




Center for Land Use Education and Research at the University of Connecticut

Running an Meeting and Making a Decision

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Land Use Academy






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Online Version

- Please note that the answers to the question slides in the presentation are highlighted in light blue on the next slide. The graph on the slide indicates how participants at the training responded to the question.
- This presentation is for educational purposes and **not** intended to represent legal advice. Consult your town attorney in matters concerning your town.






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Pre-Application Conferences

- Valuable procedure but, until recently, no case law or statute allowing it
- Should have a procedure in your regulations
- Be careful of appearing to make a judgment







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Pre-application Conferences

- With the staff
 - * common, informal
 - * non-binding and advisory
- With the commission
 - * permitted by statute (CGS 7-159b)
 - * non-binding

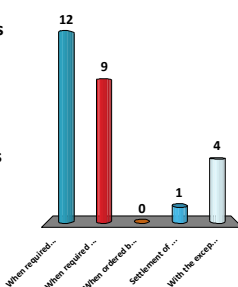




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When is a Public Hearing by a Commission Required?

- A. When required by the statutes
- B. When required by the regulations
- C. When ordered by the City Council/Mayor
- D. Settlement of Litigation
- E. With the exception of IWWA, whenever the Commission wants



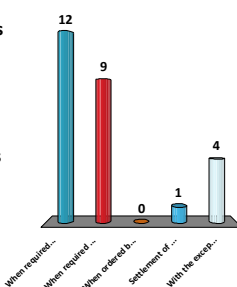
Response Option	Count
When required by the statutes	12
When required by the regulations	9
When ordered by the City Council/Mayor	0
Settlement of Litigation	1
With the exception of IWWA, whenever the Commission wants	4



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Zoning Board of Appeals

- **Must Hold a Public Hearing on Everything**
- **Can deny if a previously denied application is resubmitted as a new application with no changes**




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Planning and Zoning Commissions

Public Hearings Required for:

-
-
-
- **Resubdivision**
- **May be required for site plan review but won't extend your time limits for action**




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Inland Wetlands and Watercourses Agency

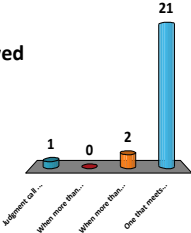
- “ ” required.
- **For other activities a hearing may be held at the discretion of the agency**
- **Upon petition of 25 residents the town (within 14 days of the date of receipt)**



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How is a “significant activity” defined?

- Judgment call of the IWWA
- When more than 5% of a watercourse or wetland is destroyed
- When more than 20% of a watercourse or wetland is destroyed
- One that meets the definition contained in your wetlands regulations.

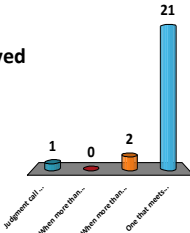


Definition	Count
Judgment call...	1
When more than 5%...	0
When more than 20%...	2
One that meets...	21

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Application Fees

Failure to pay application fees is NOT grounds for not acting on an application. Treat the application as a live bomb and act on it to avoid automatic approval.





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Conducting the hearing-what does the law require?

- **Procedural Due Process vs. Substantive Due Process**
- **Review the application against the regulations as they are written**
- **Conduct hearings so that no one is intimidated, harassed or disadvantaged, regardless of their position**







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Crowd Control-How important is it?

- **Decisions are subject to appeal if an atmosphere of hostility is allowed to pervade the proceedings**
- **Even jokes can be viewed as hostile toward an applicant**
- **Potential for a civil lawsuit**








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Rules for running a meeting

- **All comments are directed to the commission**
- **Never allow [blank] to interrupt a member of the commission, especially the chairman**
- **No one speaks—including commission members—unless and until they are recognized by the chair.**









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Rules for running a meeting

- **Keep people on the point**
- **Don't run too late at night**
- **If it's likely to be bad, have your attorney there to assist you.**




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Let Everyone Know the Rules

Set out the rules of the game before the applicant ever stands up:

- **We will hear from the applicant**
- **Then questions from the Commission and staff**
- **Then those in favor**
- **Then those opposed**
- **Then those who don't wish to be categorized as in favor or opposed**




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Let Everyone Know the Rules

Set out the rules of the game before the applicant ever stands up:

- **There will be no shouting, applause, booing, heckling, or other disturbance**
- **Those who break these rules will be ejected from the meeting.**
- **There will be no exceptions**







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Rules for running a meeting

- **Keep the applicant in line- don t let the applicant incite the crowd or goad the commission into saying something stupid**
- **Keep your own troops in line- your fellow commission members may be your worst enemy**




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Rules for running a meeting

- **on hand if necessary**




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Rules for running a meeting-Logistics

- **Have a large room-oversized, in fact. Packing people together contributes to their anonymity and encourages heckling or shouting out (the voice from the crowd.)**
- **Have a board or other way to display plans, etc.**
- **Have an AV system. People will sit in the back row and then shout, I can t hear.**

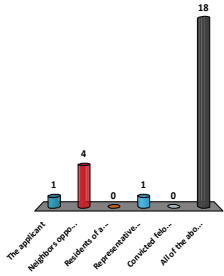


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Which of the following individuals may speak at a public hearing?

- The applicant
- Neighbors opposed to an application
- Residents of another town
- Representatives of trade associations
- Convicted felons
- All of the above



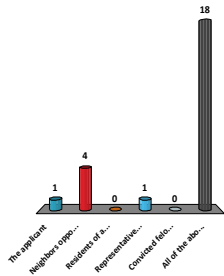
Option	Count
A. The applicant	1
B. Neighbors opposed to an application	4
C. Residents of another town	0
D. Representatives of trade associations	1
E. Convicted felons	0
F. All of the above	18

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Option	Count
A. The applicant	1
B. Neighbors opposed to an application	4
C. Residents of another town	0
D. Representatives of trade associations	1
E. Convicted felons	0
F. All of the above	18

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Who gets to speak?


- **Typically, applicant speaks first to present application**
- **Can have proponents, then opponents, or take turns**
- **Intervenors under CGS 22a-19 can speak even if no public hearing**
- **Can allow people to speak if no public hearing at the discretion of the chair**

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Cross examination

- Explain to the public/applicant why cross examination and questions must be permitted, despite formality.
- Refusal of witness to be cross-examined is grounds for "motion to strike"




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Site Walks

- Must be noticed
- No comments or questions, take notes
- Public and applicants may attend
- Stay together
- What happens if a commissioner doesn't go on the site walk?




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Subpoenas

- Only one case, brand new and only Superior Court, says that an attorney can subpoena parties to appear, with documents (" "), before a ZBA
- Municipal agencies alone (without an attorney) can't issue or enforce subpoenas

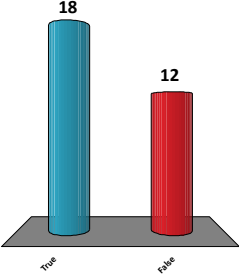


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Continuation of a public hearing requires an additional published notice stating the time and location of the meeting

A.True
B.False



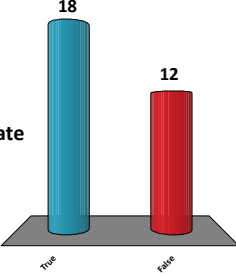
Response	Count
True	18
False	12

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Continuation of a public hearing requires an additional published notice stating the time and location of the meeting

A.True
B.False-Notice of time, date and location of the continued hearing should be announced before adjourning the hearing



Response	Count
True	18
False	12

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Extensions



- Always get them in writing, even handwritten at the table.
- Specify how many days, not just "extension".
- Make sure the applicant understands: if you don't extend, the Commission will make its decision on what it has in front of it or call special meeting within the time limit

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Testimony

- **Everyone must identify themselves**
- **During deliberations-no new evidence and no direct input from applicants or opposition**
- **Commissioners should take care not to “testify”**
- **If you start to testify to facts or “special expertise” the applicant or his attorney may be able to question you**
- **Your job is to listen, question and consider what you hear**







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Decorum

- **Demand to be treated with respect**
- **Refer to each other and speakers with some formality**
- **Treat staff with respect**








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Reports, Exhibits, Letters

- **Note at the opening of the hearing exhibits that have been received**
- **Time to evaluate and examine material**
- **Reading reports and letters out loud**
- **What to do with reports from other agencies, experts, staff, etc.**
- **Electronic presentations**






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Staff Input

- **Normal rule is that your staff and other objective advisors, such as State or other government agencies, can comment even after the public hearing closes but not totally new material**
- **You are not bound by staff opinion**
- **Note special case for ZBA appeal of ZEO: contrary to the normal situation, the ZEO cannot speak after the close of the public hearing when his/her decision is subject of the appeal.**








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Evidence

- **Numbering and logging**
- **Substantial Evidence**
- **Burden is on the applicant to provide evidence to support approval**







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Expert Input

- **Don't be afraid to challenge an expert**
- **Get opinions on both sides of technical issue**
- **Who gets the "last word"?**








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CEPA/22a-19a Interventions

- **Opportunity for intervenor to speak, with or without public hearing**
- **Can raise environmental issues but also procedural issues**
- **Intervenors must allege specific adverse impacts of the proposed activity.**







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CEPA/22a-19a Interventions

- **Impacts must be within the commission's jurisdiction.**
- **Impacts must be proven by substantial evidence.**
- **If allegations proven, then the commission must deny the application if there are "feasible and prudent alternatives" with no or less adverse impacts**








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Keeping the record

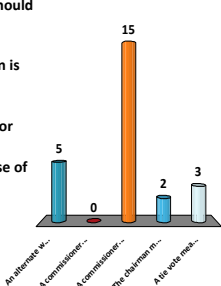
- **Tape everything, even if it is not a formally advertised public hearing**
- **Lack of a transcript could result in a remand for new hearing or sustaining of the appeal**
- **Be specific when you speak so it's clear in the transcript**
- **FOIA allows taping or filming of meeting by others**



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Which of the following statements are generally true?

- A. An alternate who has not been seated should not participate in deliberations
- B. A commissioner who was elected or appointed after the public hearing began is not eligible to vote
- C. A commissioner should not vote on an application in which he has a pecuniary or other personal interest
- D. The chairman may not vote except in case of a tie
- E. A tie vote means that a motion carries



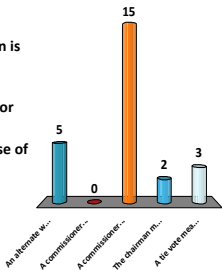
Statement	Number of Votes
A. An alternate who has not been seated should not participate in deliberations	5
B. A commissioner who was elected or appointed after the public hearing began is not eligible to vote	0
C. A commissioner should not vote on an application in which he has a pecuniary or other personal interest	15
D. The chairman may not vote except in case of a tie	2
E. A tie vote means that a motion carries	3



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Making the Decision-Who Votes?

- **If you were not a member of the agency when the public hearing opened, you can't vote**
- **If you were absent, must listen to the tapes, review all of the documents submitted**








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Making the Decision-Who Votes?

- Alternates can participate during the public hearing phase of proceeding, but once deliberations begin, alternate not seated cannot vote or participate in deliberations.
- Once deliberations begin, voting alternate remains so, even if full member returns mid-process







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FOIA

- “Public Meetings”
 - * definition in statute
- “Public Documents”
 - * definition in statute
 - * includes correspondence
 - * email chain warning

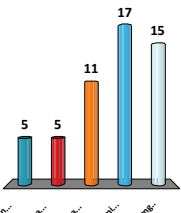




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If not noticed as a public meeting under FOI, which of the following may constitute an illegal meeting of a commission?

- A chance social gathering of a quorum of the members
- A planned meeting of a quorum of the commission members all from one political party
- A planned meeting of a quorum of the commission members all from one political party and the mayor/first selectman
- A quorum of the commission discussing a pending application while standing in the parking lot after a meeting
- An email exchange among a quorum of the commission discussing a pending application



A chance social gathering... 5
 A planned meeting of a... 5
 A planned meeting of a quorum... 11
 A quorum of the commission... 17
 An email exchange among... 15






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Making the Decision-Counting the votes

- What constitutes a quorum
- ZBA is always four out of five
- Tie vote=defeat of the motion
- Abstentions
- Extraordinary Majority
- Ex Officio Members






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Decision on the record

- Must make your decision based on *public hearing*
- You cannot ignore uncontradicted expert testimony if you do not question it. If you have doubts, question the expert on the record
- If you have special expertise upon which you will rely, say so on the record (while hearing is open).

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”Commissioner” Expertise

May rely on own knowledge and expertise

- * OK for general subjects such as traffic
- * otherwise, need to establish expertise
- * may be subject to cross-examination

- State the information for the record during hearing
 - * don’t introduce new facts or opinions later
 - * due process/”surprise” concerns





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Decision Based on Regulations

- **Must make your decision based on the criteria in your regulations; or, if variance, what is stated in the case law. Be sure to use regulatory standards to focus your discussion**
- **Interpretation of regulations**




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Three questions to ask

- 1) **What evidence did we hear about this criteria?**
- 2) **What do we conclude based on that evidence?**
- 3) **Were the criteria met?**





HAVE SOME DISCUSSION to demonstrate that you thought about it

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The Decision

- **Denial "Without Prejudice"**
- **Statement of reasons for the decision**
- **Reconsideration**
- **Precedent**
- **Post decision notice**

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The Decision

- **Time limits**
- **Effective date**
- **Conditions and modifications**
- **Stating the motion**
- **Restate complicated motions**

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The Decision

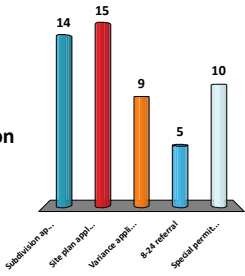
- **Be specific with stipulations and comments**
- **Integral conditions**
- **Approval of the application, not the applicant**
- **Defeating motion to approve does not automatically equal denial**

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Which applications are automatically deemed to have been approved if the agency does not act on them with the statutory time periods?

- Subdivision application
- Site plan application
- Variance application
- 8-24 referral
- Special permit application

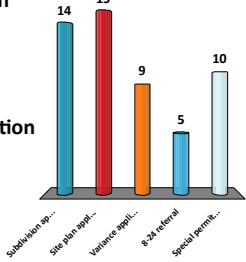


Application Type	Count
Subdivision application	14
Site plan application	15
Variance application	9
8-24 referral	5
Special permit application	10

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Interagency Overlapping Jurisdiction

- Local Overlaps in General
- Zoning/Wetlands/Subdivision
- Zoning/Subdivision Regulations
- Planning and Zoning Commission/Zoning Board of Appeals
- State/Federal Overlaps
- Agency/Administrative
- Inland Wetlands and Watercourses Jurisdiction







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Jurisdiction to hear/decide the application

Agency must have jurisdiction to hear the application and/or to impose its regulations, and jurisdiction must be established before the merits of the issue will be reached



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Which of the following is a legally permissible reason to go into executive session?

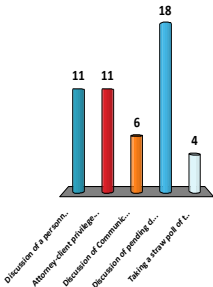
- A. Discussion of a personnel matter
- B. Attorney-client privileged communications
- C. Discussion of Communications from attorneys representing interested parties
- D. Discussion of pending claims or litigation
- E. Taking a straw poll of the members on a pending application



Reason	Count
Discussion of a personnel matter	11
Attorney-client privileged communications	11
Discussion of Communications from attorneys representing interested parties	6
Discussion of pending claims or litigation	18
Taking a straw poll of the members on a pending application	4

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Most Important

Be prepared

- review the materials before the meeting starts
- have access to the regulations
- view the subject property







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Legal and Procedural Considerations-Special Mention

When in doubt, call the town attorney



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Group exercise

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choose

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