Smart Land Use, Growth & Tax Policies

November 2008

Summary: New land use and growth management policies should be created after thoughtful debate by all stakeholders on what we need to do to grow smart – but grow we must. In fact, growth is how we can pay for property tax reform, provide for government services, achieve our environmental goals and preserve the community character each town and city chooses for itself. With leadership that embraces the land use policy recommendations presented below we can balance the need for new development with environmental health and community character so that all of Connecticut's citizens can prosper and enjoy where they live, work, shop and play.

Guiding Principles

Four guiding principles lead us to a number of recommendations on what Connecticut must do:

I. More commercial and industrial development and jobs cannot be accomplished without more housing. Homes are where jobs go at night. Housing growth drives other types of economic development. More jobs and greater economic development, including housing, provide net fiscal positives to towns and cities, as well as the state. Contrary to commonly heard but unsupported statements, new homes are fiscally positive for local governments.

II. Greater development of all types will provide more tax resources directly to towns and cities and more resources for a higher level of state funding of local public education, further reducing burdens on the local property tax. A synergy of commercial, industrial and residential growth will even provide opportunities to decrease income, sales and property tax rates, creating additional incentives to live and work here. By adopting the land use policies outlined below, we can create an upward cycle of increasing prosperity for all while providing more resources to protect our high quality of life, achieve our environmental goals and preserve and create the community character each municipality chooses for itself.

III. Reasonable regulation is important in a civilized society, but policy makers also need to recognize the ultimate power of the free market. We must accommodate where people want to live and the homes they want to live in within the context of reasonable regulation. For most people, these are critically important decisions and if choices are denied in Connecticut they will go (and have gone) elsewhere. State and local governments must facilitate a full range of housing and other land use choices while protecting important environmental values, community character and our high quality of life. But, in our view, we surpassed the line of reasonable regulation long ago and must swing the pendulum back toward the middle.

IV. Where development occurs and the form it takes is critical to achieving a sound balance between environmental health and community character and meeting the demands of the marketplace. We are convinced that these seemingly competing goals do not have to be in conflict and can be balanced. The answer to guiding new development in ways both local communities want yet all of Connecticut’s current and future citizens need is to restructure our out-dated land use system that is based on a model created by the federal government in the 1920s. Connecticut could lead the nation and adopt a new, simpler and streamlined land use regulatory system that plans appropriately for all of society’s needs, provides certainty for both development applicants and the general public and allows each community to achieve its goals more quickly and without unnecessary bureaucracy.

What Connecticut Must Do

The recommendations below have been developed after critical analyses and are based on decades of experience and expertise with land use, economic development and environmental policies. We offer them in keeping with the guiding principles above.

1. Significantly reduce our land use bureaucracy and create a new administrative system at the local level for both planning a community's land uses and reviewing specific development proposals by doing the following: **Consolidate and create only three land use "boards" in each municipality** – A Land Use Commission to both write the plan of conservation and development ("plan of C&D") and all land use regulations, such as planning, subdivision, zoning, inland wetlands and other regulations; a Development Review Agency to review all applications for specific projects, from the home owner's deck to the largest developments; and a Land Use Board of Appeals to review requests for variances from the regulations to handle the inevitable, unforeseen hardships regulations can create. This change would have multiple benefits and solve many land use issues about which advocates from all sides have complained and debated over the years, such as:
   a. Preserving local control over land uses under state enabling statutes;
   b. Ensuring that all land use regulations are drafted to implement the local plan of C&D because they will be written by the same commission;
   c. Ensuring that inconsistencies between different local regulations are eliminated because they will all be written by the same commission;
   d. Eliminating tunnel vision that can occur in certain local boards because they currently deal with only a piece of the total land use environment and creating a new holistic planning, regulatory and review structure;
   e. Providing a single responsible local entity for creating a vision of a community, planning its land uses and facilitating broad public involvement in this process;
   f. Eliminating unnecessary permit processing delays by doing away with the "ping pong" game often played in the current land use process with applicant referrals to other boards and commissions;
   g. Creating a single, one-stop entity for all applications, with the Development Review Agency having the responsibility to ensure an application complies with all applicable regulations;
   h. This new system can be created to empower citizens to better plan and design their community at the front end while removing some of the adversarial tension on individual applications at the back end.

2. **Do not require local, regional and state plans of conservation and development to be consistent unless their underlying state statutes are made consistent.** There has been much attention paid to and disagreement over whether local plans of C&D should be consistent with regional plans and the state plan of C&D. However, before requiring this cross governmental consistency, the current statutory authorities for local, regional and state plans of C&D need to be made compatible. They currently mandate different requirements and have different functions. Consistency must begin with these statutes since we cannot require consistency across plans at different levels when they have different purposes. The authority for local plans of C&D, Conn. Gen. Stat. section 8-23 is a good, well-balanced statute. If Connecticut is to require cross governmental planning consistency, it must duplicate that authority for both regional plans and the state plan so that they will be working "from the same page." Once this is done, then plans should be written mostly from the bottom up (e.g., designation of local land uses, street layout, open spaces, town centers, village districts), while reserving major issues of statewide or regional impact to be written from the top down (e.g., major highways and transportation systems, major utility systems, power plants, specific areas of statewide or regional environmental significance). We envision a process where the state drafts a statewide

skeleton plan, noting the major items listed, regional plans filling in more of the skeleton related to items of regional significance and then local governments filling in all the detail and sending plans back up to be filled in at the regional and state level as local governments have written. Beginning to deal with consistency issues anywhere other than the underlying statutory authority for planning will greatly complicate the current land use process and backfire on economic and municipal development efforts. This new type of planning regime could also dilute or eliminate tensions between municipalities and state agencies that make decisions based on the state plan of C&D.

3. **Do not mandate local consistency between zoning and other implementing regulations with the local plan of conservation and development.** Recommendation 1. above is a much better approach to this local land use consistency issue. That aside, mandating that zoning be consistent with local plans of C&D begs the question, with what are we trying to be consistent? Many local plans of C&D are outdated, not written well or ignore the very good statutory enabling authority for writing local plans of C&D. Requiring zoning and other regulations to be consistent with poor plans is not sound land use policy. Rather, local governments should be made to follow the statute, C.G.S. sec. 8-23. Mandating consistency with local plans of C&D also would cause further delays in our land use process as it is currently constructed, create additional legal claims to challenge land use decisions and would cause other conflicts in local communities. See our separate policy statement on this issue (on our web site at www.hbact.org, under the Government Affairs menu, click on Land Use, Planning, Zoning & Growth Management Issues).

4. **Establish a specialized land use and environmental court** to handle all land use and environmental appeals. This is a highly specialized area of law and a court dedicated to handling these issues will build more judicial expertise and a more consistent body of law. This will lead to even more predictability and certainty in our land use system. For appeals, encourage the court to suggest to the parties to utilize the existing land use mitigation statute. Also, for certain types of appeals, such as environmental intervenors using CEPA, require an immediate show-cause hearing to prevent appeals from being used merely as a delaying tactic and to ensure only legitimate appeals proceed to a full hearing.

5. **Require land use board and commission members to be educated about the statutes and regulations they're charged with implementing.** It is vastly unfortunate that many local land use board members do not fully understand their legal limitations under both the statutes and case law, do not understand the basic elements and components of land use planning or of development applications. According to UConn's CLEAR office, forty percent of local commission members have no training or experience whatsoever in these issues. Yet, they wield tremendous power to shape the character of local communities as well as trample on the rights of property owners and other citizens – just as much as a policeman. Police are required to undergo extensive training while land use board members receive little. Liberty and property rights share equal status within our Constitutional system – the United States Supreme Court has stated so. Yet we've created a governmental system that shores up the former while too easily transgressing the latter. Education resources for local land use board members need to be studied, coordinated and enhanced to improve the training of local board members.

6. **Authorize all municipalities to adopt land value taxation** (or split-rate taxation) for specific areas chosen by local government to encourage development as the municipality chooses. This method of property taxation has been used successfully in other states and countries. It allows a municipality to tax vacant or unoccupied land at a higher rate than land that is developed (or tax land at a higher rate than buildings on the land), producing an incentive for owners to develop or redevelop the property. However, unlike proposals in prior legislative sessions that

limit this authority to only cities or targeted investment communities, it should be provided to all municipalities so they can use it as they wish;

7. **Adopt comprehensive and complete brownfield liability relief for innocent purchasers** of land to encourage cleanup and reuse of contaminated areas;

8. **Adopt tax credits** for developments meeting smart design criteria or in areas where local governments want to encourage development, but these tax credits must be simply drafted with clear guiding principles and requirements and avoid any bureaucracy that weakens their utility;

9. **Authorize or mandate density bonuses** for cluster and conservation subdivision designs;

10. **Prohibit large lot zoning or provide incentives to rezone to smaller lots.** Minimum lot sizes should be tied to well and septic requirements in non public utility areas or to capacity availability in public utility areas while allowing larger lots if that's what the market demands. If a town wants larger minimum lots than the public health code would require, it should have to justify the larger lots on other public health or safety grounds or compelling community character issues applicable to each zone with larger lots. It is the proliferation of larger lots, not more housing units, that creates fiscal stress on property tax payers because with larger lots there are fewer homes paying for an even greater infrastructure maintenance cost;

11. **Prohibit development moratoria** except for legitimate, demonstrated public health or safety emergencies. Moratoria on developments should not be imposed on land owners, builders, new home owners and businesses just because a town needs more time to write regulations or draft plans. They directly and severely impact property rights and the needs of the marketplace and in the absence of legitimate, demonstrated public health or safety emergencies, should not be allowed;

12. **Remove the discretion that has crept into "as-of-right" development approvals.** Even these "as of right" approvals (i.e., subdivision and site plan applications), were designed by state statutes to be quick and certain reviews of proposed projects that meet the adopted regulations of a municipality, but they are routinely delayed to death by too many communities. The regulations are purposely written with vague language or catch-all provisions to thwart the "as of right" intention of the legislature. These as-of-right developments should not be thwarted by requiring them to seek special permits or special exceptions, which come with virtually unlimited discretion to condition or deny;

13. **Provide extra approval assurance** for higher density, pedestrian friendly developments by adopting **pre-approved development areas** for not only industrial and commercial development but also residential developments fitting "smart design" criteria, or at least make smart design land development plans and cluster and conservation subdivisions "as-of-right" rather than fully discretionary under special exception, special permit or "floating zone" rules. Other areas that could benefit from this pre-approved process are "grey fields" – i.e., old shopping centers or other areas with abundant asphalt that need to be redeveloped;

14. **Require each municipality to anticipate and plan for growth and to adopt a long-term but flexible infrastructure development plan**. Plans of C&D and infrastructure development plans must meet both the current and projected future demand for business and housing. Amendments to these plans should be required as marketplace changes occur. Land use plans and regulations must be used as tools to encourage development where a community would like it to go, but not as rigid blueprints to control – and eventually stifle – the free market. When that happens, all of Connecticut loses. Municipalities should be required to fund infrastructure development through equitable, broad-based revenue sources so as not to pit existing residents

against future residents. Development-sponsored tax districts should be authorized by the legislature as long as the enabling legislation is structured so that it serves the smaller builders and developers that make up the vast majority of our industry in Connecticut.

15. To help facilitate the improved planning that must be done, the new **satellite land cover data** compiled by UCONN should be utilized and the state should fund a coordinated **geographic information system ("GIS")** that can be used by all communities. However, until the mindset about the need for balanced growth changes, we do not support using **build-out analyses**, which make assessments as to how a municipality would look if it built itself according to zoning and other land use regulations at the time of the study. These studies have proven to not serve as useful, objective tools in the hands of some land use commissions and have led to policies that limit the growth a build-out analysis suggests rather than create smarter ways to accommodate future growth. And build-out analyses by their nature, which look out twenty-five or more years as to what can be built, quickly become inaccurate as soon as any land use regulation in a community changes. If adopted, funding build-out analyses should be tied to requirements to accommodate expected growth in the smartest way possible and should be conducted only after standards are developed, perhaps through UConn's CLEAR office (Center for Land Use Education and Research), for properly conducting them.

16. **Revitalize our urban areas and correct inequities in both education grants and our property tax system.** Cities need to take care of crime, improve education systems, reform city bureaucracies and budgets and upgrade existing housing stock to attract more people to the cities and reduce the flight from them. A number of the state's cities have begun to do this. Suburban sprawl is not the cause of urban decline, but urban problems do lead to more growth further out as cities become less of an option for the marketplace. Understanding this strongly suggests that the plight of our cities can be fixed without limiting growth in the suburbs. Conversely, limiting growth in the suburbs will not force people to choose the cities if they remain unviable options. They will go elsewhere (i.e., out of state or to other rural or outer suburban areas) and that is what has happened to Connecticut. Reform of our land use planning and regulatory system across the state as we have recommended will lead to greater economic revival but cities need to continue to fix their non land use problems if they hope to participate in it. Accordingly, to assist municipalities in this goal, we need to fix the cross inequities between city and suburb of a) the education cost sharing system (which penalizes wealthier suburbs), b) the payment in lieu of tax ("pilot") system and state road maintenance practices (which penalize cities), and c) the lack of a governmental system for city and suburb to share in public safety burdens. Finally, the politically unacceptable must become acceptable and we collectively need to address the real service cost drivers faced by towns and cities, such as unfunded state and federal mandates, Davis-Bacon laws, public employee pensions and binding arbitration and other collective bargaining practices.

17. Failing adopting recommendation 1. above, **coordinate and make uniform our myriad local land use permit processes**. Public Act 03-177, effective Oct. 1, 2003, helped with this goal, but much more coordination and streamlining of the process must be accomplished. We need to adopt an objective checklist, devoid of any subjective decisions, for determining the completeness of development applications to start the processing clock ticking, perhaps in conjunction with the voluntary pre-application review meetings authorized by the legislature in 2003 (PA 03-184). Individual communities can also choose to streamline their permit processes without waiting for the state legislature to do it for them. Connecticut's statutes must take on the difficult task of encouraging more public involvement on the front end of creating plans of C&D, zoning maps and regulations, subdivision regulations and inland wetland regulations, but discourage public involvement on the back end of approving specific developments complying with adopted plans and regulations, especially for "as-of-right" applications. Public hearings, particularly on smaller developments that meet the adopted

regulations, should be eliminated – if you meet the regulations then legally there is nothing for the public to comment on. State and local governments also need to foster public education on the benefits of smart design, cluster and conservation subdivision developments.

18. **The multitude of state agency permits and decision makers must also be addressed.** Their requirements and processes must be coordinated as any development usually has more than one state permit or approval to obtain. The legislature can start this review by analyzing the development due diligence checklist produced for the legislature's Blue Ribbon Task Force on Housing earlier in 2008.

19. **Correct the over-regulation of activities regarding wetlands and watercourses in Connecticut.** Connecticut's "wetlands" are defined under state law to cover the largest amount of ground of any wetland definition in the nation (e.g., CT's wetlands are based solely on soil classifications and do not need to have water or wetland vegetation). The state definition covers more than twice the amount of land as the federal definition of wetland under the national Clean Water Act. There is also rampant misunderstanding and misuse of the statutory concept of upland review areas under the state statute. And inland wetland agency members are largely uneducated about the job they are supposed to be doing, and the extent of and limitations on their authority under state law.

20. **Address 22a-19 CEPA interventions** in administrative and legal proceedings, by limiting the timeframes under which environmental concerns are resolved, and requiring an immediate "show cause" hearing to dismiss claims that do not raise legitimate environmental issues that are both within the jurisdiction of the administrative body and went unaddressed by such body.

21. **Fix the subdivision open space exaction language** that allows a town to take a fee in-lieu-of land amounting to 10% of the value of property prior to subdivision approval (or combination of such value and actual land), but has no percentage limit on the taking of land by itself as open space. This subdivision open space requirement has been abused by some municipalities, which define available land for taking as what's left after all development restrictions are imposed (e.g., wetlands, floodplains, ridgelines and steep slopes) and then they take 30%, 40% even 50% of what's left. This violates the Constitution, but since no single property owner or developer wants to risk taking on this litigation, since their livelihood depends on the very commissions they would sue, it should be incumbent on the legislature to fix it.

22. **Stop the practice of local governments requiring maintenance bonds as a condition of development approvals**, i.e., requiring upfront payments of principal to a town, the interest from which is to be used for the lifetime maintenance of stormwater detention basins or the maintenance of other public infrastructure facilities. Unlike performance bonds, which guarantee that roads and utilities are completed, ongoing maintenance costs should be borne by the general tax base of the community.

23. **Last but certainly not least, make a $10 million investment in the next budget to fund the HOMEConnecticut zoning and building permit incentives.** It would be foolish to pull the rug out from municipalities and badly needed housing now, and it truly is an investment that will pay back the state with increased revenues in future years.