

## Home Builders Association of Connecticut, Inc.

### State Traffic Commission Certificates of Operation Amended in Major HBA Permitting Reform Legislation

**House Bill 6540 (PA 11-256):** Sections 14 and 15 incorporate the HBA's proposals to streamline State Traffic Commission (STC) permits. The new law does the following:

- changes the STC threshold from 100,000 sq. ft. to over 100 homes for projects that must go to the STC for a Certificate of Operation (i.e., for any residential only subdivision or site plan containing 100 or fewer homes, you do not need an STC Certificate of Operation;
- requires the STC to review permit applications concurrently with local approvals to the extent practicable;
- changes the prohibition on getting a building permit to getting a certificate of occupancy prior to obtaining the STC's Certificate of Operation for only residential subdivision lots that do not directly access or abut a state highway; and
- clarifies what the STC/DOT can review or require of an applicant, limiting required improvements to "impacts to highway safety created by the addition of the applicant's proposed development or activity."
- Finally, DOT Encroachment Permits for direct access to state highways are no longer mandatory in all cases; they'll be required at the discretion of DOT as DOT does not want to process encroachment permits for every little driveway on a state highway.

These changes are effective on the date the Governor signed the bill (July 13, 2011). Actual language of sections 14 and 15 as adopted by the CT General Assembly is attached.

HB 6540, Public Act 11-256 (effective date: date Governor signs the legislation). Language in sections 14 and 15 is almost identical. Section 14 deals with projects by a single entity, whereas section 15 deals with projects by two or more (i.e., a group of) entities.

“Sec. 14. Section 14-311 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No person, firm, corporation, state agency, or municipal agency or combination thereof shall build, expand, establish or operate any open air theater, shopping center or other development generating large volumes of traffic [, having an exit or entrance on, or abutting or adjoining, any state highway or] that substantially [affecting] affect state highway traffic within this state, as determined by the State Traffic Commission, until such person, firm, corporation, or agency has procured from the State Traffic Commission a certificate that the operation thereof will not imperil the safety of the public, except that any development, including any development to be built in phases, without regard to when such phases are approved by the municipal planning and zoning agency or other responsible municipal agency, that contains a total of one hundred or fewer residential units shall not be required to obtain such certificate if such development is a residential-only development and is not part of a mixed-use development that contains office, retail or other such nonresidential uses, provided if any future development increases the total number of residential units to more than one hundred, and such total substantially affects state highway traffic within the state as determined by the State Traffic Commission, a certificate shall be procured from said commission.

(b) [No] Except as otherwise provided in this subsection, no local building official shall issue a building or foundation permit to any person, firm, corporation, state agency or municipal agency to build, expand, establish or operate such a development until the person, firm, corporation or agency provides to such official a copy of the certificate issued under this section by the commission. If the commission determines that any person, firm, corporation, or state or municipal agency has (1) started building, expanding, establishing or operating such a development without first obtaining a certificate from the commission, or (2) has failed to comply with the conditions of such a certificate, it shall order the person, firm, corporation or agency to (A) cease constructing, expanding, establishing or operating the development, or (B) comply with the conditions of the certificate within a reasonable period of time. If such person, firm, corporation or agency fails to (i) cease such work, or (ii) comply with an order of the commission within such time as specified by the commission, the commission may make an application to the superior court for the judicial district of Hartford or the judicial district where the development is located enjoining the construction, expansion, establishment or operation of such development. Notwithstanding the provisions of this subsection, for single family home building lots within a subdivision of land, for

which a certificate is required and which do not have a direct exit or entrance on, or directly abut or adjoin any state highway, no local building official shall issue a certificate of occupancy to any person, firm, corporation, state agency or municipal agency to occupy homes on such lots until the person, firm, corporation or agency provides to such official a copy of the certificate issued under this section by the commission and such official confirms that the certificate conditions have been satisfied.

(c) The State Traffic Commission shall issue its decision on an application for a certificate under subsection (a) of this section not later than one hundred twenty days after it is filed, except that, if the commission needs additional information from the applicant, it shall notify the applicant in writing as to what information is required and (1) the commission may toll the running of such one-hundred-twenty-day period by the number of days between and including the date such notice is received by the applicant and the date the additional information is received by the commission, and (2) if the commission receives the additional information during the last ten days of the one-hundred-twenty-day period and needs additional time to review and analyze such information, it may extend such period by not more than fifteen days. The State Traffic Commission may also, at its discretion, postpone action on any application submitted pursuant to this section or section 14-311a until such time as it is shown that an application has been [filed with and] approved by the municipal planning and zoning agency or other responsible municipal agency. The State Traffic Commission, to the extent practicable, shall begin its review of an application prior to final approval of the proposed activity by the municipal planning and zoning agency or other responsible municipal agency.

(d) In determining the advisability of such certification, the State Traffic Commission shall include, in its consideration, highway safety, the width and character of the highways affected, the density of traffic thereon, the character of such traffic and the opinion and findings of the traffic authority of the municipality wherein the development is located. The State Traffic Commission may require improvements to be made by the applicant to the extent that such improvements address impacts to highway safety created by the addition of the applicant's proposed development or activity. If the State Traffic Commission determines that such improvements, including traffic signals, pavement markings, channelization, pavement widening or other changes or traffic control devices, are required to handle traffic safely and efficiently, one hundred per cent of the cost thereof shall be borne by the person building, establishing or operating such open air theater, shopping center or other development generating large volumes of traffic, except that such cost shall not be borne by any municipal agency. The Commissioner of Transportation may issue a permit to said person to construct or install the changes required by the State Traffic Commission.

(e) Any person aggrieved by any decision of the State Traffic Commission hereunder may appeal therefrom in accordance with the provisions of section 4-183, except venue

for such appeal shall be in the judicial district in which it is proposed to operate such establishment. The provisions of this section except insofar as such provisions relate to expansion shall not apply to any open air theater, shopping center or other development generating large volumes of traffic in operation on July 1, 1967.

Sec. 15. Section 14-311c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No group of persons, firms, corporations, state agencies or municipal agencies or combination thereof shall build, expand, establish or operate any open air theater, shopping center or other development generating large volumes of traffic on any group of individual parcels of land which are separately owned but are utilized together for a single development purpose, whether or not such parcels are separated by any state, local or private roadway [, having an exit or entrance on, or abutting or adjoining, any state highway or] that substantially [affecting] affect state highway traffic within this state, as determined by the State Traffic Commission, until such group has procured from the State Traffic Commission a certificate that the operation thereof will not imperil the safety of the public, except that any development, including any development to be built in phases without regard to when such phases are approved by the municipal planning and zoning agency or other responsible municipal agency, that contains a total of one hundred or fewer residential units shall not be required to obtain such a certificate if such development is a residential-only development and not part of a mixed-use development containing office, retail or other such nonresidential uses, provided if any future development increases the total number of residential units to more than one hundred, and this total substantially affects state highway traffic within the state as determined by the office of the State Traffic Commission, a certificate shall be procured from said commission.

(b) [No] Except as otherwise provided in this subsection, no local building official shall issue a building or foundation permit to any such group or member thereof to build, expand, establish or operate such a development until the group or member provides to such official a copy of the certificate issued under this section by the commission. If the commission determines that any group or member has (1) started building, expanding, establishing or operating such a development without first obtaining a certificate from the commission, or (2) has failed to comply with the conditions of such a certificate, it shall order the group or member to (A) cease constructing, expanding, establishing or operating the development, or (B) to comply with the conditions of the certificate within a reasonable period of time. If such group or member fails to (i) cease such work, or (ii) comply with an order of the commission within such time as specified by the commission, the commission or the traffic authority of the municipality wherein the development is located may make an application to the superior court for the judicial district of Hartford or the judicial district where the development is located enjoining the construction, expansion, establishment or the operation of such development.

Notwithstanding the provisions of this subsection, for single family home building lots within a subdivision of land, for which a certificate is required and which do not have a direct exit or entrance on, or directly abut or adjoin any state highway, no local building official shall issue a certificate of occupancy to any such group or member thereof or person to occupy homes on such lots until such group, member or person provides to such official a copy of the certificate issued under this section by the commission and such official confirms that the certificate conditions have been satisfied.

(c) The State Traffic Commission shall issue its decision on an application for a certificate under subsection (a) of this section not later than one hundred twenty days after it is filed, except that, if the commission needs additional information from the applicant, it shall notify the applicant in writing as to what information is required and (1) the commission may toll the running of such one-hundred-twenty-day period by the number of days between and including the date such notice is received by the applicant and the date the additional information is received by the commission, and (2) if the commission receives the additional information during the last ten days of the one-hundred-twenty-day period and needs additional time to review and analyze such information, it may extend such period by not more than fifteen days. The State Traffic Commission may also, at its discretion, postpone action on any application submitted pursuant to this section or section 14-311a until such time as it is shown that an application has been [filed with and] approved by the municipal planning and zoning agency or other responsible municipal agency. The State Traffic Commission, to the extent practicable, shall begin its review of an application prior to final approval of the proposed activity by the municipal planning and zoning agency or other responsible municipal agency.

(d) In determining the advisability of such certification, the State Traffic Commission shall include, in its consideration, highway safety, the width and character of the highways affected, the density of traffic thereon, the character of such traffic and the opinion and findings of the traffic authority of the municipality wherein the development is located. The State Traffic Commission may require improvements to be made by the applicant to the extent that such improvements address impacts to highway safety created by the addition of the applicant's proposed development or activity. If the State Traffic Commission determines that such improvements, including traffic signals, pavement markings, channelization, pavement widening or other changes or traffic control devices are required to handle traffic safely and efficiently, one hundred per cent of the cost thereof shall be borne by the group building, establishing or operating such open air theater, shopping center or other development generating large volumes of traffic, except that such cost shall not be borne by any municipal agency. The Commissioner of Transportation may issue a permit to said group to construct or install the changes required by the State Traffic Commission, in consultation with the local traffic authority.

(e) Any group aggrieved by any decision of the State Traffic Commission hereunder may appeal therefrom in accordance with the provisions of section 4-183, except venue for such appeal shall be in the judicial district in which it is proposed to operate such establishment. The provisions of this section except insofar as such provisions relate to expansion shall not apply to any open air theater, shopping center or other development generating large volumes of traffic which has received all necessary permits, variances, exceptions and approvals from the municipal zoning commission, planning commission, combined planning and zoning commission and zoning board of appeals in which such development is located prior to or on July 1, 1985, or to any such development which is in operation on that date."