

Legislative History for Connecticut Act

Act Number: PA 06-80
Bill Number: 5290
Senate Pages: Senate: 2580-2585 **6**
House Pages: House: 2206-2215, 2257-2288 **42**
Committee: Planning & Dev.: 302, 304-305, 321-335, 347-349, 351-355, 365, 367-373, 392, 431-437 **42**

Page Total: 90

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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S-532

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS

2006

VOL. 49

PART 8

2293-2615

kmn
Senate

April 28, 2006

THE CHAIR:

Without objection, the item will be placed on the
Consent Calendar.

SEN. FINCH:

Thank you, Mr. President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar 437, File 280 and 606, Substitute for
House Bill 5290, An Act Concerning Notice Requirements
for Land Use Applications (As amended by House
Amendment Schedule "A"), Favorable Report of the
Committees on Planning and Development and
Appropriations. Clerk is in possession of amendments.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you, Mr. President. Good afternoon. I
move acceptance of the Joint Committee's Favorable
Report and passage of the bill in concurrence with the
House.

THE CHAIR:

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Senate

April 28, 2006

On acceptance and passage in concurrence, will you remark? Senator Coleman.

SEN. COLEMAN:

Thank you, Mr. President. Mr. President, this bill attempts to address the method of providing notice to interested parties in land use activities. There are actually two circumstances that the bill addresses.

One is when applicants apply for changes in zoning boundaries or zoning regulations or subdivision regulations. In such an event, notice is to be provided to interested parties pursuant to best practices, which would include newspaper publication notice, direct mail to adjacent owners, and sign postings.

However, in the event that one of the land use bodies initiates a zoning change or a zoning regulations change or a change in zoning boundaries or subdivision regulation changes, then the land use body and the town are required to establish and maintain a public notice registry whereby interested parties may sign up on the registry and receive notice of such

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Senate

April 28, 2006

actions, at their option, either by email or by written notice provided through First Class mail.

The overwhelming opinion is that the current notice requirements, when changes are initiated by a land use body, which involve newspaper publication, do not constitute effective notice to many of the residents of the town who are interested in such activities of the land use body.

So this bill is an effort to accomplish more effective notice to interested parties under such circumstances. I move, again, acceptance and passage in concurrence with the House, Mr. President. Thank you.

THE CHAIR:

Will you remark further? Senator Fasano.

SEN. FASANO:

Thank you, Mr. President. Mr. President, I join in supporting this bill. Mr. President, when an individual does a zone change, it is required, under most municipal local zoning ordinances that certified letters are sent to people who are within 500 feet of this change.

kmn
Senate

April 28, 2006

However, when a municipality decides to change the zoning ordinances for your municipality, there is no notice given. And unless you are vigilant in reviewing the legal ads, which people are very busy and they're very small print, you will not pick up on that.

So what this allows people to do is go into a data bank registry, and at the end of three years to renew their name, and this way you can keep track of municipal changes which may or may not adversely affect you in that town.

I think this is a step in the right direction. I support the bill. Thank you, Mr. President.

THE CHAIR:

Will you remark further? Senator Coleman.

SEN. COLEMAN:

Mr. President, if there are no further remarks to be made and if there is no objection, I would ask that this item be placed on the--

THE CHAIR:

I'm sorry, I didn't. Senator Roraback.

SEN. RORABACK:

kmn
Senate

April 28, 2006

Thank you, Mr. President. I would object to the matter being placed on the Consent Calendar.

THE CHAIR:

Very good. If so, the Clerk will please announce a roll call vote is in process. The machine is open.

THE CLERK:

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

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

THE CHAIR:

Have all Members voted? Senator McKinney. If all Members have voted, the machine is closed. Clerk will announce the result.

THE CLERK:

Motion is on passage of House Bill 5290 in concurrence with the House.

Total number voting, 35; necessary for passage, 18. Those voting "yea", 33; those voting "nay", 1. Those absent and not voting, 1.

THE CHAIR:

kmn
Senate

April 28, 2006

The bill is passed. Mr. Clerk.

THE CLERK:

Calendar Page 8, Calendar 459, Files 456 and 626,
Substitute for House Bill 5011, An Act Concerning
Family and Medical Leave for Foster Parents Who Are
State Employees, Services for Individuals Eighteen
Years of Age and Older in the Care and Supervision of
the Commissioner of Children and Families, Permanency
Plans for Children, and Employment Accommodations for
Members of the General Assembly (As amended by House
amendment Schedules "A", "B", and "C"), Favorable
report of the Committees on Children, Human Services,
Government Administration and Elections, and Labor.
Clerk is in possession of amendments.

THE CHAIR:

Senator Meyer.

SEN. MEYER:

Good afternoon, Mr. President. I move acceptance
of the Joint Committee's Favorable Report and urge
passage of this bill.

THE CHAIR:

On acceptance and passage, will you remark?

Senator Meyer.

H-970

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2006

VOL. 49

PART 7

1989-2296

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House of Representatives

April 19, 2006

On Page 12, Calendar Number 191, Substitute for
House Bill Number 5290, AN ACT CONCERNING NOTICE
REQUIREMENTS FOR LAND USE APPLICATIONS, Favorable
Report by the Committee on Appropriations.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, you have the floor, Sir.

REP. WALLACE: (109th)

All right. Thank you, Madam Speaker. Madam
Speaker, I move acceptance of the Committee's
Favorable Report and passage of the Bill.

DEPUTY SPEAKER KIRKLEY-BEY:

The question is on acceptance and passage. Will
you remark further, Sir?

REP. WALLACE: (109th)

Thank you, Madam Speaker. Madam Speaker,
currently, when an applicant goes before a planning or
zoning commission, they are required by municipality
to put a legal notice in the newspaper, so that people
who are adjacent to their property will know that land
use change is being proposed and is being heard.

This Bill first does one thing. It requires that
the municipality require the applicant to either send
a mailing to adjacent property owners or post a sign

gld
House of Representatives

April 19, 2006

on the property that land use change is being proposed.

Additionally, Madam Speaker, when a municipality initiates a change in its land use regulations, and typically, that's either done when a municipality implements a plan of conservation and development, or some citywide zoning change.

At this point, a municipality is only required to put a legal notice in the newspaper. So what this Bill is intended to do is to provide greater notice to people residing in that town, of zone changes and land use changes that are occurring, so that they can respond as they see fit.

What this Bill, therefore, sets out to do is to establish a registry where interested property owners, electors or organizations can register and be notified when the local planning and/or zoning commission is initiating a zone change.

And additionally, Madam Speaker, the second section of the Bill deletes a requirement that the Planning and Development Committee define what a lake is in the state.

gld
House of Representatives

April 19, 2006

With that, Madam Speaker, the Clerk has an Amendment. It is LCO Number 4198. Would you please ask the Clerk to call, and I be allowed to summarize?

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call LCO Number 4198, which will be designated House Amendment Schedule "A".

CLERK:

LCO Number 4198, House Amendment Schedule "A",
offered by Representative Wallace.

DEPUTY SPEAKER KIRKLEY-BEY:

Will you please summarize, Representative Wallace?

REP. WALLACE: (109th)

Yes, Madam Speaker. Thank you, Madam Speaker. Madam Speaker, the Amendment makes a few technical changes, and then, two broader changes to the Bill. I move adoption.

DEPUTY SPEAKER KIRKLEY-BEY:

The question before us is on adoption. Will you remark? Will you remark on the Amendment that is before us?

REP. WALLACE: (109th)

Madam Speaker?

gld
House of Representatives

002209
172
April 19, 2006

DEPUTY SPEAKER KIRKLEY-BEY:

Yes, Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Madam Speaker, this Bill makes it a little easier for the municipality to establish the registry. It says that when a citizen signs up to receive mailings from the municipality, the registry is up for three years, independent of when the person signs up.

So the registry expires at the end of three years, and then, the person can sign up again for the next three years.

Additionally, the notice can be e-mailed to the registrants, and finally, it holds that the planning and zoning commissioners will not be civilly liable and are granted immunity should the notice not be received by anyone on the register because the municipality is still required to put the legal notice in the paper, so that those people who are interested will either receive a legal notice or will receive information by their signing up on the registry.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

gld
House of Representatives

April 19, 2006

Thank you, Representative. Will you remark?
Will you remark further on the Amendment that is
before us? Representative Ward of the 86th, you have
the floor, Sir.

REP. WARD: (86th)

Thank you, Madam Speaker. Just a quick question,
through you, to the proponent of the Amendment.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, prepare yourself.
Representative Ward, please frame your question.

REP. WARD: (86th)

Thank you, Madam Speaker. Representative
Wallace, I see that there is the ability to do an e-
mail notice, which frankly makes a lot of sense to me,
but if the person that asks to go on the registry
doesn't provide an e-mail address, will they still be
properly on it, and they would receive another form of
notice, through you, or is there a requirement now?

Could the town require, in order to be on the
registry, you have to provide an e-mail address,
through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

gld
House of Representatives

April 19, 2006

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam Speaker, the Bill states that anyone on the registry needs to be mailed, but the Amendment further states that it can be an e-mailing.

If you look at Lines 19 through 21, it says it can be e-mailed, so therefore, depending on how the person signs up on the registry, that will lead the town, the municipality, to either send out snail mail or e-mail, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Ward.

REP. WARD: (86th)

I thank the gentleman for his answer because we recognize that more and more we are using e-mail, and it would certainly save the town money when they have to send a notice out, maybe to 1,000 people, to be able to do it with a blanket e-mail.

But I wouldn't want somebody who is a homeowner, but doesn't have access to e-mail, to be unable to get this notice, but it seems, from my understanding of the answer, it has to be mailed, that it could be accomplished by e-mail, but obviously wouldn't be

gld
House of Representatives

April 19, 2006

accomplished if they didn't have an e-mail address for the person, so that a citizen that doesn't have e-mail would be protected, and with that answer, this Amendment makes sense to me. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Will you remark? Will you remark further on the Amendment that is before us? Will you remark further? Representative Witkos of the 17th, you have the floor, Sir.

REP. WITKOS: (17th)

Thank you, Madam Speaker. A question to the proponent of the Amendment.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, prepare yourself. Representative Witkos, please frame your question.

REP. WITKOS: (17th)

Thank you. Through you, Madam Speaker, the same subsection 3, Lines 15 through 21 of the Amendment states that the notice shall be mailed.

It does not specify as to how it shall be mailed. Would it be registered, return-receipt mail,

gld
House of Representatives

176
April 19, 2006

or just through regular mail? Through you, Madam
Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Through you, Madam Speaker. The intent is
through regular mail, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you. So under this, Madam Speaker, we
would have two sets of different types of mailings.
One is required if you are an adjacent property owner,
you must receive a certified letter.

And then, if you want to be on a public registry,
you just may receive notification via regular mail.

Is that correct, through you Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Through you, Madam Speaker, that is correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

gld
House of Representatives

April 19, 2006

REP. WITKOS: (17th)

Thank you. And, through you, Madam Speaker, what checks and balances do we have that the notice was actually mailed seven days prior to the commencement, if it's just through the regular mail system, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam Speaker, the checks and balances would be if an individual received it or not.

But I would also, through you, Madam Speaker, remark that the municipality is still required to put the legal notice in the newspaper. So this is really a secondary way of notifying anyone who is interested, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, and--

DEPUTY SPEAKER KIRKLEY-BEY:

gld
House of Representatives

April 19, 2006

Representative Witkos, would you please hold for a moment? The House will stand at ease.

(CHAMBER AT EASE)

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos, will you yield to the Majority Leader, Representative Donovan?

REP. WITKOS: (17th)

Through you, Madam Speaker, yes, at this time I will yield to the Majority Leader.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you very much. Representative Donovan, you have the floor, Sir.

REP. DONOVAN: (84th)

Thank you, Madam Speaker. Apparently there are guests waiting to come in, so at this point, I move that this Bill be passed temporarily.

DEPUTY SPEAKER KIRKLEY-BEY:

The motion is for the Bill to be passed temporarily. Are there any remarks? Any remarks?
Hearing none, the Bill is P.T. temporarily.

SPEAKER AMANN:

gld
House of Representatives

April 19, 2006

HILTON ARMSTRONG:

Thank you. I'd like to say thank you again to everybody for the support from everybody here and also the fans that have been with us every time we step on the court, and even off the court, there have been a lot of ups and downs, and you were always behind us through the whole time.

I know, even when we're not in season, you are still thinking about us and hoping everything is all good for us. So with that said, I just want to say thank you on behalf of myself and the team.

(APPLAUSE)

SPEAKER AMANN:

Ladies and gentlemen, one more time for our Husky men 2006.

(APPLAUSE)

DEPUTY SPEAKER KIRKLEY-BEY:

The House will please come back to order. Will the Clerk please call Calendar Number 191.

CLERK:

On Page 12, Calendar Number 191, Substitute for
House Bill Number 5290, AN ACT CONCERNING NOTICE

gld
House of Representatives

221
April 19, 2006

REQUIREMENTS FOR LAND USE APPLICATIONS, Favorable
Report by the Committee on Appropriations.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, you have the floor.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Madam Speaker, I move
acceptance of the Committee's Favorable Report and
passage of the Bill.

DEPUTY SPEAKER KIRKLEY-BEY:

The question is on acceptance and passage. Will
you remark further?

REP. WALLACE: (109th)

Yes, Madam Speaker, thank you. This is the Bill
that requires municipalities to establish a registry,
so that electors, property owners and organizations
can sign up and be notified when the municipality
initiates a land use change.

Madam Speaker, the Clerk has an Amendment. It is
LCO Number 4198. Would you please ask the Clerk to
call, and I be allowed to summarize?

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call LCO Number 4198.

CLERK:

gld
House of Representatives

222
April 19, 2006

LCO Number 4198, House Amendment Schedule "A",
offered by Representative Wallace.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, do you care to remark on
the Amendment?

REP. WALLACE: (109th)

Yes, Madam Speaker. Madam Speaker, the Amendment
has some technical changes and then, two more
substantial changes, and I move adoption.

DEPUTY SPEAKER KIRKLEY-BEY:

The question before us is on adoption. Would you
like to explain the Amendment, Sir?

REP. WALLACE: (109th)

Yes, Madam Speaker. Again, this establishes the
registry. The registry expires every three years,
then, people can re-signup for it, reenlist, re-signup
for it.

Additionally, the Amendment says that should a
person who is signed up for the registry not receive
notification, the Commission is not liable.

Additionally, Madam Speaker, I'm looking, I have
the fiscal note for the Amendment. I just wanted to

gld
House of Representatives

April 19, 2006

look at the fiscal note for the Bill, and I believe it was indeterminate impact. Thank you, Madam.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative Wallace. Will you remark? Will you remark further on the Amendment that is before us? Representative Witkos.

REP. WITKOS: (17th)

Thank you, Madam Speaker. Just a continuation of my questioning from earlier, if I may.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, prepare yourself for questioning. Representative Witkos, please frame your question.

REP. WITKOS: (17th)

Thank you, Madam Speaker. In the Amendment, it states that a person who requests to be placed on the registry shall remain on the registry for a period of three years.

If the party so desires to have their name removed from the registry, would this language be precluding them from doing that, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

gld
House of Representatives

224
April 19, 2006

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. I don't know if the language would legally preclude that from happening. It does not address it, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, Madam Speaker. If I read lines eight through nine of the Amendment, it says once you make an inquiry to ask to be placed on it, you shall remain on the registry.

So I would assume that once you say that you'd like to be on there, there is no way you can come off of the registry, unless three years has expired.

Through you, Madam Speaker, if the proponent of the Amendment could explain the reason why we would allow entities across the country to be placed on a list to have information about what happens in the individual communities wherein they don't reside or have ownership of any property, or are an elector of that municipality, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

gld
House of Representatives

April 19, 2006

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam Speaker, the organization may represent a landowner, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you. So, through you, Madam Speaker, we had, I'll give you for an example, in my community, there were some development regulations that were changed, and it was called the Big Box Measure.

And representatives that came out, that would defeat, say, Wal-Mart, for example, came and descended upon the town, and showed up in town meetings, and spoke in public at town meetings.

Would corporations that prohibit this type of activity, the Big Box movement, urban sprawl, be allowed to come in and speak or get this information on their behalf, even though they are not attached to a landowner, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

gld
House of Representatives

April 19, 2006

REP. WALLACE: (109th)

Thank you, Madam Speaker. Madam Speaker, again, certainly anyone who is on the registry would get that information.

And again, the registry is a way of ensuring that those people who are particularly interested in what's occurring on land use issues in that municipality will be informed of what their government is doing.

Additionally, Madam Speaker, through you, this is secondary to the legal notice that the municipality has to print in a newspaper of general circulation, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you. And I understand that, Madam Speaker, through you, if an entity in Montana wants to know what's happening in different communities in Connecticut, they may search the *Hartford Courant* or one of the other local newspapers that has a circulation that's required under the law.

But my question would be why are we extending this to organizations that have no interest that I can

gld
House of Representatives

April 19, 2006

see, whether they be an elector, a property owner, or organization within that community, to be allowed to be on this registry, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. The good Representative is right. That certainly could be an organization from outside the municipality, but it could well also be an organization from inside the municipality.

For instance, in Danbury, we have formerly the Swamp Field Land Trust, now renamed as the Danbury Land Trust. And their mission, as a not for profit organization, is to preserve land and put it into open space.

I think they'd be very interested in knowing what's going on with land use changes and decisions in, certainly, my city. I know many other municipalities have similar local organizations that are very concerned and very passionate about land use issues.

gld
House of Representatives

April 19, 2006

I think it is fair that they have an opportunity to be as well informed as early in the process as possible, of what government is doing to change the law that will affect them, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, Madam Speaker. And I would concur. I believe that line four in the Amendment, which strikes the word annually from the Bill, does just exactly opposite that.

Because what it says is that let's create a registry and let all of our citizens know about it, but then, after our initial notice, we're never going to tell anybody again about the registry.

We're not going to be required to do that, so if the goal is to let our citizenry know or our electors know that there's a register that they can put their name on, and get this information because they have an interest in it, why in the world would we take the word annually out.

So we do it once, we never have to do it again, and hopefully, people will forget about it, or people

gld

House of Representatives

April 19, 2006

that move into this community wouldn't even know one exists, if they move into this state, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam Speaker, the reason we took out annually is to try and reduce the cost as much as possible, to a municipality, so that we don't create any type of fiscal burden to the municipality.

And again, the municipality is not prohibited from notifying their landowners, electors, organizations, annually, should they choose, but we thought it was an unnecessary burden to make it annually, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, Madam Speaker. And if the thought is to reduce the cost and the burdens on our municipalities, is there a cost associated with this

gld
House of Representatives

April 19, 2006

Bill, through you, Madam Speaker, this Amendment?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Madam Speaker, I have the fiscal note for the Amendment. I'll have to, if you'll put me at ease for a moment, I'll get the fiscal note for the Bill itself.

DEPUTY SPEAKER KIRKLEY-BEY:

Yes, we will. The House will stand at ease for a moment.

REP. WALLACE: (109th)

Thank you.

(CHAMBER AT EASE)

DEPUTY SPEAKER KIRKLEY-BEY:

The House will come back to order.

Representative Wallace, you have the floor.

REP. WALLACE: (109th)

All right. Thank you, Madam Speaker. Madam Speaker, the fiscal note for the underlying Bill, the Office of Fiscal Analysis said the cost was indeterminate, and once the Bill was amended, the

gld
House of Representatives

231
April 19, 2006

Amendment would reduce notification requirements and any associated municipal impact, through you, Madam.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, Madam Speaker, and I thank the gentleman for his answers, and I'll wait to speak further on the Bill.

DEPUTY SPEAKER KIRKLEY-BEY:

Will you remark? Will you remark further on the Amendment that's before us? Representative Chapin of the 67th, you have the floor, Sir.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. As a follow-up, some questions, through you, to the proponent of the Amendment, please.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, prepare yourself.

Representative, please proceed.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. Yesterday, I think it was, we did a Bill that required the posting of plans

gld
House of Representatives

April 19, 2006

of conservation and development updates on a
municipality's website.

Was any thought given to putting a requirement in
this Bill that would notify individuals that such a
registry does exist, by requiring the municipality put
such notice on that website, through you, Madam
Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam
Speaker, we did think, that was discussed, both in
Committee and outside of Committee, and the way we
resolved it was to leave that up to the municipality.

Some municipalities may choose to put it on their
website. Some may choose to include it in their tax
forms. Some may choose to put it on receipts that
people get when they purchase a dog license.

I think there are a number of ways municipalities
could very easily, at little or no cost, notify those
interested that this registry exists, through you,
Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

gld
House of Representatives

April 19, 2006

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. I guess I don't see why, for notification of POCD updates, it was a worthy thing to do, and in this case, why the Planning and Development Committee chose to leave it up to the individual municipalities.

However, I think generally, the Amendment is a good one, and I will be supporting it. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative. Will you remark? Will you remark further? Representative Miner of the 66th, you have the floor.

REP. MINER: (66th)

Thank you, Madam Speaker. I won't ask any questions to the presenter of the Amendment, but I would just like to say, for the record, that the Committee did work very hard to balance the objections of municipalities about the mandate with input that we heard from constituents and folks in the real estate business about changes that are often made at the

gld
House of Representatives

234
April 19, 2006

planning and zoning level with very little notification.

It's that small legal ad that nobody really pays much attention to. And so, while the Bill initially set out to require a lot of mailing, a lot of paper, a lot of notification, it really has been pared down quite considerably to a point at which most of the stakeholders seem either relatively comfortable or relatively uncomfortable.

And I think this is a good place for us to start, and I do hope that people will support the Amendment. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative. Will you remark? Will you remark further on the Amendment that is before us? Will you remark further on the Amendment that is before us? If not, let me try your minds. All those in favor, please indicate by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER KIRKLEY-BEY:

Those opposed, Nay. The Ayes have it. The Amendment has been adopted. Will you remark further

gld
House of Representatives

April 19, 2006

on the Bill as amended? Will you remark further on the Bill as amended? Representative Chapin, you have the floor, Sir.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. Again, through you, some questions to the proponent of the Bill as amended, please.

DEPUTY SPEAKER KIRKLEY-BEY:

Prepare yourself, Representative Wallace. Representative Chapin, please frame your question.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. Prior to our P.T.'ing of this Bill earlier, I thought I heard you say that this notification would be taking place upon the initiation of a zone change. Did I hear that incorrectly?

Does this only relate to zone changes, or does it relate to changes in zoning regulation, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

gld
House of Representatives

April 19, 2006

Thank you, Madam Speaker. Through you, Madam Speaker, it specifically relates to changes in zoning regulations or boundaries, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. WALLACE: (109th)

Madam Speaker, if I may?

DEPUTY SPEAKER KIRKLEY-BEY:

Yes, Representative Wallace?

REP. WALLACE: (109th)

Changes in zoning regulations or boundaries initiated by the local planning and/or planning and zoning commission, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker, and again, through you, so if my zoning commission is contemplating a change in a regulation that might affect my property, whether it affects the adjacent property, in an instance like that, where they initiated such change, then, this would be the opportunity where I would receive

gld
House of Representatives

April 19, 2006

notification through the registry, through you, Madam
Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam
Speaker, that is correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker, and again, through you,
if an applicant, rather than the zoning commission,
thought that a zoning regulation should be changed
that affected my property, and they weren't the
adjacent property owner, would that notification be
available to me through the registry, through you,
Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam
Speaker, this Legislation would not require that
people on the registry be notified when an application

gld
House of Representatives

238
April 19, 2006

is submitted to the Planning and/or Planning and
Zoning Commissions.

Certainly a municipality could choose to send out
notification through the registry on any land use
changes, if the municipality so decided to, but this
legislation does not require them to do so, through
you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker, and again, through you,
so it is possible for an applicant, rather than the
municipality, to put forth the idea of a change to the
zoning regulations that may affect my property.

And just so I'm clear, in a case like that, there
is no requirement in this law that I be notified
through this registry, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. No. There is no
requirement that, in this case, the good

gld
House of Representatives

April 19, 2006

Representative, there is no requirement that the good Representative be notified through the registry.

Many, I dare say all, but certainly many municipalities have other requirements when an applicant comes forward to a local land use board with a zone change.

Often that applicant is required to send out mailings to property owners within 100 feet, 500 feet, so in this instance, Representative Chapin would be notified, through existing law, not impacted by this law, of the zone change, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. Again, through you, is it possible for an applicant on the other side of town to go to the zoning commission and say, I believe all of the property in, in my case, are 60 and one-half zoning, I believe the side yard setback should be changed from 40 to 60 feet.

Is it possible for an applicant to go ahead and make that application to a municipality today, through you, Madam Speaker?

gld

House of Representatives

April 19, 2006

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. I just want to make sure I understand the question, Madam Speaker. And as I understood the question, it's can an applicant go to a land use commission and ask that land use commission to make an extensive change on property not owned by the applicant, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Is that the question you have framed, Representative Chapin?

REP. CHAPIN: (67th)

Yes, that's correct, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Through you, Madam Speaker, I've never served on a land use commission, so I don't know the answer to that question, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. The point I'm trying to make is, I'm not quite understanding why, if the municipality proposes something that impacts my property as it's being regulated, and there's a requirement or an option through this legislation that I receive notification if I'm on this registry.

I'm not quite sure if there's an opportunity for an individual to propose a similar change that affects my property, why that wasn't contemplated in this legislation for a similar notification.

Is there a specific reason that Planning and Development opted not to include all such applications for changes to regulations, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam Speaker, in testimony heard by the Committee, there was not the concern about an applicant going to a land use commission and not complying with existing municipal notification laws, which may include a

gld
House of Representatives

April 19, 2006

mailing to affected property owners, or may include posting up a sign on the impacted property.

The issue that we heard, in the Planning and Development Committee, was when a local land use board, of its own volition and at its own initiative, changes land use and/or zoning regulations on an extensive piece of municipal property.

And so, the issue that we dealt with, well, how can a municipality best inform people who are interested? AT this point, a municipality merely has to put a legal notice in the paper.

With this registry, anyone who might, at any time, be interested in a land use matter, again, initiated by that land use commission, can sign up for the registry.

We believe that will significantly reduce costs to the municipality. It still gives the interested persons and organizations the opportunity to know what's going on in the municipality, and it doesn't interfere with the current laws and regulations a municipality has for applicants going forward to land use commissions with zoning regulations or zone changes, through you, Madam Speaker.

gld
House of Representatives

April 19, 2006

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Madam Speaker. I thank the gentleman for his answers. This is certainly a Bill I have given some thought to. People have asked me, isn't this a mandate on the municipality?

I'm usually one who looks for ways to try to remove those types of mandates on municipalities. In this particular case, I think we have to balance that mandate against what is a perception that there's an erosion of property owner rights.

And I think the Planning and Development Committee has done a good job in creating a piece of legislation that strikes that good balance, and I appreciate their efforts, and I encourage my colleagues to support the Bill. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative. Will you remark? Will you remark further? Representative Alberts of the 50th, you have the floor, Sir.

REP. ALBERTS: (50th)

gld
House of Representatives

244
April 19, 2006

Thank you, Madam Speaker. If I may, I'd like to pose a couple of questions to the proponent of the Bill.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace, please prepare yourself.
Representative Alberts, frame your question.

REP. ALBERTS: (50th)

Thank you, Madam Speaker. I represent five relatively small towns in eastern Connecticut, and I'm interested in exploring the potential costs of the underlying Bill.

I know that the fiscal note refers to indeterminate nature, but perhaps the proponent of the Bill could give us a little bit more information about what aspects of the Bill would require municipalities to have to incur additional expense, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Through you, Madam Speaker, one way of addressing this Bill and legislation, were it to pass, would be each

gld

House of Representatives

April 19, 2006

municipality would likely establish some type of signup sheet, perhaps at the planning and zoning office, at some spot, perhaps, at City Hall.

An interested person, landowner, elector, would go to City Hall, would sign their name on the registry. They may either leave their mailing address or their e-mail address.

Someone would have to establish a database, and at some point, again, when the municipality initiated a land use change, which are very infrequent, they typically only occur when a municipality is going their Plan of Conservation Development, which is once every ten years, or where there is some large change to zoning regulations, which is once every two or three years.

So it's not a frequent occurrence, and the costs would be establishing a database, on a desktop computer, on Excel, adding names to it periodically, and if there is an e-mail service, an ISP that the municipality uses, loading those e-mails into that database.

The notice is already established because one would have to be produced for the newspaper anyway,

gld
House of Representatives

246
April 19, 2006

either scanning it in, or typing it in, or attaching it as a Word document, sending it off.

If it's snail mail, it would have to be copied into envelopes with a \$.37 stamp. Perhaps they'll do bulk mail, if there are 250 pieces or more.

The costs, as we discussed it in Committee, as we heard from interested persons, the cost seems fairly minimal, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Alberts.

REP. ALBERTS: (50th)

And in terms of who would normally do this work, and all five communities I have, at most, one full time individual who is a planning and zoning clerk, in most cases, they are part time.

Is this the person that you would think would be the most likely person that would do this work, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Wallace.

REP. WALLACE: (109th)

Thank you, Madam Speaker. Based on the good Representative's scenario, it seems likely that that

gld
House of Representatives

April 19, 2006

person would be called upon to handle this task as well.

As we discussed it in P&D, and as the good Representative from New Milford said, we, certainly in P&D, we, certainly in this Chamber, are always hesitant to implement mandates on municipalities.

But what I've learned in P&D, Chairing it these past four years, and the discussions that I've had, people really have a right to know what's going on in their government, and what's going on with land use in their municipality.

Because once land is developed, it never goes back. Open space is a critical issue, and providing a way for people to be informed about those changes, I think is vital today, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Alberts.

REP. ALBERTS: (50th)

Thank you. And I thank the gentleman for his responses. I too have struggled with the cost of this and the impact on the local municipalities of the District.

gld
House of Representatives

April 19, 2006

And I do agree with Representative Chapin's perspective that the good in this, in terms of making the public aware of what is taking place outweighs what appears to be the modest cost, so thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY: /

Thank you, Representative. Will you remark further on the Bill as amended? Representative Miner of the 66th, you have the floor, Sir.

REP. MINER: (66th)

Thank you, Madam Speaker. I think, with the questions that have been asked and the answers that have been given, I think we've all come to realize that this is somewhat of a compromise.

I come down on the side of notification, just like the Chairman does. I think government has an obligation.

If they don't make an effort to notify people of what's going on, I think you run into a situation where people feel they've been bamboozled at some point, so I do urge my colleagues to support the Bill. Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

gld
House of Representatives

249
April 19, 2006

Thank you, Representative. Will you remark further? Representative Aman of the 14th, you have the floor, Sir.

REP. AMAN: (14th)

Thank you, Madam Speaker. I urge my colleagues to support this measure. It addresses a major problem that has arrived for many of the landowners throughout the state, especially for our farming community.

They are not people who normally would ever read legal notices in the paper or pay attention to planning and zoning meetings, etc.

But when towns decide, and rightly so, to look at changing their regulations, the people that it impacts most often are the larger landholders.

And this was a way that we felt, through the Planning and Development Committee, that these people could be notified, that they could put their name on a list every three years, update it every three years, and if there was a major change in the regulations, they would be notified of it.

Again, from my experience, most towns do this very, very seldom. It is not something that is going to be a large generator of expense.

gld
House of Representatives

250
April 19, 2006

Some of the proponents originally talked about any zone change whatsoever, or any change in zoning regulations would require a full notification.

If you took that to the extreme, we talked about the fact that if you change a setback, you change where a garden shed would be located, you'd have to notify every person in town, obviously, something very expensive, and not the intent of the Bill.

So I think the compromises that were worked out, that the landowners, the environmental groups, etc., that are very interested, but maybe not the ones who are always monitoring the newspaper, will have a way of being notified, and therefore, I urge my colleagues to support this bill. Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative. Will you remark?
Will you remark further on the Bill as amended? Will you remark? Will you remark further on the Bill as amended?

If not, staff and guests, please come to the Well. Members, take your seats. The machine will be opened.

CLERK:

gld
House of Representatives

251
April 19, 2006

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is taking a Roll Call Vote. Members to the Chamber, please.

SPEAKER AMANN:

Have all the Members voted? Have all the Members voted? If all the Members have voted, please check the board and make sure your vote has been properly cast.

If all the Members have voted, the machine will be locked, and the Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

House Bill Number 5290, as amended by House Amendment Schedule "A".

Total Number Voting	137
Necessary for Passage	69
Those voting Yea	136
Those voting Nay	1
Those absent and not voting	14

SPEAKER AMANN:

The Bill passes as amended. Are there any announcements or introductions? Announcements or introductions? Representative Doyle.

JOINT
STANDING
COMMITTEE
HEARINGS

PLANNING
AND
DEVELOPMENT

PART 1
1-320

2006
INDEX

It continues to get more and more innovative. I learned about CLEAR, as a matter of fact, at a conference out on Ohio. It was an innovations conference on education, and how we teach people about agriculture.

Lo and behold, as I'm walking around some of the educational programming, here was a booth put on by UConn, with folks from CLEAR. I think it's something that we really need to address, especially as they go out and do that nuts and bolts training.

It's something that's very, very necessary, and to be honest with you, we'd like to see even more funding put towards this program. It's very, very important and very, very vital.

As we get into more and more of the issues that we have with Planning and Development, we would certainly hope that as we remember agriculture, as we develop these regs and other legislation, CLEAR is one tool that we can continually put to use to help folks understand that. Are there any questions?

SEN. COLEMAN: Are there questions for Ms. Burr? Seeing none, thank you for your testimony. Christopher Wood is next.

CHRISTOPHER WOOD: Good afternoon, Chairman Coleman, Chairman Wallace, Committee Members, thanks for the opportunity to speak before you today. I am Chris Wood.

I am representing the Connecticut Chapter of the American Planning Association, and I'll

HB 5287

SB 42

HB 5290

HB 5285

SB 39

(HB 5287)

government in Connecticut and the private sector.

We strongly urge the Committee to use this Bill as a means of continuing the State's progress towards improved, coordinated, and fiscally efficient planning by the State of Connecticut.

And we look forward to detailing our views on this matter at the information hearing that Chairman Wallace reference in his introductory comments.

I would note that CCAPA President, Mark Pellegrini, is also here to speak to this bill today, and will provide some additional details on the importance of the bill from our perspective as planners.

I'd like also to speak to Raised House Bill 5290, concerning notice requirements for land use applications. This proposes to establish uniform public notice requirements on applications to land use boards, and for revisions to the land use regulations.

But while we concur with the intent regarding uniform notice procedures for land use applications, the proposal, as we understand it, could have significant fiscal impacts on municipalities in the form of additional mailing and staff costs to issue the notices of land use regulation changes, as the bill proposes.

If in the course of a regulation, the commission determined, for instance, on the

side of caution that a regulation amendment or map change may be significant, or potentially significant impact on property owners, on all property owners in a town, that would require mailing to virtually every property owner in town, which could be quite expensive.

While we can't support the bill as currently drafted, we certainly are available to work with the Committee and staff, to identify fiscally reasonable improvements to the land use notice requirements.

Two specific changes that I think you'll hear more about, that we would suggest you consider, providing that the creation of the notice registry that is included in the bill, would remove the mailed notice requirement, would provide an alternative method to mailing notice to virtually every affected individual in the community.

And secondly, specify that any change that may have significant, potential fiscal impact on a municipality be timed to take effect after the next-- [Gap in testimony. Changing from Tape 1A to Tape 1B.]

--today, quickly. We strongly support the bill you just heard about from a couple of speakers, Raised House Bill 5285, providing funds for the Center for Land Use Education and Research.

And we'd be pleased to work, of course, with the Center, as we already do, OPM and the Planning and Development Committee, to identify and address other opportunities for improving

JOINT
STANDING
COMMITTEE
HEARINGS

PLANNING
AND
DEVELOPMENT

PART 2
321-629

2006

SEN. COLEMAN: Are there further questions? Seeing none, thank you Ms. Monahan. Next is Charles Rothenberger. Charles Rothenberger. If not, Tony Fappiano.

TONY FAPPIANO: Good afternoon, and thank you for this opportunity. My name is Tony Fappiano. I'm speaking on behalf of the 17,000 members of the Connecticut Association of Realtors, as Chairman of the Legislative Committee.

We strongly favor passage of Raised Bill 5290, AN ACT CONCERNING NOTICE REQUIREMENTS FOR LAND USE APPLICATIONS. The major benefit of this proposal, as we see it, is that it provides for better notice to affected property owners about upcoming public hearings that may affect their land.

This is particularly needed in land use actions initiated by municipal zoning commissions and planning and zoning commissions. Many realtors have expressed concern at the inconsistent methods used to inform property owners of proposed changes in zoning regulations or boundaries.

While some towns have, in the past, provided written notice by mail to the affected property owners, other towns observe only the minimum statutory requirement of small legal notices in the newspaper.

As a footnote, I would add that, for your consideration, the fact that not every property owner reads or even receives local newspapers.

Down-zoning proposals, reducing the value of an owner's land, have been initiated, with less than adequate notice to affected owners. In some instances, towns initiate land use changes, but don't follow the same notification rules that they impose on private parties seeking a zone change.

For example, a private property owner seeking a variance of a zoning issue is required to inform all affected property owners, by mail, of the change that he or she seeks.

We feel that this process is a good thing. We also feel that the same obligation to inform, should be required by a municipality who are seeking a change that may affect property owners.

I've enclosed with this testimony, three examples of inadequate notice by a municipality, and in each case, the realtors have taken action to assure public participation.

At the core of this Bill is the new wording found in Subsection D of Section 8-7d. The new wording provides for the following. One, when a town commission, on its own initiative, proposes any significant zoning boundary change, or a significant change to an allowable use or density limit, it will be required to provide for mail notice of any persons who own land that is subject to the hearing, or who own land immediately adjacent to that land.

Two, when it proposes any other zoning text change, it will be required to provide for mail notice to landowners it reasonably determines to be potentially significantly impacted by the proposed change.

And three, when it proposes a change in subdivision regulations, it would be required to provide for mail notice to landowners it reasonably determines to be potentially significantly impacted by the proposed change.

This Bill also makes changes to Subsection a, which affects land use petitions made by private parties to town land boards. The intent here is to clarify and simplify the notification process, and to reduce the opportunity for due process procedural challenges.

Several provisions were added to the Legislation to minimize impacts on towns. Proof of mailing is to be by the less expensive certificate of mailing, not return receipt requested.

Also, town commissions cannot be sued solely on the basis of their determination of who is significantly impacted, in those cases where they have some discretion in deciding the recipients of the notice.

The allowance for land use boards to establish a public notice registry for interested parties wanting notification is still another aid to towns.

Please note that this is not an unfunded mandate on towns. The law already allows them to impose filing fees to defray the costs of publishing hearing notices now.

That concludes my prepared statement. I'd just like to add a personal statement, or a personal anecdote. And I wish Senator Fasano was here.

My 85-year-old father is a retired schoolteacher from the New Haven school system, and he recently received a mailing, which I think further demonstrates the impact and the positive affect that a direct mailing can have.

He received the mailing from his State Senator, informing him of some of the information, and some of the complications associated with his retirement fund.

Now, he could have gotten that information from reading the newspaper. He could have gotten the information from listening to a news broadcast on it, but he really focused in on the information because it was complete, it was concise, and it really explained that situation well to him.

But I think what that does is, and I'm not taking a position on the funding of state retirement funds right now, but I think this underscores the fact that a direct mailing about a specific issue, that specifically impacts the recipient of that mail, is much more effective, and has a much more positive impact on that person than reading a small legal notice that might be published in a local

newspaper, that he may or may not even see, or even bother to read.

Now, if there are any questions, I'd be happy to answer them if I can.

SEN. COLEMAN: Are there questions? Representative Miner.

REP. MINER: Thank you, Mr. Chairman. On the issue of the unfunded mandate, I think you're right, that the commission has the ability to assess a charge to an applicant. What I don't understand is how this doesn't become an unfunded mandate.

TONY FAPPIANO: How it does not?

REP. MINER: Yeah, because the applicant is, in theory, the town.

TONY FAPPIANO: Well, there is already a budgetary process in place in most towns for placing ads in newspapers, and that would be what I would focus on, and I would look at those monies that are being allocated for that purpose, and either redistribute them or work on that budgetary amount of money.

Secondly, we believe that the town, in the long run, will save more money if they're not having to defend themselves from property owners that have been impacted, and feel that they were not properly notified.

So in the final analysis, at the end of the day, we think that there is a strong

possibility that there may be, in fact, a savings to the town by doing this.

The other thing is too, how can anybody really be against better communication? I mean, you're in the communication business. I'm a realtor. I'm in the communication business. The more communication, the better we communicate, the better off everybody is.

And all this bill does is really provide for a better form, or forum, or informational vehicle for people to get the information that is going to impact them, or could potentially impact them.

REP. MINER: There are probably statutory mailings that go out from each municipality to property owners annually, and I'm thinking of the tax bill as one.

In an effort to try and minimize the unfunded nature of this because I don't agree with you on whether it's an unfunded mandate or a funded mandate.

But to set that aside, how about if there was a delay in the implementation of a zoning regulation, that would be consistent with the mailing process, that the town would put out on an annual basis?

So I'm thinking that if zoning commission when through a public hearing process, and said we're going to change the setback requirements in this zone to 60 feet instead of 20, they would have the ability to put that regulation

implementation off for a year, so they can hit one of the mailings they already do. Does that accomplish?

TONY FAPPIANO: Well, I understand what you're saying, but my feeling is that once a process is started, I think that you have to have input from all concerned parties.

And in order to do that, you need to better inform them that there is a forum, where they can actually speak, and they can talk about what's going to happen, whether it be six months, nine months, or a year down the road.

The other thing is, I watched your telecast of, I think it's called the Economic and Community Department, sometime last week. And I feel that this bill is consistent with some of the goals, in that they're trying to businesses and expand population within the State of Connecticut.

Many of the relocation families that we deal with, come in to Connecticut, they look at property, but don't actually end up living here for perhaps as long as six months or nine months down the road, based on their own employment situation, as well as other factors that come into play.

So it's conceivable that somebody could come in here on January 1st, look at property in a certain neighborhood, and come back on October 1st, and find that while they were away, things were happening with an adjacent, or a parcel of land down the street that could, in some way,

negatively impact the choice that they had made when they came to town.

So even though you set up a delay, what has to happen is that, if you're going to have people comfortable, all we need to do is improve a, the vehicle for communication, and b, allow them to participate in the process.

And I just think that that's what this is all about. I mean, that's what this hearing is about. You're allowing everybody to speak from their particular perspective, so that you can make a decision and a conclusion at the end of the day.

That's all this bill does. It allows people to speak their piece, and participate, and make sure that they're aware that the process is happening.

REP. MINER: I'm not in disagreement with you at all about the principle under which this is drafted. I'm trying to address the concerns that municipalities have, that more often than not, we pass Legislation that obligates them to do something that they did not anticipate.

And this morning at about 8:30 o'clock a.m., I took the position that I think we have an obligation to let the town know what's going on within the town.

So whether it's an unfunded mandate that's warranted, or an unfunded mandate that's not warranted is a matter of some future discussion, but I agree with you that I think,

from time to time, both the state and local officials pass things and don't really understand the consequences of what they've done.

TONY FAPPIANO: Okay. I would just add one more notion for your consideration on that point, and that is that we're not talking about a large amount of money here.

We're talking about people, in the cases of the realtors informing people, I think the most that we ever had to inform was 120 people, by mail.

So if you calculate the cost of that, it's relatively small, relative to the benefit. Secondly, when a zoning change or something that affects the entire town, or the entire zoning regulations of a town, this bill does not require mailing.

All this bill says is, they have to have the information available through the statutory minimum requirement. So bottom line, we're not talking about a lot of money here.

It's not an unfunded mandate relative to some of the major issues that you've had to deal with in the past. This is a small amount of money relative to the benefit, in our opinion.

REP. MINER: Would you point out to me, where in this bill is doesn't require for a town-wide change in regulation?

62

gld

PLANNING AND DEVELOPMENT

February 22, 2006

TONY FAPPIANO: It's in Subsection D. On my e-mail it's page 23. I'm sorry, what's the line again? 95, 96 and 97.

REP. MINER: I may be wrong here, but that speaks to densities. For instance, if there was a setback regulation change that was town-wide, would they still be exempt from the mailing?

TONY FAPPIANO: As it was explained to me, and I'm not an attorney, I'm not you Legislators.

REP. MINER: He'll speak up. Don't worry about it.

TONY FAPPIANO: This would exempt them. Don't hold it against me. As I described earlier, I think they are exempted from having to send out town-wide mailings, for issues that affect all citizens and all property owners in the town.

SEN. COLEMAN: Further questions? Representative Ryan, and then, Representative Aman.

REP. RYAN: Representative Miner had so much fun starting this line of questioning, I just wanted to follow-up here, and I appreciate your concern about notice.

And I can't help but think if, gosh, the General Assembly was required to send notice by mail to every taxpayer in the State, that we're upping their taxes next week, think how happy the Postal Service would be with us.

But on the topic of mailing here, just suppose, with the last topic you were discussing, the zoning folks in a small place like New Haven,

for instance, wanted to change something that affected people in a residential zone.

Let me make an easy one up here. They were concerned about maybe it's not easy to compute the number of parking spaces you have to have for residence units.

And if you had to send notice to everybody who's in a residential zone in New Haven, I can guess what the folks might think. And I'm just wondering, could you give us some input, since as Representative Miner said, we're in the habit of passing these things, and other people have to react to them.

And I agree with your concept. Notice is good, but could you give us some viewpoints today, or at some point, about what you might think would be an insignificant impact here because the magic word is significant.

Any town council or corporation council, if you ask them, is going to say, any change is significant, mail it out, so we don't get sued. I'm just wondering, could you give us some thought or some comment down the road about what might be the sort of thing nobody contemplates that you've got to send a letter out to thousands of people on this? Thank you.

TONY FAPPIANO: I don't know who wrote this. Significant obviously can be problematic in the future. What I'd suggest is that the local commission, the local planning commissions, decide within their own situations.

For example, of the example you used, the City of New Haven versus the Town of Guilford, the notification expense and so forth could be substantially greater in New Haven, so the Planning and Zoning Commission of the City of New Haven, and the Planning and Zoning Commission of the Town of Guilford would have to decide for themselves what is significant.

That said, if that becomes a problem, and you end up with a mish-mash of interpretations and definitions of the term significant, then it has to come back to you, and you have to redefine that, and zero in on what actually makes more sense.

In the sense that I'd like to see this be passed, I'm acceptable to the term significant as ambiguous as that may be. I think it's okay.

REP. RYAN: And just to follow-up, if I could, Mr. Chairman. I think another part of perhaps the unfunded mandate part of this, might be the next section, which is section two.

If any zoning text change is proposed to be required to landowners, it reasonably determines, you notice we love words like significant and reasonably, and some lawyer will make money off those.

But to be potentially significantly impacted by the proposed change, and I have to meet with a zoning official tomorrow morning at 8:45 o'clock a.m.

And if he's looked at this, I can hear what he's going to say. I don't have enough staff people now, and how am I going to figure out which 100 people are going to be on the list of landowners in this particular zone that might be impacted. So if you have any thoughts on that, let us know.

TONY FAPPIANO: How are you going to determine, well, I would assume that everybody is potentially impacted, and really what you're looking for is input from all people, from all persuasions, and all interest levels.

So again, we're not talking about the end product. We're not talking about whether the provision gets passed or doesn't get passed.

What we're talking about here is just letting people know that there is a provision under consideration, and that, if they have an interest, if they feel that they could be impacted, they should show up.

So you take a neighborhood that's adjacent to a large parcel of land that was formerly zoned residential, and is now being considered for commercial use, in order for a town to increase its tax base.

I mean, to me, that's fairly clear. People down the street, and around the corner, and on the back side of it have to be notified. And whether or not it's a good thing or not, remains to be seen.

That's what the process is all about. But the important part of this Bill is that, the people that are potentially impacted by this are notified and have an opportunity to participate in the process.

REP. WALLACE: Representative Aman?

REP. AMAN: Yes, first of all, I am very much in favor of the notification to people when land use changes are done, but also as a former municipal official, I'm looking at line 74, section 2 that says, for any proposed change or a zoning regulation not subject to subdivision would have to be notified.

And I think what people are trying to say up here is, your Planning and Zoning Commission decides to change your zoning regulations on accessory apartments. I don't think that's what you're really concerned about.

But as these are currently written, I would interpret that, that anybody that has a home would have to be notified because whether they could build an accessory apartment in their home, or their neighbor could, would be a very significant impact.

And I think that's what, as a group, we're trying to say. What we're trying to avoid is that type of notice, and what I would like to be able to get from you and from the other organizations that are advocating it, is a more specific time of when the town must notify.

If it's a major up-zoning of an area, I think that's something that's very clear. But I don't think that we want to get involved in a change of the regulation of where doghouses can go on a residential lot, needs for the City of New Haven to send out 50,000 certified letters.

TONY FAPPIANO: Well, again, my understanding of those lines that were described earlier is that the town would not be required to send out a town-wide mailing.

That we're really talking about, you know, if there were a change in zoning regulation where all available land in the town was going to be up-zoned to a minimum lot size of four acres, I don't think you would need to do any mailing.

I think there would be enough publicity in the newspaper. I think people would be aware of that, and I think you'd have every farmer, you'd have every large tract owner, everybody that owned anything other than one building lot would show up, and that public hearing would go on for days.

I don't think it's necessary, and this Bill does not require it. So if it's a change that impacts everybody, as I understand this Bill, it does not require any type of a mailing, just the normal, existing, statutory minimum requirements would be required.

REP. AMAN: Thank you.

REP. WALLACE: Thank you. Any further questions? Seeing none, thank you for your testimony.

REP. WALLACE: All right. Thank you. Are there other questions? Seeing none, thank you for your testimony.

CHUCK SHEEHAN: Thank you, Mr. Chairman.

REP. WALLACE: Fred Knous, followed by Glenn Chalder.

FRED KNOUS: Well, good afternoon, Chairman Wallace, Members of the Committee. My name is Fred Knous. I'm the Government Affairs Director for the Middlesex Shoreline and Eastern Connecticut Realty Associations.

We represent more than 2,300 realtors in 400 offices working in 51 towns. We welcome the opportunity to offer some brief comments on behalf of the Association, in support of Raised House Bill 5290.

One of our concerns with the current public notice requirement, as a prior speaker noted, is that many of our residents who are impacted by the decisions of land use boards, are not aware of the proposed changes.

Many towns have split print media, three different daily papers, a weekly paper, serving a town. So to begin with, the majority of the residents wouldn't even have an opportunity to see the public notice, and again, I know you're aware, the public notices themselves are rather small.

In some cases, people probably have trouble reading them, and the average person doesn't go

through the newspaper, looking at public notices.

In our role, we frequently attend and provide testimony before various land use boards in the towns we represent. And we've noted that if a proposed change is not widely publicized, occasionally you'll have an issue where the newspaper might pick it up, and it becomes a second or third page item, and more people are aware of it, but that doesn't happen very often.

But when it's not widely publicized, there is very little input. Public input tends to be minimal, their awareness is minimal. Occasionally as a public service, we sometimes mail out a notice to homeowners who might be impacted by proposed changes.

When we do that, we've noted that the attendance goes up dramatically, and there is a lot more public input. That's been our experience every time we've done that.

When local boards and commissions initiate policy change, it's imperative to remember the impact these changes can have on town residents.

Parents who might want to provide a building lot for a son or daughter might be precluded from doing that. A resident who's looking at land that they own for retirement purposes, again, might find their retirement income reduced or eliminated.

81
gld

PLANNING AND DEVELOPMENT

February 22, 2006

Finally, we just feel that home and property ownership is viewed as such an important right, that we have an obligation to make every effort to ensure the government notifies citizens, so they'll have an opportunity to, at least, voice their opinions. Thank you.

REP. WALLACE: Thank you. Any questions? Seeing none, thank you for your testimony. Glenn Chalder, followed by Mark Pellegrini.

GLENN CHALDER: Good afternoon, Chairman Wallace, Members of the Planning and Development Committee. My name is Glenn Chalder. I'm a Planning Consultant. I work in a number of municipalities around the State of Connecticut.

SB42
HB5290

I'm here today to speak in favor of Raised Senate Bill 41, which is the adoption process for plans of conservation and development. I was involved in the development of this language prior to last year's change, and it had been worked out in a way to promote public participation in the process of preparing a plan, and public notification of what was in a plan.

Last year the process was changed for adoption, which put in a sort of second phase of adoption, subsequent to the Planning Commission acting on a plan of conservation and development.

In two communities we've worked in, it's created a great deal of confusion amongst municipal attorneys and others, and really

bringing together of people with different interests and insights.

And we think there are a lot of benefits that could accrue to the state from a similar type of thing, and a task force to study that issue, I think would be a positive step in that direction.

Finally, in terms of the notice bill which has received a lot of comment on today, I also agree with the concept of notification, in terms of zone changes, and things like that, but I think the mechanics in this bill are possibly, create a lot more problems.

HB 5290

I think there will be more appeals based on this, in terms of the issue of what does the word reasonable mean, what does the word significant mean, and so, as a result, if anybody for any reason is concerned about a land use action, they're going to file an appeal on that basis.

And we're going to go to court, and it may go all the way through all three levels of court. So I believe that notification is an important concept. People need to know. I'm not sure this is the vehicle to do it. So with that, I've taken enough of your time. I'd be happy to answer any questions.

REP. WALLACE: Thank you. Any questions?
Representative Miner.

REP. MINER: Thank you, Mr. Chairman. Earlier we talked about variances, and the requirement in

a variance process to notify, I think it's persons maybe within 500 feet of the property.

If we make folks have that obligation in the private sector, why shouldn't we make municipalities do the same thing?

GLENN CHALDER: I think the question gets down to what is the measurable standard as to what sort of notification and things is required. I think different communities do different levels of notification. There is the minimal legal notice requirement in the paper today.

Some committees require an applicant to notify abutters. Sometimes those situations get appealed because, if I was the town and you were the applicant, my regulations would require you to notify all the abutters and submit the certificates of mailing.

But if you miss one, you don't get appealed. I do. I end up defending your lack of due process, that somebody was denied. So we open a Pandora's box of issues related to who did or did not receive notification.

I have heard of examples where people are supposed to be notified by certified mail, but refused to sign for it, so they can say, I didn't get notice.

These are situations, again, these are far out there. I agree with the concept of notification. The issues of land use, as you all well know, are so important in our community.

I'm not sure that this particular process right now is the way to go, and I think we should all seek ways to try and improve that process. I'm just not sure that this is the right way to do it.

REP. MINER: So in terms of other recommendations of how we could make the process better, there's no, do you have any suggestions, if this isn't the answer?

GLENN CHALDER: I think that communities may require notification. Written notification is already in the statute. The issue of signs, some communities use signs quite effectively for locations, again, this is an application from a private party.

I think on the public side, there are some communities that offer a subscription basis. Let's see what happens, in terms of planning and zoning agendas.

So you automatically get whatever is on the agenda, and you pay for this, so that there is no fiscal impact on the municipalities. But requiring that everybody in the community be notified on a regulation change, or everybody in the zone can just open up a whole host of issues.

I wish there was a better way. We'll put our thoughts together, and see if we can come up with something before your J.F. deadline, and see if we can work with the staff on that.

REP. MINER: Thank you. I'm trying to be sympathetic to the municipalities' concerns about costs, and I think you make a good point about opening up another opportunity for a challenge.

At the same time, you know, if you require me, if a municipality requires me to send out a notice because I want to be six inches inside that 40 foot setback, at the same time we've got municipalities saying, we're going to make that setback 60 feet rather than 20, and nobody has to know.

They may know, if the local newspaper goes to that meeting on a regular basis, but--

GLENN CHALDER: Maybe that's what we should require, is the newspaper, no, I understand. I think the idea here is that presumably the community and the commission is acting in the public interest, and again, we do work with a number of communities around the state.

And I find that to be the case, that they look at their land use and their zoning, and they try to do things which they think are the best things for the community in the long run.

Some of these issues that they face are extremely difficult because they do affect people's property and property rights, but they're trying to do the right thing.

Notification as to what they do, sometimes there is community access television, sometimes there isn't. They try to get press releases

87
gld

PLANNING AND DEVELOPMENT

February 22, 2006

into the paper. Sometimes they're run, sometimes they're not.

The issue we had some concern expressed about this Bill, for a community that basically has one residential zone. And they were concerned that this could require that on anything, such as if we're going to change the side yard setback from 20 feet to 15, so we no longer have the six inch variance request, which would perhaps be the right thing to do, or they believe it's the best thing.

It would require them to notify, I forget what the number of households, 3,000 or 4,000 households in the community. And that's money that they don't have in their budget.

And so, the question is well, is that reasonable? And if somebody doesn't like it, they're going to, it's very difficult as to what's reasonable. But I'm just very concerned about the due process issues.

REP. MINER: Me too. Thank you.

REP. WALLACE: Any other questions? Seeing none, thank you for your testimony.

GLENN CHALDER: Thank you.

REP. WALLACE: Mark Pellegrini, followed by Glenn Moore.

MARK PELLEGRINI: Good afternoon. Thank you, Chairman Wallace and Committee Members. My name is Mark Pellegrini. I am the President of

3842

97

gld

PLANNING AND DEVELOPMENT

February 22, 2006

REP. MINER: So state property and commercial currently require--

GLENN MOORE: Any state agency or commercial enterprise that begins installation of an automatic lawn sprinkler system on or after October 1, 2003, shall equip such sprinkler system with a rain sensor device.

REP. MINER: Thank you.

REP. WALLACE: Yes, I'd remind the Committee that [inaudible] showed leadership on this issue three years ago, and here we go again. Any other questions? Seeing none, thank you for your testimony. Bill Ethier, followed by Sandy Breslin.

BILL ETHIER: Thank you, Representative Wallace, Members of the Planning and Development Committee. My name is Bill Ethier. I'm with the Homebuilders Association of Connecticut.

I've submitted written testimony on five bills. I'd be happy to answer questions on any of the Bills before you today, but quickly going through the five bills that I've submitted written testimony on, we support Raised House Bill 5285, that's the bill providing funds to the CLEAR office at UConn.

We can confirm basically everything that Chet Arnold said. We work closely with him. He's presented to our groups, and it's a great office. It's a small step in the right direction, to add this funding.

HB 5043

HB 5287

SB41

HB 5290

We strongly support that bill. We think it's a great improvement to the process of adopting local plans. We agree with the planners on that, however, as we state in our written testimony, we do have two suggestions for language to add to that bill.

The changes that are made in that bill, unfortunately, I hope inadvertently, would deny due process to applicants to planning commissions that want to make changes to the local plan.

The way the bill is drafted, there is no requirement to ever hold a public hearing or ever proceed on the application. So we would respectfully ask that you put in a timeline for a public hearing on those types of applications to change local plans.

We suggested 90 days. That seems to fit with the existing, in the changed language about a 65-day referrals out to other groups, so we would hope you would do that.

We also think it's prudent for insignificant changes to the local plan, to not require a public hearing at all, and we added some suggested language on that as well, just to improve again, the local process.

I'd like to spend the rest of my time on Raised House Bill 5290, the notice bill in zoning. That's a top priority for our organization, and I just want to go through and explain in a little more detail, and I think I have an

answer to address some of the questions that were raised about the potential impact on towns.

But understand that that bill does two things, two really separate things. The first deals with the public notice requirements on applicants.

When people apply to local land use boards or wetlands commissions, as you have heard, there is a wide variety of requirements to notify the public about the pending application, certified mail, certificate of mailing.

Some towns, I think it's the Town of Madison, doesn't require any mail notice, to all number of adjacent people, to people within 100 feet, people within 500 feet.

There are all kinds of requirements out there, and a lot of those requirements have a lot of procedural pitfalls built into them, and has been mentioned, they can really mess up the process.

Procedural due process claims is the largest type of land use litigation that we have in this state, and a lot of those procedural due process claims come from inadvertent, defective notice requirements.

So if the first part of this bill, what it would do is make uniform and clarify the notice requirements that applicants would have to abide by, and I don't think there's been any objection to that piece of the bill.

So even though most of the discussion has gone on the second part, I urge you at least to go forward with the first part of that bill.

The second part of the bill deals with when local ordinances, zone changes, zoning text amendments are proposed by the local commissions themselves.

What should be the local requirements on those boards, beyond just the newspaper notice that they currently do which is not effective notice.

There are several things in the language of this bill that I'd want to point out. We believe that the requirements are not significant on towns, the way it's drafted.

There is an ample amount of discretion on the amount of local boards to determine when an issue is significant, who might be significantly impacted, and contrary to what was said earlier, the way the bill is written, you cannot appeal those decisions.

So they're un-appealable decisions, so that even gives more discretion and more leeway to local boards to do what they want to do.

Earlier the question was asked, I think by Representative Miner, in response to a comment, that if a zone change for example would affect the entire zone, every zone in the town, the Bill does say that the town does not have to do those mail notice requirements.

I mention, lines 95 to 97, and I got a frown from Dr. McCarthy, who, I know when I get a frown from him I'm usually wrong, and actually I got the lines right, but what's wrong is the language of the bill.

The language of the bill actually does not provide that, so I would suggest some changes in that. If you look at line 94 and 95, it refers to subsection (a) of this section.

It really should refer to subdivision one of subsection (d), to make sure that that exemption would apply. So that if a zone change is proposed town-wide, the town would not have to comply with these.

But I have even a better answer for towns that, an easy way for towns to comply with this. If you look at lines 97 through 106, that's the new language this year that was not in last year's bill.

And I would point out, last year's bill passed this Committee, passed the Insurance and Real Estate Committee, it passed the Senate on consent, and it almost passed the House, it just ran out of time on the last night, so it's been through the process.

This new language would set up this public notice registry. I think you need a change in line 97, to make sure that, you know, it would be our intent, that a town could comply with all these requirements when they propose

things, just by mailing notice to people who are on the public notice registry.

So they wouldn't have to go through the decision of deciding what's significant, who's significantly impacted. The onus would then be on electors in the town, residents of the town, as we say, organizations perhaps in town, or otherwise, such as us, the realtors, and environmental groups that want to get on the public notice registry.

The onus would be on them to put their name there, and they would be the folks to receive notice, and that's how the town can satisfy the requirement.

So you need to put, in order to make sure that they can use that to satisfy it, put in order to comply with this subsection, after the period on line 97, and that solves the problem for the town.

So we would make that suggestion. I mentioned that in my testimony, that language in the line number, so I would stop there, and be happy to answer any questions on this or any of the other bills.

REP. WALLACE: Thank you. Any questions?
Representative Ryan.

REP. RYAN: Thank you, Mr. Chairman, and Bill, thank you for [inaudible - microphone not on]

BILL ETHIER: That's how I read the bill, and I think that's just unconscionable.

REP. RYAN: And so, you're finding it would be a better policy and a strategy for the land use entity to be able to tell somebody, well, you know what you're contemplating, why don't you bring all of your potential [inaudible - microphone not on].

BILL ETHIER: Yes, absolutely. I mean, interveners, I mean, I've been involved that process. Sometimes interventions have legitimate concerns that are not raised by either the commission or the party, and they should be addressed.

Other times, in my view, they're not legitimate concerns, but if you're going to intervene in the administrative process, you should be within the statutory timeframe, get in early, so that both the commission and the applicant can respond to those concerns.

Interveners could also come in after the decision, intervene, and appeal. So they have that opportunity as well, under our laws.

REP. RYAN: And if you're intervening in a manner that's contemplated in the bill, theoretically, one of the conditions could have started on a topic, gotten to whatever they think [inaudible - microphone not on].

BILL ETHIER: You get out of sequence, and what happens if you've had a public hearing, you've closed the public hearing, and you've got 35 days to make a decision, and on the 34th day

somebody intervenes in the application, what do you do?

I mean, do you, there's no, the statute doesn't allow for you to open up the public hearing again. How does the applicant respond to the issues raised in the intervention? It's just, it's a recipe for a lot of mischief, and more delays than just the 35 days contemplated in the bill.

REP. RYAN: Thank you.

REP. WALLACE: Any other questions? I would ask that, should you choose to speak to our Chris Wood, and see if you can perhaps work together on some language for Senate Bill 41. I think that would be helpful.

BILL ETHIER: Absolutely.

REP. WALLACE: That would be great. Any other questions? Seeing none, thank you for your testimony.

BILL ETHIER: Thank you.

REP. WALLACE: Sandy Breslin, followed by Robert Fromer.

SANDY BRESLIN: Good afternoon, Chairman Wallace, Members of the Committee. Thank you for the opportunity to speak to you this afternoon. My name is Sandy Breslin. I'm the Director of Governmental Affairs for Audubon Connecticut.

HB 5286

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TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

PLANNING & DEVELOPMENT COMMITTEE

February 22, 2006

The Connecticut Conference of Municipalities appreciates the opportunity to testify on the following bill of concern to towns and cities:

R.B. 41, "An Act Concerning Municipal Plans of Conservation and Development"

R.B. 5290 would make substantive and technical changes to the process by which local plans of conservation and development are adopted.

As the Committee well knows, the General Assembly passed Public Act No. 05-205 just last session. This law enacted important changes to local, regional and state plans of conservation and development – changes to which towns and cities are still adjusting. CCM urges the Committee to allow those changes to be implemented -- and evaluated before making additional changes.

Note: Public Act 05-205 enacted several changes contained in the Blue Ribbon Commission on Property Tax Burdens and Smart Growth Incentives. However, legislation enacted so far has involved changing plans of conservation and development, not the other essential part of the equation – state investments to towns and cities to reduce property tax burdens and encourage smart growth.

For example, the Commission recommended several proposals to reduce the over-reliance on the property tax (which can lead to unwise land use decisions), including increasing the "equity, stability, and sufficiency of the state-local revenue system". Such proposals have yet to be enacted by the General Assembly.

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If you have any questions, please call Ron Thomas or Jim Finley at (203) 498-3000.

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FEBRUARY 22, 2006

PLANNING AND DEVELOPMENT COMMITTEE

RHB - 5290: AN ACT CONCERNING NOTICE REQUIREMENTS FOR LAND USE APPLICATIONS

SUMMARY: RHB-5290 proposes to make uniform public notice requirements on applications to land use boards and to require notice to owners of land immediately adjacent to property that is the subject of land use applications.

ANALYSIS: This bill would authorize regulations for "additional" notice of a hearing on a land use application. While the proposed language specifies that a commission, board, or agency "may" provide for additional notice, it goes on to say that such regulations "shall" include mailing or posting provisions. It is not clear whether such notice is intended to be required by the statutes, or remains discretionary. The draft language does make clear that proof of any such notice is by certificate of mailing, which is more economical and as effective as certified mail, return receipt requested.

Additionally, the new notice procedures for zoning regulation, zone boundary changes, and subdivision regulation changes do not define what constitutes a "significant" change or "potentially significantly impacted" property owners. Similarly, a change to a zoning regulation, zoning map, or a subdivision regulation could be reasonable determined to affect every property owner in the town, requiring excessively expensive and administratively unrealistic notice requirements. Notwithstanding the later clause in the proposed bill barring legal challenge of a decision regarding required notice, land use agencies will be placed in a difficult position when challenged on notice requirements, leading them to err on the side of caution.

FISCAL IMPACT: This bill could have a significant fiscal impact on municipalities in the form of additional mailing and staff costs to issue notices of land use regulations and map changes.

CCAPA POSITION: CCAPA strongly opposes RHB 5290 as currently drafted. Although we concur with the intent regarding uniform notice of land use applications, the provisions regarding notice of changes to zoning regulations, zoning maps, and subdivision regulations raise several concerns including the appropriate criteria to be applied by commissions and the likelihood of significant costs to municipalities.

RHB 5290: An Act Concerning Notice Requirements for Land Use Applications
CCAPA Testimony February 22, 2006
Page 2

Two modifications would make the bill more acceptable:

1. Provide that creation of the notice registry would remove the mailed notice requirement for regulation changes.
2. Specify that any change that may have a potential fiscal impact take effect after the next municipal budget cycle to permit incorporation of incremental costs.

CCAPA supports proper and effective notice of all public actions and will be pleased to work with the Committee and its staff to identify possible improvements to notice requirements for land use actions without creating expenses that cannot be recovered.



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Statement on

H.B. 5290 (Raised) An Act Concerning Notice Requirements for Land Use Applications ... Strongly Support

Submitted to the Planning and Development Committee
 February 22, 2006

By

Tony Fappiano

Chairman, Legislative/Political Affairs Committee

Good Afternoon. My name is Tony Fappiano and I'm speaking on behalf of the 17,000 members of the Connecticut Association of REALTORS® as chairman of its Legislative Committee.

We strongly favor passage of Raised Bill No. 5290: An Act Concerning Notice Requirements for Land Use Applications. The major benefit of this proposal is that it provides for better notice to affected property owners about upcoming public hearings that may affect their land. This is particularly needed in land use actions *initiated by municipal zoning commissions and planning and zoning commissions*.

Many REALTORS® have expressed concern at the inconsistent methods used to inform property owners of proposed changes in zoning regulations or boundaries. While some towns provide written notice by mail to the affected property owners, other towns observe only the minimum statutory requirement of small, legal notices in the newspaper. As a footnote, I would add for your consideration the fact that not every property owner reads or even receives all local newspapers.

Downzoning proposals, reducing the value of an owner's land, have been initiated, with less than adequate notice to the affected owners. In some instances, towns initiate land use changes but don't follow the same notification rules they impose on private parties seeking a zone change. For example, a private property owner seeking a variance of a zoning issue is required to inform all affected property owners by mail of the change that he or she seeks. We feel that this process is a good thing; we also feel the same obligation to inform should be required by municipality seeking a change that may affect property owners.

I have enclosed with this testimony three examples of inadequate notice by a municipality. In each case, REALTORS® took extra action to assure public participation.

At the core of the bill is the new wording found in subsection (d) of Section 8-7d. The new wording provides for the following. (1) When a town commission, on its own initiative, proposes any significant zoning boundary change, or a significant change to

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an allowable use or density limit, it will be required to provide for mail notice of any hearing to persons who own land that is the subject of the hearing or who own land immediately adjacent to that land. (2) When it proposes any other zoning text change, it will be required to provide for mail notice to landowners it reasonably determines to be potentially significantly impacted by the proposed change. (3) When it proposes a change in subdivision regulations, it will be required to provide for mail notice to landowners it reasonably determines to be potentially significantly impacted by the proposed change.

This bill also makes changes to subsection (a) which affects land use petitions made by private parties to town land use boards. The intent here is to clarify and simplify the notification process and to reduce the opportunity for due process "procedural" challenges.

Several provisions were added to this legislation to minimize impacts on towns. Proof of mailing is to be by the less expensive certificate of mailing (not return receipt requested). Also, town commissions cannot be sued solely on the basis of their determination of whom is significantly impacted in those cases where they have some discretion in deciding the recipients of the notice. The allowance for land use boards to "establish a public notice registry" for interested parties wanting notification is still another aid for the towns. Please note that this is not an unfunded mandate on the towns. The law already allows them to impose filing fees to defray the cost of publishing hearing notices now.

Thank you for your consideration. Are there any questions?

EXAMPLES OF INSUFFICIENT NOTICE BY MUNICIPALITIES OF LAND USE CHANGES

Lisbon (2004): Planning and Zoning Commission's proposed text amendment increasing minimum lot size to 5 acres draws ire of so many landowners - who felt circumvented by the process (hearing had already been closed) - that it was necessary to relocate the Commission's meeting to a gym. The turnout was due in large part to a REALTOR®-sponsored mailing to landowners (who own more than 5 acres) informing them of the proposed change.

Clinton (2004): Planning and Zoning Commission attempts on a second try to increase minimum lot size from ½ acre to 3 acres in one section of town. This followed previous failure on technicality. Scores of property owners showed-up at the public hearing to speak against the change. They also criticized the inadequate notification process and expressed appreciation for a REALTOR®-sponsored mailing (sent to 120 owners) as they would otherwise not have shown up. The Planning and Zoning Commission went back to the drawing board.

Cheshire (2005): Proposed zoning text amendment would increase percent of open space set-aside in certain subdivisions. A REALTOR-sponsored mailing was sent to landowners (who own more than 5 acres) informing them of a third hearing scheduled for May.



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February 22, 2006

To: Senator Eric Coleman, Co-Chairman
 Representative Lewis J. Wallace, Co-Chairman
 Members of the Planning and Development Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 5290, AAC Notice Requirements For Land Use Applications**

The HBA of Connecticut is a professional trade association with almost one thousand three hundred (1,300) member firms statewide with tens of thousands of employees. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We also created and administer the Connecticut Developers Council, a professional forum for the land development industry in the state.

We strongly support as a top priority RB 5290 – But with one important change.

An essentially identical bill passed the Planning and Development Committee and Insurance and Real Estate Committee and the full Senate on consent last year and simply ran out of time in the House on the last night of the session (see SB 1080, 2005 regular session).

RB 5290 will create two very important and necessary changes to the public notice requirements in the local land use process. First, it will make uniform and clarify the public notice requirements that applicants to local land use boards must follow. This will substantially reduce the potential for procedural due process litigation, the largest portion of all land use legal claims, and thereby save both municipalities and applicants tremendous financial resources. Second, it will add needed public notice provisions for land use changes proposed by the local land use boards themselves (i.e., not applicant initiated).

With few exceptions, when an individual or firm initiates a zone change petition or other type of application or request falling under C.G.S. sec. 8-7d(a), the applicable local regulations require additional notice beyond the statutorily required newspaper notice. This additional notice is typically mail notice to potentially interested property owners and abutters, or prominent sign postings on the subject site that are visible from the roadway, or both. RB 5290 maintains the local discretion to require such additional notice, as it should since not all such applications, petitions or requests may require this additional and expensive notice (see lines 17-19 of the bill).

However, when changes are proposed to zoning regulations, the zoning map boundaries or subdivision regulations by the planning and zoning commissions themselves, the commission is exempt from the notice and other requirements of

Representing the Home Building, Remodeling and Land Development Industries In Connecticut
"Enhancing Our Member's Value to Their Customers and Our Industry's Value to Society"

C.G.S. sec. 8-7d(a) due to C.G.S. sec. 8-7d(d) (see line 63-106 of the bill). **Zone changes, as well as changes to other types of land use regulations such as subdivision regulations, can have a drastic impact on the property rights of affected land owners. These property owners deserve to know what their local zoning or planning boards propose to do with or to the owners' property.**

The uniformity and clarity proposed by the bill is as follows.

Notices should not be required to be sent to people who occupy land that is the subject of a land use change because it can be difficult to identify occupants in a multiunit residential or commercial building and the failure to get everyone is a jurisdictional defect rendering any action taken invalid. Thus the bill requires notice to owners of property as identified on property tax maps and grand lists.

Notice to land owners within any number of feet of the subject site, versus adjacent land owners, must be avoided since that involves measuring footage either on the ground or more typically by measuring inaccurate assessor's maps. Again, if one person is missed a jurisdictional defect is created that invalidates any action taken. Thus, the bill requires notice to all adjacent owners to a subject site or sites. Adjacent owners are much more easily identified and this requirement creates more certainty that proper notice has been made.

Notice should not be evidenced by certified mail since the failure to produce the post office's return of just one address card would again be a jurisdictional defect rendering any action taken invalid. Thus, the bill requires evidence of mailing by a certificate of mailing, which is different than certified mail. A certificate of mailing is a certificate produced by the U.S. Post Office that they delivered the notice to a specific list of addresses. This should suffice as proof of mail notice and it is also less expensive for the applicant and the municipality than using certified mail.

Lastly, the public notice provisions that local land use boards must follow under this bill should be easy to follow and the decisions local boards must make cannot be the subject of a legal challenge. The one difference between last year's SB 1080 and RB 5290 before you is the authorization for municipalities to create a public notice registry (see lines 97-106). **This public notice registry is an additional tool that municipalities can create to ensure that interested land owners, electors and organizations will receive public notices of proposed land use regulatory changes. However, as drafted it is not clear that municipalities can use this public notice registry to comply with the new public notice requirements of subsection 8-7d(d). Thus, we strongly urge you to insert "In order to comply with this subsection, [A]a" after the period in line 97.**

Please vote for a joint favorable substitute as described above and thank you for considering our views on this very important legislation.



CONNECTICUT CONFERENCE OF MUNICIPALITIES

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TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

PLANNING & DEVELOPMENT COMMITTEE

February 22, 2006

The Connecticut Conference of Municipalities appreciates the opportunity to testify on the following bill of concern to towns and cities:

R.B. 5290, “An Act Concerning Notice Requirements for Land Use Applications”

CCM has concerns with this bill.

R.B. 5290 makes several substantive changes without defining important terms. For example, terms like “immediately” adjacent [to property] (lines 21 & 72), “reasonably determines” (line 77), “significant change” (line 67) are not clearly defined and could have significant implications for towns and cities – and property owners.

CCM is also unsure of the rationale – and implications behind developing a detailed procedure for changes proposed by zoning commissions, but not for changes proposed by private actors.

CCM urges the Committee to obtain a fiscal note on this proposal, since it would require additional municipal expenditures, and add an administrative burden to over-worked agencies with limited resources.

Finally, the bill would allow municipalities to establish a registry containing the names and addresses of land owners, residents, and certain nonprofits for such entities to receive land use hearing notices. CCM is unsure of the rationale behind requiring that specific nonprofits be on the public notice registry.

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If you have any questions, please call Ron Thomas or Jim Finley at (203) 498-3000.