



New Land Use Enabling Legislation Needed

MORE COORDINATION NEEDED BETWEEN PLANNING AND ZONING REGULATIONS

By DWIGHT H. MERRIAM

Connecticut's land use enabling legislation desperately needs a complete rewrite. What we must work with today is based on a 1926 model act by the U.S. Department of Commerce, the Standard State Zoning Enabling Act, and its model Standard City Planning Enabling Act of 1928. All of the states have followed these models and one can see at least traces of them throughout.

The problem is that the world has changed in 90 years. By working off these initial models, we have ended up today with a patchwork of legislation and often-contrived common law (occasioned by fact-driven cases) that is not only highly dysfunctional in many respects, but utterly and blithely ignores better ways of planning and regulating land use.

There is very little coordination between planning, zoning, subdivision control, and wetlands regulation. Indeed, Connecticut has become the laughingstock of the country when it comes to land use planning. The noted land use lawyer Edward Sullivan, of Portland, Oregon, every year addresses the topic of comprehensive planning for *The Urban Lawyer*, a publication of the American Bar Association. And every year he lambastes Connecticut for being the worst state in the country when it comes to integrating planning and land use regulation. Although we have mandatory planning in Connecticut, as most states do, we do not follow the "consistency doctrine" requiring that land use decisions be consistent with the plan.

Section 8-3a of the Connecticut General Statutes furthers the cause a little, but only a little. As Sullivan said in his most recent

annual survey: "Although the view that the comprehensive plan is found in the zoning ordinance and maps was once the majority view, very few states now adhere to that analysis. Connecticut has most of the cases in this category for the last year."

Essentially, our planning efforts are nearly meaningless because the decisions that matter, those decisions regarding regulations and the approval or denial of projects, need not be consistent with our adopted plans. This needs to change.

Baby Steps

So, too, with regional planning. We do have regional planning, but it is a toothless tiger. No one is required to follow the regional plans. We are such a small state geographically that we need regional planning and regional regulation in land use matters of regional interest and importance. We need state planning and state regulation that we do not have now for critical issues of statewide importance, such as affordable housing and group homes. The General Assembly has made some baby steps in the right direction over the decades with the affordable housing land use appeals statute, the definition of family for certain types of group homes, and the use of modular and prefabricated residential structures.

A long, hard look needs to be given to what the state and the regions should regulate. For example, why are there no state and regional plans, and regulations, for development along our major public transit corridors, including Metro-North, Shoreline East, the New Haven to Springfield rail corridor, and the new CTfastrak bus line? These involve major federal and state expenditures in infrastructure and the only way they will work to their maximum effi-

ciency is if we mandate high density in close proximity to the stations. The highly Balkanized system of local planning and regulation has not yielded, and will not result in, the density and type of development—planners call it "transit oriented development"—envisioned and needed along these corridors.

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Sec. 8-13a (b) When a use of land or building (1) is on a parcel that is fifteen or more acres, (2) is included in industry numbers 1795, 2951, 3272 or 4953 of the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, (3) is not permitted by the zoning regulations of a municipality, (4) has been established and continued in reasonable reliance on the actions of the municipality, and (5) has been in existence for twenty years prior to July 8, 1997, without the institution of court action to enforce the regulations regarding the use, such use shall be deemed a legally existing nonconforming use and may be continued. Nothing in this subsection shall be construed to exempt such



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use from the requirements of the general statutes or of any other municipal ordinance.

This sort of thing has to go.

Rethink Variances

Zoning variances need some honest rethinking. The late UCLA law professor Donald Hagman said that 90 percent of variances are granted illegally because the applicant cannot meet the hardship requirement. Variances are granted with a wink and nod and a whole lot of tall tales. Pinocchio would have a short career as a lawyer representing clients seeking variances.

Some states (Illinois, North Carolina and Texas are examples) enable the establishment of local unified development ordinances fully integrating planning, zoning, subdivision and environmental reviews. We need to consider doing this for Connecticut. We presently live and must work in a world of multiple applications, multiple hearings (I had 27 nights of hearings for one application), inconsistent decision making, application revisions, multiple appeals ... and the beat goes on. Our current

“non-system” is not only highly inefficient and ineffective, it is also a malpractice trap. And this, of course, disregards the chilling effect of such uncertainty, layering and multiplicity on the willingness of anyone to start and endure the process, to engage in meaningful economic development in our state, whatever the locale. When it comes to land use permitting, Connecticut is unfriendly to business.

Following the U.S. Supreme Court’s decision in *Koontz v. St. John’s River Water Management District* (2013), it has become more important to be more exact with exactions. One of the ways to more closely align exactions with actual development impacts is to use impact fees. They are not authorized by our statutes and ought to be considered.

While it is possible under Connecticut law for local land use authorities to condition approvals and for applicants to unilaterally offer concessions, we have no procedural opportunity or ability to engage in bilateral, open and completely transparent negotiations in the land development process. Starting with California in 1979 and then Ha-

waii in 1985, 15 states (Arizona, California, Colorado, Florida, Hawaii, Idaho, Louisiana, Maryland, Nevada, New Jersey, Oregon, South Carolina, Texas, Virginia, and Washington) by statute or common law have enabled bilateral development agreements. We need that authority in Connecticut.

The American Planning Association spent seven years developing Growing Smart, the next generation of model planning and zoning enabling legislation for the United States (www.planning.org/growingsmart/). It is a perfect starting point for what might be done. A complete rewrite of our land use enabling statutes would benefit every stakeholder in the land development process—government, landowners, developers, businesses, neighbors, advocacy organizations, conservation groups and generations not yet born. We owe it to ourselves and to the future to spend the time, energy and expense of such an initiative. ■

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