Land Use Academy
Center for Land Use Education and Research

Basic Training

Welcome!

CLEAR

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Basic Training for Connecticut Land Use Commissioners

Bruce Hyde
University of Connecticut
Department of Extension
Center for Land Use Education & Research

University of Connecticut
CAHNRC Dept. of Extension, CANHR Dept of Natural Resources, Connecticut Sea Grant

Climate Adaptation Academy
Connecticut NEMO
National NEMO Network
Geospatial Training Program
Land Use Academy
Lab for Earth Resource Info Systems

Water
Land & Climate
Mapping & Geospatial

Website: clear.uconn.edu
Important Information

• Training is not legal advice
• Discussion is encouraged but beating a dead horse is not
• Clickers  ABCDE & multiple answers
• Exits
• Restrooms
• Packets
• Have fun
Topics

• Legal Basis for Land Use Regulation
• Important Issues to Consider
• Conflicts, Bias and Pre-determination
• Running a Meeting
• Public Hearing and Timeframes
• FOI
• Ex-Parte Communications
• Hypothetical Case Study Review
On what commission do you serve?

A. Planning
B. Zoning
C. Planning and Zoning
D. ZBA
E. Inland Wetlands and Watercourses
F. Conservation
G. Economic Development
H. Other
I. n/a
How long have you served?

A. Less than 2 years
B. 2-4 years
C. 5-10 years
D. More than 10 years
E. n/a
How is your Commission staffed?

A. Full time municipal staff
B. Part time municipal staff
C. Contract with COG
D. Contract with a Consultant
E. No staff
F. Other
Are you elected or appointed?

A. Elected
B. Appointed
C. N/A
What do you think of the presidential campaign?

A. It’s great, I can’t wait to vote for Donald
B. It’s great, I can’t wait to vote for Hillary
C. I’m still “Feelin’ the Bern”
D. I’m undecided
E. How did this happen?
F. Canada, here I come.
G. I’m not allowed to use that kind of language in public
An Awesome Responsibility

Land Use Commissions make decisions that affect a community’s quality of life for generations, where investment takes place and an individual’s or business’s financial well being.
An Awesome Responsibility

FAIL

[Images of poor land use and accessible parking]

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"In one particularly egregious case, the HDC, in its fervor to 'preserve' what it considered historic additions on a prominent residence, expressed an official opinion that it would not consider any change to these additions. This refusal to work with the prospective buyer caused the loss-of-sale of the property and eventually a bank foreclosure at great financial cost to the owner," they said.
Sometimes there will be tough decisions...
Hypothetical Case Study

Town of East Northport, CT
Sources of Power

American system derived from English system

- Sovereign had total power over the land
- Granted rights on the use of land to their subjects
  Called “Fees” or “Fiefs”
- In America, the Sovereign is the State government
- Power of state must give way to federal law (10th Amendment)
Legal Basis for Local Land Use Regulations
Which of the following provides the legal basis for a local commission’s land use authority?

A. Legislation through state statutes
B. A vote of the City Council/Board of Selectmen
C. Court decisions
D. Duly adopted local regulations
E. Governor’s Executive Order
F. Public opinion
Which of the following provides the legal basis for a local commission’s land use authority?

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Legal Basis for Local Land Use Regulations

- State Enabling Legislation
- Court Decisions
- Local Regulations
State Enabling Legislation Provides the Foundation and Limits of Power
Police Power = The right or need of government to protect the public health, safety and welfare

Basis of all land use regulation and all sections of the regulations must achieve this end
<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Code and Section Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>Title 8, Chapter 124, Sections 8-1 through 8-13</td>
</tr>
<tr>
<td>Planning</td>
<td>Title 8, Chapter 126, Sections 8-18 to 8-30</td>
</tr>
<tr>
<td>Wetlands</td>
<td>Title 22a, Chapter 440, Sections 22a-36 to 22a-45</td>
</tr>
</tbody>
</table>
Legal Basis for Local Land Use Regulations

State Enabling Legislation

Court Decisions

Local Regulations
Court Decisions

Provide legal review and interpretation

Federal Level

Constitutional foundation for all American zoning was established in a 1926 Supreme Court decision that upheld a zoning ordinance enacted by the Village of Euclid, Ohio

VILLAGE OF EUCLID, OHIO vs. AMBLER REALTY
Ambler bought 68 acres to develop as industry. Village zoned land for residential use only.

-Ambler charged an unconstitutional violation of due process in that it was a taking without just compensation.
-Also claimed financial loss due to restrictive zoning.

**Supreme Court Ruled:**
-Not a taking as Ambler could make use of the land, (not the use they wanted)
-Zoning’s purpose is to protect public health, safety and welfare not personal financial gain
-Village can establish districts and exclude certain uses from certain districts
Euclidean Zoning

The term “Euclidean Zoning” comes from the Euclid vs. Ambler case.

It has nothing to do with Euclidean Geometry.
Court Decisions

State Level

- Courts provide local land use officials wide & liberal discretion

- Feel local officials best suited to make local land use decisions

- Courts will not interfere in local matters unless commissions act illegally.
Court Decisions

Illegal commission acts:

1. Failure to follow procedures set forth in the State Statutes

2. “Clear breach of duty” – acting in an arbitrary or capricious manner

   *arbitrary* = at random, unreasonable

   *capricious* = acting impulsively
Legal Basis for Local Land Use Regulations

State Enabling Legislation

Court Decisions

Local Regulations
Legal Basis of Land Use Regulation

Local Regulations

Ultimate Source of Land Use Control

Basic set of local land use regulations:
1. Zoning
2. Subdivision
3. Inland Wetlands
When drafting regulations, commissions serve in what capacity?

A. Administrative
B. Police
C. Judicial
D. Legislative
E. Parliamentary
Types of Power - Legislative

When writing regulations a commission is acting in a legislative capacity

- Courts allow wide discretion
- Must be consistent with legislative purposes set forth in CGS
Types of Power - Administrative

When reviewing development applications, a commission is acting in an administrative capacity.

- Discretion is more limited
- Must employ appropriate standards
Types of Power - Quasi-Judicial

When hearing appeals, a commission is acting in a quasi-judicial capacity

- Can reverse or affirm, wholly or in part, or modify the challenged order, requirement or decision.
- Must limit decision to issues actually raised in the appeal
Types of Local Commissions

**Regulatory**
- Planning
- Zoning
- Zoning Board of Appeals
- Inland Wetlands and Watercourses
- Historic District
- Aquifer Protection Agency

**Nonregulatory**
- Conservation
- Economic Development
- Design Review
- Agricultural Commission
Which of the following does the State of CT REQUIRE municipalities to have?

A. Planning Commission
B. Zoning Commission
C. Zoning Board of Appeals
D. Inland Wetlands and Watercourses Agency
E. Conservation Commission
F. Everything but a Conservation Commission
Which of the following does the State of CT REQUIRE a municipality to have?

A. Planning Commission
B. Zoning Commission
C. Zoning Board of Appeals
D. Inland Wetland and Watercourses Agency
E. Conservation Commission
F. Everything BUT a Conservation Commission
Current Planning Issues

- Responsible/Smart Growth
- Affordable Housing
- Farmland Preservation
- Climate Change
- Transit Oriented Development
- Low Impact Development
State of Connecticut

We’re Number 1 !!!

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Why is Affordable Housing Important

We were #1
Now we are #6

Connecticut was losing a higher percentage of its 25-34 year olds than any other state, now only 5 other states are worse
Affordable Housing

- The common definition of an affordable home is one where the resident uses no more than 30 percent of his or her income to pay housing costs.
- What was the 2013 “Housing Wage” (what a renter must earn per hour to afford a typical 2BR apartment) in CT? $23.22/ hour or $48,300/year

The more rural regions of Connecticut rank as the nation’s fifth least affordable for renters (with a housing wage of $19.51).
What does affordable housing look like?
What is the 2016 income limit for affordable housing for a family of four in Stratford?

A. $36,900
B. $44,600
C. $53,700
D. $59,800
E. $65,700
# Median Family Income - Harwinton, CT

## FY 2016 Income Limits Summary

<table>
<thead>
<tr>
<th>FY 2016 Income Limit Area</th>
<th>Median Income</th>
<th>FY 2016 Income Limit Category</th>
<th>Persons in Family</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Very Low (50%) Income Limits ($)</td>
<td>1</td>
</tr>
<tr>
<td>Stratford town</td>
<td>$86,300</td>
<td>31,300 35,750 40,200 44,650 48,250 51,800 55,400 58,950</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extremely Low Income Limits ($)</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>18,800 21,450 24,150 26,800 28,950 32,580 36,730 40,890</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low (80%) Income Limits ($)</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>46,000 52,600 59,150 65,700 71,000 76,250 81,500 86,750</td>
<td></td>
</tr>
</tbody>
</table>

**Explanation:**
- **Very Low (50%) Income Limits ($):** These limits are calculated based on 50% of the median income for the area.
- **Extremely Low Income Limits ($):** These limits are calculated based on a lower percentage of the median income for the area.
- **Low (80%) Income Limits ($):** These limits are calculated based on 80% of the median income for the area.
Who Needs Affordable Housing?

Meet Nancy. Every day, she drives from Salt Lake City to Park City, where she works as a nurse. She loves her job and the people she serves, but Nancy may need to leave her job because she can’t find affordable housing close to work.

Safe, attractive, affordable housing is critical to our community’s health and vitality. More affordable housing means that more of our employees will be able to live, work, and play in Park City.

For more information visit www.housinghelp.org
Maps created by Connecticut’s Legislative Commission on Aging, in partnership with the Connecticut State Data Center
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An Aging Connecticut

Percentage of People Age 65 and Older as Proportion of Total Population

Maps created by Connecticut’s Legislative Commission on Aging, in partnership with the Connecticut State Data Center
Why is LID/GI Important?

Stormwater runoff from impervious surfaces is one of the biggest causes of surface water quality degradation.

Up to 70% of the pollution in our surface waters comes from stormwater.
LID/GI Practices

- Vegetated Swales, Buffers, and Filter Strips
Low Impact Development Practices

• Bioretention/Rain Gardens

Rain Garden, Glen Brook Green, Waterford, CT

Rain Garden, Suburban Maryland
Alternatives to Pavement

Not less engineering...

...different engineering!
Green Roof

Centerbrook Architects, Centerbrook, CT
Sometimes you can go too far
Changing Weather Patterns Impact on Connecticut Communities

• More Frequent and Serve Storms-inland flooding, street flooding, stormwater system failure
• Coastal Flooding and Storm Surge-damage to buildings and infrastructure, Coastal Land Loss-erosion
• Rising Groundwater-septic system failure
In NE intense rainstorms and snowstorms now happening 85 percent more often than in 1948.

Source: When It Rains, It Pours by Travis Madsen, Frontier Group & Nathan Wilcox, Environment America Research & Policy Center
The “Rain Bomb” Phenomenon

50 miles

13+”

3+”

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August 9, 2013-----3" rain in 40 minutes

This house is in Torrington.

Friday, Aug 9, 2013 • Updated at 10:35 PM EDT
Storm Sewer Overload
Water Supply, Sanitary Sewer and Stormwater Mgt.
Ice and snowstorms
In the event of a major power failure and disruption to utility systems which do you feel will be hardest of compensate for?

A. Drinking water supply
B. Lack of electricity
C. Food supply
D. Lack of gasoline
E. Inability to flush the toilet
RESPONSIBILITIES

• Be fair to all parties
• Listen to all the facts before rendering a decision
• Treat applicants with respect
• Treat staff with respect
• Follow the rules
Conflict of Interest

Different kinds of conflicts:

• Personal
• Financial
• Perceived or potential conflicts
When a commissioner has a conflict the chairperson of the commission may remove that member and seat an alternate

A. True
B. False
When a commissioner has a conflict the chairperson of the commission may remove that member and seat an alternate

A. True

B. False
If a Commissioner has a perceived conflict of interest, he/she should:

A. State the nature of the conflict and assure the public and the applicant that it will not influence his/her judgment

B. State the nature of the conflict and say that it really isn’t a conflict, just perceived

C. Not say anything because it isn’t a conflict

D. Recuse himself/herself because the appearance of a conflict is just as bad as a real conflict

E. It depends on the circumstances
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E. It depends on the circumstances
“I have seen two ZBA decisions set aside and new public hearing required because in one case a Commissioner recused himself and testified and the other case the Commissioner recused himself and sat next to his brother in the audience who testified about the application and the court found just his presence next to his brother raised the specter of undue influence over the remaining members of the ZBA.”
A planning commission member may represent his neighbor at a zoning commission hearing so long as he declares that he is a member of the planning commission but is not acting in that capacity.

A. True
B. False
A planning commission member may represent his neighbor at a zoning commission hearing so long as he declares that he is a member of the planning commission but is not acting in that capacity.

A. True

B. False
Sec. 8-21. Disqualification of members in matters before planning or zoning commissions or zoning board of appeals

No member of any planning commission and no member of any municipal agency exercising the powers of any planning commission, whether existing under the general statutes or under any special act, shall appear for or represent any person, firm or corporation or other entity in any matter pending before the planning or zoning commission or zoning board of appeals or agency exercising the powers of any such commission or board in the same municipality, whether or not he is a member of the commission hearing such matter.
What the State Statutes say

- CGS 8-11 Disqualification of members of Zoning Commission and Zoning Board of Appeals
- CGS 8-21 Disqualification of members in matters before planning commissions
- CGS 22a-42(c) Municipal regulation of wetlands and watercourses
- CGS 7-148t Conflict of interest for members of land use and purchasing commissions and boards
A Planning Commissioner’s cousin has proposed a subdivision for a piece of land that is adjacent to the commissioner’s hated ex-wife. She is opposed to the development and states, correctly, at the hearing that the commissioner and his cousin are partners in an on-line business. The commissioner has a conflict and should recuse himself.

A. True
B. False
Conflict of Interest

A Planning Commissioner’s cousin has proposed a subdivision for a piece of land that is adjacent to the commissioner’s hated ex-wife. She is opposed to the development and states, correctly, at the hearing that the commissioner and his cousin are partners in an online business.

The commissioner has a conflict and should recuse himself.

A. True
B. False
In the event of a disqualification

- Such fact shall be entered on the records of the commission or board.
- A replacement shall first be made from alternate members pursuant to the provisions of sections 8-1b, 8-5a and 8-21.
- The municipality may provide by ordinance that an elector may be chosen to act as a member of such commission or board in the hearing.
Bias vs. Predetermination

“Bias” generally refers to a personal feeling of either favoritism or antipathy toward a particular person or position.

“Predetermination” or “prejudgment” is a tendency to vote for or against a particular application before all the facts are in.

In certain cases bias and predetermination may both exist.

Definitions from *What is Legally Required* by Michael Zizka
Avoid the Appearance of Bias

The Commission members must not create an atmosphere of hostility

Be careful how your statements may be interpreted

If you allow prejudice to flare at a public hearing, you are inviting the overturn of your decision and, even worse, money damages against your town
Avoid the Appearance of Bias

Especially critical where the flashpoint is a civil right issue all its own: religion, free speech (adult book stores or other entertainment uses or political signs), ethnic background, race, disability. (RLUIPA and CRFA)

Examples:

Applications involving a Church, Synagogue, Mosque
Affordable housing application
“Half-way” house for juveniles transitioning out of prison or disabled persons recovering from alcohol or drug addiction
“Half-way” house for Treatment facility for persons suffering from Alzheimer’s Disease
Residential facility for people who are developmentally disabled
Predetermination

Must not publicly take a position on granting or denial of an application before the application has been formally heard and considered

Keep an open mind
DO NOT post your feelings about a project/application/applicant on Facebook/twitter/snapchat/etc.
Was there bias or predisposition?

An application is made to planning and zoning commission for expansion of gravel mining operation. The chairman visited site “regularly”, followed trucks leaving property and interviewed a family for whom the applicants had done construction work.

During the public hearing, two commissioners discussed potential impacts on wetlands beyond the scope of the application.

The wife of a commissioner who recused himself testified in opposition at the hearing and read a letter she had submitted to the commission.
Was there impermissible predisposition or bias?

A. Yes
B. No
ANSWER: NO

- Chairman’s actions, although “zealous”, did not prove predisposition or bias
- Statements of two commissioners during hearing was insufficient to prove predisposition or bias
- Wife’s statements did not constitute “appearance” by husband at hearing
- Cioffoletti v. Ridgefield PZC, 1988 CT Supreme Court decision
Court Remedies

- Reversal of the commission’s decision
- Remand to the commission for a new hearing or a new vote without the conflicted member(s) participating
- Other remedies that the court deems appropriate based on the facts including, potentially, ordering approval of an application or issuance of a permit
- Potential money damages if civil rights claims are made successfully
Rules for running a meeting

• Chair is in control
• Let everyone know the rules
• Decorum-no interruptions
• Crowd control/Hostility
• Try to run an efficient meeting
• Meeting Logistics
Rules for running a meeting

• All comments are directed to the commission

• Never allow *anyone* 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.
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
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
- Then the applicant will be given a chance to respond to comments and questions
Decorum

- Demand to be treated with respect
- Refer to each other and speakers with some formality
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
Rules for running a meeting

• Avoid the mob mentality. Have the police on hand if necessary
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.

www.timesfreepress.com
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.
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, exhibits, etc.
- Have an AV system. People will sit in the back row and then shout, “I can’t hear.”
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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Timeframes --- The 65-35-65 rule except for IWWC

- A public hearing commence within 65 days of receipt of the application
- Public hearing must be completed within 35 days
- Decision rendered within 65 days (35 days for wetlands)
Extensions

- Applicant may consent to extend time for any of the steps but total of all extensions cannot exceed 65 days.
- Always get them in writing, even handwritten at the table.
- Specify how many days, not just "extension".
Which applications are automatically deemed to have been approved if the agency does not act on them within the statutory time periods?

A. Subdivision application
B. Site plan application
C. Variance application
D. 8-24 referral
E. Special permit application
Which applications are automatically deemed to have been approved if the agency does not act on them within the statutory time periods?

A. Subdivision application
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D. 8-24 referral
E. Special permit application
When is an application considered to be received?

A. On the day it is received
B. The next business day following it’s submission
C. At the next regularly scheduled meeting
D. On the date the next regularly scheduled meeting even if the meeting has been cancelled
E. At the next regularly scheduled meeting or 35 days after submission whichever is sooner

![Bar chart showing percentages for each option]

- On the day it is received: 33%
- The next business day following it’s submission: 11%
- At the next regularly scheduled meeting: 17%
- At the next regularly scheduled meeting or 35 days after submission whichever is sooner: 39%

On the date the next regularly scheduled meeting even if the meeting has been cancelled: 0%
When is an application considered to be received?

A. On the day it is received
B. The next business day following it’s submission
C. At the next regularly scheduled meeting
D. On the date the next regularly scheduled meeting even if the meeting has been cancelled
E. At the next regularly scheduled meeting or 35 days after submission whichever is sooner
Application Fees & Incomplete Applications

Incomplete applications or 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.
Making the Decision

• If you were absent, must listen to the tapes, review all of the documents submitted and state so for the record

• 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

• Don’t abstain-conflicting court cases

• Approval of the application, not the applicant

• Defeating motion to deny
Decision Based on Regulations

Must make your decision based on the criteria in your regulations

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
Keeping the record

- **Tape everything**, even if it is not a formally advertised public hearing
- One person speaks at a time
- Avoid familiarity. Think of how the transcript will look to a judge reading it.
- 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
Freedom of Information Act

• The Act provides the public with the right of access to records and meetings of public agencies.

• What constitutes a public meeting and public records is defined in the statutes

Selected statutes:

Chapter 14 Freedom of Information Act

- **Sec. 1-200** Definitions.
- **Sec. 1-205** Freedom of Information Commission.
- **Sec. 1-210** Access to public records. Exempt records.
- **Sec. 1-215** Record of an arrest as public record. Exception.
- **Sec. 1-225** Meetings of government agencies to be public. Recording of votes. Schedule and agenda of meetings to be filed and posted on web sites. Notice of special meetings. Executive sessions.
- **Sec. 1-231** Executive sessions.
- **Sec. 1-241** Injunctive relief from frivolous, unreasonable or harassing freedom of information appeals.
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 quorum of the commission discussing a pending application while standing in the parking lot after a meeting

D. An email exchange among a quorum of the commission discussing a pending application
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D. An email exchange among a quorum of the commission discussing a pending application
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 financial or 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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Ex parte Communications

• Should be avoided, if at all possible

• 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
Site Walks

• Must be noticed. It is a meeting.
• No comments or questions, take notes
• Public and applicants may attend
• Stay together
• Does everyone have the same information?
4 things your staff wants you to know...

1) Always bring your tools (regulations) with you.
2) Take time to read the POCD and your regulations.
3) Be thoughtful and courteous during a meetings. Remember your role.
4) Be prepared.
Legal and Procedural Considerations-Special Mention

When in doubt, call the town attorney

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Hypothetical Case Study

Town of East Northport, CT
1. Chairman should have had a backup location arranged.
2. Chairman is excluding people from the hearing and ordering those who have already spoken to
   leave the room.
3. Chairman can only limit people to a set time for their first time “at bat,” and then must give
   them another chance.
4. There is no hardship requirement for a special exception & ZBA deals with hardships.
5. Chairman must get control of the crowd by any means at his disposal.
6. How bodies are buried is not a zoning issue.
7. Ex-parte communications by Gosup. Predetermination and grounds for appeal
8. Conflict of interest. Mr. Gilted should recuse himself.
9. Can’t walk site and get new info after the close of the hearing. Must allow the public the same
   right to see the property as commissioners. Must allow the applicant a chance to respond to
   commissioners concerns raised by the site walk.
10. An apology is not enough.
11. Gaun never says he listened to the tapes, and the alternates are participating though not
    seated.
12. Expertise disclosed only after the close of the public hearing
13. New information and new expert testimony and member Karz hasn’t been seated for a
    missing full board member
14. Unconstitutional restriction on freedom of religion and speech, and also RLUIPA violation.
15. Tie motion does not carry
16. *Soylent’s behavior could be considered as hostile