

Legal Responsibilities of Connecticut Land Use Boards



Land Use Academy

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Zoning Commission-Categories of uses

- 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- 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**



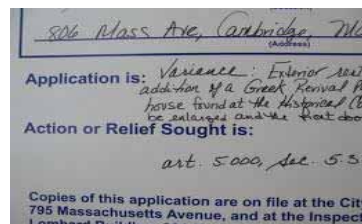
Zoning Board of Appeals-Appeals of ZEO Decisions

- Must be an actual “decision” to prompt the appeal
- Order or decision is generally not stayed during appeal
- Time frame for filing
- de novo 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 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”
- 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



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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"



IWWC-Upland Review Area

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



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



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



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



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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**



Subdivision Example...

100 acre Jones Farm

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

Lot #1

Lot #2

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



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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



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**
- **$\frac{3}{4}$ vote of ALL members**



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"



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

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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**



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**



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



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



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**

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**

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



Legal and Procedural Considerations-Running the Hearing

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



Legal and Procedural Considerations-Site Walks

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



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

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



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



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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**



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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