

Legislative History for Connecticut Act

HB 7568 (89-356) 1989  
~~Ess~~ Jud: 1814, 1962-65, 2058-64  
2113-2114 (14)  
Sen: 4195-4197, 4216-4218 (6)  
Hse: 5572, 8801-8842  
11186-11226 (84)  
104p.

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

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JOINT  
STANDING  
COMMITTEE  
HEARINGS

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PART 5  
1535-1909

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March 27, 1989

is so tight next year that we don't think we can do what we've already been asked to do and certainly could do no more.

With regard to other sections of the bill, talking about placing the juvenile in a residential drug rehabilitation facility, there are no such facilities. We should have them. We don't have them. What we have are, there are long, long waiting lines. Good idea, but somebody is going to have to provide us with the facilities in one case, with the money in another case, if we are to abide by this bill if enacted into law. Yes, Faith.

FAITH MANDELL: I have just comment on HB7568, AN ACT CONCERNING LOCAL ADMINISTRATIVE APPEALS. Someone had brought to my attention, particularly I'd just like to bring to the Committee's attention lines 126 to 128 where it talks about a form for bringing an appeal prescribed by rules of Superior Court. We don't think that that was the intent of the draftmanship of the bill. I don't think it was intended that an appeal should be set forth by a form prescribed by the rules of Superior Court. Therefore, I think that the words, by legal process and the form prescribed by rules of Superior Court should be deleted from the bill if this bill were to be favorably considered.

REP. TULISANO: What lines is that?

FAITH MANDELL: Lines 126 through 128. I think you are talking about an appeal shall be commenced in the manner as prescribed by, prescribed for civil actions brought to court because not, the rules of Superior Court don't set forth the entire manner for bringing appeals so does the statutes. Thank you.

REP. TULISANO: Thank you.

REP. NYSTROM: Thank you Mr. Chairman. Judge Ment, HB7539, how many people do you expect this bill to effect if it passes in its present form? Do you have any numbers?

JUDGE AARON MENT: I don't have any numbers. I would hope it is a significant number. As I indicated in my testimony, I believe there is either 1.25 or 1.5

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testimony. You don't need to talk. If you've submitted written testimony, we would appreciate --.

ATTY. ALAN KOSLOFF: I will be mercifully brief. I do have written testimony. I would like a minute or two to summarize. My name is Alan Kosloff. I'm a partner with the firm of Rome, Case, Spinelli and Permanoff and I want to speak to Raised HB7568 and in particular -- and I am speaking in support of that bill. I will not go on at length as the substance of my prepared testimony, however, Ladies and Gentlemen of the Committee, I would like to simply state the reason for my support is that it speaks to a very important issue facing members of the Bar such as myself, issues that were presented and raised as a result of the Ansaldi decision which is often euphemistically referred to as son of Simko.

I need not bore you with the details of the Simko decision, nor will I with the Ansaldi case, Ansaldi, of course, speaks of the failure to name as a party and to serve appropriately the Chairman of the Commission as opposed to the Town Clerk, as I believe was the situation in Simko. This, Raised HB7568, speaks effectively, in my judgment, to remedying the problem confronting members of the Bar as was the case in the Simko decision which you remedied by Public Act 88-79.

The one suggestion I might add is that when you enacted 88-79 you included a Section 3 that dealt with validation of the Service of Process in the actions presented to the various Superior Courts throughout Connecticut that validated those cases that are in process or were in process at the time. I would hope that you would give consideration to inclusion with Raised HB7568, such a validating provision. In fact, the identical provision that was included as Section 3 of Public Act 88-79 would certainly suffice with the one notable exception that the date, December 1, 1987 in both Section (a) and (b) of Section 3 should be changed to reflect the actual date that the Ansaldi case came down, which according to my records, was April 12, 1988.

With that, I have concluded my statements. I would, however, like to offer my prepared testimony which identifies for the committee the various cases that have been reported in Superior Court, both following Ansaldi and coming down in the other direction saying that it is a non-jurisdictional error and can be corrected.

The court decisions are in disarray. There is confusion. You can correct that. In the interest of judicial economy, it would be a good thing if you did that. Thank you very much.

REP. WOLLENBERG: That was quite an innovation, though, don't you think that validation business?

ATTY. ALAN KOSLOFF: Forgive me?

REP. WOLLENBERG: The validation business we did, that was kind of an innovation.

ATTY. ALAN KOSLOFF: If I can speak briefly to that, Representative Wollenberg, there is a need for the same kind of validation.

REP. WOLLENBERG: I understand.

ATTY. ALAN KOSLOFF: The validation is a good idea. It caught lawyers unaware. I sense that Raised HB7568 wants to avoid unfair surprise. I might add very quickly that I was an Assistant Attorney General from 1975 to 1980. I had the unfortunate responsibility as an Assistant Attorney General of filing numerous pleas and abatement which caught competent attorneys unaware of the responsibility to return writs to court within 30 days and not just file them by Service of Process on opposing counsel.

I must have knocked out 30 or 40 cases on those grounds. I don't think that's just. I think it's unfair surprise. I think Simko was unfair surprise. I think the result in Ansaldi created unfair surprise and that should be remedied retroactively, I believe.

REP. WOLLENBERG: It's my understanding now some of the courts are saying, they're using the language and saying that -- what is it -- substantial change of circumstances or something that they can place --?

ATTY. ALAN KOSLOFF: There is confusion. Some of the cases are coming that way. There are others that are strictly following the Ansaldo decision that says strictly it's jurisdictional defective. You don't follow the statutes (inaudible) without jurisdiction. You entertain -- you have to make sense out of -- the courts shouldn't be burdened with wrestling with procedural issues. They should get to the merits of the case and to me that's the essence of fairness, the merits.

REP. WOLLENBERG: Do you think we ought to do anything what that and clear that up for the courts?

ATTY. ALAN KOSLOFF: Forgive me.

REP. WOLLENBERG: Do you think we ought to clear that up for the courts a little bit?

ATTY. ALAN KOSLOFF: Yes, I do.

REP. WOLLENBERG: The fact that they tend to uphold --.

ATTY. ALAN KOSLOFF: Whatever you can do to clarify and lend precision to these issues so that the courts need not wrestle with preliminary procedural issues is something that I think should be supported by the Bar.

REP. TULISANO: On the validating section of this, should we do it, what should be the cutoff point?

ATTY. ALAN KOSLOFF: Well, as I recall, Section 3 of 88-79 used the date that the Simko decision came down and the cutoff date, I'm trying to recall why they used, why the legislature used October -- oh, no, I remember. October 1, 1985 was the date that the legislature changed the word "or" to "and" in 8-8 and the cutoff date was the date that Simko was decided, or I believe was the date that it was printed in the Law Journal and that's why I

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suggested April 12. I believe that was the date that we had notice, the Bar had notice of the Ansaldi decision.

REP. TULISANO: Is there anything that happened -- similar mistakes after April 12, 1988?

ATTY. ALAN KOSLOFF: Well, I suspect that you're at your peril. If you get the Connecticut Law Journal and you're a member of the Bar and you don't read the Journal, I suppose it's your problem at that point.

REP. WOLLENBERG: Excuse me, we never did Ansaldi, did we?

REP. TULISANO: It was all hung up on some constitutional law.

ATTY. ALAN KOSLOFF: Representative Tulisano, without getting into the constitutional ramifications, it's --.

REP. TULISANO: No, no, not Ansaldi --.

ATTY. ALAN KOSLOFF: Okay, but it's unfair surprise that's the essence here and if you had noticed in the Law Journal, I suppose anybody that didn't follow the Supreme Court should know better.

REP. WOLLENBERG: Well, Representative Mintz and I were very harried that night, so it seemed a burden on us. All the members of the legislature were enjoying themselves.

ATTY. ALAN KOSLOFF: I want to leave you now because I think there are other people -- unless you --.

REP. TULISANO: Steve Griffin.

STEVE GRIFFIN: I'll just be pretty brief. I'm not a very good public speaker. I'm kind of a little nervous, so --. I'm a private practice physical therapist and I'm here to speak in support of SB1027. I think the committee is has a unique opportunity with this bill to help control health care costs and assist in assuring the kind of quality standards that are important to health care today.

PREPARED TESTIMONY

OF

ALAN M. KOSLOFF

OF

ROME, CASE, KENNELLY AND KLEBANOFF, P.C.

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RAISED BILL NO. 7568

First, I would like to introduce myself. My name is Alan Kosloff and I am here to testify in favor of passage of Raised Bill No. 7568.

Among other matters, Raised Bill No. 7568 addresses a jurisdictional problem which arose out of two Supreme Court cases known as the Simko cases. See Simko v. The Zoning board of appeals of The Town of Fairfield, 205 Conn. 413 (1987) ("Simko I"); Simko v. The Zoning Board of Appeals of The Town of Fairfield, 206 Conn. 374 (1988) ("Simko II"). These Simko cases construed Sections 8-8 and 8-28 of the Connecticut General Statutes which authorize appeals from administrative zoning decisions to Connecticut Superior Courts. At the time that the Simko cases were decided, the statutes required that the appellant serve a true and attested copy of the appeal upon the Chairman or Clerk of the Zoning Board and also upon the Chairman or Clerk of the Municipality. The Simko cases held, in brief, that the failure to properly cite and serve the town clerk under Sections 8-8 and 8-28 of the Connecticut General Statutes constituted a fatal jurisdictional defect. Accordingly, the Simko courts granted motions to dismiss on jurisdictional grounds.

As a result of the Simko decisions, superior courts were suddenly flooded with Simko-based motions to dismiss. When the Simko decisions were widely criticized by the entire legal community, the legislature promptly responded with Public Act 88-79. Public Act 88-79 cured the failure to join the town clerk as a necessary party to a zoning appeal. It clarified for the court technically perfect service and citation are not jurisdictional essentials to zoning appeals. Unfortunately, the framers of Public Act 88-79 did not anticipate a sister issue which was spawned by the Simko decisions.

Andrew Ansaldi Co v. The Planning and Zoning Commission, 207 Conn., 67 (1988), was decided after the Simko decisions were issued. Ansaldi held that the failure to join the Chairman or Clerk of the Zoning Commission, as opposed to the Town Clerk, also constituted a fatal jurisdictional defect. This holding has been dubbed "The Ansaldi Prolem" by the courts. See e. g., Fromer v. Two Hundred Post Associates et al, 15 CLT 9, No. 507673 (J.D. New London at New London, Jan. 6, 1989). As a result of that unfortunate decision, Connecticut trial courts have again been flooded with motions to dismiss based on Ansaldi defects, or

failure to join the Clerk or Chairman of the Zoning Commission as a party to zoning appeals.

Previously trial courts facing Simko-based motions to dismiss looked for guidance to Public Act 88-79. Trial courts presently facing Ansaldi-based motions to dismiss have no curative legislation on which to base their decisions. The law is in disarray. Some judges have dismissed cases with an Ansaldi defect, while others refuse to dismiss otherwise meritorious cases on such a technicality. Specifically, there are ten superior court decisions refusing to dismiss cases plagued by an Ansaldi defect, and seven decisions dismissing otherwise meritorious cases on Ansaldi grounds.

The following cases represent the view that technical imperfections in joining the Commission clerk are not fatal jurisdictional defects. These cases slightly outnumber contrary cases and include:

Dunbar v. Wallingford Zoning Bord of Apprals, 14 CLT 36, No. CV-86-02274525 (J. D. New Haven at Meriden, July 28, 1988);

Dakin v. The Zoning Board of Appeals of the Town of Simsbury, 14 CLT 29, No. 047465 (J. D. Litchfield, May 27, 1988);

Ghent v. Zoning Commission, City of Waterbury, 14 CLT 29 No. 84570 (J. D. Waterbury, May 20, 1988);

Rogers v. The Orange Planning and Zoning Commission, 14 CLT 29, No. CV-88-0024930 (J. D. Ansonia/Milford at Milford, May 24, 1988);

Sharpe v. The Board of Zoning Appeals of the City of Appeals of the City of New Haven, 13 CLT 34, No. 270647 (J. D. New Haven, July 13, 1988);

Umberti v. The Zoning Board of Appeals of Milford, 14 CLT 35, No. CV-88-0024870 (J. D. Ansonia/Milford at Milford, July 21, 1988);

Dellaquila v. The Efield Planning and Zoning Commission, 14 CLT 35, No. 339738 (J. D. Hartford/New Britain at Hartford, July 19, 1988);

Heinig v. North Haven Planning and Zoning Commission, 14 CLT 40, No. 264452 (J.D. New Haven, August 19, 1988);

Fromer v Two Hundred Post Associates et al, 15 CLT 9, No. 507673 (J. D. New London at New London, January 6, 1989); and

Hurzeler et al v. Ridgefield Zoning Board of Appeals et al, 14 CLT 43, No. 288485 (J. D. Danbury, September 14, 1988).

Most but not all of these cases cite to Schwartz v. Planning & Zoning Commission, 208 Conn. 146 (1988) and to Capalbo v. Planning & Zoning Board of Appeals, 208 Conn. 480 (1988).

These Supreme Court cases reexamined the fiasco of the Simko decisions which elevated form over substance. The Schwartz decision focused on the fact that the purpose of service of process is to provide notice and held that actual notice is all that is required.

Calpalbo similarly adopted a functional approach on the Simko issue. It focused on the overarching purpose of Public Act 88-79 of ensuring that zoning appeals, otherwise subject to dismissal on Simko grounds, will be heard on the merits. These Supreme Court cases provide authority to judges holding that the failure to join the clerk of the Zoning Commission is not a fatal defect. This authority, however, is not conclusive absent retroactively curative legislation.

That is why other judges have decided that neither Schwartz, Capalbo nor Public Act 88-79 cured the Ansaldi defect or the failure to serve the clerk of the Zoning Commission. These trial courts have held that the Ansaldi defect constitutes a fatal jurisdictional defect:

Barillari v. Haddam Planning and Zoning Commission, 14 CLT 32, No. 409605 (J. D. Middlesex, June 28, 1988);

Primus v. Southington Zoning Board of Appeals; Primus v. Planning and Zoning Commission of Ssouthington, Nos. CV-86-042557, CV-87-0427585 (J. D. Hartford/New Britain at New Britain, June 28, 1988);

Angel v. Colcheser Zoning and Planning Commission, 14 CLT 32, No. 506186 (J. D. New London at New London, July 5, 1988);

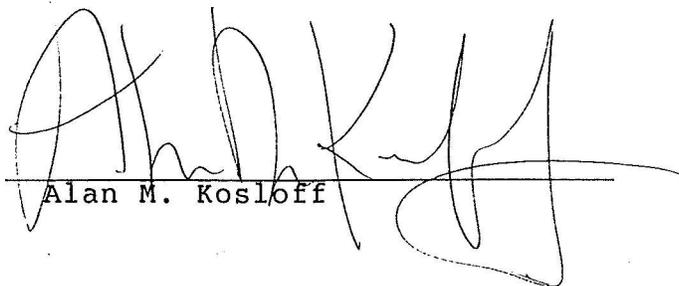
Ilveto v. Fiattali, 14 CLT 28, No. 506035 (J. D. New London at New London, June 2, 1988);

McKenna v. Planning and Zoning Commission of the Town of Southington, 14 CLYT 30, No. 505482 (J. D. New London at New London, June 20, 1988); and

Stoppa v Dadstudner, 13 CLT 34, No. 38469 (J. D. Tolland at Rockville, July 15, 1988).

These cases reflect that the language of Public Act 88-79 did not specifically clarify that neither the clerk of the Zoning Commission nor the town clerk are parties to zoning appeals. These cases are slightly outnumbered by contrary cases holding that the Ansaldo problem does not constitute a fatal defect.

The confusion among trial court judges on this issue illustrates the need for retroactively curative legislation on the Ansaldo defect. Raised Bill No. 7568 would unambiguously cure this confusion. Just as Public Act 88-79 cured the Simko defect, Raised Bill No. 7568 would cure the Ansaldo defect. It is my opinion that the Ansaldo litigation presently cluttering an already strained judicial system would disappear with the passage of Raised Bill No. 7568. Litigants with meritorious claims could proceed to try their cases on the merits, unencumbered by needless and expensive delays. Therefore, in the interest of judicial economy, for the sake of attorneys trying to earnestly advise their clients, and on behalf of clients burdened with increased legal fees, delays, and financial loss, I urge you to adopt Raised Bill No. 7568.



Alan M. Kosloff

## Connecticut General Assembly

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Written Testimony of  
 David L. Hemond, Senior Attorney  
 Law Revision Commission

H.B. 7568, An Act Concerning Local Appeals

March 27, 1989

House Bill 7568 represents a recommendation of the Law Revision Commission to revise the law concerning local administrative appeals. The bill addresses the tendency of recent judicial decisions to restrict the appeal procedure from decisions of zoning and planning commissions and from zoning boards of appeals, thereby resulting in dismissals prior to a hearing on the merits. See Simko v. Zoning Board of Appeals, 206 Conn. 374 (1988), the earlier decision in Simko v. Zoning Board of Appeals, 205 Conn. 413 (1987), Ansaldi v. Planning & Zoning Commission, 207 Conn. 67 (1988), and Fong v. Planning & Zoning Board of Appeals, 16 Conn. App. 604 (1988). While the problem was addressed in part by Public Act 88-79, the tendency of the court to issue restrictive interpretations - because these appeals are a creature of statute - and the opportunity for procedural errors resulting in inappropriate dismissals of appeals still remain. Public policy should allow a hearing on the merits for good faith appellants who make reasonable efforts to comply with the statutory guidelines. The proposed bill should increase the likelihood of an appellant receiving that hearing on the merits.

The bill takes three steps to protect appeals:

1. The bill makes clear that service of process on the clerk or chairman of the commission and on the clerk of the municipality is for the purpose of giving legal notice to the board and does not make those persons necessary parties to the appeal. This was addressed in part by Public Act 88-79.
2. The bill clarifies that failure to serve a necessary party other than the board is not a jurisdictional defect requiring dismissal of the appeal. The bill directs that any necessary party be joined.

3. Section 1(o) specifically directs that the right of appeal be liberally construed and that the remedial procedural provisions applicable to civil actions apply. However, because time is a critical element in land use appeals, section 1(p) specifically provides that section 52-592, a liberal provision allowing correction of certain defects within one year, does not apply. Under the bill, an appeal inadvertently failing due to an inadvertent defect - neglect of a sheriff, for example - must be properly retaken within 15 days of determination of the defect.

The bill also makes a number of significant drafting changes designed to eliminate confusion and clarify the process. For example, the bill consolidates the provisions of sections 8-8, 8-28, and 8-30 eliminating the current confusing variations in text. Paralleling current UAPA requirements, the bill requires the board to return the record within 30 days unless given an extension (thereby lessening delays), further defines what constitutes the record, and allows parties to limit or stipulate to the record.

The Commission also recommends the following changes to the bill as currently drafted for further clarification:

- o In section 1, subsection (p), delete the word "unavoidable" in the third line.
- o In section 1, subsection (p), change "from determination of that defect" to read "from judicial determination of the defect in the original appeal".

The Law Revision Commission remains ready to assist in further consideration of and in making necessary revisions to this bill.

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GEN. ASSEMBLY  
SENATE

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THE CLERK:

Immediate roll call has been ordered in the Senate.

Will all Senators please return to the Chamber.

Immediate roll call has been ordered in the Senate.

Will all Senators please return to the Chamber.

THE CHAIR:

Question before the Chamber is a motion to adopt  
Calendar #584, Substitute HB5739, File #652 as amended  
by House Amendment Schedules "A" and "B".

Machine is open, please record your vote.

Has everyone voted?

The machine is closed.

Clerk, please tally the vote.

The result of the vote:

36 Yea

0 Nay

The bill is adopted.

THE CLERK:

Calendar Page 4, Calendar #588, File #601.

Substitute HB7568, AN ACT CONCERNING LOCAL  
ADMINISTRATIVE APPEALS. As amended by House Amendment  
Schedules "A", "B", "D", "E" and "F". Favorable Report  
of the Committee on PLANNING AND DEVELOPMENT.

Clerk is in possession of two amendments.

THE CHAIR:

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Senator Blumenthal.

SENATOR BLUMENTHAL:

Thank you, Mr. President. I move adoption of the Joint Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

Clerk, please call the amendment.

THE CLERK:

LC08831, designated Senate Amendment Schedule "A" offered by Senator Sullivan of the 12th district.

THE CHAIR:

Senator Sullivan. Senator Sullivan, we have an amendment offered by you. Would you read the LCO number, please?

THE CLERK:

LC08831.

SENATOR SULLIVAN:

Could I have a moment?

THE CHAIR:

Senate will stand at ease.

Senator O'Leary.

SENATOR O'LEARY:

Mr. President, could we PT this item, please?

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THE CHAIR:

Pass Temporarily.

Call the next item, please.

THE CLERK:

Calendar Page 7, Calendar 468, File 583 and 715,  
Substitute HB7580, AN ACT CONCERNING DUTIES AND  
RESPONSIBILITIES OF THE MUNICIPAL FINANCE ADVISORY  
COMMISSION, THE AUTHORIZATION OF GRANTS FROM THE LOCAL  
CAPITAL IMPROVEMENT FUND, AND THE ESTABLISHMENT OF LAND  
ACQUISITION FUNDS BY MUNICIPALITIES. As amended by  
House Amendment Schedules "A", "B", "C", "D" and "F"  
and Senate Amendment Schedule "A". Favorable Report of  
the Committee on FINANCE, REVENUE AND BONDING. The  
House rejected Senate Amendment Schedule "A" on May  
31st. Clerk is in possession of two additional  
amendments.

THE CHAIR:

Senator DiBella.

SENATOR DIBELLA:

Thank you, Mr. President. I move adoption of the  
Committee's Joint Favorable Report and urge passage of  
the bill.

THE CHAIR:

Clerk please call the amendment. Is this in  
concurrence with the action of the House?

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Calendar 588 on Page 4.

THE CLERK:

Calendar Page 4, Calendar 588, File 601, Substitute HB7568, AN ACT CONCERNING LOCAL ADMINISTRATIVE APPEALS. As amended by House Amendment Schedules "A", "B", "D", "E" and "F". Favorable Report of the Committee on PLANNING AND DEVELOPMENT. Clerk is in possession of two amendments. The bill was last called, LCO8831 was called and designated Senate Amendment Schedule "A".

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

Thank you, Mr. President. I move adoption of the Joint Favorable Report and urge passage of the bill in concurrence with the House.

THE CHAIR:

The motion is now on the LCO8831 and this is Senator...authored by Senator Sullivan of the 12th District.

SENATOR BLUMENTHAL:

I believe, Mr. President, that both amendments have been withdrawn or will be withdrawn.

THE CHAIR:

Both amendments are withdrawn. Is there...Senator Meotti has agreed to the withdrawal.

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SENATOR BLUMENTHAL:

He wishes to withdraw his amendment as well, Mr. President.

THE CHAIR:

Thank you. We are now on the bill. You may proceed.

SENATOR BLUMENTHAL:

Thank you, Mr. President. This bill makes a number of what may be characterized as technical changes in the law relating to appeals of land use bodies, that is to say, zoning commissions, boards of zoning appeals and other similar agencies at a local level.

Although they are technical in nature these changes are extremely important in providing some fairness to appellants, a greater measure of fairness to appellants who may feel aggrieved by the decisions adverse to them of these local bodies.

It essentially consolidates what are now two separate tracks, one of them applicable to appeals from zoning decisions and the other applicable to all other land use bodies. It provides that notice and service must be given to various local officials, such as the chairman of the zoning commission and the clerk of the zoning commission, but specifies that the failure to make such services does not deprive the court of

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jurisdiction.

It provides for a number of other changes which over the years have become evident as necessary in order to protect the rights of all parties who are involved in this somewhat complex area of law. I urge the members of the Circle to adopt this bill.

THE CHAIR:

Further remarks on the bill? Clerk please make an announcement for immediate roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Will all Senators please return to the Chamber.  
Immediate roll call has been ordered in the Senate.  
Will all Senators please return to the Chamber.

THE CHAIR:

Question before the Chamber is a motion to adopt Calendar 588, Substitute HB7568, File 601 as amended by House Amendment Schedules "A", "B", "D", "E" and "F". The machine is open. Please record your vote. Has everyone voted? The machine is closed. Clerk please tally the vote.

The result of the vote:

35 Yea

1 Nay

The bill is adopted.

H-528

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

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abs

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House of Representatives

Tuesday, May 9, 1989

Representative Frankel.

REP. FRANKEL: (121st)

May that bill be referred to the Committee on Finance, Revenue and Bonding?

SPEAKER BALDUCCI:

The question is on referral. Is there objection? Seeing none, it is so ordered.

CLERK:

Calendar 503, Substitute HB7568. AN ACT CONCERNING LOCAL ADMINISTRATIVE APPEALS.

Favorable Report of the Committee on JUDICIARY.

REP. FRANKEL: (121st)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Frankel.

REP. FRANKEL: (121st)

I move that bill to the Committee on Planning and Development.

SPEAKER BALDUCCI:

The question is on referral. Is there objection?  
Seeing none, it is so ordered.

CLERK:

Calendar 198, page 19, Substitute HB7427. AN ACT CONCERNING THE QUALIFICATIONS OF HEIR FINDERS.

Favorable Report of the Committee on JUDICIARY.

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House of Representatives

Wednesday, May 24, 1989

SPEAKER BALDUCCI:

The question is on referral? Is there objection?  
Seeing none, it's so ordered.

CLERK:

Page 15, Calendar 503, Substitute for HB7568. AN  
ACT CONCERNING LOCAL ADMINISTRATIVE APPEALS.

Favorable Report of the Committee on PLANNING AND  
DEVELOPMENT.

REP. MINTZ: (140th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

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

SPEAKER BALDUCCI:

The question is on passage. Will you remark?

REP. MINTZ: (140th)

Yes, Mr. Speaker, at this point I'd like to yield  
to Representative Wollenberg.

SPEAKER BALDUCCI:

Representative Wollenberg, do you accept the yield?

REP. WOLLENBERG: (21st)

Yes, I do, Mr. Speaker. Thank you, Representative

abs

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House of Representatives

Wednesday, May 24, 1989

Mintz. This bill is a codification of two and sometimes three statutes in zoning and planning, bringing into line things like definitions of aggrieved person, party, setting up an appeal process. I think if this Chamber will recall, we had quite a go around with cases named Simko and Insaldi last year to try to correct some of the things that the Supreme Court had done which we felt were in error.

This bill does take care of those incidents. There has been in this field an easing of burdens as far as going forward in appears, a more liberal view of these things, this is encompassed in this bill. There's also a section for inadvertent failure of suit which is in our statutes for other suits, but was not applicable to zoning and planning suits and this just picks that up and tracks that as well.

The last two sections of the bill and throughout indicate that if there are actions taken by a court that they must be -- they can't be taken if regulations have changed in the zoning area and in the wetlands area, however, it is if wetlands has been acted upon.

Mr. Speaker, I have an amendment. I have three or four amendments. If I may, if the Clerk has them if he could call, LCO6239. I believe the Clerk has that, if I could be allowed to summarize.

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SPEAKER BALDUCCI:

The Clerk please call LCO6239, designated House "A".

CLERK:

LCO6239, designated House "A", offered by Representative Wollenberg, et al.

SPEAKER BALDUCCI:

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

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker. Mr. Speaker, a couple of clerical corrections. "Wetland" becomes "wetlands", in a couple of places we change "and" and "any", but basically this amendment, from lines 114 on allows for an extension to be requested by the Inlands Wetlands Commission and the applicant can give that if he wishes. Right now there's no possibility of an extension of wetlands.

The wetlands meets, they're under time constraints. If they cannot decide within that period of time, what they have to do now is either approve or deny. If they're not happy with what they have seen, they deny. This would give them an opportunity to get an extension similar to zoning and planning and I move the adoption of the amendment, sir.

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SPEAKER BALDUCCI:

The question is on adoption. Will you remark?  
Representative Emmons of the 101st.

REP. EMMONS: (101st)

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

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

I'm prepared, sir.

REP. EMMONS: (101st)

Representative Wollenberg, my dealings with some of  
these boards has been when the commission wants and  
extension they more or less tell your engineer or  
lawyer that they need an extension and will you agree  
and obviously you agree because they'll deny you if you  
don't and the thing that bothers me about this is on  
line 74 is the one or more extensions.

This could really go on for a fairly long period of  
time. Is there any capping at which Inland Wetlands  
has to be able to take care of your matter?

REP. WOLLENBERG: (21st)

Yes, through you, Mr. Speaker, if you'll notice on  
line 77, "provided the total extension of any period  
shall not be longer than the original period as

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specified in the subsection," so it can't be more than 65 days. However, they could give you a 15 day and a 15 day, but it cannot be more -- the cumulative cannot be more, and that tracks the language in zoning and planning.

SPEAKER BALDUCCI:

Will you remark further? Will you remark further on the amendment? If not, we'll try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

Opposed nay.

The ayes have it.

The amendment is adopted and ruled technical.

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House Amendment Schedule "A".

Delete lines 959 to 1002, inclusive, in their entirety and substitute the following in lieu thereof:

"Sec. 16. Section 22a-42a of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The inland wetlands agencies authorized in section 22a-42 shall through regulation provide for (1) the manner in which the boundaries of inland wetland and watercourse areas in their respective municipalities shall be established and amended or changed, (2) the form for an application to conduct regulated activities, (3) notice and publication requirements, (4) criteria and procedures for the review of applications and (5) administration and enforcement.

(b) No regulations of an inland wetlands agency

including boundaries of inland wetland and watercourse areas shall become effective or be established until after a public hearing in relation thereto is held by the inland wetlands agency, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the form of a legal advertisement, appearing in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than twenty-five days nor less than fifteen days, and the last not less than two days, before such hearing, and a copy of such proposed regulation or boundary shall be filed in the office of the town, city or borough clerk as the case may be, in such municipality, for public inspection at least ten days before such hearing, and may be published in full in such paper. A copy of the notice and the proposed regulations or amendments thereto, except determinations of boundaries, shall be provided to the commissioner at least thirty-five days before such hearing. Such regulations and inland wetland and watercourse boundaries may be from time to time, amended, changed or repealed, by majority vote of the inland wetlands agency, after a public hearing, in relation thereto, is held by the inland wetlands agency, at which parties in interest and citizens shall have an opportunity to be heard and for which notice shall be published in the manner specified in this subsection. Regulations or boundaries or changes therein shall become effective at such time as is fixed by the inland wetlands agency, provided a copy of such regulation, boundary or change shall be filed in the office of the town, city or borough clerk, as the case may be. Whenever an inland [wetland] WETLANDS agency makes a change in regulations or boundaries it shall state upon its records the reason why the change was made and shall provide a copy of such regulation, boundary or change to the commissioner of environmental protection no later than ten days after its adoption provided failure to submit such regulation, boundary or change shall not impair the validity of such regulation, boundary or change. All petitions submitted in writing and in a form prescribed by the inland [wetland] WETLANDS agency, requesting a change in the regulations or the boundaries of AN inland wetland and watercourse area shall be considered at a public hearing in the manner provided for establishment of inland wetlands regulations and boundaries within ninety days after receipt of such petition. The inland

[wetland] WETLANDS agency shall act upon the changes requested in such petition within sixth days after the hearing. The petitioner may consent to [extension] ONE OR MORE EXTENSION of the periods [provided for in hearing and for adoption or denial] SPECIFIED IN THIS SUBSECTION FOR THE HOLDING OF THE HEARING AND FOR ACTION ON SUCH PETITION, PROVIDED THE TOTAL EXTENSION OF ANY SUCH PERIOD SHALL NOT BE FOR LONGER THAN THE ORIGINAL PERIOD AS SPECIFIED IN THIS SUBSECTION, OR ANY EXTENSION THEREOF, SHALL NOT BE DEEMED TO CONSTITUTE APPROVAL OF THE PETITION.

(c) On and after the effective date of the municipal regulations promulgated pursuant to subsection (b) of this section, no regulated activity shall be conducted upon any inland wetland and watercourse without a permit. Any person proposing to conduct or cause to be conducted a regulated activity upon an inland wetland and watercourse shall file an application with the inland wetlands agency of the town or towns wherein the wetland in question is located. The application shall be in such form and contain such information as the inland wetlands agency may prescribe. The day of receipt of an application shall be the day of the next regularly scheduled meeting of such inland wetlands agency, immediately following the day of submission to such inland wetlands agency or its agent of such application, provided such meeting is no earlier than three business days after receipt, or thirty-five days after such submission, whichever is sooner. No later than sixty-five days after the receipt of such application, the inland wetlands agency may hold a public hearing on such application. Notice of the hearing shall be published at least twice at intervals of not less than two days, the first most more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse, or any part thereof, is located. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing any person or persons may appear and be heard. The hearing shall be completed within forty-five days of its commencement. Action shall be taken on [applications] SUCH APPLICATION within thirty-five days after the completion of a public hearing or in the absence of a public hearing within sixty-five days from the date of receipt of [the] SUCH application. THE APPLICANT MAY CONSENT TO ONE OR MORE EXTENSIONS OF THE PERIODS SPECIFIED IN THIS SUBSECTION FOR THE HOLDING OF

THE HEARING AND FOR ACTION ON SUCH APPLICATION, PROVIDED THE TOTAL EXTENSION OF ANY SUCH PERIOD SHALL NOT BE FOR LONGER THAN THE ORIGINAL PERIOD AS SPECIFIED IN THIS SUBSECTION, OR MAY WITHDRAW SUCH APPLICATION. IF THE INLAND WETLANDS AGENCY FAILS TO ACT ON ANY APPLICATION WITHIN THIRTY-FIVE DAYS AFTER THE COMPLETION OF A PUBLIC HEARING OR IN THE ABSENCE OF A PUBLIC HEARING WITHIN SIXTY-FIVE DAYS FROM THE DATE OF RECEIPT OF THE APPLICATION, OR WITHIN ANY EXTENSION OF ANY SUCH PERIOD, THE APPLICANT MAY FILE SUCH APPLICATION WITH THE COMMISSIONER OF ENVIRONMENTAL PROTECTION WHO SHALL REVIEW AND ACT ON SUCH APPLICATION IN ACCORDANCE WITH THIS SECTION. ANY COSTS INCURRED BY THE COMMISSIONER IN REVIEWING SUCH APPLICATION FOR SUCH INLAND WETLANDS AGENCY SHALL BE PAID BY THE MUNICIPALITY THAT ESTABLISHED OR AUTHORIZED THE AGENCY. ANY FEES THAT WOULD HAVE BEEN PAID TO SUCH MUNICIPALITY IF SUCH APPLICATION HAD NOT BEEN FILED WITH THE COMMISSIONER SHALL BE PAID TO THE STATE. THE FAILURE OF THE INLAND WETLANDS AGENCY OR THE COMMISSIONER TO ACT WITHIN ANY TIME PERIOD SPECIFIED IN THIS SUBSECTION, OF ANY EXTENSION THEREOF, SHALL NOT BE DEEMED TO CONSTITUTE APPROVAL OF THE APPLICATION.

(d) In granting, denying or limiting any permit for a regulated activity in the inland wetlands agency shall consider the factors set forth in section 22a-41, and such agency shall state upon the record the reason for its decision. In granting a permit the inland wetlands agency may grant the application as filed or grant it upon such terms, conditions, limitations or modifications of the regulated activity, designed to carry out the policy of sections 22a-36 to 22a-45, inclusive. No person shall conduct any regulated activity within an inland wetland or watercourse which requires zoning or subdivision approval without first having obtained a valid certificate of zoning or subdivision approval, special permit, special exception or variance or other documentation establishing that the proposal complies with the zoning or subdivision requirements adopted by the municipality pursuant to chapter 124 to 126, inclusive, or any special act. The agency may suspend or revoke a permit if it finds after giving notice to the permittee of the facts or conduct which warrant the intended action and after a hearing at which the permittee is given an opportunity to show compliance with the requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The applicant shall be notified of

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the agency's decision by certified mail within fifteen days of the date of the decision and the agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the town wherein the wetland and watercourse lies. IN ANY CASE IN WHICH SUCH NOTICE IS NOT PUBLISHED WITHIN SUCH FIFTEEN-DAY PERIOD, THE APPLICANT MAY PROVIDE FOR THE PUBLICATION OF SUCH NOTICE WITHIN TEN DAYS THEREAFTER.

(e) The inland wetlands agency may require a filing fee to be deposited with the agency. The amount of such fee shall be sufficient to cover the reasonable cost of reviewing and acting on applications and petitions, including, but not limited to, the costs of certified mailings, publications of notices and decisions and monitoring compliance with permit conditions or agency orders."

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SPEAKER BALDUCCI:

Will you remark further on the bill?

REP. WOLLENBERG: (21st)

Mr. Speaker, the Clerk has LCO7545 on his desk and he please call and read. It's a short amendment, sir.

SPEAKER BALDUCCI:

Representative Wollenberg, would you just repeat that LCO number?

REP. WOLLENBERG: (21st)

LC07445 -- LCO7545, LCO7545.

SPEAKER BALDUCCI:

The Clerk please call LCO7545, designated House "B".

CLERK:

LC07545, designated House "B", offered by

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Representative Wollenberg.

SPEAKER BALDUCCI:

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

REP. WOLLENBERG: (21st)

Could the Clerk read it? It's a very short amendment, sir.

CLERK:

In line 225, strike "SHALL BE A FINAL JUDGMENT FOR" and insert in lieu thereof, "MAY BE APPEALED IN THE MANNER PROVIDED IN SUBSECTION (n) OF THIS SECTION."

Strike lines 226 to 229, inclusive, in their entirety

REP. WOLLENBERG: (21st)

Thank you.

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

I move the adoption, sir.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark?

REP. WOLLENBERG: (21st)

Yes, just briefly, at this point in the statutes, any applicant, anyone who brings an appeal has a right to appeal further, that is, to the Appellate Court,

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only upon certification to that court. The section that we are changing does allow someone who contests standing, that is, whether or not they are aggrieved, that will be a final judgment and they're allowed to go directly to the Appellate Court without certification.

Someone who is not an applicant has more right to appeal than someone who is an applicant under this and this was requested by the Appellate Court and the Supreme Court to put it in line with the other appeals statute and I move the adoption, sir.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark?  
Representative Knopp of the 139th.

REP. KNOPP: (139th)

Thank you, Mr. Speaker. A question, through you, to the proponent.

SPEAKER BALDUCCI:

Please proceed, sir.

REP. KNOPP: (139th)

Yes, Mr. Speaker, will the adoption of this amendment make it more difficult for someone who has lost a final judgment on a motion to dismiss to get access to appellate review, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Representative Wollenberg.

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REP. WOLLENBERG: (21st)

Yes, through you, Mr. Speaker, it would only be by certification. He would not have it as a matter of right as he does at this time.

REP. KNOPP: (139th)

So, through you, Mr. Speaker, is the answer that it be yes, that presumably some people who would have been able to appeal in the past would not be certified for an appeal and therefore would not have their case reviewed by the Appellate Court if this amendment is adopted, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Representative Knopp.

REP. KNOPP: (139th)

A question to Representative Wollenberg. Thank you, Mr. Speaker.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Yes, it is similar to any appeal from a zoning planning, inland wetlands at this point, it does require certification. This would require certification and track with someone who was contesting

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the aggrievement.

REP. KNOPP: (139th)

Through you, Mr. Speaker, did the Law Revision Commission, which as I understand it, prepared the original draft, recommend the change that you are now proposing?

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, no, the Law Revision has not had their fingerprints on this amendment. This was required by the Supreme Court, also the Appellate Court who felt that someone -- an appellant had less of a right than someone who was aggrieved, or merely aggrieved.

REP. KNOPP: (139th)

One final question, through you, Mr. Speaker, it seems that one of the differences between someone who has an adjudication on the merits and then makes an application for certification for appeal and someone who has been dismissed on a motion to dismiss and therefore has not had a chance to have his or her case heard on the merits, would seem to deserve more of an appellate review to determine whether or not the draconian motion to dismiss had been properly made.

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Wouldn't it seem logical to continue that process even though it may impose a bigger burden on the courts, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Yes, through you, Mr. Speaker, Representative Knopp, I think they both, the appellant and the person who is contesting aggrievement have both been heard by the Superior Court and they both have -- after this amendment they will both have a right to certification, so it's not that they both haven't been heard and had a decision. The person who -- the appellant can be denied cert as well. It just puts them on an even field, I think.

REP. KNOPP: (139th)

Mr. Speaker, the file copy was intended, as I understand it, primarily to be a recodification and technical changes that did not substantially change the scope of existing statute and case law. It's my concern that some of the changes being proposed will substantially restrict the right of appeal of parties and individuals interested in zoning matters.

I'm more concerned with a future amendment and I'll restrict my remarks to that time, but I am concerned

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and this will make it more difficult for individuals who have been ruled out on a draconian motion to dismiss to get their matter reviewed by the Appeal Court.

SPEAKER BALDUCCI:

Will you remark further? Representative Mintz.

REP. MINTZ: (140th)

Yes, Mr. Speaker, I just want to rise in support of the amendment. I think it really is a technical one that tracks the appeals procedure for all other matters for the motion to dismiss and I would urge the body to adopt the amendment.

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

I urge adoption of the amendment. I move adoption, urge adoption, sir.

SPEAKER BALDUCCI:

Will you remark further on the amendment? Will you remark? If not, all those in favor of the amendment please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

Opposed nay.

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The eyes have it.

The amendment is adopted and ruled technical.

Will you remark further?

REP. WOLLENBERG: (21st)

Mr. Speaker, the Clerk has LC07233 on his desk.  
Would he please call and read, sir.

SPEAKER BALDUCCI:

The Clerk please call and read LC07233, designated  
House "C".

CLERK:

LC07233, designated House "C", offered by  
Representative Tulisano, et al.

In line 119, after the comma, insert "except a  
decision approving a site plan, subdivision or  
resubdivision

SPEAKER BALDUCCI:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Yes, Mr. Speaker, this amendment, under the  
aggrieved section, persons who are aggrieved in zoning,  
planning, inland wetlands and other areas even, have  
automatic aggrievement if they are within 100 feet of  
the site. This would not allow automatic aggrievement.  
Now this does not say they cannot be aggrieved and they  
cannot be heard on the matter, but it would not allow

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automatic aggrievement in the case of an approval of a site plan, subdivision or resubdivision and the reason for this is that site plan, subdivision and resubdivision are a matter of regulation.

They're not a legislative act as a zoning act or an inland wetlands action by the board can be. If you meet the regulations in site plan, subdivision or resubdivision, the board has no alternative but to approve that application. If they approve that application, now remember, this is from an approval of the application, if they approve that application, the law as it stands now, and the court will interpret that the town acted reasonably and the town acted within their regulations. The burden is on an appealing party to disprove that.

This doesn't say someone can't take an appeal. It just, hopefully, makes it more -- a more expedited process to do it this way and the person who appeals just for the sake of appealing to stop this subdivision, resubdivision or site plan may be called off. Now we've done many things and we've tried to do some things up here during this session to make it more possible to get these kinds of things through, it has to do with affordable housing too, if you wish, but it has to do with housing in general, subdivision, site

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plans and resubdivisions and I urge adoption, sir.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark?

REP. MADDOX: (66th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Maddox.

REP. MADDOX: (66th)

Thank you, Mr. Speaker. I guess a couple of questions, through you, if I may, to the proponent of this amendment so I believe I fully understand what this does. As I understand it, Representative Wollenberg, what the amendment would do is that currently if someone is bordering a property owner who has a very large subdivision coming in and they're not happy with that subdivision for whatever reason, maybe they feel that the runoff from the subdivision would affect their property or for whatever reason, because they're within 100 feet they have the automatic right to appeal this decision in court.

Now what your amendment would do would be to deny that right unless they "showed probable cause." Is that correct, through you, Mr. Speaker?

SPEAKER BALDUCCI:

Will you remark further on the amendment?

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REP. WOLLENBERG: (21st)

Through you, Mr. Speaker, I believe a question.  
Representative Wollenberg.

REP. WOLLENBERG: (21st)

I stand ready, sir. No, that does not mean that they -- in the first, if someone appeals for just any reason, that's exactly what we're trying to get at here. Someone should have a good reason to appeal. The reason should be that the commission acted arbitrarily and illegally outside of the regulations. It should not be a frivolous appeal.

However, they're not precluded and they don't have to show probable cause. They have to show aggrievement before the court and it does put a burden on this individual to show aggrievement, but it does prohibit the frivolous appeals that we see from time to time and many times in these instances.

REP. MADDOX: (66th)

Okay, and -- well, I'll let other members ask some questions about this. I do have a concern. I think that we have reached, through time, we have worked to reach a balance between the developer's rights and private property owner's rights who are going to be affected when a very large subdivision comes in and that's where my concern is, is with a very large

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subdivision and I'm not sure if this amendment crosses that line.

We have spent hours and hours of debate, I know at the Planning and Development Committee, discussing how far do we go, how far does the developer have a right to develop his property and he does, and how far do we go to protect those people within this community and I do raise some reservations about this amendment, but I do know other members have questions and I'll yield the floor at this time. Thank you, Mr. Speaker.

SPEAKER BALDUCCI:

Will you remark further?

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Frankel of the 121st.

REP. FRANKEL: (121st)

Mr. Speaker, Ladies and Gentlemen, I'm going to urge you to oppose this amendment for two reasons. First, be mindful of what the main file was all about. For years we've had a separate set of rules for Planning and Zoning and a different for Zoning Board of Appeals, but they were nevertheless very similar. The main bill seeks to merge those for the first time. It's a major change, somewhat technical in nature, but

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it will speed up and clean up the process.

The amendment before you addresses a separate issue altogether and injects something very new into the process. If I can take a moment to tell you about the history of aggrievement as I know it. Once upon a time, even if you were next door, you'd have to go to court and immediately there would be a fight over whether you, even though you're the house next door, whether you were really and truly affected. It seems somewhat absurd, but nevertheless, we had case upon case upon case being appealed and our books, and our statutes, and our cases were littered with fights over whether a person was aggrieved or whether a person wasn't and finally we came to our senses and we said, "Look, it's clear that in 99% of the cases if you live within 100 feet, you're aggrieved, automatically. You don't have to prove it. Let's put it into statute and let's once and for all avoid all that litigation. Let's get on with the merits of the case." That's why we have our 100 foot rule.

If you're more than 100 feet away, what's 100 feet? Most lots have 60 feet of frontage, absolute minimum. Most are 100. Some municipalities, two acres. 100 feet, that's the only automatic aggrievement you get and we're going to take that away and you're going to

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force every individual who brings a case to have to fight and prove that somehow simply because they're next door they're truly aggrieved.

I think the reason we have it in statute was a learning lesson and we ought not to tinker with it, particularly, when we're doing major overhaul. The argument that this is different because we're only talking about subdivisions and resubdivisions, I don't know about the municipalities that Representative Wollenberg has been involved with, the ones I have, there are plenty of ways that the boards have authority simply by the way their regulations are written, to be able to reject or to accept with conditions or reject with conditions and to suggest that it's automatic, they're hands are tied and therefore we shouldn't have automatic aggrievement I think is giving you the wrong impression.

You know, the reason we have the automatic 100 feet is to protect those individuals, those homeowners, those consumers who find themselves up against big subdivisions and who have to fight in court, long court battles just to prove that they truly are affected when they're only 100 feet.

Now I suggest to you that we stick to the notion that what we're about in the file copy is to streamline

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these two various areas of law and put them together and not at this time take on what I think is an inappropriate course of action, but one that I think is totally inappropriate for the file copy.

I strongly urge the membership to reject this amendment.

DEPUTY SPEAKER POLINSKY:

Will you remark further on House "C"? Will you remark further? Representative Wollenberg of the 21st.

REP. WOLLENBERG: (21st)

Madam Speaker, I'll be very short. Representative Frankel, I don't disagree with this history of this. I don't disagree with what we're attempting to do here. My disagreement comes where I think since 1977 we've gone the other way and people now are appealing these subdivisions, whether they're 150 lot subdivision or whether they're a two-lot subdivision and whether they're under the proper zoning and everything is met in the regulations, if you're 100 feet you can appeal, frivolously or otherwise and that's what I was aiming at getting here was those frivolous appeals and to try to stop some of that and maybe we could get more appeals taken up by the Appellate Court and the Supreme Court if we didn't clutter the courts with these.

I can't deny, 100 feet, we needed aggrievement, we

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needed a standard for aggrievement. We still have it in zoning and other ways. This was a very limited thing. I think it deserves at least a vote in this House and I ask for a vote by roll call.

DEPUTY SPEAKER POLINSKY:

The request is for a roll call vote on House Amendment "C". All those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER POLINSKY:

Twenty percent just barely. When the vote is taken, it shall be taken by roll. Will you remark further? Representative Knopp.

REP. KNOPP: (139th)

Thank you, Madam Speaker. I'd like to rise to support the comments of the Majority Leader and I don't think this is a minor technical change that's attempting to be accomplished here. What the amendment would do is slam the door on individuals in all of our communities who ought to have the right to have an Appellate Court and a Superior Court review the decisions taken by these land use agencies on subdivisions, site plans and resubdivisions.

Aggrievement is a matter of jurisdiction. If this

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amendment were to pass, there will be individuals who will not be able to go to court to get a ruling on the merits of their case because the court may find that there is no jurisdiction even though there's an abutting property owner or the plaintiff lives within 100 feet.

I think, as the Majority Leader said, over time it's a reasonable presumption to conclude that an abutting property owner or someone who lives within 100 feet is going to have his or her property interest affected by the site plan or subdivision and that's what the definition of aggrievement is. It has nothing to do with whether an appeal is frivolous or not. Those concern the nature of the issues raised on the appeal. Jurisdiction is what is an issue. Do you have the right to get a court to review the merits of your case?

All that aggrievement require is a showing that your particular property interests are affected or the economic value of your property is affected. That's what aggrievement is and isn't it reasonable to assume if you live next door to the subdivision that your property interests are being affected somehow? Isn't it reasonable to assume if you live next door to a large or even a small subdivision that your, that the

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value of your property may be affected. That's all aggrievement says, "Don't go to court just because you're a member of the public, you need some particular stake in the outcome of the litigation to make it worthwhile and I think, as Representative Frankel said, our law over a period of years has concluded that it's reasonable factually to say that an abutting property owner or someone who lives within 100 feet will have his property interest affected enough to allow the court to review the matter.

So that's really what's at issue here, not expediting frivolous matters, but slamming the door on people who have a legitimate interest in having a court review the subdivision site plan and resubdivision issues. I don't think as a legislature we ought to restrict that right. I don't think we ought to prevent people from having land use decisions reviewed and for that reason, Madam Speaker, I oppose the amendment.

DEPUTY SPEAKER POLINSKY:

Thank you, sir. Representative Wollenberg.

REP. WOLLENBERG: (21st)

Madam Speaker, with permission of the Chamber, I would ask to withdraw this amendment.

DEPUTY SPEAKER POLINSKY:

Pardon, I didn't get that.

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REP. WOLLENBERG: (21st)

With the permission of the Chamber, I would ask to withdraw this amendment.

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg has asked permission to withdraw the amendment. Is there objection? Seeing no objection, the amendment is withdrawn.

REP. WOLLENBERG: (21st)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

The Clerk has LC07514 on this desk. I'd like to call and I be allowed to summarize.

DEPUTY SPEAKER POLINSKY:

Will the Clerk please call LC07514, which shall be designated House Amendment Schedule "D".

CLERK:

LC07514, designated House "D", offered by Representative Frankel, et al.

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg has asked leave of the Chamber to summarize. Is there objection? Seeing no objection, please proceed, sir.

REP. WOLLENBERG: (21st)

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Thank you, Madam Speaker. In overhauling these statutes the Law Revision Commission took out one part which at this point if there is an appeal taken from an Administrative Board such as the Zoning and Planning Board, and you wish to withdraw it, both parties must go to court, the judge must formally record it.

That, I am told, was put in the statute because of some conditions that existed where there were some frivolous appeals being taken and in order to get people into court to have to withdraw them, that was put in. That was taken out by the Law Revision. This amendment puts that action back in and does make it mandatory that people go to court if they want to withdraw and I move adoption.

DEPUTY SPEAKER POLINSKY:

The motion is on adoption of House "D". Will you remark further, sir? Will you remark further on House "D"?

REP. FARR: (19th)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Farr.

REP. FARR: (19th)

Yes, Madam Speaker, through you, to Representative Wollenberg. What I don't understand is if a person

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appealing decides not to pursue this, how does the court effectively enforce this. I mean the appellant, the attorney withdraws, there's no appellant there anymore, how does somebody effectively force somebody to go to a hearing, through you, Madam Speaker, to Representative Wollenberg?

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Through you, Madam Speaker, having had experience in this, the court will not dismiss the matter unless both parties are in court. You cannot do it by motion and by agreement, so you're hanging in there. You may want to get out, but the case still hangs there. That's why we left it out, but I understand there was some good reasons some years ago to put it in and we're putting it back in.

DEPUTY SPEAKER POLINSKY:

Representative Farr.

REP. FARR: (19th)

It just seems a very bizarre section of our statutes in that it seems to negate against settlements. I didn't realize this was here. I haven't had experience with this particular section. If it works, fine. It just seems very strange to me

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and I don't know how it's enforced because if one party, the appellant refuses to go to court, if his attorney withdraws from the matter, I don't know how they schedule the hearings, but maybe Representative Frankel, since he's the sponsor of the amendment, could comment on that.

REP. FRANKEL: (121st)

Through you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Of course, Representative Frankel.

REP. FRANKEL: (121st)

Yes, I'd be delighted to. I can understand why the Law Revision Commission decided to strike this because on its face it seems somewhat strange. The reason this was put into the law in 1984 was as a result of what can perhaps best be characterized as scams that were taking place in or about the City of Bridgeport.

Apparently, some very unscrupulous people were approaching individuals and offering to represent them, holding out contingencies and they were very subtly behind the scenes extracting dollars in connection with appeals and they would appeal the case and then they would hold up, if you will, the applicant for some sum of money in order to withdraw.

There was a ring, as I understand it, of such

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unscrupulous characters and Judge Jacobsen who is now in the Appellate Court had brought this matter to our attention and the language that appears here was the genesis of that solution or the solution of the problem and that is to force those individuals to come before the court before they were allowed to withdraw and to explain why they were withdrawing it and it's my understanding that this process, while a little bit cumbersome for the rest of us, has effectively put an end to that problem and it apparently hasn't resurfaced, to my knowledge.

So that's the reason for it. It as to force unscrupulous parties to appear before the court and explain why they were appealed in the first place and it acted as a deterrent and for that reason I would suggest we retain this language and I support Representative Wollenberg's amendment.

DEPUTY SPEAKER POLINSKY:

Representative Farr, you still have the floor.

REP. FARR: (19th)

Thank you. I guess just a question, through you, in terms of the process, to Representative Frankel. If somebody files a notice of appeal and then decides after having the chance to further review this that they don't really, it's not worth the expense and

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everything of pursuing the appeal any further, how do they then just withdraw from this? Does this say then that the appellant has to, by motion or something, move to withdraw the appeal, is that the process, through you, Madam Speaker, to Representative Frankel?

DEPUTY SPEAKER POLINSKY:

Representative Frankel.

REP. FRANKEL: (121st)

I'm wondering if you have in mind the writ being returned to court and the return date expiring. At what stage are you suggesting the withdrawal is to be proffered?

DEPUTY SPEAKER POLINSKY:

Representative Farr.

REP. FARR: (19th)

Well, I guess, through you, to Representative Frankel, I don't know. The language doesn't address that. It says no appeal shall be withdrawn and so I don't know if you haven't even -- I assume that it has to be returned to court, but I don't know that. Maybe you can say what the history of this is and what the intent was.

REP. FRANKEL: (121st)

Through you, Mr. Speaker, I don't know precisely at what stage this actually has been used. My expectation

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would be that if a writ were served, but not returned to court, you wouldn't have to file anything in the way of a request for withdrawal. It would be after the return date, after you file the writ and the return date expired and at that point in time you would have to file the appropriate motion and appear before court and explain why you want to withdraw it.

REP. FARR: (19th)

Thank you.

DEPUTY SPEAKER POLINSKY:

Will you remark further on House Amendment Schedule "D"? Will you remark further? If not, let's try our minds. All those in favor of the amendment please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER POLINSKY:

Opposed nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER POLINSKY:

The ayes clearly have it. The amendment is adopted and ruled technical.

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House Amendment Schedule "D".

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After line 262 insert the following and reletter the remaining subsections accordingly:

"(n) NO APPEAL TAKEN UNDER SUBSECTION (b) OF THIS SECTION SHALL BE WITHDRAWN AND NO SETTLEMENT BETWEEN THE PARTIES TO ANY SUCH APPEAL SHALL BE EFFECTIVE UNLESS AND UNTIL A HEARING HAS BEEN HELD BEFORE THE SUPERIOR COURT AND SUCH COURT HAS APPROVED SUCH PROPOSED WITHDRAWAL OR SETTLEMENT."

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DEPUTY SPEAKER POLINSKY:

Will you remark further on the bill as amended?

REP. WOLLENBERG: (21st)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Madam Speaker, the Clerk has LCO7414 on his desk.

Could he please call and read.

DEPUTY SPEAKER POLINSKY:

Will the Clerk please call LCO7414, which shall be designated House Amendment "E". Representative Wollenberg, did you ask to have it read or did you --.

REP. WOLLENBERG: (21st)

Read, yes, I did. I asked to have it read, if he would please.

CLERK:

LCO7414, designated House "E".

Delete lines 129 to 135, inclusive, in their

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entirety

In line 175, delete "PARTY IN THE PROCEEDING BEFORE THE BOARD." and insert in lieu thereof "PERSON WHO PETITIONED THE BOARD IN THE PROCEEDING, PROVIDED HIS LEGAL RIGHTS, DUTIES OR PRIVILEGES WERE DETERMINED THEREIN."

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Madam Speaker. Madam Speaker, party was defined in several different ways as this bill wended its way through the various attorneys for the Law Revision, for LCO and others and after much ado, have even got together and felt that this would be agreed as the definition for "party" to, in this instance, to go in this statute which was an attempt at codifying several statutes, so I ask that this amendment be approved and I move its adoption, if I haven't, Madam.

DEPUTY SPEAKER POLINSKY:

Thank you, sir. The motion is on adoption of House "E". Will you remark further? Will you remark further? If not, let us try your minds. All in favor of House Amendment --.

REP. RADCLIFFE: (123rd)

Madam Speaker.

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DEPUTY SPEAKER POLINSKY:

Representative Radcliffe of the 123rd.

REP. RADCLIFFE: (123rd)

Thank you. Madam Speaker, through you, to the proponent of the amendment, the first part of the amendment deletes the definition of party and that's a word that reappears several places later in the file copy. Without that particular definition with what is it being replaced, through you, Madam Speaker?

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

It's being replaced with the additional language "person who petitioned" -- the language, I believe, and I don't have it right in front of me, if you do, Representative Radcliffe, I believe it says "a party" and then it defines "a party" as a person who petitioned the board in the proceeding provided his legal rights, duties or privileges were determined therein.

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, I don't believe that's the definition of "a party." Lines 129 through 135 deleted in their entirety defined what a party is. Line 175 in which the new language is added says,

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"Service of process shall be made on." It defines the individuals on whom service of process is to be made. It does not replace the definition. In fact, it leaves the file copy without a definition. Through you, Madam Speaker, is this the intent of the amendment?

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Madam Speaker, it's not the intent of the amendment, through you. Party is not being defined anymore. We're carrying it through in all the sections of the statute as party, and I think we use person, we interchange in some instances, but it's not being defined per se.

REP. RADCLIFFE: (123rd)

Why is the word "party" not being defined, then, since it seems to be used, it's used on line 85, for example, it says, prejudiced to any board or any party. It's used throughout. That's not being changed by this amendment. If you're not replacing the definition, what are we to look for the definition of the word "party", through you, Madam Speaker?

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

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Through you, Madam Speaker, it was felt that the word "party" would have its usual meaning as a party in any case would, any appeal would.

REP. RADCLIFFE: (123rd)

All right, and what would that mean. As I read the definition that's being eliminated on line 129 through 135, it's "A party would be an individual whose rights were determined, including a person who applied to the board." Now as I read that, that could be an individual who is aggrieved. That could be an individual whose rights were finally determined by the board, by the commission one way or the other.

Are we to read party synonymous with aggrievement, through you, Madam Speaker?

DEPUTY SPEAKER POLINSKY:

Please proceed, sir.

REP. WOLLENBERG: (21st)

Through you, Madam Speaker, no, in think in that instance that you read, and I'm trying to recall, it seems to me that that a party would be anyone who applied and had their rights determined before the board.

REP. RADCLIFFE: (123rd)

No, through you, Madam Speaker, the definition which is being eliminated by this amendment says, "Any

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person who participated in a proceeding before the board, to participate in a proceeding before the board one need not be a party. Through you, Madam Speaker, is it that a broader definition and does not that definition give additional protection to individuals whose rights or whose interest may be aggrieved at the hearing of this particular board or commission?

REP. WOLLENBERG: (21st)

Through you, Madam Speaker, which line are you on, Representative Radcliffe?

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, I'm on line 129, which says, "Party means each person who participated in a proceeding before the board." Now that could mean an individual who participate in favor of an application, who participated against an application. That's being eliminated. What people are we eliminating from the definition, if we haven't replaced it with anything, through you, Madam Speaker?

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

I don't quite understand, but, through you, Madam Speaker, are we agreed that 129 through 135 are deleted, so that no longer is the definition of

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"party"?

REP. RADCLIFFE: (123rd)

We are agreed and that is not replaced with any definition. I see the Majority Leader is seeking recognition. Through you, Madam Speaker, if I may, I'll yield the floor to the Majority Leader, if he can shed some light on this particular situation.

REP. FRANKEL: (121st)

Through you, Madam Speaker, I'll try. I wasn't really seeking the floor, but maybe I can help. A number of conversations took place among individuals after we studied the file. There was an effort here to define "party", although I think you would agree in the past we had no need to define it. The reason this amendment is here is because in defining party, you have to read this in conjunction with the section that deals with service and if you read this, and you're correct, it would include as a party every person who appeared before, let's say, a planning and zoning hearing. It could be 200 individuals, neighbors, interested citizens and the like, and this taken together with the section dealing with service, would require that each and everyone of these people be served and while they may not necessarily be so-called necessary parties, you're burdening people with the

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obligation to track down perhaps 200 people to serve them, you're not sure which ones you're at risk with in terms of a motion to dismiss, which is language that follows, so the thinking was, "Let's not try to define party in this fashion. Let's simply leave it the way it always has been interpreted and back off from what was a good effort, but turned out to be a monster."

REP. RADCLIFFE: (123rd)

Then, through you, Madam Speaker, again to either the proponent of the amendment or to the Majority Leader, I take it that the definition of "party" will be left to its normal and ordinary judicial construction and is not sought to be defined in the act?

REP. FRANKEL: (121st)

Through you, Madam Speaker, and I see Representative Wollenberg nodding his head as well, the answer is absolutely correct, sir.

REP. RADCLIFFE: (123rd)

Thank you.

DEPUTY SPEAKER POLINSKY:

Will you remark further on House Amendment Schedule "E"? Will you remark further? Then let us try our minds. All those in favor of the amendment please indicate by saying aye.

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REPRESENTATIVES:

Aye.

DEPUTY SPEAKER POLINSKY:

Opposed nay.

The ayes clearly have it and the amendment is adopted and ruled technical.

Will you remark further on the bill as amended?  
Representative Wollenberg.

REP. WOLLENBERG: (21st)

Madam Speaker, I move passage of the bill.

REP. FRANKEL: (121st)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Frankel.

REP. FRANKEL: (121st)

Yes, it's my understanding that there's at least one amendment from one of the Members of the Chamber on the way over. I apologize and at this time I move that this item be passed temporarily.

DEPUTY SPEAKER POLINSKY:

The motion is to pass temporarily. Is there objection? Seeing no objection, so ordered.

Are there any announcements or Points of Personal Privilege? Are there any announcements or Points of Personal Privilege? Going once, going twice.

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privilege? Are there any announcements?

Representative Terry Bertinuson.

REP. BERTINUSON: (57th)

Madam Speaker, for a point of personal privilege, please.

DEPUTY SPEAKER POLINSKY:

Please proceed, ma'am.

REP. BERTINUSON: (57th)

Thank you, Madam Speaker. For an introduction. Seated in the Well this afternoon is a young woman from Ellington, Erin Miller. She is a junior in Ellington High School. She is in an independent study program on government. She has visited Congress in Washington, and this is here chance to see her own state government in action. If Erin would stand, I would ask the House to give her a warm welcome.

APPLAUSE

DEPUTY SPEAKER POLINSKY:

Are there further announcements or points of personal privilege?

Clerk will please return to the Call of the Calendar.

CLERK:

Page 17, Calendar 503, Substitute HB7568. AN ACT CONCERNING LOCAL ADMINISTRATIVE APPEALS. (As amended by

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House Amendment Schedules "A", "B", "D" and "E").

Favorable Report of the Committee on PLANNING AND DEVELOPMENT.

House adopted House Amendment Schedules "A", "B", "D" and "E", May 24th.

DEPUTY SPEAKER POLINSKY:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

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

DEPUTY SPEAKER POLINSKY:

Motion is on acceptance and passage. Will you remark, sir?

REP. MINTZ: (140th)

Yes, Madam Speaker. We have amended this bill. I think it's a good bill. It sets up some procedures for the administrative procedures. And at this point, I would yield to Representative Wollenberg.

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg, will you accept the yield?

REP. WOLLENBERG: (21st)

Thank you, Madam Speaker. I thought I could get out of that. Madam Speaker, I am told there is an amendment to go on this bill, which I would be glad to

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identify.

DEPUTY SPEAKER POLINSKY:

Let us stand at ease for just a few moments--

REP. WOLLENBERG: (21st)

I appreciate that.

DEPUTY SPEAKER POLINSKY:

While they locate the amendment, one among many.

REP. WOLLENBERG: (21st)

Madam Speaker?

DEPUTY SPEAKER POLINSKY:

The House will please come back to order.

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Madam Speaker. Madam Speaker, the Clerk has LCO7581 on his desk. I would ask that he call, and I be allowed to summarize.

DEPUTY SPEAKER POLINSKY:

Clerk, please call LCO7581, which shall be designated House Amendment "F".

CLERK:

LCO7581, House "F", offered by Representative Mushinsky.

DEPUTY SPEAKER POLINSKY:

The gentleman has asked leave of the Chamber to summarize. Is there objection? Seeing no objection,

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please proceed, Representative Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Madam Speaker. A bill was passed out of this House the other day with regard to Section 3 of the bill. It had to do with in the wetlands and setbacks and boundaries of wetlands, and this amendment clarifies and identifies the difference between boundaries and setbacks and buffers. In other words, boundaries of wetlands are physical or physically on the ground and should not be a matter of change, whereas setbacks and buffers may be changed from time to time. And that is what we are asked to prevent.

When someone gets up in court, is ready for a decision, a local commission can have changed the regulations. This would prohibit that for setbacks and buffers, but not boundaries, which as I say are physical, and as I say, we didn't want to do that. I move for adoption of the amendment.

DEPUTY SPEAKER POLINSKY:

The motion is on adoption of the amendment. Will you remark further on the amendment? Will you remark further? If not, let us try your minds. All those in favor of the amendment, please signify by saying aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER POLINSKY:

Opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER POLINSKY:

The ayes clearly have it. The amendment is  
adopted.

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House Amendment Schedule "F":

After line 1002, add the following and renumber the remaining section accordingly:

"Sec. 17. Section 3 of substitute house bill 7270 of the current session is repealed and the following is substituted in lieu thereof:

An application filed with an inland wetlands agency which is in conformance with the applicable inland wetlands regulations as of the date of the decision of such agency with respect to such application shall not be required thereafter to comply with any change in inland wetlands regulations, [or boundaries] INCLUDING CHANGES TO SETBACKS AND BUFFERS, taking effect on or after the date of such decision and any appeal from the decision of such agency with respect to such application shall not be dismissed by the superior court on the grounds that such a change has taken effect on or after the date of such decision. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO APPLY (1) TO THE ESTABLISHMENT, AMENDMENT OR CHANGE OF BOUNDARIES OF INLAND WETLANDS OR WATERCOURSES OR (2) TO ANY CHANGE IN REGULATIONS NECESSARY TO MAKE SUCH REGULATIONS CONSISTENT WITH THE PROVISIONS OF CHAPTER 440 OF THE GENERAL STATUTES AS OF THE DATE OF SUCH DECISION."

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DEPUTY SPEAKER POLINSKY:

Will you remark further on the bill as amended?

REP. WOLLENBERG: (21st)

Madam Speaker?

DEPUTY SPEAKER POLINSKY:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

This bill was before the House the other day and was PTed for an amendment, and we have put that amendment on. There were several amendments added to it. Basically, the bill brought together several sections of the administrative appeals in our present statutes, and the amendments that went on were passed by this House. The bill does that. We did go through the bill at that time. I think PTing just to wait for the amendment. I think if there are any questions, I'd be happy to answer them. Otherwise, I move the bill.

DEPUTY SPEAKER POLINSKY:

Will you remark further on the bill as amended?

Representative Maddox of the 66th.

REP. MADDOX: (66th)

Yes, Madam Speaker. The Clerk has an amendment bearing LCO8600. Would he please call and read?

DEPUTY SPEAKER POLINSKY:

Clerk, please call LCO8600, which shall be

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designated House Amendment Schedule "G".

CLERK:

LC08600, House "G", offered by Representative Maddox.

DEPUTY SPEAKER POLINSKY:

Please read, sir.

CLERK:

After line 1004, insert the following new section:

"Sec. 18. Section 1 of substitute house bill 7270 of the current session is repealed."

DEPUTY SPEAKER POLINSKY:

Representative Maddox.

REP. MADDOX: (66th)

Yes. I move adoption.

DEPUTY SPEAKER POLINSKY:

Motion is on adoption of House "G". The House will stand at ease for a few moments.

SPEAKER BALDUCCI:

Representative Maddox, you have the floor.

REP. MADDOX: (66th)

Thank you, Mr. Speaker. I think by now most members of the Chamber have figured out what this amendment does, and for those who haven't, I will be happy to explain it. It is a simple one line amendment, and what it basically does is strike Section

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1 of the bill which we were debating a couple of nights ago, which is the Affordable Housing Appeals Board.

Ladies and gentlemen, everyone in this Chamber wants affordable housing. I have sat on the Planning and Development Committee for the last three years and worked with many colleagues on both the Republican and Democratic side of the aisle to develop affordable housing. We have taken in the state what is referred to as a carrot approach to that.

What we did two nights ago was, in my opinion, to throw the baby out with the bath water. Certain members-- The bill, as we know, had three sections. We just recently on the prior amendment corrected Section 3. This seeks in my opinion to correct Section 1. To review for the benefit of the membership what Section 1 does, it sets up an appeals procedure for developers to partake, if they come in with an affordable housing unit that would allegedly have 20% or more affordable housing units.

As was pointed out in the floor debate, I believe that this has several flaws. The first, if you recall, which Representative Fleming pointed out, was the fact that it doesn't take into account what would happen if the developer said, "I will set 20% aside," but then he doesn't. There is no penalty there. Secondly, there

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is no requirement that they stay affordable in perpetuity. That's referred to as inclusionary zoning, which you find it in.

Thirdly, it does not count, nor does it take into consideration what I would call non-government subsidized affordable housing. And let me tell you, ladies and gentlemen, it is my honest belief that there is more non-affordable or more affordable non-government subsidized housing in this state than there is government-subsidized housing. I can know that that is true in my district, and I think that's true in several of your districts. It just doesn't count that in the 10% exclusion.

In addition, it changes the burden of proof onto the town, as opposed to onto the developer. This is contrary to our history of zoning in this state. Later on today, we will be taking up a bill, another bill dealing with ash land siting. And I know many of you, Democrats and Republicans, have come to me and asked me, "Well, Bob, how are you going to be on this bill? This is a local control issue." That's what we are talking about here. Local control

As I mentioned the other night, the cost of land in my estimate is the problem that has driven up housing. Since 1980 in certain municipalities, the cost of land

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has increased fivefold for a building lot. That's a five fold increase. When you have a fivefold increase of that nature, how can you build housing that's affordable. I don't believe you can.

We have sought here to subsidize the cost of land through a variety of programs in the state. I think that is what we need to continue to do. We need to continue to go. Those members of the Planning and Development Committee heard a very creative presentation earlier this year by a land planner out of Massachusetts, dealing with cluster housing. Cluster housing is a solution, especially in rural and suburban areas in Connecticut. However, mandatory override of local zoning in my opinion is nowhere near the solution.

Mr. Speaker, that's what this amendment seeks to do. I am basically not into a tremendously long debate. I am sure that a few other individuals here have some comments on it that they wish to share with the Chamber. And with that, now, I would like to, before I yield the floor however, ask that when the vote be taken on this amendment, it be taken by roll.

SPEAKER BALDUCCI:

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

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REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

20% having been met, when the vote is taken, it will be taken by roll.

REP. MADDOX: (66th)

Thank you, Mr. Speaker.

SPEAKER BALDUCCI:

Will you remark further on the amendment?

REP. CIBES: (39th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Cibes of the 39th.

REP. CIBES: (39th)

Mr. Speaker, I would like to yield at this point to Representative Frankel.

SPEAKER BALDUCCI:

Representative Frankel, do you accept the yield?

REP. FRANKEL: (121st)

Yes, I will, Mr. Speaker. Initially, my inclination was to move that this item be recommitted, because frankly I don't think the Chamber should take the time to debate for the second time a measure that has already passed.

We fully debated this matter, and the votes were

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cast on it. It is tantamount, I suppose, to a reconsideration. I see no reason to debate it again. However, I will yield the floor at this time with Representative Cibes, in connection with the proposition itself, for some remarks, before making any further motions.

SPEAKER BALDUCCI:

Representative Cibes.

REP. CIBES: (39th)

Through you, Mr. Speaker, I think it is silly to put the Chamber through the agonies of extensive debate on this issue. We debated this at great length the other evening. The Chamber expressed its will. There was a Parliamentary Procedure available to reconsider this motion, had anyone wished to employ it yesterday. Nobody moved for reconsideration at that point. I accordingly believe that this is a circumvention of that method, and I would simply urge all of those yesterday who had committed to voting for, who had committed to voting against reconsideration to simply honor that pledge and defeat this bill immediately without further debate.

Thank you.

SPEAKER BALDUCCI:

Will you remark further?

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REP. JAEKLE: (122nd)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Jaekle.

REP. JAEKLE: (122nd)

Mr. Speaker, I not only rise in support of the amendment, but for the procedure that is now being used and, I gather, being somewhat questioned. This amendment had been filed to a three section bill two days ago, and based on some information that was given to opponents of the bill, it was suggested that no further amendments be offered, including the one to delete Section 1 of a three section bill, that the votes were probably there to defeat the legislation. And based on that information, maybe it was a bad strategy, but members relying on that did not offer this amendment to have it debated two days ago, and Section 1 may have been defeated, because there was support for Sections 2 and 3 of HB7220 and a different outcome.

Yesterday, there was going to be a motion to reconsider. As I recall, the bill, HB7220, passed-- Or excuse me, HB7270, sorry, had a margin of victory of maybe 6 votes. I talked to four members who would support reconsideration. And lo and behold, the word

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also got back that there would not be votes to reconsider the issue, and that is why reconsideration--the Chamber was not put through a long debate on reconsideration of the bill, which might have taken an hour, hour and a half of floor time yesterday. And the decision was made to put forth an amendment to the bill that could have been put forth two nights ago, when the bill was debated.

Gee, I think the bill maybe had a couple minutes of debate. All the debate, as I recall, was on House "A", so very little debate on the bill. This is a proper way of putting forth the narrow question that probably should have been put to the Chamber two nights ago. Section 1 of HB7270, one of three sections of the bill, was a very controversial section of our law. To refresh people's memories, the biggest objection I had to it and have to it is that it shifts the burden of proof for our municipal zoning authorities. When somebody goes before them with a zoning application with the term "affordable housing," and depending upon whether that town qualifies or not with 10% of affordable housing or a certification for a year or what have you, the whole burden of proof got shifted on our zoning authorities, and in all likelihood, the developers in our state would be given the upper

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hand vis-a-vis our zoning authorities.

I objected. I did not debate that bill the other night, by the way, so I am not like doubling or tripling my floor time on that issue. It was an issue that I was surprised passed. And this is putting it forth to this Chamber to give it another opportunity to delete that controversial section from the bill, still keeping the Sections 2 and 3 that had other support in the Chamber and merely puts forth the issue to the Chamber. Do we wish to set about our zoning laws of really 180 degrees, tip them on their head, give developers upper hands with zoning authorities?

And there was one thing about the bill, and I don't know if it was really mentioned. It's what bothers me about some of that type of legislation. I am not going to debate tax classification, but I am always concerned when I see our laws - and it is becoming some creative drafting. Certain laws are going to apply in certain towns, based on certain criteria and not in others. And that in essence is what the administrative appeal zoning override section of the bill really called for. Depending what town you live in and depending on what you are currently doing or have done, certain laws of the State of Connecticut will govern.

Meaning: a developer comes in, you qualified for

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the exemptions from the law. Zoning authorities deny it. The developer is going to have to have the burden of proof in any appeal they bring, to show that the Zoning Board acted arbitrarily or capriciously or beyond their authority. They are going to have to prove the record didn't justify the Zoning Board's decision.

But, if you live in another community, maybe mine. I guess from the list I saw, it might be mine. And a developer comes in, they have got, you know, a nice little acre piece along Main Street, and they want to put in, you know, 70 condominiums. And they are going to dedicate a certain portion as affordable. And the town says, "My God. That's zoned single family residential." They apply for the zone change, they make their case, the traffic studies are done. It shows it is heavy traffic, and it's denied. They appealed to the court, and the Zoning Board has to prove all the criteria that was listed. They have to prove why they denied, not just to say, "Hey, it's zoned one family residential, and this was for 70 condo units." That won't be a good enough defense.

I object to that. It will work in somebody's town, but not in mine. Maybe it'll work in your town. Maybe it won't. That style of law is not good law, and we

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are seeing that encroachment year by year where different rules apply in different towns. I really don't like that style. If you wanted to say anybody with affordable housing, you go to court, you get a privilege case. I don't care what town it is. I wouldn't have supported that, but at least it would have been fair and even handed.

The legislation that we passed the other night was not, is not and this is a way of deleting that provision from the law that passed in the House. I don't know what happens in the Senate. Maybe we get it back. There is less than a week to go. This seems like the most expeditious way of testing that one issue that could have been tested and was not the other night, could have had reconsidered, reconsideration yesterday to afford members the opportunity to offer this amendment. That was filed, but they were talked out of it the other night. But of course, that wasn't to be yesterday either.

This is the best way of handling the issue in my opinion. I'd urge passage of the amendment, and at the very least, an opportunity to have this matter explored that really was not the other night. Thank you.

SPEAKER BALDUCCI:

Will you remark further? Will you remark further

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on the amendment? If not-- Representative Maddox.

REP. MADDOX: (66th)

Very briefly, Mr. Speaker. I would hope that this not be a party line issue. I even suspect here that there might be some Republicans who may not support this amendment. I would hope not, but I can't say that. And speaking to some of my colleagues on the other side of the aisle, I would hope that there are some Democrats that do. It's-- this is not a procedural matter, ladies and gentlemen. This is a quick up and down, how do you feel about the guts of the override bill. That's what the vote is.

Thank you, Mr. Speaker.

SPEAKER BALDUCCI:

Will you remark further? Representative Cibes.

REP. CIBES: (39th)

Thank you, Mr. Speaker. For the second time. I regard this as a procedural matter. Vote no.

SPEAKER BALDUCCI:

Will you remark? If not-- Representative Emmons of the 101st.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. The interesting part about this is the amendment before, that we just passed, was an amendment that had been offered the other night and

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had failed. So, I don't really understand why it is all right to have a vote on one piece of changing that bill, but to vote on the other piece to change that bill becomes procedural.

We all voted on the changes to Section 3, which was defeated the other night, and now we have adopted it. So, there seems to me no reason why one section that we adopted, we can now not adopt and un-adopt. I think if we are going to be fair, and we are going to be consistent, let's do it all the way along.

SPEAKER BALDUCCI:

Will you remark further? If not, staff and guests, to the Well. Members, please be seated. The machine will be opened.

CLERK:

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

SPEAKER BALDUCCI:

Have all the members voted? Have all the members voted, and is your vote properly recorded? If so, the machine will be locked. Clerk, take a tally. Clerk, please announce the tally.

CLERK:

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House Amendment "G" to HB7568:

Total Number Voting	147
Necessary for Adoption	74
Those Voting Yea	65
Those Voting Nay	82
Those absent and not Voting	4

SPEAKER BALDUCCI:

The amendment fails. Will you remark further on the bill?

REP. MADDOX: (66th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Maddox.

REP. MADDOX: (66th)

Yes, Mr. Speaker. The Clerk has an amendment, LCO8166. Would he please call, and may I be allowed to summarize?

SPEAKER BALDUCCI:

Clerk, please call LCO8166, designated House "H".

CLERK:

LCO8166, House "H", offered by Representative Maddox et al.

SPEAKER BALDUCCI:

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

REP. MADDOX: (66th)

Thank you, Mr. Speaker. What this amendment does is two simple things to Section 1 of the affordable housing appeals. It shifts the burden of proof back onto the applicant as opposed to the municipality, and it says that when you have the hearing, it will be in the Judicial District where the town is located, not in New Britain and Hartford.

I would move adoption.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark?

REP. MADDOX: (66th)

Yes, Mr. Speaker. I don't anticipate a long debate on this. I thank the Chamber for its patience.

SPEAKER BALDUCCI:

(Gavel) Ladies and gentlemen, Representative Maddox is trying to explain an amendment. Please give him the courtesy of your attention. Representative Maddox.

REP. MADDOX: (66th)

Thank you, Mr. Speaker. Given the last vote that I guess some of my Democratic colleagues thought was procedural, I would hope that you don't think that a six page amendment is procedural. It's not meant to be. It's meant more in the line, I think, of

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Representative Mushinsky's amendment, to correct what members, at least what I know I feel personally, and other members feel is a very severe portion of the bill, the shifting of burden.

All of our zoning laws require the applicant to prove his case, should he be denied by the Zoning Commission. This just keeps it constant to what current practice is. And, Mr. Speaker, when the vote is taken, I would ask that it be taken by roll.

SPEAKER BALDUCCI:

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

REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

20% having been met, when the vote is taken, it will be taken by roll. Will you remark further?

REP. FRANKEL: (121st)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Frankel.

REP. FRANKEL: (121st)

Mr. Speaker, through you, a question to the proponent.

SPEAKER BALDUCCI:

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Please proceed, sir.

REP. FRANKEL: (121st)

I see a Section 19, which appears on page 5, line 143 and 144. And I will read it to the Chamber.

"Section 1 of substitute house bill 7270 of the current session is repealed."

Through you, Mr. Speaker, is that the identical section that we just defeated, identical language? Through you, Mr. Speaker?

REP. MADDOX: (66th)

Representative Frankel, yes, it is. And I will be very honest, sir. When this amendment was drafted, I did not realize that that was put in there. So, I guess in all fairness to--

Right. I am sorry. Representative Frankel, that is correct, but this is substituted in its place, so it is correctly drafted. In other words, Section 1 is repealed. This is put in its place. As you noticed, everything should be identical to the Section 1 that is there now, with the exception of the shifting of the burden and the location of where the hearing will be for the Judicial hearing. It will be, for example, for Litchfield, it will be in Litchfield County as opposed to in the Hartford-New Britain Judicial District.

Through you, Mr. Speaker.

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SPEAKER BALDUCCI:

Representative Frankel, you still have the floor.

REP. FRANKEL: (121st)

Yes, Mr. Speaker. I will yield the floor at this point to other individuals.

SPEAKER BALDUCCI:

Will you remark further on the amendment?

REP. GELSI: (58th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Gelsi.

REP. GELSI: (58th)

Mr. Speaker, I don't know where we are going this year. It seems to me like nothing dies. I voted against the bill the other day, and I voted for the last amendment. The Minority Leader said he has seen nothing wrong with us debating Section 1, because we really didn't debate it the other day, when we were debating the bill. Well, that is shame on the people that didn't want Section 1. They should have debated it. The bill was there. The bill was before this Chamber.

There is an awful lot of business to go, and I don't mind staying here this coming Saturday, Sunday, to midnight til Wednesday, but I think the business of

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this Chamber should be considered. And if we continue to revisit every vote that somebody loses a fight on, then I think it is shame on us.

And I am going to urge the members, at least on this side of the aisle, to vote against the amendment.

REP. MEYER: (135th)

Mr. Speaker?

SPEAKER BALDUCCI:

Will you remark further on the amendment?

REP. MEYER: (135th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Meyer of the 135th.

REP. MEYER: (135th)

Thank you, Mr. Speaker. I would just like to say one thing about this amendment. I think you have got to think very, very carefully. In the United States of America, the judicial tradition has always been that one is innocent until proven guilty. And I do not think that in our land use judicial proceedings, we should be any different than we are in everything else.

Think very, very carefully. This really does nothing to your bill. It has everything else all of you wanted, but it does say that the burden of proof is on the person who brings you to court and not on the

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group that is defending. And I think that is a very important precedent. If you do nothing else, at least support this amendment.

Thank you.

REP. KNOPP: (139th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Knopp of the 139th.

REP. KNOPP: (139th)

Thank you, Mr. Speaker. Thank you, a question to the proponent.

SPEAKER BALDUCCI:

Please proceed.

REP. KNOPP: (139th)

Thank you. Representative Maddox, is it true that on lines 65 through 69, that the language of your amendment is identical to the language in the bill that passed previously? Through you, Mr. Speaker?

REP. MADDOX: (66th)

Through you, Mr. Speaker, I believe it to be, yes.

REP. KNOPP: (139th)

And through you, Mr. Speaker, a further question. Does this mean, Representative Maddox, that if hypothetically, there is a zone that permits, let's say, a density of five multi-family units. The

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developer makes an application to build 30 multi-family units. And the developer sustains his burden of proof.

Under this amendment, would the court, pursuant to lines 65 through 69, have the authority to order that 30 multi-family unit development be constructed in the zone that currently allows only five multi-family units? Through you, Mr. Speaker?

REP. MADDOX: (66th)

Through you, Mr. Speaker, I believe they would, just as they would in the current bill that was passed a few nights ago.

REP. KNOPP: (139th)

Thank you, Mr. Speaker. I rise to oppose this amendment. One of the, I think, major problems I had with the bill the other night, and the reason why I voted against it was not so much the issue of burden of proof, but the question of what discretion a judge ought to have in deciding essentially legislative matters regarding housing policy.

And the major flaw I thought with the bill the other night was that the court would have authority to order that 30 unit multi-family housing in a zone that currently would allow only 5, if the other provisions of the bill were met. This amendment does nothing to change that, so I guess for those of us who were

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concerned about parts of the bill other than the burden of proof, this amendment does nothing to change that, and I oppose this amendment for the same reasons that I opposed the bill the other night.

Thank you, Mr. Speaker.

SPEAKER BALDUCCI:

Will you remark further?

REP. KRAWIECKI: (78th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I rise in support of the amendment, and the reason why I am going to support this amendment is for the very point I was making the other evening. I thought that the manner in which the amendment had been drafted, placing the burden on the Commission, was insane. I didn't think it was logical. I don't think it makes any sense today. I have slept on it two nights, and I don't think it makes any more sense now than when we talked about it.

I must admit, I have contacted all of my developer clients however in the time, and they appreciate the fact that the statute passed the other day. To Representative Knopp and those of like thinking, I

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would suggest that while the amendment or the bill that passed the other day, he may not have liked. I would suggest that it is certainly more in tune with improving the bill that you support this amendment and then vote against it again, you know, later on, if you don't like it all the way through. That makes far more sense.

To my good friend, Representative Gelsi, up there, I am wondering whether he feels the same way when we revisit some of the prison votes that we have in this Chamber on a regular basis, where on one day things pass, and on another day, after a certain amount of convincing by individuals, votes get changed. I have watched it over the years, and it seems to me one of the areas that pops into my mind that we constantly change. So, I suppose we can revisit issues 100 times, and I suppose that is part of our job here, whether it be midnight or 5:00 a.m. or any other time.

I think this amendment makes a lot more sense, because it just makes one change to the file that was before us the other day, and that leaves the burden of proof on the applicant, where I really truthfully think the burden should lie. The burden should not lie on a Commission that had nothing to do with an applicant butting their nose into the process. The Commission,

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in its wisdom and after listening to evidence and information and examining their ordinances and the like, makes a decision on whether or not they think an application should be approved.

The other day, you had the burden of proof being shifted to the Commission to prove that they were in fact correct, not that the applicant was correct and that the Commission might have done something wrong. I just think it makes no sense to have the kind of process that we had the other day. I would encourage you to adopt the amendment and perhaps make the bill that we had the other day a little bit better.

SPEAKER BALDUCCI:

Will you remark further? Representative Cibes.

REP. CIBES: (39th)

Through you, Mr. Speaker, I thought that members of this side of the aisle were extremely tolerant and appreciative of the efforts of members of the other side of the aisle the other evening. I thought indeed on the, in respect to the tax package, that we went through a lot of debate on Friday and Saturday night.

I think frankly that once we have taken up a bill on which there was an opportunity to file amendments, and in fact an amendment - and I don't have the copy before me-- An amendment if not identical to this,

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similar to this was filed on the bill the other evening. The appropriate time to offer such amendments is when the substantive matter is under consideration.

Now, we can find ways around, obviously, the rules of the House, and apparently, the members of the other side of the aisle have found such a method. But I think we should debate these issues once. There is a procedural method for reconsidering the issue. If Representative Krawiecki had slept on it for only one night, for example, he would have been able to offer an amendment, offer a motion for reconsideration yesterday.

There are methods of doing this. I think that this method is becoming a way around the long standing procedures of this House, and I urge defeat of this amendment.

SPEAKER BALDUCCI:

Will you remark further? Representative Metsopoulos.

REP. METSOPOULOS: (132nd)

Thank you, Mr. Speaker. Just to comment on a couple of things Representative Cibes said, I can remember in the Finance Committee, we had a bill, and an amendment was offered. And it passed, and Representative Cibes at that moment adjourned the

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meeting, caucused and came back and reconsidered and the amendment was defeated.

I think part of the beauty of the democratic system is that you have the opportunity to reconsider, to offer amendments, to change legislation. I think our constituents realize that the democratic process is not easy, and that it takes maybe two or three times for a bill to be worked and reworked.

I think if we look back just the other day, a few weeks ago with the United Bank issue, and the amendment was defeated. We can look at prison furloughs. I mean, we could list and list and list where you in the Majority Party have reconsidered or re-adopted amendments or re-introduced amendments to change legislation. To now say that that's wrong-- I mean, I understand. You've got the votes, but at least be consistent.

If you don't like the process, then don't go forward with the process. You know, I say it again, you can pass a lot of pro and great election reform legislation, but when the people out there see the process shut down, that is what turns them out, turns them away from voting. And I think that this is another effort at that. This amendment is here, properly before the Chamber, to rework a piece of

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legislation, in some view to make it better, in some view to make it worse.

Don't vote it down because you don't think the process is being respected. Vote it down because you don't agree with it. But the process is most definitely being respected, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Jones.

REP. JONES: (141st)

Mr. Speaker, thank you. I would hope that all of us in this Chamber would not see this as a partisan issue. Since our discussion the other night, I have spoken with the Democratic leadership in my community as well as Republicans, and they all agree that encroachment on local control by a change in legal procedure will be devastating to this state.

So, I believe that we should be encouraged to see this, not as a partisan issue. Also, I do not believe it is an affordable housing issue. If we want affordable housing units, we can get them. All we'd have to do is assign the real estate conveyance tax to the local district, let them have three years to spend it, and they'd build plenty of housing.

This is a bill that deals with state encroachment on towns and city rights. It's just that simple. I

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urge everyone to see it in that light and realize what the folks back home will have to say to us. Thank you.

SPEAKER BALDUCCI:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I wasn't intending to speak again, but I think that Representative Cibes used a classic maneuver in a debating Chamber in an attempt to move the issue from the issue that is before us to something other than the issue before you.

And I just want to remind you what you are voting on. What you are voting on is a bill that needed, in the opinion of a good many members, to be amended. And what it does is it puts the burden, when an applicant goes before the various land use boards, on the applicant in an appeal process. That is the way the courts of the State of Connecticut and this nation operate. They don't operate any other way. You don't suddenly see, for example, a civil action that a plaintiff brings an action, they lose in the lower court, and the defendant suddenly has to defend what in the world happened at the lower court level, which is exactly what you are doing here.

This amendment seeks to correct that problem. It is absolutely within the realm of our responsibility to

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debate bills once, twice or a hundred times, to get it right, if we have to. And I think that to believe that this vote is anything but a vote to correct a statute that passed a day or two ago makes no sense. And if it becomes a partisan issue, then we are doing our constituents a disservice, and they certainly are not going to understand Parliamentary Procedure at home. And I think we are going to have some very interesting explaining to do, if that's how we make our decisions in this, the last week of the legislative session.

I think that what you ought to do is read the amendment, take a look at it, and make a decision as to whether or not you think it is good or bad for the people who live in your community and if you think it is good or bad for your community. If you think that the concept of having Commissions defend what their ultimate decisions might have been is bad, then I encourage you to vote with Representative Cibes. It makes all the sense in the world.

But, if you don't believe that that is the way the law operates, or the way that our local governments operate, or the way the citizens of the State of Connecticut think the process operates, then I would encourage you to support the amendment.

SPEAKER BALDUCCI:

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Will you remark further? If not, staff and guests, to the Well. Members, please be seated. The machine will be opened.

CLERK:

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

The House is voting by roll call. Members, to the Chamber. Members, to the Chamber please.

SPEAKER BALDUCCI:

Have all the members voted, and is their vote properly recorded? If so, the machine will be locked. Clerk, take a tally. Clerk, please announce the tally.

CLERK:

House Amendment Schedule "H" to HB7568:

Total Number Voting	149
Necessary for Adoption	75
Those Voting Yea	68
Those Voting Nay	81
Those absent and not Voting	2

SPEAKER BALDUCCI:

The amendment fails.

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House Amendment Schedule "H":

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After line 1002, insert the following:

"Sec. 17. (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 or 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 in which the municipality is located. 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, 8-30, or 8-30a, as applicable.

(c) Upon an appeal taken under subsection (b) of

this section, the burden shall be on the applicant to prove that the decision of the commission is the result of a clear abuse of discretion by such commission. If the applicant satisfies his 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 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) affordable housing, as defined in section 8-39a of the general statutes, or (3) currently financed by Connecticut Housing Finance Authority mortgages or (4) 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 8-366f of sections 8-386 and 8-387 of the general 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."

In line 1003, strike out "17" and insert "18" in lieu thereof

After line 1004, insert the following:

"Sec. 19. Section 1 of substitute house bill 7270 of the current session is repealed.

Sec. 20. This act shall take effect October 1, 1989, except that section 17 of this act shall take effect July 1, 1990."

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pat

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House of Representatives

Thursday, June 1, 1989

SPEAKER BALDUCCI:

Will you remark further on the bill as amended?  
Will you remark? If not, staff and guests, to the  
Well. Members, please be seated. The machine will be  
opened.

CLERK:

The House of Representatives is voting by roll.

Members, to the Chamber. Members, to the Chamber  
please. The House is voting by roll.

SPEAKER BALDUCCI:

Have all the members voted, and is their vote  
properly recorded? Have all the members voted, and is  
their vote properly recorded? If so, the machine will  
be locked. Clerk, take a tally. Clerk, please  
announce the tally.

CLERK:

HB7568, as amended by House Amendment	
Schedules "A", "B", "D" "E" and "F":	
Total Number Voting	148
Necessary for Passage	75
Those Voting Yea	148
Those Voting Nay	0
Those absent and not Voting	3

pat

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House of Representatives

Thursday, June 1, 1989

SPEAKER BALDUCCI:

The bill as amended is passed.

Are there any announcements or Points of Personal Privilege? Representative Anderson.

REP. ANDERSON: (45th)

Thank you, Mr. Speaker. For purpose of an introduction. We have here today over in the well of the House, a distinguished visitor from the Soviet Union. His name is Victor Gorbachev. He works for the magazine Journalist in Moscow. He's head of the Foreign Department. The interesting thing is that he is working here for three months at the New London Day, down in New London as working on the paper and is finding it a very interesting experience. He has a wife Olga and three children.

With him is Elaine Statler also from the Day and I might as a comment that it was interesting to me that last Thursday was the first meeting of an elected congress in the Soviet Union in 70 years. On that Thursday we went for 12 hours, Gorbachev went for 13, so maybe he's learning that this is the way things go. So thank you very much. Let's give him our usual warm welcome.

APPLAUSE

REP. HOLBROOK: (35th)