Legal Responsibilities of Connecticut Land Use Boards

Land Use Academy

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AS OF RIGHT
- Uses permitted in a particular zone
- Subject to certain limitations
- Accessory
  * customarily associated with a permitted use or structure
  * must be subordinate and incidental to a principal use
  * allowed under certain circumstances
  * very subjective criteria create risks

Zoning Commission-Categories of uses

Zoning Commission-Amendments of Regulations and Maps
- Public hearing required if applicant is other than the commission
- Would still recommend hearing even if town is applicant
- Consistency with POCD

Zoning Commission-Appeals
- To court unless it is specifically stated the appeal is to the ZBA

Zoning Board of Appeals-Appeals of ZEO Decisions
- Must be an actual “decision” to prompt the appeal
- Order or decision is generally not stayed during appeal
- Time frame for filing
denovo review
- Requires public hearing
- ZEO can’t provide additional evidence after close of hearing

Zoning Board of Appeals-Variances
- Must be “in harmony with” purpose and intent of zoning regulations
- Must be “with due consideration for” public health, safety, welfare, property values
- Solely with respect to a given parcel where because conditions exist affecting such parcel, but not the district as a whole, “literal enforcement of the regulations would result in exceptional difficulty or unusual hardship”
- Variances run with the land, not with the owner
Which of the following is recognized as a "hardship" for purposes of granting a variance?

A. Expense
B. Preferences of the owner
C. The neighbors object
D. It would look better if granted
E. None of the above

Which of the following ZBA actions does NOT require four affirmative votes?

A. Granting a variance
B. Overruling the order of the ZEO
C. Approving meeting minutes
D. Approving a special permit application
E. Motion to table an application

Inland Wetlands and Watercourses Commission-Regulated Area

Wetlands
* defined by soil types
* poorly drained, very poorly drained, alluvial and floodplain
* not necessarily "wet land"

Watercourses
* definition includes rivers, streams, brooks, lakes, ponds, marshes
* "all other bodies of water, natural or artificial, vernal or intermittent"
* "perennial watercourses"
### Which of the following activities are permitted "as of right" in a regulated area under wetlands statutes and regulations?

- **a.** Farming, grazing, nurseries
- **b.** Farm ponds of 3 acres or less
- **c.** Clear cutting of timber
- **d.** Soil conservation
- **e.** Construction of a single family residence

### Permitted non-regulated uses

- (1) agriculture
- (2) certain residential homes
- (3) boat anchorage
- (4) Uses incidental to the enjoyment and maintenance of residential property
- (5) construction and operation of municipal water supply systems, dams and reservoirs
- (6) maintenance of certain drainage pipes

Provided they do not "disturb the natural and indigenous character of the wetland or watercourse . . ." :

- (1) Conservation activities
- (2) Outdoor recreation
- (3) Certain activities by state agencies

### IWWC- Regulated Activities

- Removal or deposition of material, obstruction, alteration, pollution within a regulated area

### IWWC-Factors to be Considered in Decision Making

- Environmental impact of proposed action
- Feasible and prudent alternatives
- Long and short term impacts
- Impacts on other wetlands
- Judicial review has changed analysis recently
In Connecticut, into how many parcels must a lot be split to be considered a subdivision?

A. Two  
B. Three  
C. Four  
D. It depends  
E. I don’t like subdivisions, they ruin my town

Planning Commission “free split” or “first cut” exemption from subdivision regulations

- Fact-specific analysis  
- Original lot must pre-date subdivision regulations  
- New lots must comply with zoning requirements  
- No statutory requirement for commission review  
- Town Clerk/ Town Planner communication is key

Subdivision Example...

100 acre Jones Farm

Lot #1

Lot #2

Unless remaining 90 acres are labeled “agricultural land not approved building lots”

5 acre lot for his son

5 acre lot for his daughter

Which of the following is not the purpose of Subdivision Regulations?

A. Ensure subdivisions are properly designed  
B. Consumer protection  
C. Helps ensure the creation and preservation of adequate land records  
D. Ensure that the developer builds buildings that meet the building code  
E. Determines the proper layout of roads and capital improvements
A subdivision regulates

- Details on land division
- Street design and layout
- Stormwater Management
- Water Quality
- Soil Erosion and Sedimentation Control
- Public utilities and services
- Open Space Mandates
- Landscaping and buffers

Planning Commission-waivers of subdivision regulations

- Special conditions must exist
- Only in accord with standards in regulations
- Must not adversely affect adjacent property, public health or safety
- ¾ vote of ALL members

Planning Commission-Consideration of reports from IWWC

- If wetlands involved, application must be filed concurrently (or previously) with IWWC review
- May extend time period to allow for IWWC review
- May not make final decision until receipt of IWWC “report”
- Must give “due consideration” to IWWC “report”

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

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

Legal and Procedural Considerations- FOI

- “Public Meetings”
  * definition in statute
- “Public Documents”
  * definition in statute
  * includes correspondence
  * email chain warning
Legal and Procedural Considerations- Agendas and Notices

• Regular meetings
  * dates to be set each year before 1/31
  * agenda to be posted at least 24 hours in advance
  * identify items to be heard and considered
  * items may be added by 2/3 vote

• Special meetings
  * at least 24 hours' notice to members
  * at least 24 hours' advance posting
  * only those items listed on agenda may be considered
  * “Emergency” meetings
    * very unusual circumstances
    * rare for land use agencies

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

A. Discussion of a personnel matter
B. Discussion of an application that is very unpopular
C. Discussion of attorney-client privileged documents
D. Discussion of pending claims or litigation
E. Taking a straw poll of the members on a pending application

Legal and Procedural Considerations-Running an Effective Meeting

• Be prepared
  * review the materials before the meeting starts
  * have access to the regulations
  * view the subject property

• Chair is in control
• Parliamentary procedure
  * don't need to be exceptionally formal
  * purpose is to maintain order, not to confuse or trick
  * generally rely on Robert's Rules of Order
Legal and Procedural Considerations-Pre application Conferences

• With the staff
  * common, informal
  * non-binding and advisory
• With the commission
  * permitted by statute (CGS 7-159b)
  * may want to include process in regulations
  * non-binding

Legal and Procedural Considerations-Referrals

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

A. Subdivision application
B. Site plan application
C. Variance application
D. 8-24 referral
E. Special permit application

Legal and Procedural Considerations-Referrals

• Town Staff Review
• Regional Planning Agency
• Neighboring Municipalities
• Subdivision, Site Plan & Special Permit Applications to Wetlands
• Planning Commission Review of Proposed Zone Changes

When is a Hearing 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. Whenever the Commission wants
Legal and Procedural Considerations-Running the Hearing

- Questions during hearings
- Public Input
- Reports from staff
- Reports from other agencies
- Expert testimony

Legal and Procedural Considerations-“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
Legal and Procedural Considerations-Ex parte evidence

- Receipt and consideration
  - should be avoided, if at all possible
- Staff and consultant reports
  - limit to factual matters
  - limit to issues raised and discussed during hearing
- Questions and comments during deliberations
  - no new evidence
  - no direct input from applicants or opposition

Legal and Procedural Considerations-Bias and Predisposition

- Statutory prohibitions
- Conflicts of interest
- Perceived or potential conflicts of interest
- Prejudgment/predisposition
- Recusal

Legal and Procedural Considerations-Proper Motions

- Be specific with stipulations and comments
- Integral conditions
- Denial “without prejudice”
- Approval of the application, not the applicant
- Reconsideration

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
Legal and Procedural Considerations-Counting the Votes

- Alternate participation in deliberations
- "Familiarizing oneself with the record"
- Quorum does your commission have rules or bylaws?
- Tie vote = the motion fails to carry, i.e. is defeated
- Abstentions
  - Superior court split on treatment
  - Better to seat an alternate than end up with an abstention
- Defeating motion to approve does not automatically equal denial
- Required supermajorities

Legal and Procedural Considerations-Special Mention

- 22a-19 environmental interventions
- Affordable housing applications

Legal and Procedural Considerations-Special Mention

- Adult entertainment and related uses
- RLUIPA- Religious Land Use and Institutionalized Persons Act (CRFA-Connecticut Religious Freedom Act)

Legal and Procedural Considerations-Special Mention

- When in doubt, call the town attorney

Thank You!

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