

## How to Streamline Housing Permitting in Connecticut

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When builders and developers face systematic delays and uncertainty in planning, permitting, and creating new housing, they pass the associated costs along to the end user. Worse, delays and uncertainty can dissuade developers from initiating projects entirely. This results in decreased competition and raised prices for all homes, not just new ones.

Data on housing starts and completions imply that the length of construction in the Northeast has doubled since the early 2000s, from about 10 months to about 20 (see figure 1). In addition, delays occur during the application and permitting phases. No single factor is to blame for the inflated time line, which shows up in both single-family and multifamily construction and in all four US regions.

To better understand the sources of these cost escalators, I consulted land use experts across Connecticut. They pointed to the many procedural layers that each small housing development must go through. Each planning, permitting, and judicial process adds time, during which salaries and interest on loans must be paid. And each process represents a source of uncertainty.

Connecticut has been identified as an exemplar of exclusionary zoning.<sup>1</sup> But even where growth is allowed, towns employ procedures that make obtaining approval for housing into a lengthy and adversarial saga with an unpredictable outcome. Even if an applicant succeeds in obtaining the approval of town boards and commissions, objectors often challenge the approval in court. Although most of these lawsuits are dismissed, it's a rare instance when a case takes less than a year to resolve. Just the threat of litigation is a deterrent to developers.

Most of the sources of delay and uncertainty identified in this policy brief arise from state laws. Only state lawmakers can fix them. Of course, city and town officials should do their best within the existing legal framework to provide prompt, clear guidance to developers and builders.

**Figure 1.** Housing Construction Duration Index, Northeast Region



Source: US Census Bureau and US Department of Housing and Urban Development, retrieved from the Federal Reserve Bank of St. Louis (FRED), November 3, 2023.

Note: To construct this index, I separately calculated 12-month moving averages of housing starts, completions, and units (single family and multifamily) under construction. For each housing type, I divided units under construction by housing starts and, separately, completions, to arrive at an estimate of construction duration. To create an index unbiased by changes in the composition and short-run shifts, I summed the single-family and multifamily unit ratios using weights equal to their relative shares in the past 10 years of data and averaged the construction-based and starts-based ratios. I thank Kevin Erdmann for inspiring this approach.

This policy brief recommends reforms to streamline four areas of state law. Doing so will lessen the delay and uncertainty that increase rents and home prices for Connecticut residents.

## **REFORM THE INLAND WETLANDS AND WATERCOURSES ACT TO RESTORE BALANCE**

Connecticut’s Inland Wetlands and Watercourses Act (IWWA), enacted in 1972, was intended to “balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology.”<sup>2</sup> In practice, the law has enabled time-wasting lawsuits, which routinely delay projects for a year or more. Additionally, the fragmented, amateur nature of local IWWA enforcement adds delay and uncertainty to many projects.

The IWWA requires each municipality to establish or designate an inland wetlands agency. Each local agency is composed of citizen volunteers, some of whom have little or no expertise. These agencies set town wetlands regulations.

The result is a proliferation of different environmental standards across Connecticut's 169 towns and cities, although wetlands and watercourses refuse to obey town boundaries. Unlike zoning, which is supposed to follow a comprehensive plan, inland wetlands agencies review applications on a case-by-case basis.

Wetlands issues can be technically challenging, but the IWWA requires that only one member of the agency or agency staff complete a training program.

Dozens of agencies with limited expertise enforcing vague standards are not a recipe for orderly and predictable governance. The decisions of inland wetlands agencies have generated hundreds of lawsuits—267 by last count.<sup>3</sup> Many of those appeals were filed by the applicants themselves, claiming that a wetlands agency improperly denied their application, but others were filed by third parties claiming that the agency should have disapproved a project.

The IWWA allows any person, from anywhere in the state, to sue a town inland wetlands agency by simply asserting some harm to Connecticut's natural resources.<sup>4</sup>

These third-party lawsuits are usually useless delays. I reviewed 120 such appeals and found that 82 percent of them were unsuccessful. But they did succeed in one respect: delaying justice. The average time between the agency's decision and the court's ruling on the appeal was 815 days, with no case taking less than 238 days. Taken together, the delays filled 224 years. Even a meritless appeal filed by a third party for as little as a few hundred dollars in court costs and attorneys' fees can delay a project by a year or more.

**POLICY RECOMMENDATIONS:** To address the statute's imbalances that have tilted the playing field against economic development without clear environmental benefits, I propose several reforms:

1. Establish a requirement that all members of inland wetlands agencies undergo training.
2. Narrow the statutory right to challenge the decisions of inland wetlands agencies and commissions to persons or entities who can allege particularized injury to person or property, as opposed to generalized injury to wetlands or watercourses. Following Connecticut General Statutes § 52-190a, a signed opinion of a qualified hydrologist could be required to accompany the appeal.
3. Require that appeals taken pursuant to the IWWA be privileged cases to be heard by the court as soon after the return day<sup>5</sup> as is practicable.
4. Create specific and objective state standards that, if satisfied by an applicant, waive the need for inland wetlands agency review.
5. Allow each municipality to exempt from IWWA review appropriate areas in its plan of conservation and development, such as downtown areas with municipal infrastructure.

## **SIMPLIFY THE SPECIAL PERMITTING PROCESS**

Connecticut’s municipalities often use special permits, special exceptions, and special exemptions to offer flexibility within the zoning code. These processes invite controversy by blurring the lines between administrative and legislative decisions. Although none of these special allowances involve text changes to zoning ordinances, the applications are subject to public hearings.<sup>6</sup>

In most cases, there are no clear and objective criteria for a special permit, special exception, or special exemption. As a result, public opposition and ambiguous standards have scotched special permits for multigenerational housing in Enfield, a food pantry in New London, and pickleball courts in Westport, among many other examples.<sup>7</sup> For more basic changes to what zoning allows, like an increase in residential density or a change from residential to commercial use, applicants will typically need to seek a rezoning. Under Connecticut law, even a seemingly modest change in zoning categories—such as a rezoning from a half-acre single-family residential unit to a quarter-acre single-family residential unit for a small geographic area using existing zoning categories—qualifies as a legislative action, equivalent to the town enacting a new municipal ordinance, and likewise requires a public hearing.<sup>8</sup>

**POLICY RECOMMENDATIONS:** Special permits, special exceptions, and exemptions should be used on a limited basis in which towns can define clear criteria instead of using procedures suited to broad rezonings. I recommend that municipalities audit their own zoning codes and reduce the use of special permissions. I recommend that the state legislature undertake the following reforms:

1. Prescribe specific and objective criteria whenever possible for special permits, special exceptions, and exemptions. The rules should be clear to the applicant, neighbors, and zoning board members.
2. Eliminate the requirement for public hearings under Connecticut General Statutes § 8-3c for special permits, special exceptions, and exemptions. The issuance of permits available under existing ordinances should not be subject to a pseudolegislative process.
3. Establish clear and enforceable consequences for town commissions or boards that fail to act on special permits, special exceptions, and exemptions within the time prescribed by Connecticut General Statutes § 8-7d. Controlling case law renders these timeframes toothless in this context.<sup>9</sup>

## **ALIGN ZONING POWER WITH BROADER COMMUNITY PRIORITIES**

The current version of the Connecticut zoning enabling act forbids municipalities’ primary elected governing bodies from exercising the zoning power unless a town is small or a special act provides otherwise.<sup>10</sup> Instead, zoning can be changed only by a zoning commission, a separate body that can be appointed or elected. Connecticut alone prohibits towns from wielding

the zoning power through their primary elected town governing bodies. In each of the other 49 states, municipalities or other local governments are given the zoning power by state statute and can exercise it directly.<sup>11</sup>

Where zoning commissions are elected rather than appointed, city councils and similar municipal governing bodies are left with limited power to direct the physical form of a community and guide the development of real property, which provides nearly three-quarters of local tax revenues.<sup>12</sup> The policy basis for mandating a division of the legislative power between two separate bodies is unclear, has no precedent in any other American state, and has led to misalignment of priorities. Connecticut has been a laggard in housing production under this statutory regime, routinely ranking close to the bottom of all 50 states in housing production per capita.<sup>13</sup>

Those projects that are approved by the zoning commission also run the risk of lawsuits from property owners, who by statute have the right to initiate litigation simply by being close to the development site. This provision makes it easy for upset neighbors to sue. Regardless of their merit, these lawsuits can delay a project by a year and often more. Rezoning procedure further contains a protest provision that can raise the threshold for project approval to two-thirds upon petition by the owner or owners of 20 percent of the land within 500 feet of the rezoned area.<sup>14</sup> Effectively, the provision allows a minority, which could be a single landowner, to veto the majority vote of a municipality's zoning commission even if there is supermajority support from neighbors and from the owners within the rezoned area. In recent years, a similar protest provision has been used as a means of obstructing rezoning efforts in Texas cities. Over the past decade, however, two states—Wisconsin and North Carolina—have repealed their state protest petition laws entirely, leaving only 20 states with such laws, while Massachusetts and Oklahoma have weakened theirs.<sup>15</sup>

**POLICY RECOMMENDATIONS:** The current scheme for regulating zoning does not serve the best interests of Connecticut residents and privileges small groups of dissenters over the interests of the community at large. The following recommendations are proposed:

1. Amend Connecticut's zoning enabling statute to allow a municipality's principal legislative body (or, in the case that the legislative body of the municipality is a town meeting or representative town meeting, the board of selectmen) to exercise the zoning power and to hear applications from developers for rezoning of property. To make this change, a municipality would have to revise its charter.
2. Narrow the statutory right to challenge the decisions of zoning commissions or other approving entities to persons or entities who can allege particularized injury to person or property, rather than abutters or persons who allege generalized aggrievement because of proximity.

3. Repeal the protest petition triggering two-thirds approval in Connecticut General Statutes § 8-3(b) or, alternatively, amend it by allowing only owners within the rezoned area to file a petition, rather than by creating an arbitrary zone of impact extending beyond the rezoned area.
4. Establish clear and enforceable consequences for town commissions or boards that fail to act on applications for rezoning within the time prescribed by Connecticut General Statutes § 8-7d. Controlling case law renders these timeframes toothless in this context.<sup>16</sup>

## **STRENGTHEN THE COMPREHENSIVE PLAN AS A PLANNING AND POLICY-MAKING TOOL**

Like many states, Connecticut requires its municipalities to prepare comprehensive plans on a periodic basis. The planning commission of a town or city (which is often the zoning commission as well) must at least once every 10 years prepare and adopt a plan of conservation and development in which numerous factors, including affordable housing, environmental protection, and economic development, require consideration.<sup>17</sup> Although the statute is lengthy, there are very few requirements for reporting concrete data or information that would assist zoning commissions in carrying out their duties.<sup>18</sup> In the absence of uniform requirements for data reporting, the plan of conservation and development has limited value either for zoning commissions seeking clear guidance or for policymakers assessing state housing needs, thereby leading to unpredictability and lack of clarity in the rezoning process.

**POLICY RECOMMENDATIONS:** An emphasis on data could make the plan of conservation and development more useful in the planning and rezoning processes. I propose that the statute be amended to require each comprehensive municipal plan to contain the following:

1. Zoning capacity analysis stating or reasonably estimating the total number of dwelling units permitted under current zoning
2. Computation of the percentage of land zoned for each use, including land zoned for single-family and multifamily uses
3. Comparison with the zoning capacity and use analysis in the prior plan
4. A map showing which buildings or lots do not comply with their current zoning designation, and a computation of their percentage in the municipality's total
5. Disclosure of the wastewater treatment capacity of a municipality's treatment facility or facilities, if any, or the allowed capacity from another municipality
6. Computation of the percentage of municipal land serviced by city sewers and city water and a comparison with the percentages in the prior plan
7. The identification of the general location and extent of areas served by public water

## CONCLUSION

For Connecticut's citizens and towns, the red tape around land use is a persistent problem. Any sort of change to the zoning map or built environment, whether initiated by local government or private property owners, may risk a lawsuit. To enable predictable growth with more competition between developers, the state should work on streamlining development processes.

Although several concrete suggestions have been offered here for reform, I recognize that any change to the development process can have complex consequences as governments and private actors re-optimize around a new set of rules. Keeping that complexity in mind, I urge the state legislature to revisit these statutes in an open process, listening to land use lawyers, local governments, developers, and others who will have to live with the results.

## ABOUT THE AUTHOR

Charles Gardner is a research fellow at the Mercatus Center whose research focuses on planning law and housing affordability. He has testified before several state legislatures and frequently advises local government officials on zoning matters. He has also served as a local elected official and as an active participant in state policy making on the Connecticut Advisory Committee to the US Commission on Civil Rights (USCCR) and on the Commission on Connecticut's Development and Future (CCDF).

## NOTES

1. Robert C. Ellickson, "Zoning and the Cost of Housing: Evidence from Silicon Valley, Greater New Haven, and Greater Austin," *Cardozo Law Review* 42, no. 5 (2020): 1611-93.
2. Conn. Gen. Stat. § 22a-36 (2023).
3. With research assistance from Eli Kahn, I counted 267 IWWA court opinions between 1980 and July 2023.
4. Conn. Gen. Stat. § 22a-19(a)(1) (2023).
5. A date near the commencement of litigation that is selected by the party filing the lawsuit pursuant to Conn. Gen. Stat. § 3-2 (2023) and § 52-46 et seq. (2023).
6. Variances are a similar form of zoning flexibility, usually sought for dimensional modifications. Unlike special permits, variances are administered by a zoning board of appeals and do not require a public hearing.
7. See Susan Danseyar, "Enfield Land-Use Board Denies Felician Sisters' Zone Change Request for Affordable Housing," *Hartford Business*, October 28, 2022; Johana Vazquez, "New London Denies Food Pantry Special Permit," *The Day*, April 23, 2023; and Thane Grauel, "Hunt Club Pickleball Withdrawn after Noise Concerns, Rocky Hearing," *Westport Journal*, October 31, 2023.
8. Conn. Gen. Stat. § 8-3(a) (2023).
9. See *Ctr. Shops of E. Granby, Inc. v. Plan. & Zoning Comm'n of Town of E. Granby*, 253 Conn. 183, 757 A.2d 1052 (2000). In that case, the Connecticut Supreme Court held that the automatic approval provisions of Connecticut General

Statutes § 8-7d do not apply to special permits, leaving a party with no recourse should a municipality drag its feet in considering a special permit application.

10. The enabling act is codified at Conn. Gen. Stat. § 8-1 et seq. (2023). It allows municipalities with fewer than 5,000 inhabitants, of which Connecticut had 39 as of the 2020 US census, to designate the board of selectmen as the zoning authority (Conn. Gen. Stat. § 8-1(a)(1)). For examples of special acts, the City of New Haven exercises the zoning power through its primary legislative body, the Board of Alders, by way of a special act enacted in 1925 (1925 Conn. Spec. Acts 1006), and the City of Norwich, through its city council by way of a special act enacted in 1951 (1951 Conn. Spec. Laws 459). Direct legislative control has apparently not hampered housing production in New Haven, which over the five years from 2018 to 2022 produced by far the largest number of housing units of any municipality in Connecticut and the sixth highest per capita (4.0 units/1,000 residents), according to data from the Connecticut Department of Economic and Community Development.
11. With research assistance from Eli Kahn, I surveyed the zoning enabling statutes in all 50 US states. For example, see New York (N.Y. Mun. Home Rule Law § 10 (2023) (providing that the “legislative body of a local government” has general power to adopt and amend laws) and N.Y. Town Law § 261 (2023) (providing that a “town board” may regulate zoning)); North Carolina (N.C. Gen. Stat. Ann. § 160D-702 (2023) (providing that a “local government” may adopt zoning regulations)); Ohio (Ohio Rev. Code Ann. § 713.07 (2023) (providing that zoning laws may be passed by “the legislative authority of the municipal corporation”)); Texas (Tex. Loc. Gov’t Code Ann. § 211.003 (2023) (providing that “the governing body of a municipality” may regulate zoning)); Vermont (Vt. Stat. Ann. tit. 24, § 4414 (2023) (providing that zoning regulations “may be adopted by a municipality in its bylaws”)).
12. According to the Connecticut Office of Policy and Management’s Municipal Fiscal Indicators for 2016–2020, 72.2 percent of municipal revenue in Connecticut is derived from local property tax.
13. According to census data, Connecticut’s housing stock increased 0.3 percent from 2021 to 2022, an increase lower than all states other than Illinois and Rhode Island. See <https://www.census.gov/data/tables/time-series/demo/popest/2020s-total-housing-units.html> (last accessed November 2, 2023).
14. Conn. Gen. Stat. § 8-23 (2023).
15. Salim Furth and C. Whit Ewen, “Mostly Invisible: The Cost of Valid Petitions in Texas,” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, February 2023).
16. See *Coastal Suburban Builders, Inc. v. Plan. & Zoning Comm’n of Town of E. Haven*, 2 Conn. App. 489, 489, 479 A.2d 1239, 1240 (1984). In that case, the Appellate Court of Connecticut held that the automatic approval provisions of Connecticut General Statutes § 8-7d do not apply to applications for rezoning, leaving a party with no recourse should a municipality drag its feet in considering a rezoning application.
17. Conn. Gen. Stat. § 8-23 (2023).
18. The only concrete, substantive requirements in the statute for documents or data are those for a “map . . . showing proposed land uses” and the identification of “the general location and extent” of areas served by sewers, as well as areas where sewers are planned or should be avoided (Conn. Gen. Stat. § 8-23(e)(1)(D) (2023) and § 8-23(g) (2023)). The statute also requires that the plan “recommend the most desirable density of population in the several parts of the municipality” but provides no guidance for how desirability should be assessed (Conn. Gen. Stat. § 8-23(e)(1)(E) (2023)). The plan of conservation and development has the potential to be a powerful planning device and could be reformed to incorporate substantive planning and zoning reforms, which are beyond the scope of this brief.