

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

Legal Responsibilities of Connecticut Land Use Boards



Land Use Academy

Richard P. Roberts
Partner, Halloran & Sage, LLP






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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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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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

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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

Application by: [Name] [Address]
Action or Relief Sought is: [Text]

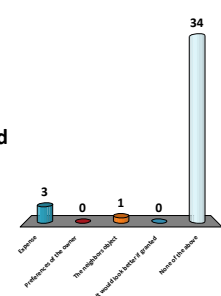
Copies of this application are on file at the City of Meriden, and at the location...

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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



Option	Count
A. Expense	3
B. Preferences of the owner	0
C. The neighbors object	1
D. It would look better if granted	0
E. None of the above	34

Which of the following is recognized as a "hardship" for purposes of granting a variance?

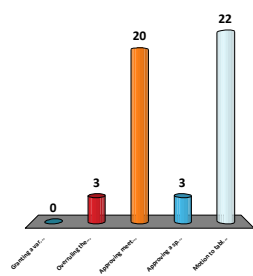
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- C. The neighbors object
- D. It would look better if granted
- E. None of the above

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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



Action	Count
A. Granting a variance	0
B. Overruling the order of the ZEO	3
C. Approving meeting minutes	20
D. Approving a special permit application	3
E. Motion to table an application	22

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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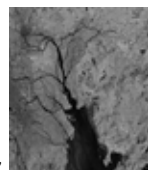
Inland Wetlands and Watercourses Commission-Regulated Area



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**



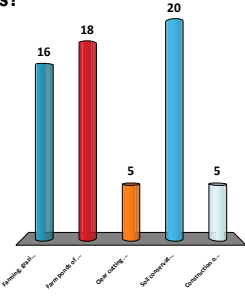



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Which of the following activities are permitted "as of right" in a regulated area under wetlands statutes and regulations?

- 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



Activity	Count
Farming, grazing, nurseries	16
Farm ponds of 3 acres or less	18
Clear cutting of timber	5
Soil conservation	20
Construction of a single family residence	5






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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**



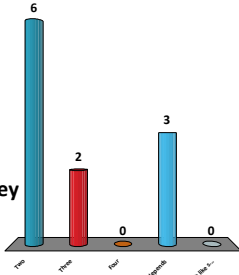



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In Connecticut, into how many parcels must a lot be split to be considered a subdivision?

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



Option	Number of Responses
A. Two	6
B. Three	2
C. Four	0
D. It depends	3
E. I don't like subdivisions, they ruin my town	0






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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...

100 acre Jones Farm



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

Lot #1

5 acre lot for his son

Lot #2

5 acre lot for his daughter

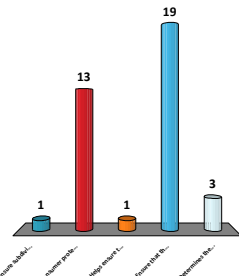



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Which of the following is NOT the purpose of Subdivision Regulations?

- 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



Option	Number of Responses
A. Ensure subdivisions are properly designed	1
B. Consumer protection	13
C. Helps ensure the creation and preservation of adequate land records	1
D. Ensure that the developer builds buildings that meet the building code	19
E. Determines the proper layout of roads and capital improvements	3






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



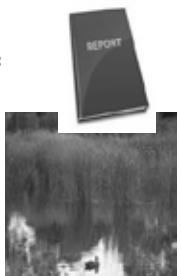





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Planning Commission-Consideration of reports from IWWC

- 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"

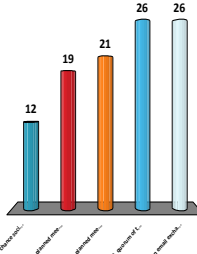







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If not noticed as a public meeting under FOI, which of the following may constitute an illegal meeting of a commission?

- 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



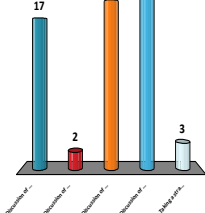



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Which of the following is a legally permissible reason to go into executive session?

- A. 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



Option	Number of Responses
A. Discussion of a personnel matter	17
B. Discussion of an application that is very unpopular	2
C. Discussion of attorney-client privileged documents	19
D. Discussion of pending claims or litigation	21
E. Taking a straw poll of the members on a pending application	3






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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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Decorum

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









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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



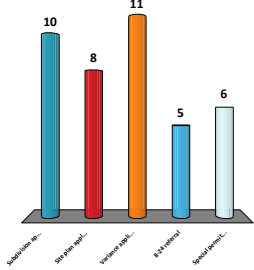



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Which applications are automatically deemed to have been approved if the agency does not act on them with the statutory time periods?

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



Application Type	Count
Subdivision app	10
Site plan app	8
Variance app	11
8-24 referral	5
Special permit	6






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- D. 8-24 referral
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Legal and Procedural Considerations-Referrals

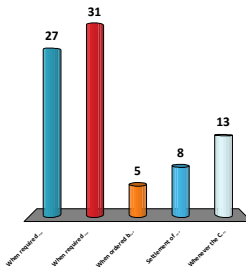
- **Town Staff Review**
- **Regional Planning Agency**
- **Neighboring Municipalities**
- **Subdivision, Site Plan & Special Permit Applications to Wetlands**
- **Planning Commission Review of Proposed Zone Changes**

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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



Option	Count
A. When required by the statutes	27
B. When required by the regulations	31
C. When ordered by the City Council/Mayor	5
D. Settlement of Litigation	8
E. Whenever the Commission wants	13

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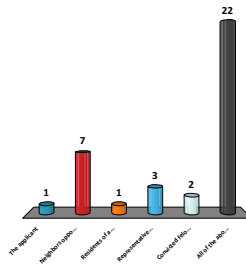
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- D. Settlement of Litigation
- E. Whenever the Commission wants

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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



Option	Count
A. The applicant	1
B. Neighbors opposed to an application	7
C. Residents of another town	1
D. Representatives of trade associations	3
E. Convicted felons	2
F. All of the above	22

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


- A. The applicant
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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

- **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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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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Ex parte Communications

- **How to respond if someone approaches you in a restaurant, store, at a party, etc.**
- **What to do if someone tells you something outside the meetings and you can't avoid it**









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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**

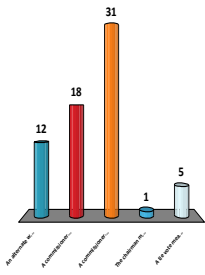



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Which of the following statements are generally true?

- 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



Statement	Count
A	12
B	18
C	31
D	1
E	5

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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
- 8-30g Affordable housing applications

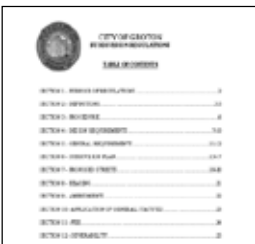


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Bonding Requirements

Authorization to require bonds must be included in regulations




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PA 11-79: Bonding requirements

Applies to site plan and subdivision approvals:

- Limits form of security
- Limits types and amount of permissible bonding
 - Post-acceptance maintenance bonds are impermissible
- Imposes deadlines for release



Bond, Performance Bond



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PA 11-79: Bonding requirements

Form of bond:

“the commission shall accept surety bonds, cash bonds, passbook or statement savings accounts and other surety including, but not limited to, letters of credit, provided such bond or surety is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission”


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PA 11-79: Bonding requirements

Posting bonds:

- Can be posted anytime prior to completion of construction, except commission can require posting prior to commencement E&S
- Lot can't be sold unless all security posted
- Each phase of subdivision must be treated as separate subdivision for purposes of bonding









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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!



Land Use Academy

Richard P. Roberts
Partner, Halloran & Sage, LLP
roberts@halloran-sage.com
860-297-4695




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