procedure for affordable housing.

I (inaudible-microphone not on) that we (inaudible) the initiative presented here so that we at the State can exert (GAP - TAPE JUST WENT DEAD)

(CASSETTE BACK ON - GAP IN TAPE)

SEN. BARROWS: Thank you, Commissioner, is there any questions? Representative McNally. Commissioner.

REP. MCNALLY: A couple of quick questions for you, Commissioner.

COMM. JOHN PAPANDREA: I was taking the easy way out.

REP. MCNALLY: These may be easy questions, so. A couple of things with regard to the drafted bill as proposed. I guess the first question is, do you have any recommendations for change as drafted? Start with that one. Have you had a chance to take a look at --

COMM. JOHN PAPANDREA: I would not say I had any recommendations specifically for changes. Let me put it this way. I think what I tried to impress on the members of the Blue Ribbon Commission was that essentially it was our responsibility to make recommendation, but as the particulars of that

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really should be left to the Legislature. I think that, obviously, there is going to be some negotiation. There are going to be some people who are going to be able to accept certain portions of it who may be able to buy in and certain other changes that are made and then I certainly would not to appear rigid.

REP. MCNALLY: Okay.

COMM. JOHN PAPANDREA: I think that the essential (inaudible-not speaking into mike) I think the 20% requirement is a good one for those developers which will qualify under the affordable. I would not want to see that eroded, and I certainly would like to see the 10% permission stay.

There are, by the way 32 communities that presently meet that requirement and almost double that number that are anywhere between 5% and 10%. So it is not something that (inaudible) us. That does not take into account what the communities who have already enlisted in the partnership program have indicated that they are willing to do. So I'd be willing to say that perhaps as a result of participation through the housing partnership, perhaps as fully as many as half of our communities would end up being (inaudible).

REP. MCNALLY: Okay. Second question. There are two generally, as I read it, there are two parts to this bill. One is a procedural part that puts the appeals procedure into the court system where it exists somewhat (inaudible) already and another part which shifts the burden of proof from the developer to the community in that appeals procedure.

There has been discussion about whether or not the judicial system is the appropriate place for the appeals, or should there be an administrative appeals procedure?

I'd be curious on your reaction to that. I'm sure you discussed in the Blue Ribbon Commission, and I'm also curious as to which part of this is more important, the shifting of the burden of proof from the developer to the communities or the procedure that's involved?

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COMM. JOHN PAPANDREA: I think both, basically, are important. I don't view the shifting of the burden as being catastrophic. I think sometimes I'm talking to you as a lawyer (inaudible-not at microphone) I think sometimes we tend to overreact and we seem to view the system as being far more rigid than it needs to be.

I think that the judicial approach is the one that encompasses (inaudible) to safeguard that our people need, given the circumstances here in Connecticut. I think our judicial response in Connecticut is certainly on a level of excellence. We are, whatever help and whatever innovative (inaudible) has to be done with the existing procedure and the existing ideas fit something like this in, is certainly going to be forthcoming.

I don't see it as something that is radical or something that is going to present that great a problem to the community. The truth of the matter is, if the communities in fact lay out the reason and give good cause for the action that they have taken, it isn't that someone's going to come in and overturn them without some valid reason being set forth, and I think that was why I led the Blue Ribbon Commission in the direction of a judicial as opposed to an administrative review because I think that administrative review would truly have been seen as a vehicle to in fact replace local autonomy.

That is not what we're proposing. That is not what we're asking you to do.

REP. MCNALLY: Okay, one final question, and it will be a brief one. You developed real estate projects, you're now the Commissioner of Housing. Could you shed some light very briefly on how important this time factor is on the land use regulation and in promoting affordable housing.

COMM. JOHN PAPANDREA: There is an absolutely direct correlation of time. It truly is money, and nowhere is it as much money as it is in the development of housing. They estimate that if you were able to eliminate all the unnecessary delays

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and eliminate a certain number of the unnecessary requirements that you could in effect, reduce the cost of housing by as much as one-third.

SEN. BARROWS: Senator Robinson.

SEN. ROBINSON: Thank you very much, Mr. Chairman. Commissioner, in your leadership of this concept through the Blue Ribbon Commission that's certainly here today and what will follow, have you had any occasion to speak with Judge Aaron Ment about some of his concerns about the bill?

COMM. JOHN PAPANDREA: Yes, I have.

SEN. ROBINSON: And I'm assuming since there was no suggested changes on the question of the Chairman, you have looked into the concerns about the lack of constitutionality, the violation of judicial ethics. You don't find that those are serious problems?

COMM. JOHN PAPANDREA: I don't feel that they are (inaudible) problems. I think there is a will to do it. There is a way to do it.

(TAPE WENT DEAD.)

SEN. BARROWS: Representative Maddox.

REP. MADDUX: Yes. Commissioner, I want to try to understand something. You're coming here, and rightly so have proclaimed some of the programs that this Legislature is going to undertake and it's seeming to be a success. You point to the Connecticut Housing Partnership Program which two of my communities, Litchfield and Washington have entered into.

You point to all these rural communities that have entered into agreements that you really didn't expect that they would be the first ones on board. So you're sort of saying the Department of Housing Programs are working, would that be a correct analysis?

COMM. JOHN PAPANDREA: (inaudible-not speaking into mike)

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REP. MADDOX: So the communities are working at addressing or beginning to address moderately priced housing within their communities. That being the case, why are you coming up here saying we now need to club our communities over the head with this stick. It's not a real big stick, but it's still a stick.

I find some inconsistency there where you're saying, our programs are working, we're addressing the situation, there is serious discussion occurring in the State of Connecticut at just about every municipality in the State of Connecticut, that we're optimistic for the future. The Governor proposes this year an additional \$75 million in bonding. Most of the money will run to your department. I understand tomorrow at the Bond Commission, you have several million dollars scheduled for release for projects throughout the State.

COMM. JOHN PAPANDREA: \$26 million.

REP. MADDOX: Okay, \$26 million. And now we want to create this Judicial Review Board. I'm not going to get in with the points Senator Robinson brought up, although I share the concern too, I'm just being conceptually. I don't think we've got enough time for these programs that we created that you, yourself believe are working and I do, too, to work.

I mean, it's one thing to say, three, four years down the road well we tried this. We pumped \$400 million, \$500 million into the situation and we didn't even make a dent. But to come in now, I mean, a lot of these municipalities are going to get very leery and say, wait a minute, here comes big brother, State of Connecticut, I said moderately priced housing. Does that mean you're going to have low-income housing next year? I mean, you follow my concern. Maybe you can somehow address that.

(TAPE WENT DEAD- It would appear that the particular microphone the speaker is using is not operating.)

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REP. MADDOX: Commissioner, you and I don't disagree. I don't think anyone on this Committee disagrees with that's what we want. We're talking about how we're going to get there. At the moment you said even yourself, (inaudible) going through, that you figure right off the bat 50% of the communities are already there and it sounded like another third are pretty close. I mean, correct?

COMM. JOHN PAPANDREA: All the more reason why I am worried about is the community that is not going to have that. The community who is not going to be (inaudible). I'm saying, I'm optimistic and I hope to God that we never have to (inaudible). And I'll tell you something, putting it in place probably wouldn't guarantee that we don't ever have to (inaudible). In Massachusetts, (TAPE WENT DEAD)

Mr. Chairman, I want to tell you (TAPE WENT DEAD)

I believe that any member of our Judiciary who would be assigned hereby Judge Ment, the court administrator, would have the impartiality that we need to insure that justice is done for our communities as well as for our people.

SEN. BARROWS: Thank you, Commissioner, we'll get together and look at it and we'll work something out and I'll get with my Vice-Chair in Senate and we'll come down with something. Thank you very much, Commissioner.

COMM. JOHN PAPANDREA: I don't see honestly, anything in this that I have (inaudible), Mr. Chairman.

SEN. BARROWS: Any questions? Representative Millerick.

REP. MILLERICK: Commissioner, just a brief question. Your dissertation a little while ago leads me to ask this question. Do you see in our crystal ball, anything forthcoming from Washington as far as help goes, funding, new programs, things that we can use in Connecticut that we maybe had before and don't have any longer?

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COMM. JOHN PAPANDREA: I honestly believe that we will see a change. I think people will know the name, Secretary Kent, far better than the name  
(TAPE WENT DEAD)

SEN. BARROWS: Further questions? No further questions? The mike's on? Thank you, Commissioner.

COMM. JOHN PAPANDREA: Thank you. I'm sorry if I rambled so much.

SEN. BARROWS: That's all right. We'll forgive you. the next speaker will be Commissioner Anderson.

(TAPE WENT DEAD)

Excuse me, Commissioner, is our light on on your speaker?

COMM. KENNETH B. ANDERSEN: It is now. I realize there's great virtue in brevity and I will try to be very brief. Every once in a while an issue comes along which kind of forces us to uncomfortably choose between advocating for the private property rights of our farmer constituency and the public's interest in seeing that our precious natural resources in the State are not frittered away through unplanned random sporadic development.

And, in this case, I am going to have to tilt ever so slightly in favor of the public's interest and support HB5404, AN ACT CONCERNING THE SALE OF LAND CLASSIFIED AS FARM LAND, FOREST LAND AND OPEN SPACE. This is the right of first refusal and I believe that a municipal right of first refusal to land classified under 490 is a useful tool for towns to preserve Connecticut's farmland, forest, and open space.

In fact, the rate of farmland loss, and we'll show you this on a chart that you'll be interested in in a minute or two and the cost of effectively preserving these acres, requires of course that the towns are the real sleeping giant here and untapped resource, really get busy with new initiatives that

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FRANCES CALAFIORI: I don't think that the language is upgrade.

REP. MILLERICK: I didn't find any. But I think what Alice was talking about and what I'm talking about --

REP. MEYERS: It's Section g.

REP. MILLERICK: Pardon?

REP. MEYERS: Section g.

REP. MILLERICK: It is in there?

REP. MEYERS: But it's only the housing inspector.

FRANCES CALAFIORI: Right.

REP. MEYERS: Can do it.

FRANCES CALAFIORI: They don't use the word upgrade but they do talk about variations, exemptions, etc. Appropriate, equivalent or alternate.

REP. MILLERICK: What I'd like to determine is if it is true that a town can upgrade from this program, under this bill.

FRANCES CALAFIORI: It would appear to me that, you know, I don't really know if Judicial has a position on this but my reading of Section g would seem not to rule out that possibility.

REP. MILLERICK: Mr. Chairman, could we get the answer to that? Thank you.

FRANCES CALAFIORI: Thank you.

SEN. BARROWS: The next speaker will be Faith Mandell.

FAITH MANDELL: Good afternoon. My name is Faith Mandell. Judge Ment, the Chief Court Administrator is unable to be here today and asked if I could read into the record a brief statement. H07270

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I regret that I am unable to appear before you today and therefore have prepared the following comments to be read into the record concerning HB7270, AN ACT ESTABLISHING A STATE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE.

Several provisions of this bill are of particular concern. First under the code of traditional conduct, a judge is required to perform the duties of his office impartially and diligently.

Lines 25 through 27 which require that any judge assigned to hear land use appeals have a commitment to the development of affordable housing opportunities for all residents of the State. (inaudible) on the judge's ability to adjudicate impartially.

The proposed language is subject to various interpretations, one of which would give the perception that a judge would not be impartial on the issue of affordable housing.

Second, the constitutionality of subsection c of section 2 which prohibits certain developers from taking appeals should be carefully considered.

Third, the requirement that the land use appeal session consist of three judges of the superior court assigned by the chief court administrator, raises some questions that need to be answered. First, are there three judges to be new judges? The answer is yes. Proper appropriations will be required for the judges and support staff.

If the answer is no, I regret to inform the committee that there are not three judges available solely for land use appeals. The effective functioning of the judicial system is currently being threatened. Just one example of the cause of this threat, as you are aware, is the existence of the crisis confronting the criminal justice system.

The establishment of special sessions of court has not been a concept that I could support. Special courts eradicate the flexibility that is so

urgently needed to move individual judges from courthouse to courthouse to meet local caseload needs.

We must make the best possible use of our judges and to do so we must maintain the ability to respond to different needs with whatever resources are available.

I believe there are other means by which land use appeals could be heard fairly and expeditiously, such as by establishing and expediting procedures in superior court.

I'd be happy to discuss this alternative and others with the Committee. Thank you for consideration of the Committee.

Judge Ment did want me to assure the Committee that the Department's concerns relate to procedural matters and drafting, and that he would be very happy at another time to meet with the Committee. He was just at another hearing this morning and this afternoon.

REP. MCNALLY: I have one question. It's not one in which you have to interpret Judge Ment's view of this legislation, but one more of a legal question.

In the testimony you gave, you said second, the constitutionality of subsection c prohibits certain developers from taking appeals. Don't we in the judicial system, but I'm not a lawyer, I'm seeking some advice here, but don't we in the judicial system create special categories of citizens in many instances. Discrimination cases, all kinds of things and we could just call this a special category of appeal and if that's the stated public policy in the State of Connecticut, that's not unconstitutional.

FAITH MANDELL: I think what he's talking about, and I'll preface with I think, previous to the public hearing I did speak to a couple of members about that provision because we talked about the constitutionality. And it has now been brought to my attention that these developers have another right to appeal under another existing statute, so I think that language would have to be clear to

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realize that a person does have a right to appeal a decision. And subsection c the way it's written now in line 8, it says, not standard provisions, subsection a and b, no developer take an appeal.

It's not, the first reading of it, as I read it first, was that it seemed like they had no right to appeal, but it was brought to my attention that they're not being precluded to appeal under other provisions of the existing statute, so therefore, if that was cleared up, that would take care of that issue.

I hope that answered your question.

REP. MCNALLY: Thank you. One last point of clarification. You say you believe other means of appeals could be heard fairly. Does that include, I think you've addressed this point, that these are technical problems with the legislation as drafted and it doesn't mean that a judicial appeal process is unworkable.

FAITH MANDELL: No, not at all. We would not, I'm glad you've given me an opportunity to address this. We're not taking the position that it should not, these matters should not be handled, if the Legislature feels these matters should be handled by the judges, we're not taking an opposite position to that.

We're just saying that the creation of a land use session and having three judges devoted, would be unworkable. We think that there's other means in which, procedurally, could be handled by the judges of the superior court. Thank you.

SEN. BARROWS: Karl Wagener.

KARL WAGENER: Good afternoon, Chairman, members of the Committee. My name is Karl Wagener. I'm executive director of the Council on Environmental Quality. I submitted written comments earlier so I'll just try to hit the high points.

I wanted to express the Council's concerns about two bills HB7269 and HB7270. First, HB7269, which appears to be unnecessary in the permanent environmental standpoint, undesirable.

incompetence of a local agency. So while we agree that applicants should get timely decisions, we don't want to see the wetlands penalized because of goof-ups by the town.

Secondly, we wanted to comment on HB7270, AN ACT ESTABLISHING A STATE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE. Skipping to the most damaging portion of the proposed bill, that would be section 2, subsection d, which would place the burden of proof entirely on the local commission.

I can assure you without reservation that filling in of our wetlands would have severe consequences for our health and safety, but it's usually difficult, if not impossible, to measure the incremental effect of each wetlands filling. The next time the Connecticut River floods in say, Cromwell, and the water flood levels are a little higher than they were the last time, no one's going to be able to go out there and say, well, that's because of the new subdivision on Walter Road up in Enfield.

Increased flooding is a definite communitive effect of wetlands destruction, but it's difficult for the lay commission member to measure those effects. Related to the difficulty of measuring each impact is the impossibility of proving that apples outweigh oranges when there's no scale to weigh them.

This is particularly true if the judge favors oranges. In all of its decisions, a local wetlands agency must weigh the benefits of a project against its impacts. The citizen commissions do the best they can, but is it realistic to expect them to not just defend, but to prove the wisdom of their decisions before a person, who according to section 1 of the bill, is likely to be biased toward one side of the equation.

Finally, I question seriously whether wetlands decisions need to be subject to any special appeals procedure to stimulate affordable housing. I think a land use appeals session of the superior court is a great idea to speed decisions, but I am not aware

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of any legitimate efforts to develop affordable housing that have been stymied by illegitimate wetlands concerns.

Under the proposed bill, I can foresee a developer who has been denied permission to build in a wetland, to come back in with the same application, this time with 80% of the units at market price, simply in an effort to get permission to build where he has been denied permission in the past and probably perhaps should be denied.

I don't know if this is the intent of HB7270 but with respect to its impact on wetlands, HB7270 as written would stand administrative law on its head only to yield unintended and potentially damaging results.

SEN. BARROWS: Any questions? Representative McNally.

REP. MCNALLY: I can assure you that it's not the intent of either of these pieces of legislation to ravage wetlands. I was a member on this Committee who believe that, and I think that you're characterizing both pieces of legislation in that way.

Let me begin with the HB7269. Sir, while you may not have heard of instances, where wetlands commissions have been used as roadblocks to affordable housing, I can assure you that in my very short tenure as Chairman of this Committee, I've heard scores of instances of just that happening, and I would suggest that if it would be helpful to you, I would be very happy to bring those people in and have them explain those.

We had a workshop this morning where just that was talked about, so to say that there is a 45 day time limit now, there are people on wetlands commissions who will say it to your face. It isn't mandatory. Take me to court if you don't like it.

All we're saying here is that if someone can make a decision about planning and zoning matters, and if we can believe that one can make a decision on wetlands matters in the 60 day period, or 45 day period, that you have to do it with a penalty at the end. There has to be some incentive there for

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REP. MCNALLY: The next question on HB7270, on subsection d, you talk about the changing of the burden of proof. Where does it, in that section, say anything about wetlands and telling the judge that he has to give wetlands areas secondary regard on making an appeals procedure determination?

KARL WAGENER: I believe it states that, I'll read it. The board, commission or agency shall have the burden of proving one, that the decision from which the appeal is taken is necessary to protect vital public health and safety interests and that such health and public safety interests substantially outweigh the need for affordable housing in the region. That's the section to which I was referring, not that, I'm not an attorney either, but as I understand the appeals now, the Commission has to defend any decision that it makes and point out the fact that they were reasonable in making their decision, but that the commission does not have to prove that the environmental concerns over here, the apples, outweigh the oranges over here. Because you can't assign numerical values to either.

REP. MCNALLY: I would disagree with that characterization. But, I think we would find agreement on firming it up to insure that what we're talking about here is not wetlands or affordable housing, but unfortunately those vital procedures to guarantee protection for vital wetlands areas of the State are being used in ways that have nothing to do with wetland protection in some communities, and I think that there's certainly a happy medium here that protects a wetlands and provides affordable housing and I'd be happy to work with you in that area to try to find that mutual ground.

KARL WAGENER: Yeah, we'd be happy to work with you, too.

SEN. BARROWS: Thank you very much. Any further questions? No questions, thank you very much. Thank you. Our last speaker, we have one more speaker and that would be Mr. Tondro. If anyone has any information that they would like to leave to the Committee, please do so. If you'd like to

meet with the Committee later on, please leave your name and your telephone and we will contact you so that we can talk to you about your bill. So the last speaker will be Mr. Tondro.

TERRY TONDRO: Senator Barrows, Representative McNally, members of the Committee. My name is Terry Tondro. I have been serving as the Co-Chair of the Land Use Subcommittee for the Blue Ribbon Housing Commission.

I'm here to speak primarily on HB7270, the land use appeals procedure and I strongly recommend that this bill be adopted. This is the centerpiece of our recommendations to the Legislature.

The substance of this bill is simple, I believe, and that's that the reasons given by a municipal land use agency be it a zoning commission, zoning board of appeals, planning commission, or wetlands agency, for its rejection of a proposal that includes a stated minimum number of affordable housing units, must reflect vital public health and safety concerns that substantially outweigh the need for affordable housing, and moreover, the vital health and safety reasons that are given by the agency are supported by the evidence in the record, of the agency's review of the application.

Present law, this would change present law. This has been characterized as a shift of burden of proof and to a large extent that's true. Under present law, the Connecticut courts do not require agencies that I just named, to state the reasons for their rejection of an application. The statute requires them to state the reasons but the courts do not enforce the requirement.

And even if the agency does state its reasons for rejecting an application, there is no requirement that those, that the reasons be supported by the evidence, rather the burden of proof is on the applicant to show that the commission was wrong.

In effect, the municipal agency's decisions are presumed correct unless shown otherwise, even if the agency gives no reasons for its conclusion. It's that problem that we are trying to address.

This, affordable housing appeals procedure is designed to keep the decision at the local level. The decision would be made by the land use agency in question before which an appeal is pending. An appeal to the courts is presently available and the only difference that this bill would make would be to provide a shifting of the burden of proof if the application included an affordable housing component that met the requirements specified in the bill.

Other applicants who have come in with a normal subdivision application, would go the normal route that's presently available to them, which is to a court where they have to show the commission was wrong.

In addition, as a further protection for a municipalities who are trying to do something for affordable housing and to give them the benefit of the current rules, if 10% of the units in the municipality are available at affordable levels, not including elderly housing, the special affordable housing appeals procedure would not be available, even for proposals that include an affordable housing component.

My understanding is that approximately 10% of Connecticut's municipalities would qualify under this provision, would be except from the special housing appeal procedure under this provision.

So I would support this. I think it is important that this be done. I would, however, make several significant changes, recommend several significant changes in the legislation. I think the bill as drafted creates a separate session of the superior court to hear these cases. Our intention was in making this recommendation, was not to impose an unwield the institutional structure, but rather to simply modify the burden of proof in cases that met these minimum qualifications.

Land use decisions by municipal agencies involve a complex balancing of competing and for the most part, legitimate interests. The (inaudible) commission is concerned that in the context in which the local land use decisions are made,

municipal agencies are at present, sometimes not giving sufficient weight to the town's statutory obligation to provide housing for all its citizens.

The Commission does not believe a separate session of the superior court is necessary to insure that a municipalities satisfy that obligation. More active judicial review should be all that is required.

The drafters of the bill may have mistaken our intention because we did recommend that the judge hearing affordable housing appeal be one of three judges designated by the Judicial Department to hear those appeals.

We believe that the complexity and sensitivity of judicial oversight of local balancing of competing land use demands requires that the judges hearing these cases develop some significant experience.

Unless the number of judges hearing affordable housing appeals is limited, few if any would develop in the experience as there is no reason to expect a great number of cases. At present, there are just under 700 land use cases each year in the Connecticut superior courts. But these include commercial and industrial as well as residential use cases. They include changes to zoning regulations rather than specific projects. They include variances, and of course, many of the residential applications do not include an affordable housing component. So we're not talking about a lot of cases.

If the unnecessary structure, moreover, if the unnecessary structure of a separate session of the superior court would delete it from the bill, it could be greatly simplified. Most of section 2a for example, could be deleted because it simply restates the statutory rules that apply to all land use appeals. It is lines 45 through 61 of the bill.

The same is true for lines 94 through 99 and 117 through 136. Moreover, I do not believe there is any reason why an affordable housing appeals have to be heard in Hartford/New Britain Judicial District. One of the commission's expectations in

devising the affordable housing appeal is that it will focus the participants in local land use debates to present all their evidence to the local land use agencies rather than to a distant board or commission in Hartford.

Neither applicants nor town agencies should have to travel to Hartford to try these appeals. I assume that the Judicial Department would not want to designate all three affordable housing judges from the same judicial district.

Another unnecessary part of the bill is one that's been commented on earlier, the statement in lines 27 through 27, that the judges hearing affordable housing appeals cases must have a commitment to the development of affordable housing. The Commission's recommendation to limit the number of judges hearing these appeals was not made because we believe the problem to be one of judges who did not have such a commitment as this statement applies.

A commitment to the development of affordable housing is part of the statutory law of Connecticut, applicable to all judges as well as to land use agencies as the Supreme Court made clear in the recent builder service corporation case.

Finally, the technical change, the limitation in line 33 to appeals under Chapter 124 to final decisions by a zoning board of appeals is an oversight and a loophole that should include final decisions of zoning commissions as well as zoning boards of appeals. I'll be happy to answer any questions.

SEN. BARROWS: Do you have any questions?  
Representative Maddox.

REP. MADDUX: Yes, Professor Tondro, let me raise to you one problem I have with the original concept of part of the bill. Your 10% exclusion. Let's suppose there's a community out there and the need for affordable housing in that community happens to be a 13% threshold, if we say, of the available stock. And we have another community out there and the need for affordable housing is 6%. By placing this 10% arbitrary, you are penalizing one

community where maybe the need, they don't have the need for that, for whatever reason, and you're saying to the other community that has a need, all you have to do is stop at 10% and you won't be penalized. Can you rationalize why that 10% should even be in there?

TERRY TONDRO: The second half of your question. This is not a penalty. This is rather, designed to insure that in those communities where there is not sufficient affordable housing, that the decisions by a land use commission are, in fact, supported by the evidence. That is not required at present. The Hunting case that Commissioner Papandrea referred to earlier, did exactly this same thing.

It required the Commission to state its reasons and to support those reasons. The Nolan case of the U. S. Supreme Court two years ago has probably put this obligation on the municipalities anyway, because there has to be a rational relationship established.

What we were trying to do here is make explicit that if the interest in housing, in affordable housing is at stake, if there has to be an obligation on the part of the land use agency to have a legitimate reason and not a subterfuge for making this decision. If it does, fine, then this decision will be upheld.

Now, as far as the disparity between 6% and 13% in your example, I believe that the studies done by the regional planning agencies last year at the behest of the Legislature as part of the original bill established and delivered in Commission, showed that, I don't believe there is any community, or there are very few communities, that had no need for more affordable housing on the level significantly higher than 10% even.

REP. MADDOX: That is on regional basis, correct?

TERRY TONDRO: Right.

REP. MADDOX: So you're talking one hand about we want to maintain decisions at the local control, but now you've got two communities right next to one

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another and one community has been doing a good job of providing affordable housing and the other one hasn't. You're potentially going to penalize --

TERRY TONDRO: It's not a penalty. They'll win their appeal. They'll win their appeal because they've got good reasons. That's all we'll be requiring communities to give a reason that vitally states the public health and safety concern and to back up that reason with some evidence. That's all. That's not a penalty. That's merely establishing what I think communities should be doing in the first place. I presume you would, too.

REP. MADDIX: If the Commission really, and I believe you do support this, I don't know why you want to sugarcoat it and put this 10% in? I think you should have submitted the thing straight and say, listen, it's wrong, we have a need in the State of Connecticut, if we look at Connecticut as being a fairly small state. You can even expand regional planning agencies even bigger and there shouldn't have been that 10%, that cutoff. The way it's drafted, I have a problem with the whole concept of the bill, but this one specific point does grate at me. I just don't think that that should be there. You know, if it's wrong, it's wrong.

TERRY TONDRO: The communities that qualify under the 10% exemption are still going to be subject to an appeal by an applicant. The applicant believes that they were wrongly treated under the statute. It's simply that in those circumstances the community as at present, would go into court with the presumption that this decision was correct.

REP. MADDIX: The other thing of course, that let's suppose they go to this special appeal board and they find in favor of the applicant. The town will still be permitted the right to appeal in superior court, correct?

TERRY TONDRO: We're not talking about housing appeals board. We're talking about appeals procedure in superior court.

REP. MADDIX: The appeals procedure in superior court --

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TERRY TONDRO: So they can go to the court of appeals.

REP. MADDUX: That's right. The town could go to the court of appeals? Correct? And they could (inaudible) it all up? So all you're doing if you believe that these towns are exclusionary, as you're saying, it's going to cost you more because if the town is really that exclusionary, they'll appeal it. They'll all kick in the money and they'll appeal it up the line until they lose. I mean, correct? So, all you're doing is just saying to those towns, okay, it's going to cost you an extra \$100,000 in legal fees.

TERRY TONDRO: If the town is willing to pay that price, but I don't happen to think that any towns, in my experience in Connecticut, would be willing to pay that price. I think what we're concerned about is not that kind of municipality, or that kind of land use agency. I think our commissioners are more honorable than that.

I think what we're really concerned about is commissioners who, as sitting in their commission, do not really look closely at the competing interest for housing as opposed to competing interest for environmental concerns, for example. I think that's inevitable. That should be the case. The people who are sitting on those commissions have their houses in their town and what they would like to get more of is more open space, not more people and not more houses.

And I think that although the statute requires them to consider housing for all citizens of the community, there's not an institutional reason for them to really look closely at that and what we're asking to be done is set up a procedure where they will have to look closely at that when making a decision. It may come out still, you know, against more housing. But we would like to see them look more seriously at that question.

REP. MADDUX: I guess I would disagree. There may not be a legal foundation to the degree that you speak of. As the Commissioner of Housing alluded to earlier, I think that many members of the zoning commission actually have a real moral commitment.

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They're realizing that their own sons and daughters can't afford to live in the community they grew up in. I think they're concerned about creating housing units for them among other people, and opportunities.

TERRY TONDRO: I think I said that earlier. I think I prefaced my statement by saying, I don't think there are very many commissions, or any commissions and very few commissioners who would be willing to take a housing appeal all the way up to the U. S. Supreme Court, the Connecticut Supreme Court, at a cost of \$100,000 on fabricated reasons, which as you suggested. I don't think we're talking about those people.

We're talking about people who I don't think give sufficient consideration to housing needs.

SEN. BARROWS: Are there any further questions?  
Representative Figueroa.

REP. FIGUEROA: Yes, Professor. You mentioned that in lines 25 to 27, that that language was unnecessary because that concept was already embodied in case law and statutory law.

TERRY TONDRO: No, not 25 to 27. I didn't think that should be in there because as other people commented on earlier, I think, I have no problem with judges, the current group of judges sitting in the courts, and presumably the judges you people had approved to sit in courts later on. I don't think we need to tell them that they should have a commitment to affordable housing. I think judges need to come into, are supposed to come into a decision with an open mind.

I would take this out because I think it's an improper imposition on the judiciary.

REP. FIGUEROA: Is there anything legally or constitutionally wrong with repeating that standard (inaudible).

TERRY TONDRO: I think it verges on a constitutional question of the Legislature telling judges that they have to have a commitment in a case, a point of view in a case, yes. I think there are serious

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That's not going to make a lot of people happy either, because actually what that could then do is the commissions will say, fine, we're not going to act on any of these applications for six months. We're going to sit here until day whatever and then we'll finally grant it. I don't think that if you're considering this to be a punishment to the commissions, I think I'm saying I don't believe it's fair.

SEN. SULLIVAN: I don't see that it's punishment. I just see that it is trying to force somebody off dead center.

NANCY KRIZ: Maybe the Blue Ribbon Committee on Housing could furnish the DEP with information on all of these bad commissions that are out there that are letting things go on forever and ever.

SEN. BARROWS: Good thank you very much. Are there any further questions? Thank you. Mr. David Sutherland.

DAVID SUTHERLAND: My name is David Sutherland. I'm the Director of Environmental Affairs for the Connecticut Audubon Society. We would like to express our concern about and/or opposition to three bills or portions thereof, HB7270, HB7271 and HB7269, which affect the operation of municipal inland wetlands agencies.

We share your concern that inland wetland laws not be used for any purpose other than to protect inland wetlands. Abuse of these statutes and their provisions by either wetlands commissioners or by property owners is a concern because it tends to reflect poorly on the majority of commissions and developers who cooperate to protect a resource that is essential to the health and safety of our communities and environment.

I would like to stress that under our current laws Connecticut's wetlands are not inviolate. The filling or alteration of an estimated 1,200 to 1,500 acres each year is approved by local commissions. This number would indicate to us that the vast majority of wetlands commissions weight the protection of wetlands with other factors.

We urge your opposition or alteration to HB7269. Approving an action which may irreparably harm a wetlands without proper deliberation of such an action is not in the best long term interest of our communities. In most cases when a commission does not meet its time limit, it is due to the needs of a more complete review of an application than the time limits allow.

The truly abusive commission will still be able to abuse the process even under the proposed change that's suggested in HB7269. We agree with you that some teeth do need to be put into this to stop those situations when commissions are being truly abusive.

To reiterate what someone said earlier today, we would rather see the penalty be placed on the commission rather than on the wetlands. Perhaps we would welcome working with you to perhaps work out a system which a realistic time frame could be set, and then a situation in which for example, if a commission had not acted within that time, the case would be referred to DEP, the town would have to pay the costs of having DEP review that situation, and set a time limitation on DEP doing it. Make them do it within a certain period of time.

As Mr. Wagner said earlier, I think if you penalize the town financially, it's going to have much more of an effect than if you penalize the wetlands in effect. We recommend that in HB7270 that subsection 3, starting on line 38 of section 2, paragraph a be deleted.

Wetland statutes, while protecting a natural resource, also serve as a form of consumer protection. Those citizens in need of affordable housing should not be subjected to flooded basements or sinking foundations. Wetlands commissions, though not perfect by any means, we feel are still the best judges of when a proposed development will involve such risks to the future developments.

Affordable housing must be encouraged, but two years ago when I participated in an extensive review of the wetlands statutes and recommendations

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for changes in it, I certainly spoke with a number of developers. I spoke with members of the Planning and Zoning Section of the Bar Association.

I did not hear of cases in which a truly affordable housing was stopped by wetlands regulations. I'm hearing today that there are cases, and I would certainly like to see the evidence of those, because I think that would be a serious situation.

In HB7271, we recommend that the provision for eliminating separate public hearings which is lines 25 through 27 be deleted. Municipal commissioners are for the most part volunteers. Often times they are there 'til midnight one or two nights a month contributing many hours to their towns.

This provision would put an additional hardship on all commissions and commission members and would result in less effective public hearings. We would like to urge your support for HB5404, and recommend that it include sale of land classified as forest land or open spaces as well as those classified as farmland. Thank you.

REP. MCNALLY: Are there any questions? Thank you very much. The next speaker is Sue Merrow.

SUSAN MERROW: Good afternoon. My name is Susan Merrow. I represent the Connecticut Clean Water Coalition, a coalition of 16 environmental organizations concerned about issues affecting the state's waters and watercourses.

I would just like to briefly reiterate the concerns expressed by the last two speakers and by Carl Wagner with three bills, HB7269, HB7270, and HB7271.

As we all know, municipalities are charged by the state with protecting inland wetlands from degradation because they are essential natural resources with well know environmental values. Strong wetlands law, however, is also sound consumer policy because it inhibits the location of structures and places which are ultimately unsuitable for people to live, work or recreate.

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The Clean Water Coalition understands the difficulties in developing workable public policy regarding affordable housing, and appreciates this Committee's efforts to move the state toward satisfactory solutions to this critical housing problem.

The protections afforded by good inland wetlands policy are perhaps even more critical to those who pay for and ultimately live in affordable housing. The Clean Water Coalition urges you to vote against Raised HB7269, the approval of permits to conduct regulated activities upon inland wetlands and watercourses for the reasons stated by the previous speakers.

We would be willing to talk about or look seriously at instances that involved true abuses of discretion. I think there are cases where delays may be unavoidable because of the need of getting an environmental review team or the conditions at the site itself, which may require visits that are subject to weather conditions, but in cases where there are truly abuses of discretion, we would certainly be willing to talk about sanctions.

The automatic approval process, however, appears to punish the wetlands for logistical problems with the approval process. I think the frustration of listening to the debate is that everyone, no one here is defending abuses of discretion or unreasonable delays. I think the problem is how to correct them or what would be an appropriate sanction, and we are, I believe, saying that a sanction that puts a house in an unsuitable place is not really a satisfactory sanction.

I think we're all working on anecdotal information about these problems of automatic approval. I have one, my own personal anecdote involves a case in my town where there was an automatic approval of a matter before planning and zoning. The largest subdivision to come before P and Z in my town in the past few years of 250 acres.

The planning and zoning commission very wisely asked for an environmental review team to come out and look. They did their review. They came back

to the town at the hearing to present their findings. There was a significant watercourse running through the development. The review team was going to recommend green belts along the watercourse and drainage, very important drainage considerations in the subdivision.

Before the review team could present its report, the developer stood and said that the planning and zoning secretary had counted incorrectly the 65 days, and they were several days beyond the limit, and that the permit would be automatically approved and there was no possible argument to that, and the subdivision went through without even hearing the environmental review team's report, and all of us in the neighborhood suffered for that.

I'm not sure. I think a sanction that would have caused the Planning and Zoning Commission to look very carefully and count their days more carefully perhaps would have helped out in that situation, but it was a situation where an automatic approval was not in the best public interest.

We also would like to reiterate concerns with the Raised HB7270, AN ACT ESTABLISHING A STATE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE. Insofar as the land use appeals process is described therein may facilitate building of structures and unsuitable wetlands, we reiterate concerns already expressed.

We would hope that wetlands decisions would be subject to special expedited appeals, processes only under very limited circumstances if at all.

Also we'd like to register our concern with Raised HB7271, the one-step application bill. While mandatory one-step processes simplify the lives of the applicants, they do not recognize the needs for flexibility and the consideration of special wetland situations.

A mandatory one-stop process would seem to do damage to processes which have evolved to respond to complicated environmental issues. Also land use commissions as has been previously stated are volunteers, and organizing three land use commissions into one hearing which meets all their

specialized needs, may not be possible, and in some cases may lead to even more conservative interpretations of the laws. Thank you very much for your consideration.

REP. MCNALLY: Are there questions? Sue, I have one. Kind of a point of information. We have the one-stop zoning proposal here before us, and I found out just the other day that the Department of Housing did propose a one-stop model ordinance back in 1981.

One town has used it. I've been told that town is Windsor, and it works very well, and unfortunately like may of the things we do here in the General Assembly, we give towns the options of doing things, and the other towns have not afforded themselves of the opportunity of one-stop zoning, but the one town that has is a big fan of it.

My other question is, how do we reconcile affordable housing and wetlands? These two are butting up against each other. We have heard folks who say this stuff is being used to block affordable housing. We've been hearing increasingly the option given to towns to set up buffer strips between development and their wetlands. (HB 7269)

Those buffer strips are increasing in some communities. Now we've heard numbers up to 600 feet from a wetland that one cannot do any kind of building. I guess the rationale for the buffer strips are so that things, pollutants don't leech into a wetlands area.

Yet my understanding is also we can stick wells and septic tanks within 75 feet of one another, and there's no problem to the drinking water under health regulations, so if we have 75 feet from a septic tank and we can drink the water, why do we need 600 feet to separate a development project from a wetland.

SUSAN MERROW: I think those are very insightful and incisive questions. I think that one of the problems that we're all having is that we're all operating on anecdotal information about instances where it would be helpful to us to be able to see

and look at all the cases or a good spectrum of the cases where inland wetlands laws have actually inhibited affordable housing, and then to look at commonalities among them and really work with them.

It's not our experience that it has been so. I think that's one of the problems. I was taken this morning in the testimony or in the talk by Professor Tondro about, he said that while we have set back requirements in cases where towns appear to be abusing their discretion to indensity and so forth, the real problem is with the gap in the knowledge that supports or doesn't support those that we're, he said that the DEP and the DOHS had been asked for information about minimum lot sizes that could sustain onsite sewage and water, and that that data is not available, that the gap is really in the information that supports or doesn't support those. It's not a simple answer, but there's a lot we don't know.

REP. MCNALLY: I would submit that the data is readily available, but any engineer in the State of Connecticut who has to design septic and water systems for any house in the State of Connecticut, has model guidelines, engineering standards based on soil type that they use on daily basis building homes all across the State of Connecticut, and whether or not that's put together in the form of state policy is a different matter.

The data is available. We know what the minimum lot sizes are to provide septic and water given a certain soil type. It hasn't been a matter of public policy at this point. I think there's a difference.

I hope that you folks stay around because we have Dick Davis from the homebuilders speaking in a couple minutes, so I think you'll hear some specifics that may help you to understand where some of us on the Committee are coming from a little bit more. Any other questions? Thank you. Next Rick Mattoon from CBIA.

H07270

RICHARD MATTOON: Chairman McNally, members of the Committee, my name is Richard Mattoon. I'm an economist with the Connecticut Business and Industry Association.

I'm here to speak in favor of Raised HB7270, which would establish a state affordable housing land use appeals procedure. I will not reiterate the points as to why this is an important piece of legislation or what in effect the land use appeals procedure would be as you heard it from several previous speakers.

However, I will tell you that CBIA is interested in this legislation because we feel that the work of the Blue Ribbon Commission did frame the need to have such an appeals process for those towns that may not be willing to undertake the important need of building additional affordable housing in the State of Connecticut.

For that reason, we are supporting it. Affordable housing is not just a social problem in the State of Connecticut. It's also an economic problem and one that is starting to affect our business climate.

For that reason, we believe that such a procedure would enable developers to develop the appropriate types of housing that the bill is constructed in such a way that local municipal interests are protected. It does not necessarily override local zoning in an extremely aggressive manner. Rather it merely creates a form in which discussions can occur in zoning matters and insure that there truly is a local public health or safety purposes jeopardized by the construction or the development.

For that reason CBIA supports this legislation and urges its passage. Thank you.

REP. MCNALLY: Are there any questions? Thank you very much. The next speaker is Richard Davis from the Home Builders Association.

RICHARD DAVIS: Thank you, Mr. Chairman, members of the Committee. I'm Richard Davis, the Director of the Home Builders Association of Connecticut, representing 1,800 firms who build the majority of the housing in this State.

So that I don't think that the 65 day concept is unrealistic, but you should know that the practical side of it, just like in planning and zoning, the extensions are not as a practical matter at our discretion. I means as a practical matter, we're asked to extend we're going to extend in order to get the approval, so what you're really doing is in extenuating circumstances and where there's responsible commissions, you're building in as a practical matter something on the order of 130 days.

That's better than what we have now, so that's the only thing I can comment. I think the concept here is valid, but I think it has to be married with the bill in the Environment Committee where we talk about some optional extensions.

With regard to the appeals bill, I think that's (HB 7270) probably the most noteworthy bill of the Blue Ribbon Commission. Bills that deal with one-stop (HB 7271) permitting which we're not speaking to today, because we there are, we hoped lobby that bill in 1980, but we see some practical problems with it, such as getting quorums together and so on, but some of these are icing on the cake.

This appeals bill to this tribunal is substitutive, (HB 7270) and I suggest that the legislative process is something that hasn't serviced our industry and that's why we sued the Town of East Hampton and that's why we're lining up a few more towns on the exclusionary zoning issues.

This is an opportunity to not have us get involved in Supreme Court action every time we want to build some affordable housing, but as you would understand, and others have pointed to, the guts of this bill or the burden of proof being shifted to the town and not simply having a decision remanded to the town, and being able to bring new evidence in, all of these things that restrict us now are changed in this bill, and I think it's a substitutive bill.

The Judicial Department, I think, has some issues which can be remedied, and we would not object to not having judges that are exclusively devoted to

this. What we would hope to do though over time is build up a small cadre of judges who really are, and that's a key issue in this thing, who become familiar with land use issues.

If we take people who are involved in civil action yesterday and bring them into land use, we'll get a poor decision, but over time I think this would be a beneficial bill.

Very quickly on the right of first refusal, we have (HB 5404) some problems with that along with the farming community. We oppose the 60 day right of refusal. The bill failed last year. As it sets forth as we said before, no requirements that the town actually have plumbing in place. It takes unfair advantage of the developer who has negotiated a land sale, gone to the expense of a preliminary site and soil and various engineering and legal expenses, only to have a town match that offer and remove his option to buy that property.

We would like to learn more about how the town is unfairly treated if they enmass funds in advance of of a sale, because it seems to us that we have no problem with the town doing that and entering the marketplace on a equal footing basis, but we don't understand the logic wherein you give a tax break to a farmer under Public Act 490, and somehow that extends the town into this particular bill where they come into the marketplace on a pre-empted basis.

I don't see the relationship. Our understanding of 490 is that there's an aesthetic benefit or local produce comes from that farm or what have you, but I don't see the logical extension between that and the pre-empted basis that this bill extends.

As a footnote, again some of these things are cosmetic. The program this morning with regard to clustered development is much more to the point. Let me quickly go to the abuttals issue which has been a problem for developers for some period of time.

We support eliminating the automatic right to (HB 6813) appeal to the Superior Court by abutting property owners of those within 100 feet of any land

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support. The approval of a subdivision is not a change in permitted use, but a determination of technical compliance with the regulations adopted to guide the nuts and bolts construction of a permitted use.

If a subdivision application meets regulations, it must be approved. Note that passage of this bill and removal of automatic standing will permit abutters to demonstrate a physical impact and be granted standing.

Passage of this bill is consistent with Public Act 84-227, the so-called frivolous appeals bills, which this committee passed to allow developers to move forward on a grievance in an expedited fashion.

This is not applicable to abutters under current law. In proving a grievance all we need to do is demonstrate that it is possible that development will have some impact on the use and enjoyment of one's property. The burden of proof is low.

One final benefit to the bill is to reduce municipal legal fees paid to defend town approvals. We ask, for this reason, that you amend the bill to apply to all subdivision and resubdivision applications for residential, commercial and industrial use. Thank you.

REP. MCNALLY: Are there any questions?  
Representative Maddox.

REP. MADDOX: One quick one. Dick, on HB7270 that have the 10% and if you meet the threshold that your community has 10% affordable housing units, that you're basically exempt from that. You may have heard my comments earlier that if we're going to do this, I think it ought to be pure. How's the home builders feel about it? Removing that 10% from the bill?

RICHARD DAVIS: Two points. Clearly we'd like to have the ability to take all planning and zoning matters before what amounts to a land use court. That's what this will turn into. So I would agree with that modification.

But I would like to take the opportunity to respond to a comment you made earlier also about whether or not the bill is in fact warranted, because I think in doing that we might have a problem politically if we expand that bill beyond low and moderate.

I testified earlier this week to say that the towns are doing something I think is erroneous. In particular the partnership act I submit to you is very defective.

Towns can get into a partnership act, change their regulations on paper, do various cosmetic things and never build a single unit of affordable housing or rehab unit and they are qualified under the partnership act, as we understand it, so I think the time for action on this bill is definitely, and I would not find any saving grace in the fact that towns are somehow having a consciousness awakening. I just don't see it happening.

REP. MCNALLY: Are there any further questions?

REP. MADDOX: A matter of interpretation, maybe I should have asked the Commissioner of Housing to do it because it would be in his preview. I don't know if the home builders have got...do you have a breakdown of 169 towns? I hear about these things and I don't deny that they don't occur.

I'm sure that there are communities and there are inland wetland entities that will meet tonight or planning and zoning commission that will do something to someone, somewhere in the State of Connecticut, they ought not to do, but do we pass a law to get at those? In my opinion, I mean I'm looking at my four or five towns, and we're concerned about development. No doubt about it.

I don't believe that they are overtly, that some conspiracy as it would seem here, out to use the land use regulations if you will to overtly prevent moderately priced housing when a minimum building in my town, and there's a few of them around of one acre, and I think that we could all argue that that would probably be the minimal amount of size given the soil type of Litchfield County, to put a septic and a well on. The cheapest thing is \$95,000.

Now you're telling the home builder, the best that you can do at maybe putting up a cheap prefab house at 150 is not affordable. The price of land is just too expensive unless we provide a subsidy to the land to build the moderately priced housing units of around 100 grand in Litchfield County, outside of common interest ownership community.

So I guess I want specific example. I want to know what town did what to whom when, where and how.

REP. MADDOX: Representative Maddox, I have a list. I'll read you the bottom ten towns. I can read you the top ten towns of publicly assisted housing, but I think I'd rather read you the bottom ten towns. Weston, 0.00% publicly assisted housing; Roxbury, 0.00% publicly assisted housing; Reading, 0.00% publicly assisted housing; Easton, 0.00% publicly assisted housing; Cornwall, 0.00% publicly assisted housing; Orange, 0.09% publicly assisted housing; Woodbridge, .17% publicly assisted housing; Sharon, .23% publicly assisted housing; and Eastford, .23% publicly assisted housing.

On the opposite end you have places like Hartford and New Haven with almost 30% publicly assisted housing. I will be happy to make copies of this for you. I think this is the proof that's existing out there in the State of Connecticut.

REP. MADDOX: My question isn't looking at the numbers. You come in and there's a belief here that zoning commissions and planning commissions are deliberately going out there and using their regulatory authority to prevent moderately priced housing.

Half the communities you named, John, would go down there. One acre of land in some of those communities is 2 or 300,000 dollars. What do you do in those communities? I mean, I don't know every one, but I know Cornwall's in my area, and Roxbury. It's 100 grand for an acre, and you need at least an acre unless this General Assembly is willing to put through billions of dollars to run a sewer and water line to every single household in Connecticut, so let's look at the land costs.

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The cost of land, and I think unfairly, zoning and planning commissions are just getting the bum rap on that, and I don't deny it. I want to see (inaudible). I'm happy to sit here and say there's a community doing that. I think that some of the environmental groups came in. We should immediately. I will send a letter myself over to DEP asking them if we've got the proof.

REP. MCNALLY: Would you like to respond?

RICHARD DAVIS: I think he's raised a couple of points. When you talk about intent and conspiracy, it's hard to define. We're bringing a case against the Town of Bridgewater now under the Civil Rights Code in 1983 where victorious we will assess personal damages against members of that commission, but it is not the case where people often make such grandiose mistakes as were made in Bridgewater where intent is publicly made on the record and so on, so we can't demonstrate intent and I think that's almost a side issue.

It's clear that the cost of land is a culprit in this whole equation, but I think it's bad government and it's probably very ineffectual in this fiscal climate to think that you're going to use conveyance taxes or other tax subsidies to solve this problem.

The response to the problem has got to be the highest use of the land in terms of density response, whether it be in clustering or what have you, or in some instances it's our recommendation that you get into bonding so that you can get sewer and water in place, but as is the case in some towns, if public attitude is that they don't want to provide the densities, even sewer and water won't provide that.

One comment though. There's been kind of a repeated response here about the loss of farmland and the loss of wetlands. I'd just make the comment that to the extent that that provides affordable housing, or housing of any type we don't consider it a loss.

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I'd comment just on some statistics here. There's 200,000 acres of land controlled directly by the state in terms of open space and forestry. Public Act 490 keeps 1.2 million acres in open space and forestry and so on. Land trust control, 50,000 acres. Purchase and development right has put aside 15,000 acres so far.

They have 140,000 acres as a goal, and wetlands regulation is giving principle protection to some 25% of our land. That's roughly 2/3 of the state. On the other hand the Blue Ribbon Commission points to 180,000 unit shortfall in housing. We have specifics with regard to the abuttals issue, town by town, letters from individuals as part of our testimony.

REP. MCNALLY: Any other questions? Representative Langlois.

REP. LANGLOIS: Maybe - could just make a point (HB 5404) 490, right of first refusal. I know there's some intention from at least some members of this Committee to not only allow the writer first refusal to accrue to a town solely for the purpose of open space acquisition, but also for the purpose of converting that land into affordable housing, so there may be situations where home builders, housing in general is, where that's advantageous to you.

RICHARD DAVIS: The thing is, and I'm speculating now, but my concern is my developers, when we speak about this, I'm trying to bring what I think is the real world experience of this situation and the problem is that in the land negotiation, you're doing it as quietly as you can.

There may be two or three developers in a given town who have the where with all to compete for a project. If you're going to go and put this in the local newspaper that the town is considering over 60 day period rather, every would be developer who wears a stethoscope or whatever their other activity is will be waiting to get in on that application or on that bid, and that's what our concern is, finding ways out of a contract, creating contracts that are loosely structured, so

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that once a bid from elsewhere or five bids from elsewhere be they local or be they out of state come along, I think you start to fuel the fires of land speculation, and that's probably our biggest concern, but it's speculative.

REP. MCNALLY: Are there any other questions?  
Representative Maddox.

REP. MADDOX: Just to follow up on that, I know Representative Langlois's raised a fine anti-land speculation tax. Maybe if the two of them were passed in unison, that might address your speculative problems, heavy capital gains tax, if you start playing land speculation gains?

RICHARD DAVIS: We'll speak to that in Finance. I don't there's a penalty so severe as to stop people from flipping properties. I think they'll pay the tax and ask accordingly, but we can speak to that point.

REP. MADDOX: 75% tax, you don't think that's enough or something?

REP. MCNALLY: Are there any other questions? Thank you very much for your time. The next is Raphy Podolsky from Connecticut Legal Services.

ATTY. RAPHAEL PODOLSKY: Thank you, Mr. Chairman. My name is Raphael Podolsky. I'm a lawyer with Connecticut Legal Services. I want to speak in favor of two bills. The first one very briefly is HB5559, which is an act dealing with creating state housing code.

There are a large number of towns in Connecticut that have no housing codes. In those towns as a practical matter a reliance has to be had on the State building code or the State public health code, and for dealing particularly with rental housing they don't have adequate detail to accomplish the purposes they need, so I think anything that moves us in the direction of the State housing code is a desirable thing.

I want to focus my testimony, however, on HB7270, which is the bill that deals with affordable housing review procedure. As I've told the

Committee before I'm a member of the Blue Ribbon Commission on Housing and was one of the people on the subcommittee that developed this proposal.

In my view this is actually the central bill of the Blue Ribbon Commission this year, and has the capacity to be the most important of its bills in terms of the development of housing. It may help you to know a little bit about the history of this proposal within the Blue Ribbon Commission, because a year ago the Blue Ribbon Commission recommended a somewhat different version of this proposal.

The starting point is Chapter 774 of the Massachusetts General Statutes. In 1969 Massachusetts created something called the Housing Appeals Committee, which is an administrative committee, I guess, structured so that it's within the equivalent of their State Department of Housing, which had the power to receive a certain restricted category of appeals of zoning denials.

That board has existed now for about 20 years, and is considered in Massachusetts, I believe, to have had a significant impact in the building of affordable housing. According to the Massachusetts Board it reported to the commission that about 12,000 units of housing were built that it believed would not have been built but for the existence of that board.

A year ago the Blue Ribbon Commission recommended the creation of a similar administrative board in Connecticut. Last year during this past year, the Commission reviewed that recommendation and decided that an administrative board was not really the way to go and that was because there is an existing judicial system, and that some elements of that administrative board could be built into a judicial system building in a sense, the advantages and not building in what people perceived as the disadvantages of that kind of an approach, and that is what lead to the proposal that is in front of you now.

Since this proposal which uses a form of judicial review leaves the administrative systems who are not talking about a state agency making decisions as to what is to be done at the local level,

builds on the judicial review structure that makes changes in the standards for judicial review that adopts, in a sense, some of the Massachusetts standard, but not the Massachusetts administrative apparatus.

The several speakers have expressed their opinion to you as to what they consider to be the key elements and I want to offer my opinion on that too, because I think as you look at the bill, there is room for flexibility in modification of a number of aspects, and obviously a number of concerns have been expressed, but there are some elements that are key, and I think it is very important that those key elements be retained.

There are three kinds of things, in my opinion, that the bill does. First of all, it provides for an expedited form of appeal. That, in my opinion, though was the least important of the forms. The second is that it provides for some specialized judicial mechanism. The way it comes out in this particular draft of the bill which is not really the way it was drafted by the Blue Ribbon Commission was a special session.

I don't think a session is necessary, but the notion behind that is an effort to specialize it, to have some judicial specialization, and the third part, which is the most important part is it changes the review standard, and it does this in a number of ways.

First of all, it shifts the burden or proof on to the town. Second of all, it requires that the review level that housing need be built into the review process. As a practical matter that is not included in the review process at the local level, and the third thing it does, it includes the notion that where there are legitimate concerns, local concerns that those concerns could be met by modification of the project.

That kind of modification could be addressed by the court on review, so what you're looking at is that the burden of proof is on the town to show that there are substantial health and safety considerations which justify the denial, and which cannot be alleviated by modification of the proposal.

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The Court on Review is given the power to look at all those things. Considering those, the town must show why those health and safety concerns are sufficient to justify overcoming the housing need, and as has been noted, the procedure is not generally available.

It is available only for certain kinds of housing developments and only in towns that have not made some substantial effort to accommodate some housing diversity. Representative Maddox asked a question about what about taking out those limits and simply saying it's available in any town.

Although there are certainly two sides to that issue, I think it is preferable that it not be done. The reason it not be done is that in a sense this builds in an incentive for a developer to include affordable housing units in the development because by doing so, he gets access to a procedure which is, in a sense, a more favorable judicial review procedure that he would otherwise have.

If you make the procedure available across the board, there is no incentive to include affordable housing units in the development. It's the procedures available in any event. Perhaps I misunderstood the question.

REP. MADDOX: My point was simply, yes I think the affordable housing should include 20%. I'm saying I didn't think it was fair to exempt a municipality from this that 10% of its stock as affordable housing.

ATTY. RAPHAEL PODOLSKY: Okay. I misunderstood.

REP. MADDOX: Because the demand, that has no relation to demand. There's already municipalities out there that may have 14,15%, but the demand could be 20%.

ATTY. RAPHAEL PODOLSKY: I misunderstood your comment, then. I'm sorry about that. I guess on that particular issue I could go either way on that one.

In terms of some comments you've heard from other witnesses today, as I said I don't think it's necessary that you create a special session. I do not think it's necessary that you have the language that's in this particular draft about a judge being committed to affordable housing. In fact in this particular context, I don't think it's appropriate.

It was apparently an effort in drafting by the Legislative Commissioner's Office to borrow something from the housing court statute, but what was borrowed was very different. There is a broader issue of specialization that the Judicial Department raised.

That's to say that only certain judges handle this. I think that one way of balancing the Judicial Department's concerns about administrative flexibility and the desire of the Blue Ribbon Commission to promote some specialization would be to provide that the Chief Court Administrator can make on an individual basis, case by case, can make judicial assignment.

This is done for grand juries, and it could be done for this system as well. All such appeals should be returned to the Judicial District of Hartford and New Britain which allows for a fairly large, but nevertheless fixed pool of judges, and that language be placed saying that to the extent practicable in making his assignments, the Chief Court Administrator should attempt to build a specialized pool of judges in this area, and I think that the reality of that would mean, it's much the way administrative appeals are handled.

Generally that he can pull three or four or five people who will in fact get all of these cases, but he won't be locked in by statute that he has to give it to three or four particular people, and I think that will give the Chief Court Administrator the necessary flexibility, so I would ask you to consider that as one possible way of accommodating the concerns of the Judicial Department.

I have submitted written testimony which I hope you have in your files and on the back I have suggested

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some very specific language changes that I think you need to make. I just want to mention three of them briefly in my testimony.

One is, I believe the definition of developer that you'll find in the bill is too narrow. It attempts to adopt a definition that exists in Title 8, and the problem is that definition is geared towards construction using State housing money.

This bill specifically allows a person the eligibility to take an appeal even though they're not using any governmental assistance if they're doing the set aside, and I don't think the definition of developer picks that up, so I think you need to play with that a little bit.

Second of all, I think that there is some, the 10% formula for exemption, is not quite clear and needs some slight rewording. It was the intention of the Blue Ribbon Commission that calculating that 10% exemption the denominator included all housing units in the town, the numerator included assisted family units, plus CHFA mortgages.

I don't think that the phrasing is quite right, and I've suggested an alternative way of saying that. The third thing that I want to mention is that I think you do need to incorporate some relationship to other appeals. This is a procedure for an appeal by a person, an entity, developer whether for profit or nonprofit who proposes to build housing that falls within what this act treats as affordable housing.

It is possible that you could have a case in which an abutter, you could have a situation, for example, where a town granted the necessary zoning approvals, but an abutter took an appeal challenging it. You need to make certain that the same standard of review that would be in place for the appeal by the developer will also apply to the appeal by the abutting landowner, and the language of this I don't think quite incorporates that.

You need to make sure that there's a coordination between the two systems. I believe those were all the comments that I wanted to make. I would very much encourage you to move forward with this bill.

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REP. LANGLOIS: Are there any questions? Actually I have one right here. On lines 102 and on it gives reasons or places burden of proof on the town, the municipality to show that such a zoning regulations were necessary. If a person comes in with an affordable project and it's laid out so that it's one unit per acre and the town's zoning requirements are two acre zoning, but the town fails in the burden of proof to prove that the two acre zoning was necessary to protect public health and safety, then am I correct in assuming the court could therefore authorize construction of that project?

ATTY. RAPHAEL PODOLSKY: Yeah, it could. In fact, one thing that I want to say that I think makes this bill significant is that it's site specific in that sense, and one of the issues talk about and this Committee has talked about in this whole area of inclusionary zoning, zoning reform.

All those things I think are important, but a town can have the most liberal zoning ordinances, and yet because of the price of land, because of the no interest by developers, there may be no actual housing built, so that while I think good zoning laws that permit affordable housing development are obviously essential if we're going to have housing development. They don't necessarily get us housing.

This bill addresses a situation where there is an actual developer whether for profit or nonprofit with actual access to land, whether owned or optioned, who wants to build something, who has plans to build it, who's gone through a zoning board of appeals and has been turned down.

If, ultimately on review, that person is allowed to build, wins, there will be some housing built, and that's the reason that Massachusetts, the Massachusetts Housing Appeals Committee has been such an effective mechanism for building housing, because you're not dealing with theoretical zoning. You're dealing with actual practical applications to build units, and that is very, very important part of this proposal.

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REP. LANGLOIS: So it's fair to say that this would allow an expedited challenge to the reasonableness of a town's zoning requirements on a site specific basis.

ATTY. RAPHAEL PODOLSKY: On a site specific basis, it's expedited because it's focused on particular judges and doesn't just go into the general offer. That's the expedited piece.

REP. LANGLOIS: And my understanding when this process was first contemplated and it was at the administrative level where you had a zoning board of appeals, that there was some type of mediation that was available that no longer is available in this judicial version.

ATTY. RAPHAEL PODOLSKY: Well.

REP. LANGLOIS: If I could just continue, it seems to me that once a town gets hit over the head on a couple or fails on a couple cases to win, that perhaps a mediation process, if it were used, if it were mutually acceptable to both developer and town, might actually result in increased housing and production, provided the town couldn't opt down and just use it as another delay. Would you care to comment on that?

ATTY. RAPHAEL PODOLSKY: Well, first of all I think it's clear that mediation is a critical part, or maybe I should call it de facto mediation, is a critical part of how the system works in Massachusetts. The data we got from Massachusetts indicates that over half of the cases in Massachusetts result in negotiated settlements and that's, as in any kind of a situation when you create mechanisms that have the power to overturn a decision you give incentives to both parties to try and be a little bit more flexible.

The question becomes how does that play itself out in this particular proposal, which is not an administrative board, but a judicial process. The

answer is, I think, that you have to realize how the judicial system works in Connecticut in general.

We have a pre-trial system in Connecticut which is essentially a mediation system. Normally, they would use a judge who is not hearing the case, to pretry a case. In the system in Massachusetts, the clerk of the Housing Appeals Committee has de facto become the mediator and the reason is he's managing the cases and what he'll do is, he'll call the parties in and he'll sit them down and he'll see if he can solve the case. If it doesn't settle, they schedule it for hearing.

Ideally, we would actually create a staff person in Connecticut equivalent to the housing specialist in the housing court and have such a person do that. That obviously puts a fiscal impact on the bill. It seems to me that we can get some, that even without that, though, we will in reality get the equivalent because when there are cases going to trial, the Judicial Department does have mechanisms for having people do pre-trial within the judicial system.

And pre-trial throughout the system creates many, many settlements in every kind of case. You've got, you get two cars bump into each other and you have a lawsuit. You get a lot of pretrial settlements.

My expectation is that that will happen with this procedure and it will happen with whoever is available to do it, and the way will be devised. And so I do think you will get that mediation. I think that that will have a positive effect.

It is also true that if it becomes clear that unless the town does have some substantial basis, it's going to lose, that, in and of itself has the effect of encouraging more flexibility. And what flexibility (inaudible) results in is a modification of the project where perhaps it will be scaled down a little bit in size, perhaps landscaping will be changed to satisfy concerns of the municipality, but the project can nevertheless be built on some reasonable basis to get to some housing units. I'm sorry, that was a long answer.

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REP. LANGLOIS: That's okay. I mean, I guess in an ideal world, I'd rather have, instead of having a developer's attorney versus the town's attorney, I'd rather have someone like (inaudible) in the middle that really has some technical expertise and helps you know, resolve some design issues. But I understand your concern with the fiscal impact and attaching a fiscal --

ATTY. RAPHAEL PODOLSKY: this doesn't exactly address design issues specifically, but to the extent that you have a system in which a relatively small pool of judges are handling these cases. One possibility is that one of the, that one of that pool of judges can do pretrial for a different judge who's actually hearing the case and although that doesn't get you a person necessarily with design expertise, it does get you a person who becomes familiar with these kind of affordable housing issues and that may prove in practice to be a useful way of settling a lot of those cases.

So I think it's perhaps not perfect, but I think it can be done within the framework of this proposal.

REP. LANGLOIS: And then one final question, if I could, Ray. In line 104 you use the word, or the bill, as drafted said, such public health and safety interest substantially outweigh the need for affordable housing. That seems to be great weight given to affordable housing and maybe a case of overkill. Do you think it should simply say outweigh, or do you feel that the substantially outweigh.

ATTY. RAPHAEL PODOLSKY: I think the substantially outweigh is important. I'm trying to find the language in Massachusetts. In the Massachusetts language, which is actually the regulations, rather the statute, let me just read you my summary.

The local planning need requires consideration of the impact of the project on local health and safety. The degree to which the site and proposed housing design are "seriously deficient", the degree to which additional open space in the town is critically needed, and the degree which

conditions imposed by the zoning board of appeals bear a "direct and substantial relation to the protection of those needs".

So that you'll notice that there's a heavy use of adjectives there and it goes beyond merely saying deficient. So that I think that's an important part of the way it's worked in Massachusetts and I think that's an important element that we ought to keep.

In a sense, it does say, housing is particularly important where there are substantial countervailing concerns they should outweigh the housing concerns. But where there are not, they shouldn't. I would recommend that you keep that language.

REP. LANGLOIS: Any other questions? Okay, thank you, Raphael. Excellent testimony.

ATTY. RAPHAEL PODOLSKY: Thank you very much.

ATTY. LANGLOIS: The next speaker on the list would be James Sandy, the Town Planner from the Town of Greenwich.

JAMES SANDY: Good afternoon. Thank you for the opportunity. I want to speak to HB5405 involving additional powers for the zoning enforcement officers.

In an effort to prepare a report for the planning and zoning commission in my town, I had the opportunity to contact dozens of people from all over the State of Connecticut involved in the zoning enforcement process and it was unanimous, whether you were talking to people in East Hartford or in Wethersfield, or any other town in the State that the problems of zoning enforcement were identical. There just weren't, and aren't, enough tools to get the job done.

Planning and zoning commissions spend hundreds of hours and sometimes years, preparing a plan of development that lays out the goals and objectives for the community. They spend hundreds of hours preparing their zoning regulations, precisely preparing their zoning regulations and then having violations to those zoning regulations appear

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police power measures. An important legal instrument for equitable and just enforcement throughout the State would be a State housing code.

Many of the housing problems we experience are due to the fact that we don't have a State code. The current programs we see in many municipalities create and challenge the significantly, the capability of the Judicial Department to perform equitably.

Under the present system, inadequacies in principle and practice exist. The only solution to the problem is by enactment of the State code. Such a code would receive the support of the general public and it would also address the social and economic problems of housing in general.

That's a runner to the statement I just made concerning the need for a housing code. Also in reference to the proposed bill two points that Bill Boardman made earlier, and that is the composition of the committee. Here you have 17 members that are going to work on a State housing code and not one member is a member of the housing code enforcement personnel in the State of Connecticut. Therefore, this omission, I think, should be corrected.

And the second consideration is the penalty clause. This is, I think, in the area of the committee when it proposes a State housing code, at the time of adoption of that code, a penalty would be included. Therefore, I think it's a little premature for this bill to include a penalty at this time. Thank you.

REP. LANGLOIS: Okay. Thank you very much. Any questions? The next speaker will be John Gregory Davis of the Connecticut Coalition for the Homeless.

JOHN GREGORY DAVIS: My name is John Gregory Davis. I represent the Connecticut Coalition for the Homeless and I wish to speak in support of HB7270.

As people who work directly with those who are homeless or at risk of becoming homeless, we are becoming increasingly convinced that the heart of our burgeoning homeless situation is our housing

crisis. For this reason, the affordable housing appeals process is our number one legislative priority this year.

It is painfully clear to us that simply continuing to provide shelter to those without homes will accomplish nothing other than perpetuating the existence and growth of shelters.

The housing crisis within our State has become especially acute. Despite boasting the highest per capita income of any state in the nation, Connecticut is also burdened with the fourth worst rental housing crisis in this country. We have lost housing, especially affordable housing much more quickly than we have gained it.

Within the Hartford region, rents have risen three times, three times more quickly than incomes. And the situation is equally bleak with regard to home ownership. Fewer and fewer people are able, within our State, to realize the American dream of home ownership.

This in turn applies increased pressure to our already overpriced, understocked rental housing. Our Governor declared 1987 to be the year of housing. The Blue Ribbon Housing Commission recommended a similar idea to that of HB7270 last year, yet so far, our housing crisis has continued to worsen.

It is clear to us that we need a more effective approach. Thus we affirm the centrality given this year by the Blue Ribbon Housing Commission to its proposed affordable housing appeals process. By and large to the extent that affordable housing exists within Connecticut, it is disproportionately concentrated within our cities.

Too often, our surrounding towns and suburbs are quite content to view themselves as islands of what I call economic apartheid within the larger community from which these same towns are equally content to receive whatever benefits accrue from belonging to the larger community.

Economic apartheid may sound harsh, but what else can we call it when fellow citizens are literally zoned out, prohibited from living in particular areas of our State for no reason other than their limited income.

To state the situation as boldly as I can, land use regulations are being used throughout this State to justify two highly troubling assumptions, at least in moral terms:

One, those with limited income are by definition bad people. We don't want them in our town or neighborhood.

Two, those with less limited income have no responsibility for the welfare of their more limited fellow citizens. Of course, none of us appreciate hearing this and my guess is that none of us really mean this, despite the facts, which speak for themselves.

Yet I have been astounded whenever I have spoken in towns throughout the Greater Hartford Region concerning the need for affordable housing within each and every Connecticut town. The most common objection I hear is that towns wish to make their own decisions, home rule, concerning the type of housing provided for within their towns.

My response is fine, but what are you doing to make affordable housing a reality within your town? I'm sure all of us would gladly support any such efforts on the part of any town. No one is saying towns are not free to make that decision. The reality is, that left to themselves, many towns are simply not adequately helping to alleviate our affordable housing crisis. Carrots have not yet proven sufficient.

The affordable housing procedure actually is not much of a stick, either, but it has the potential to keep towns more honest concerning their land use decisions as well as to encourage greater responsibility on the part of all of our Connecticut towns concerning the provision of affordable housing.

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The Connecticut Coalition for the homeless has no illusions that HB7270 will solve our housing crisis. Many of the people we serve will probably never benefit directly from the effects of such legislation, but we understand well the indirect effects that our people will experience if and when more non-urban housing becomes affordable.

HB7270 is a critical first step in moving Connecticut toward addressing our housing crisis on a statewide basis in contrast to the tremendous burden that our cities now tend to carry.

Similar legislation has proven effective in Massachusetts. Morally and economically, we can no longer afford not to move in this direction here in Connecticut. Thank you.

REP. LANGLOIS: Thank you. Any questions? Thank you, John. Okay, once again I'd ask speakers to restrict their remarks. If you can summarize your testimony it would be appreciated. The next speaker is Joe Zabettio. Okay. Denise, how do you pronounce your last name, Denise?

DENISE SCHLENER: Shleh - nur.

REP. LANGLOIS: Schlener. I'm sorry. From the Land Conservation Coalition.

DENISE SCHLENER: Good afternoon, members of the Planning and Development Committee. My name is Denise Schlener. I'm program director of the Land Conservation Coalition for Connecticut. I'm here to express the Coalition's support for HB5404, AN ACT CONCERNING THE SALE OF LAND CLASSIFIED AS FARMLAND, FOREST LAND OR OPEN SPACE LAND.

The Land Conservation Coalition for Connecticut is dedicated to working for adequate funding to protect State and local recreational opportunities and natural features.

The Coalition which was formed in 1987 is comprised of 70 State and local organizations with a combined membership exceeding 100,000. The

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our community can grow. Provide housing for all of its residents while protecting the quality of life for towns' residents.

The land use education council may be such a vehicle. I urge this Committee to consider expanding the responsibilities of the council and charge the council with developing recommendations to bring back to the Legislature concerning these issues that affect all of us. Thank you.

REP. MCNALLY: Are there any questions? Thank you very much. Next is Robert Josephy.

: He is ill.

REP. MCNALLY: Sorry to hear that. Next, Jude Brennan, Connecticut Association of Realtors.

JUDE BRENNAN: Thank you for giving me the time this afternoon. We've introduced our testimony in document form. What I'll do is summarize it in view of the time that we've all spent here today.

As far as HB6813 is concerned, THE AUTOMATIC RIGHT OF APPEAL IN CERTAIN LAND USE CASES, we support that bill. However, we do favor retention of the appeal remedy for abutters and semi-abutters who can demonstrate a negative impact or injury due to a housing development proposal. This will go a long way in streamlining the process that subdivisions and developers have to go through now.

HB7269, concerning the approval of inland wetlands permits. We support this bill, especially the area where the time for appeal, not the time for appeal, but the time for action and the automatic approval is concerned. The time for action may or may not be appropriate as far as the number of days, but I think it does provide some motivation towards expeditious action on the part of inland wetlands commission.

HB7270, which establishes the state affordable housing land use appeals procedure. This is a program that the Association supports and we have supported this or a similar system for quite some time. We do, after listening to some of the testimony this afternoon, where the questions were

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raised about the constitutionality of the issues in those, they cause us no problems at all. It's the concept which does go a long way to speed up the process which now can just be consecutively.

On HB7271 concerning the one-step application process for the development of land. This is another issue which we have supported for quite some time. Right now in many communities, your applications are consecutive, where you'll go to planning and zoning and you'll find out as a condition for making your application to planning and zoning you have to have wetlands approval and wetlands approval can take any length of time. You're really lucky if you don't have any wetlands on the property. If you do, it's something you have to factor in, which as an end product, results generally in a higher development cost and thereby placing the program, or the final project at the very upper limits, or outside the edges of affordability.

However, with HB7271, we recommend that it be a voluntary, instead of a mandated or required program when the regulations are approved and the procedures established by the Department of Housing.

As the Chairman had indicated earlier, there is presently a model program that is on the book. I think in most towns the problem with one-stop zoning or one-stop applications is generally that procedurally within the community itself where there is, at least to my own experience in dealing with two or three communities in the area where I work, more specifically, one hand does not always know what the other is doing and in many instances, one hand doesn't really want to know what the other is doing.

And that's our position on those particular bills.

REP. MCNALLY: Thank you. Are there any questions? If not, thank you very much.

JUDE BRENNAN: Thank you.

REP. MCNALLY: The next speaker is Alma Rutgers, Connecticut League of Women Voters.

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ALMA RUTGERS: I'm Alma Rutgers, the housing specialist for the League of Women Voters of Connecticut and I'm speaking for the most part to HB7270, AN ACT ESTABLISHING A STATE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE. However, just before I briefly summarize my comments on that bill, which I've handed in as written testimony, I would like to say that the League has historically supported the concept of a uniform state housing code and we in principle, support HB5559, although we haven't prepared testimony and haven't studied it and don't have recommendations for changes.

With regard to HB7270, as has been stated by many speakers before me, this is intended to implement a key recommendation of the Blue Ribbon Commission and the League supports in principle the establishment of such an appeals procedure and agree with the Blue Ribbon Commission that this would create the potential for encouraging the much needed development of more affordable housing.

We agree that many of our local land use regulatory agencies should be giving greater weight to affordable housing needs as a component in their evaluation of development proposals and the appeals procedures could certainly assist in accomplishing this objective.

We do, however, have one concern regarding the language of the bill the way it is written. We're concerned that the criteria which are allowed for denying a development application, which is phrased in terms to quote "protection of vital public health and safety interest" could be interpreted in a very narrow way in terms of strictly what would be public health and safety, and as we are involved in other coalitions and have other positions than just housing, for instance, we are a member of the Clean Water Coalition and as you will see in the testimony that was handed in by the Clean Water Coalition, I mean, we are listed there and have concerns similar to those that were expressed by the speaker from the Council on Environmental Quality.

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We're concerned that this narrow wording of public health and safety may be not taking into account some wetland concerns that may be legitimate. For instance, an example that was given, that flooding which would be a long-term affect, perhaps filling in wetlands cannot be immediately measured in terms of tomorrow's public health and safety concerns, although it would have such a long-term impact.

Rafie Podolsky had referred to the Massachusetts statute and I believe that has slightly broader language and we would ask that you consider including in those permissible reasons for denying an application, other legitimate zoning concerns than very narrowly construed in terms of public health and safety.

However, we do very much recognize that as I said, the affordable housing needs are not taken into consideration and that should be given more weight. The question is, how do you weigh one concern against another? That's basically our only concern with the wording of the bill, so we do urge you to look favorably upon it, even if it requires some modifications.

As far as technical aspects of the judicial appeals process which we talked about when we were preparing the testimony but didn't feel we were qualified to comment on those, but other speakers have. Thank you very much.

REP. MCNALLY: Thank you. Are there any questions? Thank you for your testimony this afternoon. The next speaker is Tim Calnen, Connecticut Association of Realtors.

TIM CALNEN: My name is Tim Calnen and I will just HB 6813, HB 7269, associate my comments with Jude Brennan of the HB 7270, HB 7271 Connecticut Association of Realtors in support of the housing land use appeals procedure as well as the other comments on the other bills Mr. Brennan commented on. Thank you.

REP. MCNALLY: Thank you very much. Next is Joe Wincze, Fair Housing Association of Connecticut. Did I pronounce your last name correctly?

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JOE WINCZE: Right. My name is Joe Wincze, I'm chairperson of the Fair Housing Association of Connecticut. Members of the Planning and Development Committee. On behalf of the Fair Housing Association of Connecticut, I'd like to speak in favor of Raised HB7270, which establishes a procedure whereby decisions of local land use commissions rejecting an application that would lead to the development of affordable housing can be appealed in an expeditious manner.

Recognized by the Governor's appointed Blue Ribbon Commission on Housing as a necessary and vital piece of legislation, in view of the critical need for the creation of more affordable housing in our State, the Commission in my organization recommends the enactment of such an appeals procedure with full awareness and sensitivity to the desire of municipalities to control the pace and direction of land development in their own communities.

However, we're also aware that up until now there has been insufficient consideration given to the affordable housing needs of those not already adequately housed in a municipality and in a region. Bear in mind the enactment of this proposal does not specifically mandate any municipality to create a single unit of housing be built, nor does it dictate that any municipality has to allow a developer to build housing units, irrespective of modified legitimate concerns expressed, such as those related to environmental or public health and safety.

What it does do, however, is provide a developer who feels this proposal calling for the construction of affordable housing in a particular community has been arbitrarily rejected with the right to appeal such decision to a judicial review. While wishing to intrude as little as possible on sound local planning decision and on legitimate community efforts to insure proper land use patterns, the Blue Ribbon Commission which has proposed this bill and the Fair Housing Association of Connecticut, which strongly supports this bill, believes that too often the equally important

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concern of providing adequate supply of housing at affordable prices just has been ignored in decisions of some local land use commissions.

By establishing this affordable housing appeals procedure, it will serve to specifically review whether a local commission has given sufficient way to affordable housing needs when evaluating developmental proposals.

In submitting this proposed bill, the Blue Ribbon Commission stated it strongly felt that if municipalities do not begin to give greater weight to the need for the creation of affordable housing when evaluating developmental proposals, we will continue to have business as usual and continue to ignore the housing crisis we're confronted with.

Unfortunately, by ignoring it the housing crisis will not go away. Thank you.

REP. MCNALLY: Thank you very much. Are there any questions? Thank you for your testimony this afternoon. Next speaker is from the Town of Berlin, I believe, but the xeroxed copy here is very, very faded. I think it's a Mr. or Mrs. Gaudin. Is that close? Perhaps that person has already left. The next person on the list here is Dorothy McCluskey.

DOROTHY MCCLUSKEY: Thank you, Representative McNally and members of the Committee. My name is Dorothy McCluskey and I'm Director of Government Relations for the Nature Conservancy. The Nature Conservancy is an international nonprofit organization with 12,000 members in Connecticut dedicated to the protection of ecologically significant areas.

We believe that the provision allowing towns to (HB 5404) assign their right of first refusal to a nonprofit land conservation organization is an especially important measure of this bill. Massachusetts, which added such a provision to their preferential tax assessment statutes in 1987 has found that it greatly increases the effectiveness of their ability, a town's ability to acquire land.

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responsibility to enforce its regulations and all but six out of the 169 municipalities in Connecticut have chosen to exercise zoning powers.

Again, I appreciate your patience and I hope that something can be done. I endorse Jim Sandy's views as expressed earlier, and certainly I hope you'll find his report of interest to you in your work, and I'd be happy to answer any questions you have. Thank you.

SEN. BARROWS: Thank you. Do you have any questions, from the Committee? No questions. Thank you.

DICK CARPENTER: Thank you very much, Senator.

SEN. BARROWS: The next speaker will be Jeffrey, I believe it is Jeffrey Freezner.

JEFFREY FRIESER: Fry-zer.

SEN. BARROWS: Freiser.

JEFFREY FRIESER: Thank you, Senator Barrows, members of the Committee. I appreciate everybody's endurance. I'm Jeffrey Frieser from the Connecticut Housing Coalition.

SEN. BARROWS: Excuse me. Could you spell your name?

JEFFREY FRIESER: Freiser. F-r-e-i-s-e-r.

SEN. BARROWS: Okay, thank you.

JEFFREY FRIESER: Here speaking in favor of HB7270, TO ESTABLISH A STATE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE. So as not to reiterate all that's been said in support of this bill, let me simply indicate the breadth of support within the housing community.

Two members of our steering committee who could not be here today have submitted written testimony to the clerk of the Committee, Liesl Standin who chairs the Central Housing Committee, and Pat Wallace of the Office of Urban Affairs of the Archdiocese of Hartford.

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Our coalition itself consists of over 160 member organizations involved in a variety of housing efforts across the State, nonprofit developers, homeless shelters, human service agencies, tenant organizations and at our December membership meeting this, the affordable housing appeals procedure was identified as one of our two top priorities. (inaudible) our sister coalition, the Coalition for the Homeless has identified the one priority, that we do look upon this procedure as a centerpiece of the State's commitment to make real progress in the creation of affordable housing.

It's a very modest proposal only available to developers who are producing affordable housing, only in localities that are not meeting their commitments. The process respects local authority and allows for particular needs of particular localities, and will make affordable housing a reality.

The Massachusetts experience has shown that we can see new units coming on line. It's not just a theoretical potential for housing. So let me just finally echo the sentiments of John Gregory Davis who testified earlier for the Homeless Coalition, that this really reaches a level of moral imperative, that the social fabric of our State. Our social conscience demands real progress in ending the economic and racial segregation of our communities. Thank you.

SEN. BARROWS: Thank you. Do you have any questions? Questions from the members? Thank you. The next speaker will be William Wamester, I believe. Wamester. Is that your name that I just massacred?

ETHAN ROME: Good late afternoon. My name is Ethan Rome, and I'm the Organizing Director for the...

SEN. BARROWS: Okay, you're Ethan Rome.

ETHAN ROME: Yeah.

SEN. BARROWS: Okay, the other one left, I believe. He's not here. Okay, go ahead.

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ETHAN ROME: And I'm Organizing Director for the Connecticut Citizen Action Group, here to strongly urge support for HB7270, the housing appeals board, and specifically want to speak very briefly to the concerns of balancing the State's housing and environmental needs.

CCAG after today's testimony, it's self evident that there are some very significant merits to this bill. There's been numerous testimony from different interests. CCAG is both a member of the Connecticut Clean Water Coalition as well as an active member of the Connecticut Housing Coalition and we are interested and will work to balance those two needs.

I don't think that there's a whole lot that needs to be changed frankly. I don't think that there's competing interest between the housing and environmental needs which is why it makes sense from my perspective that CCAG can be in a position we are, which is both the largest consumer and environmental organization, so I just urge support of this and want the Committee to know that we will work to help bring the different groups of people together from the environmental and the housing sides to resolve this, and we'll just go forward. Thank you.

SEN. BARROWS: Thank you. Do you have any questions? No questions. Thank you. The next speaker would be Philip, I believe it's Philip Tegeler.

ATTY. PHILIP TEGELER: My name is Philip Tegeler. I'm a lawyer with the Connecticut Civil Liberties Union. I'm here to speak in support on behalf of CCLU, of the affordable housing appeals procedure and the concept of affordable housing appeals procedure, as set out in the Raised HB7270.

The main concern of the Civil Liberties Union in this area is government limits on free housing choice, the right of low and moderate income housing, low and moderate income persons to select housing in communities without being arbitrarily excluded on the basis of their income.

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This bill is an important step in that direction, a reversal of the practice in Connecticut. In the past to permit exclusionary zoning to exist in local towns. A couple specific points. First, I don't believe this bill will seriously interfere with legitimate environmental concerns.

Instead it's going to screen out disingenuous zoning, and it's going to force towns in this language to accommodate both affordable housing and environmental concerns by finding ways to modify the project to change a project to address environmental concerns without completely scrapping it.

With respect to open space concerns, the real threat to open space, of course, are the sprawling two-acre subdivisions, not affordable housing. Affordable housing tends to be much more compact and may actually help to preserve open space by concentrating units into a smaller area.

Finally, to the extent that this bill streamlines zoning procedures, it obviously creates an incentive for developers, and because it's creating incentive for developers, I think the Committee should focus on what kind of housing you are encouraging to be built.

In New Jersey under the Mount Laurel guidelines adopted by the Council on Affordable Housing, the baseline requirement for inclusionary housing developments is that 10% of the units be set aside for housing that can be afforded by low income persons. Low income is defined as people who have incomes at 50% of median income levels.

An additional 10% of units are set aside for people with moderate incomes which are at levels 80% of median income. That's a 20% set aside, often without any governmental subsidies whatsoever. Developers have been voluntarily using inclusionary guidelines at this level and making a profit in New Jersey.

This suggests three things to me. We support this bill. Perhaps it could be even more inclusionary than it is. Specifically the affordable housing

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language as the bill is currently written, it's my understanding that that allows housing to be built where 20% of the units are affordable to people with 100% of the median income level in a region.

That's quite high. Possibly the market in Connecticut as in New Jersey, could support developments where 20% of the units are at a level below 100%. 80%, 70% as low as 50% on. That has to be worked out. I think the New Jersey experience speaks to that.

Secondly, perhaps proposals that include low and moderate income housing as opposed to merely affordable housing should be given particular weight in the court's decision making process. In other words, the project is 20% affordable, that carries some weight. If it's 20% low and moderate, maybe that should carry even more weight. Maybe that should be taken into account in the balancing process, that the statute envisions.

Third, and this is along the same line, at a minimum I think that the Committee should make sure that housing proposals that are more inclusionary than 20% affordable, as the bill now states, should not be excluded. You may think this is a technical point, but I think at line 76 of the raised bill, you should add the words, let me pull my bill.

At line 76, where it says the dwelling will be sold or rented at prices which will preserve, I think you should include the words at or below prices which will preserve the units as affordable housing at that point, and I think you should at least consider on the incentives that are being created here and maybe think of creative ways to make this an even stronger bill, but we certainly support it as it's written. Thank you.

SEN. BARROWS: Thank you. Representative McNally.

REP. MCNALLY: Two quick questions. One, when you speak of New Jersey and inclusionary zoning in New Jersey, isn't there an entirely different dynamic in New Jersey. Home builders brought towns to court, saying that they're excluding housing, and that the dynamic is that inclusionary zoning is one in which towns have to provide affordable housing.

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We don't have that kind of requirement state statute right now. Doesn't that make inclusionary zoning problematic in any fashion? If towns are traditionally excluding, can't inclusionary zoning and ordinances or inclusionary laws of any sort be masked in a way that really does continue exclusionary practices by making the exchange so unreasonable that you drive the developer out of town.

Without that other part of the puzzle, without saying you have to provide a certain percentage of affordable housing or low income housing, which is what New Jersey and Massachusetts and other states are doing.

ATTY. PHILIP TEGELER: I agree. It's a different mill year, and I wasn't referring to inclusionary zoning per se, but an inclusionary housing development. I think that the bill assumes a development where market rate units support affordable units, and that broadly defined is an inclusionary housing development.

I'm not necessarily referring to a town, any requirement the towns have inclusionary zoning ordinances. We have no requirement like that in Connecticut. It's unlikely that that's going to be imposed on towns from above if I read the Legislature correctly.

REP. MCNALLY: Or this hearing correctly so far today.

ATTY. PHILIP TEGELER: That's right.

REP. MCNALLY: Second question. One of the first speakers talked about the constitutionality of having a separate appeals procedure for developers who provide 20% affordable housing in communities that haven't provided 10% affordable housing, and that you were creating a separate class of folks who had a different appeals procedure. Do you see any legal problems with that? I'm speaking about lines 80 through 91.

ATTY. PHILIP TEGELER: I heard that discussion, and my off the cuff response to that is that as long as the developer's covered by this bill, have the same

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appeal rights of everyone else. I don't see the constitutional problem. This creates an incentive, a special procedure for developers willing to come in with a project and includes affordable units, and I don't really see that giving them that special treatment, I don't think raises any problems as long as the other procedure is not taken away from them, they already have.

With respect to some of your earlier legal comments, I certainly agree that that line about the judge having a certain predisposition is not necessary in the bill.

REP. MCNALLY: Final question. Does changing the burden of proof as you move to an appeals procedure, are there in your opinion legal problems with that? Shifting the burden of proof from the developer to the community when you go into this accelerated appeals procedure.

ATTY. PHILIP TEGELER: I think that's a legislative determination, and I think it's very creative way to go about it. I don't think environmental concerns are sacrificed. I just think they're put in their proper perspective, but I do think in many ways this bill is an incentive program, and if the Committee were of a mind to strengthen it further that could be done.

REP. MCNALLY: Thank you. I have no further questions.

SEN. BARROWS: Thank you. Any other questions? Thank you. Betty McLaughlin.

BETTY MCLAUGHLIN: Senator Barrows, Representative McNally and members of the Committee, my name is Betty McLaughlin, and I am the Director of the Sierra Club, Connecticut Chapter, an 8,500 member environmental organization whose purpose is to protect, preserve and enjoy the natural places of the earth.

Among the Sierra Club's goals are preservation of natural land and open space and conservation of natural resources. I'm speaker here today in support of HB5404, which seeks to amend Public Act 490.

The 490 program has enabled many land owners to maintain larger parcels of land as open space while paying use calculated taxes and the arrangement has been of mutual benefit to land owners and municipalities. The proposed legislation would give these municipalities the right of first refusal to purchase these lands when land owners opt to sell their property.

Under this program towns would learn of the availability of open space lands before the transfer of these lands is completed. The opportunity for towns to receive the right of first refusal to purchase open space lands is a crucial link in the formulation of municipal growth management plans.

We recognize that the 60 or 90 day wait period which towns may need in order to make a decision about land acquisition may inconvenience land owners wishing to transfer their property expeditiously. However, when measured against the fact that it takes up to 1,000 years to produce one inch of topsoil, a 90 day wait becomes a nanosecond in geologic time.

We believe that Connecticut's open space lands are diminishing rapidly enough to warrant this special consideration. The Sierra Club urges the Committee to support this legislative initiative which we feel demonstrates and altruistic visionary attitude towards land preservation. Thank you for your patience.

SEN. BARROWS: Thank you. Do you have any questions? Thank you very much. The next speaker will be Bob Alling.

ROBERT ALLING: Mr. Chairman, members of the Committee, my name is Robert Alling. I live in Branford, and I'm employed as a Director of Housing for Independence Unlimited, a center for independent living for persons with disabilities serving the capital region.

I speak in support of HB7270. 104 persons with disabilities have contacted our office this year seeking housing. By extension, this equates to

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about 2,000 statewide. With 86% of them being unemployed, 72% having an annual income less than \$10,000, the need for housing is desperate and the opportunities very few and far between.

Whereas we may disagree over solutions to this problem, I submit that in good conscience we cannot ignore it or even be content to address it in a leisurely business as usual pace. It is not right for the homeless to accommodate themselves to the convenience of the comfortable.

Allowing seemingly unfair zoning decisions to achieve a kind of validation simply by delay, is but one form of business as usual. We cannot afford it, and I strongly believe that most of us do not want it. Accordingly, I ask our Legislature to end it at least in part by the passage of HB7270. Thank you.

SEN. BARROWS: Thank you. Any questions from the Committee? No questions. Thank you. The next speaker will be Mr. Charlie Duffy.

CHARLES DUFFY: Thank you. My name is Charles Duffy, and I'm the Executive Director and a lobbyist for the Council for Small Towns. I want to comment very briefly on a number of bills before you. I've also got some comments from Jim Finley, from the Connecticut Conference of Municipalities. We agree on many of these issues, and I would ask your forbearance.

Jim's wife gave birth to a healthy baby boy yesterday, so he's understandably preoccupied and was unable to stay.

REP. MCNALLY: Does this mean that CCM approves of parental leave?

CHARLES DUFFY: It certainly does today. Just briefly on a number of bills before you. We support HB5404, concerning sale of land classified as farm land, both Council of Small Towns and CCM. We support HB5405, AN ACT CONCERNING MUNICIPAL ZONING ENFORCEMENT, which would end the... oh shoot, that's an enforcement bill. Yes, both CCM and COST support that one.

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for HB7269, concerning the approval of permits to conduct regulated activities upon inland wetlands and watercourses.

We listened to a number of our friends in the developer community talk about their difficulties with inland wetlands decisions. We support a change which will provide a definite time limit for action by them.

I just want to comment briefly about HB7270. The Connecticut Conference of Municipalities, Jim has indicated does support this. However, in terms of the test that is established in 80, they would urge the Committee to substitute the concept that any town involved in the Connecticut Housing Department partnership program be the test by which a commitment to affordable housing is measured.

In other words any town that is involved in that program this appeal process would not be allowed. The Council of Small Towns opposes the bill in its entirety and I'll submit some written testimony and critique of it. Basically for the same reasons that I objected to Senator Harper's bill in this Committee the other day, I don't believe that this, and I believe that this is a very drastic measure, especially in some of the language that's been adopted here. I don't believe that this is an appropriate activity for the State which has basically adopted a cooperative approach to the development of affordable housing.

We're got some significant difficulties with this bill that I'll submit some written testimony about.

REP. MCNALLY: Charlie?

CHARLES DUFFY: Yes.

REP. MCNALLY: Is this HB7270 that you're talking about?

CHARLES DUFFY: Yes, the appeals.

REP. MCNALLY: Now you wear another hat. You're a member of the Blue Ribbon Commission on Housing.