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Dear Members of the Planning & Development Committee:

My name is Stacey Sefcik, and for nearly two years, it has been my pleasure to be the Land Use Administrator for the Town of Thomaston. Prior to my current position, for a period of 12 years, I worked for five other Litchfield County municipalities in positions of increasing responsibility in the land use field. **I am writing today to voice my opposition to Senate Bill 1024, and to provide to the members of this committee information "from the trenches" as to why I oppose it.**

As a member of the Connecticut Planners Listserve, I have watched the development of this bill from its very inception. I followed Senator Anwar's bill very closely last year. While this bill is an improvement over earlier iterations, Senate Bill 1024 still has several very concerning amendments. Among them are the following:

1. ***Requirement for 6 hours of training annually for all P&Z/ZBA commission members and 2 hours for Wetlands Commissioners endangers small towns' ability to maintain quorum and conduct business in State-mandated time periods***.
   Those senators from larger municipalities may not be aware of the extreme difficulty smaller municipalities – encompassing at the very least most towns in Litchfield County – already have substantial difficulties obtaining volunteers for land use commissions. While I strongly advocate for training for all commission members, making the requirements onerous will only further discourage volunteers. Commissioner training is important, but it is better implemented by allowing each town to develop the program and topics that are most pertinent and effective for their needs and particular situation.

   While all topics listed in the bill are important, not all of them require repetitive training sessions every year, especially if there have been no legal updates or changes to best practices or if a given commissioner has served for any length of time on the commission. However, as written, failure to attend the limited offerings of yearly training sessions would now result in commissioners' inability to participate in commission meetings.

   Senators are likely not aware how many times land use professionals in small towns wonder if they will even have quorum for any given evening's business; if a commission is already operating with several vacancies, adopting this regulation and banning even one member from participation would render that commission unable to meet quorum. For smaller towns, this requirement could effectively result in land use commission business coming to a complete standstill. This puts us in danger of violating State-mandated time periods for discussion and action on applications, and in some cases, danger of automatic approvals.

This statement is not made lightly, and it is not being embellished. I would note that, in forwarding on to my town's commissioners information about SB 1024, I have already heard back that one of them plans to step down if this bill becomes law. The person in question has served the town with integrity for decades and has a wealth of knowledge about zoning law, procedural fairness, and town history. This person also serves on a commission that is already down two people and has been for more than a year; if they do leave, this commission will not be able to achieve quorum.

2. ***Nonconformity Section is a Significant Change to Existing Zoning Law and Provides Little to No Guidance for this Major Change.***

The bill proposes to "clean up" abandonment and nonconformities, which is in theory a GREAT idea, but the method by which this is supposed to occur is not. Currently, if a property owner with a nonconforming use tells a Zoning Enforcement Official (ZEO) that "they never intended to abandon it", the ZEO pretty much must accept that at face value. Obviously, this is less than ideal and runs contrary to the theory that the goal of Town zoning regulations is to bring every property into compliance. This bill proposes essentially to limit such abandonment to five years, whereafter either the zoning commission or the ZEO as its agent can deem a property abandoned by issuing a Cease & Desist Order. The bill then provides an appeal vehicle for property owners, which is again a good idea, but it lists the hearing authority as the Zoning Commission, NOT the Zoning Board of Appeals. This runs completely counter to current law, where the Zoning Board of Appeals is the body responsible for hearing appeals of a ZEO's zoning decisions.

If the zoning commission decides to retain the authority to deem properties abandoned, and they are simultaneously also the only body able to hear abandonment appeals, this is completely counterintuitive and denies property owners the procedural fairness they have a right to expect. Additionally, the bill provides no guidance and instruction for Zoning Commissions as to how they are now supposed to take on this completely new appeal authority, thus setting up what will inevitably be a legal free-for-all as land use professionals wait years for the courts to determine what this vague section actually intended.

3. ***Among public health, safety, and welfare, the P&Z's enabling authority will now require them to "combat discrimination and take other meaningful actions that overcome patterns of segregation and address significant disparities in housing needs and access to opportunities".***

Ensuring fairness is most definitely part of a municipal commission's responsibilities; and contrary to the apparent assumptions of those who crafted this bill, I would safely venture to say that the vast majority of municipal commissioners are very much against discrimination. However, this added statement FAR exceeds the reasonable responsibilities of a land use commission and sets up a situation where a municipal land use commissioner's desire to simply protect the special features of a given area of their town is now deemed "racist". It also sets the stage for numerous other policies waiting in the wings that have the practical effect of ending home rule to be adopted at a later date in the name of the very noble goal of "ending discrimination."

4. Downplaying the Importance of Town Character

While better than earlier iterations, this bill's aim is clearly to greatly curtail the idea of "character of the neighborhood" as it pertains to affordable housing. Zoning regulations

shall not: (10) *Be applied to deny any land use application, including for any site plan approval, special permit, special exception or other zoning approval, on the basis of (A) a district's character unless such character is expressly articulated in such regulations by clear and explicit physical standards for site work and structures…"*

This regulation does not outright ban consideration of character, but it is an amendment in the nature of the camel's head under the tent. I have been told that some members of Desegregate CT allegedly had been heard to state that they believe "character of the neighborhood" is a "dog whistle" for wealthy racists throughout CT. Contrary to that assertion, I believe character of the neighborhood is something akin to SCOTUS Justice Potter Stewart's quote about obscenity laws and protected speech: "*I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it.*"

Character is a HUGE part of what makes each of the 169 CT towns unique, and it is a large part of why P&Zs adopt regulations pertaining to Downtown Development Districts. It is a large part of the reason why tourists come to CT and why so many New Yorkers are now moving out of their state and setting up homes in ours. There used to be a time when Connecticut was proud of the variety in its 169 towns. But with this bill, the stage is being set to require ALL 169 CT towns to use exactly the same strategies to address affordable housing without regard for their own special characteristics and limitations. The City of Hartford is different from the Town of Thomaston, which is in turn different from rural Warren. Unlike building code, there is **not** a one-size-fits-all approach to zoning. Further, many towns have ALREADY adopted various different strategies to attack the issue of housing affordability, in the ways that best make sense for them; with this bill, they would now be required to do it the way the State wants it done, whether or not that would truly be the most effective method for a given municipality. I would also note that the main cause of housing affordability problems is not within local zoning commissions' control, so this bill is at best a well meant but poorly targeted attempt that is in danger of creating more problems than it solves.

5. ***Cottage Food Operations Required to Be Permitted in Residential Neighborhoods***

The text amendments as presented require that P&Zs shall not prohibit any cottage food operations in residential areas. Currently in many towns, this is subject to special permit/exception review in the zoning regulations as a home-based business. Mandating that all towns must permit a business operation in a residential neighborhood is a direct attack on the whole purpose of local zoning – that those living in the area are those ones best equipped to judge whether a particular use should be permitted in a particular zone.

6. ***Accessory Apartments As-of-Right***

Zoning Commissions shall: "*Designate locations or zoning districts within the municipality in which accessory apartments are allowed, provided at least one accessory apartment shall be allowed as of right on each lot that contains a single-family dwelling and no such accessory apartment shall be required to be an affordable accessory apartment*"

Like many CT towns, Thomaston's zoning regulations currently require special permit approval for accessory apartments. Under this change, all CT towns would now be required to permit them by at most site plan approval, and subject to the automatic approval

time limit of 65 days. As you know, P&Zs are significantly limited in their ability to attach conditions to site plan approvals; if the application meets the listed requirements it MUST be approved.

The whole point of special permits/exceptions is that some uses, even though they can be very beneficial, have specific issues attached to them such that a Zoning Commission wants to be able to evaluate their location on a given site on a case-by-case basis. The process also provides commissions the ability to attach conditions to an approval that make the proposal workable for the zone in which the property is located. In fourteen years of working with zoning commissions in six towns, I have NEVER seen a commission deny a special permit/exception application for an accessory apartment. I have only seen them work constructively with applicants via the conditions process in order to make sure the approval is to the benefit of the health, safety, and welfare of the applicant, the future tenant, and the neighborhood in which the apartment will be located.

7. Imposes State-wide Minimum Size Requirement for Accessory Apartments:
Zoning Commissions shall: "*Set a maximum net floor area for an accessory apartment of not less than thirty per cent of the net floor area of the principal dwelling, or one thousand square feet, whichever is less, except that such regulations may allow a larger net floor area for such apartments"*

The idea behind size limitations is to ensure the apartment remains accessory, and that the property does not become a two-family structure with two equally large units. Thomaston's current maximum square footage is 750 square feet. Other towns I have worked in have had different maximums.

Required lot sizes vary greatly throughout the zones all the towns in the State, but even the actual lot sizes of properties within the same zone of one town can vary enormously. Very often rural towns do not have a public water/sewer provider and required lot sizes are greater in order to provide space for wells and septic systems on their lots. They might also have wetlands, ledge, steep slopes, easements, or any other number of physical characteristics that play into how much space is required for a single-family home and then in turn, whether or not an accessory apartment can safely be accommodated onsite.

The State mandating that every small town MUST permit accessory apartments of a certain size on every lot prevents Zoning Commissions and their agents, the people who know the area and its physical limitations far better than State legislators and activists, from making intelligent and informed judgment calls about what is possible and what is best for their local area.

8. Adverse Impact on Height Requirements for Accessory Buildings & Public Input
Zoning Commissions shall: "(*5) Provide for height, landscaping and architectural design standards that do not exceed any such standards as they are applied to single-family dwellings in the municipality*"

As mentioned above, the special permit process offers zoning commissions the ability to impose conditions that it deems necessary to adhere to the intent of the zoning regulations. What the writers of this bill do not seem to appreciate is that sometimes these types of conditions are useful, in that neighbors who may have initially opposed the project

then become far more accepting because their concerns have been heard and a reasonable condition (vegetative screening of a parking area, for instance) was imposed. While some of this can be planned for in crafting site plan requirements, again, the ability to review on a case-by-case basis can be very beneficial in heading off neighbor concerns at the pass.

Additionally, while in my experience accessory apartments are often created via additions to an existing house, there are occasions where the apartment is built in an accessory building. Many towns require one yard setback for principal buildings (for example, 50 feet from the property line), but a lesser yard setback for accessory buildings (for example, 15 feet from the property line); in these cases, in return for the additional yard space, the accessory building is often required to be of lesser height than is permitted for the main building – based on the premise that they are so much closer to the property line. The house may be able to be 30 feet in height; however, the accessory building may not be permitted to be more than 15 feet in height.

As I read this bill, if an accessory apartment is proposed to be installed in an accessory building, the town can no longer require a lower height for that accessory building – they would be required to accept a height that is the same as the principal dwelling. Since accessory buildings in these cases are much closer to the property line, you are now creating a situation that could effectively negate the idea of yard setbacks.

9. Significantly Curtails ZEO Enforcement Tools

Zoning Commissions shall: "*c) A municipality shall not (1) condition the approval of an accessory apartment on the correction of a nonconforming use, structure or lot, or (2) require the installation of fire sprinklers in an accessory apartment if such sprinklers are not required for the principal dwelling located on the same lot or otherwise required by the fire code."*

Again, the main goal of zoning is to bring all properties into compliance with the zoning regulations. One of main ways we achieve this is by withholding subsequent permits for a property until any violations on it are corrected.

Those who wrote this bill did not specify PRE-EXISTING LEGAL nonconforming uses; they simply wrote "nonconforming use"; the whole problem that makes a use not permitted by zoning a violation is that it IS nonconforming. So because of this wording, if someone who is engaging in a nonpermitted use at their residential property, one that greatly disturbs the health, safety, and welfare of the surrounding neighborhood, comes in for an accessory apartment application, I would be required to turn a blind eye to the glaring violation and grant their permit.

As written, this section takes away a significant tool in a ZEO's toolkit.

10. Potential for Significant Budgetary Impact on Water Pollution Control Authorities

"*(d) A municipality, special district, sewer or water authority shall not (1) consider an accessory apartment to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless such accessory apartment was constructed with a new single-family dwelling on the same lot,*

or (2) require the installation of a new or separate utility connection directly to an accessory apartment or impose a related connection fee or capacity charge."

In the Town of Thomaston, the WPCA currently charges a $2000.00 connection fee for each unit including accessory apartments. Since most accessory apartments are retrofits of existing homes and/or additions to existing homes, as I read it, the bulk of accessory apartments will NOT be able to be charged this connection fee.

11. Multifamily Housing As-of-Right

Zoning Commissions shall permit as of right: *"(2) Multifamily housing or at least two types of middle housing (A) in any municipality with (i) concentrated development, or (ii) a minimum population of seven thousand five hundred in the preceding calendar year, and (B) in at least fifty per cent of the lot area within a one-quarter-mile distance from at least one main street corridor. If any such municipality does not have a clearly identifiable main street corridor, such municipality shall allow as of right multifamily housing or at least two types of middle housing in contiguous land encompassing an area of one-quarter square miles."*

As I read this, I see potential that the Town of Thomaston would be required to permit multi-family housing by zoning permit throughout our main street area, the Downtown Development District, and its surroundings. For context, we currently only permit multi-family (four or more units) on lots 10 acres or greater in size, and even then, only by special permit and only in our RA-15 Zone. However, most of our main street area is zoned General Commercial. We already permit mixed-use residential in our Downtown Development District/General Commercial area and have numerous apartments there. Despite this, we would be mandated to adhere to this one-size-fits-all "solution".

While I agree housing affordability is an important priority, and I agree every town should do what they can to address it, I believe this bill overreaches and causes many unforeseen and unintended adverse consequences, particularly for the State of Connecticut's smaller towns. As such, in my capacity as the Land Use Administrator of the Town of Thomaston, I am not in favor of this bill as written.

Thank you for your time,

Stacey Morrison-Sefcik

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