4-24-2023

REAL WORLD - ENVIRONMENTAL ISSUES WITH PROPOSED ZONING BILLS
A green defense against over-development bills like HB6890 (Transit Oriented Communities).

"*There can be no greater issue than that of conservation in this country*."- Teddy Roosevelt

Once natural land is gone it is gone forever, along with all its benefits, and leaving adverse impacts of a permanent nature.

From an environmental perspective, House Bill 6890, the proposed "transit-oriented communities" bill, described by its proponents as a non-mandatory, environmentally-friendly, 'work, live, ride' bill, fails.

This bill is neither voluntary nor green, and lacks affordability.

HB6890 exemplifies recent legislative trends related to housing by primarily focusing on development without adequate environmental input, review, planning or protection. The bill also conflicts with the environmental goals of our State. While HB6890 gives lip service to environmental issues, it is fatally deficient. Among other failures, it ignores the critical importance of open space preservation in supporting long term environmental health and the general welfare of all State residents.

Why open space preservation matters.

Connecticut recognizes the crucial importance of open space preservation. It is the public policy of our State to preserve undeveloped land. This is set forth in Connecticut General Statute §23-8 which sets a goal to conserve 21% (673,210 acres) of Connecticut's land base as open space by year 2023, with 10% (320,576 acres) to be held by the State and 11% (352,634 acres) to be held by municipalities, non-profit land conservation organizations, and water companies.

According to the State Commission on Environmental Quality (CEQ), one benefit of land preservation is that "*forests, farmlands and other natural habitats absorb more than 12% of the nation's greenhouse gas (GHG) emissions*."

Unfortunately, the State's acquisition of land to preserve is not meeting its goals. According to the CEQ, "*DEEP's preservation efforts are not on track to reach the state's preservation goal of 320,576 acres. At the average acquisition rate of 879 acres per year, it would take DEEP approximately 65 years to achieve the ten percent goal. As the cost of land increases, that goal will become more remote unless the rate of open space acquisition increases*."

These same difficulties apply to local municipal open space preservation, with local budgetary pressures, development pressure and existing laws such as 8-30g which enable all zoning regulations to be waived. While the State goal which includes municipalities, many towns do not have open space preservation plans or specific goals and strategies.

Unfortunately, open space preservation is often considered more of an expense than an economic benefit because its 'ecosystem services' are overlooked, so a true cost-benefit analysis is not done in land use decision making. The economic benefits are long term, and include naturally maintaining water quality, protecting against drought, reducing runoff, and controlling flooding which reduces the investment needed for engineered infrastructure projects such water filtration plants and storm sewers.

The zoning bills, including HB6890 do not carve out or exempt undeveloped land that should be preserved- they only generally exempt land already restricted by easement, water company Class I and II, and some wetlands-regulated land, but with no view to future necessary protections.

If HB6890 passes, wetlands, which comprise approximately 14% of the total area in Connecticut, are at risk. This bill exempts *tidal* wetlands from the TOD area, but fails to exempt *inland* wetlands. While this may have been an oversight, its omission is telling. While inland wetlands regulations would still control even if HB6890 were to pass, that doesn't mean they would be adequately protected. Tidal wetlands are regulated by the State DEEP and inland wetlands are delegated to municipalities. But there is no standard for protecting the protective buffers surrounding wetlands, nor is there a requirement for all wetlands commissioners to be trained, and there is little ability for the State DEEP to use personnel and resources to enforce wetlands protection. Local agencies can, and do, issue permits which encroach on both wetlands and the protective buffer areas, and this is influenced by extreme development pressure.

Wetlands in general serve many functions; one of them being their unique ability to store and sequester carbon. Forested inland wetlands, which comprise most of the inland wetlands, serve as important carbon sinks and sequester carbon as organic matter within the forested system, both above and below ground.

Even outside of wetlands buffers, natural open space provides for the cleansing and recharge of water, and development has an adverse impact on water quality. According to the CEQ, "*impervious cover, wastewater treatment outflows, stormwater drainage systems and over land flow are primary factors in the transport of pollutants to surface waters."* The CEQ has observed that water quality in our rivers, lakes and estuaries "*shows little signs of improvement… to support aquatic life and recreation*'.

Once land is developed it is lost for future open space '*ecosystem services'* it provides. It is very possible that future guidelines for open space preservation, water company buffers, and both tidal and inland wetlands protective buffer areas, will need to increase due to development, expanded impervious surfaces, climate change, sea level rise, severe weather and flooding, drought, water demand, and wastewater and other sources of pollution.

For example, DEEP Recently informed Fairfield's Zoning commission that sea level in Connecticut could rise by 20 inches over the next 27 years. Even development that does not encroach on current tidal wetlands buffers will have an adverse impact because according to DEEP, "*tidal wetlands adjacent to properties being developed will likely drown as sea level rises if there is no upland area available for the wetland to migrate*".

State-jurisdiction coastal areas are carved out from HB6890, but that does not accommodate the possible future need to expand the protected areas due to sea level rise and the need to provide space for inland wetlands to migrate to, or be lost forever along with all their functional value. Towns are already gradually identifying parcels of land to attempt to restore to natural state to assist in natural flood plain management. These may not be in tidal or inland regulated areas, but nevertheless should be considered preserved for future flood events.

It is short sighted to deprioritize present but also future needs which will likely required expanded natural forested open space, water company and wetlands buffers.

Coercion is not voluntary.

The bill 'deprioritizes' State discretionary funding for towns that are eligible (only 6 out of 169 are exempt) but do not opt in, and has a very broad description of which discretionary funds are at risk including brownfield remediation, transit-oriented development funding, incentive housing funding, urban and small-town grants for municipal projects are at risk. According to the Connecticut Council of Small Towns, small towns rely on infrastructure funding to infrastructure and to remediate contaminated properties. The bill doesn't carve out any conflict with federal and other state laws governing funding eligibility.

The bill fails to consider the different circumstances among the 163 non-exempt municipalities. Dozens of towns across the state are already successfully implementing TOD using state discretionary funds. The bill would penalize towns that took initiative commensurate with their own needs, capacities, and environmental calculus. It would penalize small rural towns with no demand for density or transit. In other towns, 70% of the land mass is within drinking water watersheds and these towns rely on very low density to ensure that regional drinking water is preserved and kept clean, aside from Class I and II protected watershed lands. Other towns have already added significant multifamily housing including affordable housing and do not have the infrastructure or environmental capacity to add more apartment buildings to the transit area. Yet the bill would penalize all these towns for not opting in.

HB6890 is deeply flawed, putting at risk the ability of Towns to protect the public trust in our environmental health.

The bill is poorly drafted, and cannot have had input from environmental experts or stakeholders.

First, it leaves critical interpretations, rulings, and decisions to a powerful new State official, appointed by the Secretary of the Office and Policy Management (OPM), called a "*State Responsible Growth Coordinator*" who would oversee a newly expanded Office of Responsible Growth (ORG), which would have expanded staffing to perform the expanded role. There is no requirement for environmental experts to be included in this office, yet its impact would have far reaching and permanent impact on the natural environment.

Even the Office of Policy and Management expressed concern over the ORG's (which is a part of OPM) ability to effectively carry out its broad and expansive duties without conflicting with other public policy and programs. In its comments on HB6890, the OPM Undersecretary stated:

" *The wide reach of the proposed program is concerning because 1) it could be difficult to administer, especially considering the level of coordination that would be required with other funding agencies; 2) it could disperse state infrastructure investments to an extent that would not meaningfully support high quality transit, and 3) could result in conflicts with the CT Conservation and Development Policies Plan 2018-2023 (C&D Plan). The first principle of the C&D Plan is to redevelop and revitalize regional centers and areas with existing or currently planned physical infrastructure and includes several policies that focus on infill and redevelopment and capitalizing on existing infrastructure.*"

And the OPM is also concerned over the power of ORG to pass new regulations governing other agencies, observing that " *.. it is unclear why ORG would need to develop state agency regulations to carry out its routine duties. It is particularly difficult to conceive of how to develop such regulations for many of the duties assigned to the Office involve serving as a facilitator and coordinator between agencies and levels of government or administering grant programs that are guided by their own legislation In addition, it is unclear why ORG would need to develop state agency regulations to carry out its routine duties. It is particularly difficult to conceive of how to develop such regulations for many of the duties assigned to the Office involve serving as a facilitator and coordinator between agencies and levels of government or administering grant programs that are guided by their own legislation. Other newly created divisions within OPM were not required to adopt agency regulations for their routine responsibilities..*"

By opting out, Towns would lose funding for projects that the original executive order envisions making available. But by opting in, Towns would cede control over the Transit Oriented District (TOD) and its potential impact on a Town's environmental resources to the Coordinator.

For example, the Coordinator would decide things like: the '*reasonable*' size of the TOD, the amount of affordable housing, whether a town is complying, and whether a town would be eligible for State discretionary funding. The Coordinator would have the power to expand a TOD beyond what the Town considers necessary to protect environmental resources.

Because the new position of Coordinator would now be overseeing the ORG, this would likely refocus the ORG's priorities towards housing development and away from environmental protection as envisioned in Governor Rell's Executive Order creating the ORG.

Governor Rell's purpose in establishing the ORG in 2006 was primarily environmental. Her executive order starts with the following statements: **"…** *The State of Connecticut is defined by breathtaking landscapes that extend from the majestic shoreline to the rolling hills, vibrant cities, attractive suburbs, scenic small towns and picturesque farms; and* **…** *We must actively steer the continued growth and development of our state to prevent sprawling development patterns from forever changing the character of our communities. If left unchecked, this trend will continue to fragment the landscape, impair our ability to remain economically competitive, consume precious natural resources, waste energy, pollute the air and water, increase Greenhouse Gases (GHG) that can accelerate the pace of climate change, and overwhelm local and state infrastructure..*"

It should be noted that centralized planning was not the original intent of the ORG as established in the Executive Order, which states: "*Efforts to better steer growth and development must be*

respectful of the Connecticut tradition of "home rule" and "local autonomy" by including municipal officials as full partners in this initiative"

Not really TOD. The bill fails to ensure actual Transit Oriented Developments (TOD) would be created, so it is unlikely to reduce carbon emissions or the use of cars.

TOD is a planning concept which establishes walkable areas surrounding transit stops, with mixed use retail, commercial and residential development, to minimize suburban sprawl and the use of carbon-emitting cars to get around.

But HB6890 doesn't do that- it focuses on development in the TOD but not eliminating development in outlying areas, incentives to retain local farms rather than develop them into suburban sprawl, or specifics on expanding transit, or to make driving less necessary. It simply adds high density residential development regardless of need or environmental or infrastructure capacity.

There is no requirement to build retail or commercial which is a central component of TOD. The bill gives lip service to 'commercial' without requiring it, and fails to mention 'retail' at all. It defines 'mixed use' as "*developments for residential **or** commercial use*" which means the TOD, which has a residential development mandate but no commercial mandate, could end up being mostly apartment buildings.

Finally, the bill only requires affordability ranging from zero to 20% of the new TOD development to be affordable, well under the 8-30g requirement of 30%. This would reduce the ratio of affordable to total housing stock that Towns are judged on when 8-30g appeals go to Court. By keeping the ratio low, it is more likely Courts on appeal would reverse denials or modifications of developments that encroach on open space, due to the weighing of the need for affordable housing versus other considerations. The long-term impact of allowing density without affordability means that towns that are not already at the 10% exempt ratio, would be governed the anti-open space reach of 8-30g in perpetuity.

Lack of environmental input is apparent.

This bill fails to consider the cumulative effect of its impact, not just on local municipal ecological health, in the long term, but on the rivers and failing sewerage infrastructure that ultimately ends up in Long Island Sound.

Water quality in the Sound is affected by population density and related impacts from human-sourced pollution flowing in from rivers, streams and ground water, excess nitrogen from sewers, septic systems, lawn applications and fossil fuels. According to Save the Sound's 2020 report card of bays along the Long Island Sound, only 23 out of 53 bays are in good health, and 3 bays on the Connecticut side received a "D" rating for water quality (Wequetequock Cove near Mystic, Black Rock Harbor in Bridgeport, and Inner Norwalk Harbor).

Without any apparent effort to include green expertise, stakeholders or input, it is no wonder why this bill fails to protect our State's fragile environment, including its water supply and why it

fails to acknowledge the current lack of sewerage capacity, and unique situations among its 169 towns and cities.