



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

Legal Responsibilities of Connecticut Land Use Boards



Land Use Academy

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
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Zoning Commission-Categories of uses

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







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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








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Zoning Commission-Appeals

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








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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
- de novo review
- Requires public hearing
- ZEO can't provide additional evidence after close of hearing

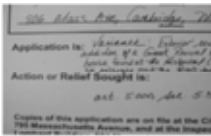






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Zoning Board of Appeals-Variations

- 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 **special** 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**"
- Variations run with the land, not with the owner

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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

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

- A.
- B.
- C.
- D.
- E. **Motion to table an application**

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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

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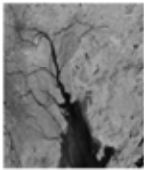
Inland Wetlands and Watercourses Commission-Regulated Area



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"
- * vernal pools
- * "intermittent watercourses"









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IWWC-Upland Review Area

- **"Buffer Zones" and Regulated Area**
- **Some towns have none and others up to 600' because of steep slopes and groundwater**



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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

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Sec. 22a-40 Wetland Uses and Operations Permitted by Right

- (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



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Permitted non-regulated uses

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



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IWWC- Regulated Activities

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


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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



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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

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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




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Subdivision Example...



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

- A.
- B.
- C. records
- D. Ensure that the developer builds buildings that meet the building code
- E. Determines the proper layout of roads and capital improvements

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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

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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



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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**

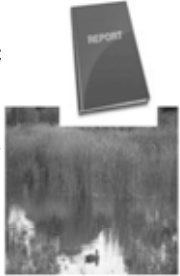


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Planning Commission-Consideration of reports from IWWC

- If wetlands involved, application must be filed concurrently (or previously) with IWWC
- 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"



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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. 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

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Legal and Procedural Considerations- FOI

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






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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









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Legal and Procedural Considerations- Agendas and Notices

- 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








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

- A.
- B. 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






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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. 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






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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









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Legal and Procedural Considerations-Running an Effective Meeting

- 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







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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



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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?

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

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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

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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

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

- A. The applicant
- B. Neighbors opposed to an application
- C. Residents of another town
- D. Representatives of trade associations
- E. Convicted felons
- F. All of the above



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Legal and Procedural Considerations-Running the Hearing

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




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Legal and Procedural Considerations-Running the Hearing

- Cross-examination of witnesses
- Electronic presentations
- Rebuttal
- Due Process
- Continuation of Hearings




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Legal and Procedural Considerations-Site Walks

- Special rules
- Must be noticed
- No comments or questions, take notes
- Public and applicants may attend




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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




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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










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Legal and Procedural Considerations-Bias and Predisposition

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







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Legal and Procedural Considerations-Proper Motions

- Statutory restrictions on various types of applications
- Be clear
- Statement of reasons – when required, almost always desirable
- Conditions and modifications
- Restate complicated motions








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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






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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






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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





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Legal and Procedural Considerations-Special Mention

- 22a-19 environmental interventions
- Affordable housing applications





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Legal and Procedural Considerations-Special Mention

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




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Legal and Procedural Considerations-Special Mention

- When in doubt, call the town attorney



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Thank You!



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