

HBA of CT Letterhead...

November 5, 2009

To: Senator Eric Coleman, Co-Chairman  
Representative Brendan Sharkey, Co-Chairman  
Members of the Continuing Committee on the State Plan of Conservation &  
Development

From: Bill Ethier, CAE, Chief Executive Officer

Re: State Plan of Conservation and Development (POCD)

The HBA of Connecticut is a professional trade association with over one thousand, one hundred (1,100) member firms statewide, employing tens of thousands of Connecticut citizens. 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 estimate our members build between 70% to 80% of all new homes and apartments in Connecticut. Our members are extensive users of our land use planning and permitting system. The HBA of CT has extensively commented on numerous land use policies, laws and plans, including the state POCD, for many years.

The State POCD has functioned to a lesser or greater degree to focus attention on a number of planning issues. Since the state POCD and its Locational Guide Map were created, it has served both well and poorly depending on one's perspective. It works well to provide a 20,000 foot level view of the state and highlight the growth management principles we all should think about, but it does not work well on the ground for many specific parcels. How state agencies most recently have used the state plan has also tended to insert the state into specific land use decisions. That is, the state has for the past ten plus years progressively focused on more of a top down approach to planning, dictating by financial fiat what municipal governments should do and what property owners can do with their land.

Local governments that oppose a particular use of land welcome this state intervention, while others object to the state intrusion. Property owners are always held in limbo waiting for the conflicts to be ironed out – waiting that is until they find a better place to invest their capital.

The conflicts among state agencies, local governments and property owners, developers and entrepreneurs who want to use their property are inherently going to continue under our current system. Providing more resources to state planning efforts, resources which the state does not have, will not resolve the current conflicts when various players “want” different things done with specific parcels. The current land use planning scheme

empowers conflicting interests such that each has “authority” for their positions and resolutions are difficult to achieve. The Continuing Committee on the State POCD, therefore, will have to continue to serve as a master “Planning Board of Appeals” to resolve these conflicts.

The current land use planning scheme is this: the planning enabling statutes for local POCDs, regional POCDs and the state POCD each provide a different charge to their respective agencies. The desire to create consistency among these three planning levels, e.g., resolution of conflicting “wants,” is akin to telling fruit growers to make apples consistent with oranges and both of them consistent with bananas. It’s not going to happen unless CT takes a bold move and changes the current planning scheme.

The current system also creates a tremendous amount of uncertainty for private investment. The relatively new emphasis by state agencies to use the State POCD as a hammer to force an agency’s own view of what should be done on the ground continues an accelerating trend by state agencies to exercise control over private economic development, and even to reconsider specific decisions already made by other agencies or different levels of government. This uncertainty feeds NIMBYs and provides the ammunition to stop or delay economic growth. This is not the way we should conduct our land use planning and regulatory system. Without a significant change in how we all look at land use planning, Connecticut can only hope to struggle to participate in the nation’s economic recovery. In more cases than not, we will fail.

We commend the tremendous amount of effort that has gone into creating the state plan and the many changes it has gone through over the years to accommodate new legislative requirements and the comments of various interests. However, we have come to the conclusion that it is time to rethink where we have been and where we are going. It is time to reinvent how land use planning is done in our state.

All the planning enabling acts (local, regional and state) should be conformed into one statute that outlines exactly those matters for which each level of government plans, eliminating conflicts starting with the statute. This “one-plan” approach would be both a top-down and bottom-up approach to planning, developed in a cross-acceptance, collaborative process with the private sector. Each level of government would “own” – to a degree – its level of detail on the “one-plan” as explained below.

The state should plan for only those things that have major statewide impact, such as major highways, rail, major utility trunk lines, airports, ports, and significant areas or resources of statewide importance deserving of environmental protection.

Regional planning agencies should then fill in more detail on the “one-plan” for only those things with major regional impacts, such as regional transportation hubs, regional utilities such as sewer plants or regional schools, and retail, sports, and cultural centers exceeding some reasonable threshold. This regional threshold should be much greater than STC thresholds.

Local governments would then fill in all the rest of the detail, including specific land uses, local transportation networks, local utility and service areas, all of which would fit on the skeleton of the state and regional plans outlined above. GIS technology should allow for this “one-plan” approach with each level of government and various agencies providing data input. It would produce a more orderly planning process and a plan with much fewer errors.

The new “one-plan” statute would outline for each level of government those matters that must be included in its portion of the plan and those matters that are discretionary, much like the mandatory and discretionary provisions of section 8-23 for local plans of C&D.

With a cross-acceptance approach, each level of government could comment on the other planning levels and responses to comments would be required before the plan is made final.

Success or failure of any plan will be determined by the marketplace. As an example, if fewer people do not want to live in high density housing next to train stations as the plan suggests should happen, it does not matter how much transit-oriented housing you plan for or even build: it will fail in the marketplace. So, the one-plan approach must have a relief mechanism for the private sector to change plan designations to allow for uses the plan might otherwise suggest denying. This, too, would be a new process similar to a request for a variance before zoning boards of appeal (which would not change), although the hardship threshold to obtain a variance would be too harsh since the request would be an exception to a plan rather than a variance to a regulation (i.e., zoning). Also, the standards for granting exceptions from the “one-plan” should be easier for the higher level portions of the plan because higher levels of government are further removed from marketplace realities and are more apt to miss marketplace needs.

A neutral body made up of representatives from all government levels as well as private sector interests could be created to resolve any conflicts that would arise and to consider plan variance requests. It could be modeled on the all volunteer statutory 18-member Codes and Standards Committee that sits within the Dept. of Public Safety. It could take the place of the Continuing Committee for resolving inter-government conflicts. The Continuing Committee would act, as it should, only as the legislature’s oversight body to make sure the process is working to produce a plan that is workable for all interests, and to make recommendations for any statute changes going forward.

Finally, I would urge you to not put too much emphasis on state planning. Centralized planning has never worked. All plans should be designed to be guidance documents, not regulatory controls. Planning is indispensable to help guide us, but plans need to be easily amended, adjusted, even discarded to allow the marketplace to flourish.

Thank you for this opportunity to address the critically important issues of how to conduct land use planning in Connecticut.