Roles and Responsibilities of Land Use Commissions

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Department of Extension

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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
- Rights held by landowners still called “fee interests”
- 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 statues
B. A vote of the City Council/Board of Selectmen
C. Court decisions
D. Duly adopted local regulations
E. 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
Connecticut General Statutes – Land Use

Zoning       Title 8,    Chapter 124,  Sections 8-1 through 8-13
Planning    Title 8,    Chapter 126,  Sections 8-18 to 8-30
Wetlands    Title 22a,  Chapter 440,  Sections 22a-36 to 22a-45
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
1926  U.S. Supreme Court
Upholds Right to Zone

Euclid vs. Ambler

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

State Level

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
Planning Commission

Key Powers and Duties

1. Prepare/adopt/amend the POCD
   a. Must be reviewed every 10 years
   b. Incorporate principles in State C&D Policies Plan

2. Establish, change or repeal Subdivision Regulations

3. Hear, consider and decide applications for subdivision approval

4. Review all proposed municipal improvements Sec. 8-24
Zoning Commission Key Powers and Duties

• Zoning Regulations and Districts
  • Establish, change or repeal regulations and districts
  • Hear, consider and decide upon petitions for changes to regulations and districts

• Zoning Administration
  • Provide for the manner that regulations are enforced and take appropriate actions
  • Certify that a building, structure or use is in conformance (ZEO)
  • Require, when appropriate, that a site plan be filed to determine conformity (ZEO)
  • Hear, consider and decide on application for special permits/exceptions
Zoning Board of Appeals

Key Powers and Duties

• Hear and decide appeals from decisions made by the Zoning Enforcement Officer (ZEO)

• To grant variances from the strict application of the zoning regulations

• To hear and decide any matters that the zoning regulations specify them to consider.
Inland Wetlands and Watercourses Agency

Key Powers and Duties

• **Regulations and Boundaries**
  • Establish, change or repeal IWW regulations and boundaries
  • Hear, consider, decide on petitions for changes in IWW regulations

• **Administration of Regulations**
  • Hear, consider and decide upon applications for regulated activities involving IWW and to determine whether activities are exempt from regulations
  • Enforce IWW regulations
  • Hear appeals from any decisions of the IWW agent

• **Advise other commissions on wetlands protection**
Aquifer Protection Agency

Key Powers and Duties

• Identify and inventory potential regulated activities in the area
• Adopt local aquifer protection area regulations
• Register regulated businesses and facilities within the aquifer protection area
• Issue permits for new regulated activities
• Educate the public about the importance of protecting groundwater
Conservation Commission

Key Powers and Duties

• **SHALL:**
  - Conduct research into utilization or possible utilization of land
  - Keep an index of open areas, public or private.
  - Keep records of its meetings and activities

• **MAY**
  - Make recommendations to zoning, planning, IWWA or others on proposed land use changes
  - Inventory natural resources
  - Propose a greenway plan for inclusion in POCD
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
"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.
Current Planning Issues

• Responsible/Smart Growth
• Affordable Housing
• Farmland Preservation
• Climate Change
• Transit Oriented Development
• Low Impact Development
What is responsible/smart growth?

Responsible/smart growth is a balance between our growth and development needs and conservation of our state’s resources and open space.
CT Conservation and Development Policies Plan Update for 2013-2018

- Adopted by the Connecticut General Assembly on June 5, 2013

- Legislation requires State to make sure spending is consistent with the plan and the six growth management principles in the Plan

- Municipalities must amend their plans by July 1, 2014 to include six growth management principles or be ineligible for state discretionary funding ($200K).
State of Connecticut

We’re Number 1 !!!
Why is Affordable Housing Important

We’re Number 1 !!!

Connecticut is losing a higher percentage of its 25-34 year olds than any other state
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 2011 “Housing Wage” (what a renter must earn per hour to afford a typical 2BR apartment) in CT?
  • $23.58/hour or $49,051/year
What does affordable housing look like?
What is the income limit for affordable housing for a family of four in the Norwich area?

A. $36,900
B. $44,600
C. $53,700
D. $59,800
E. $64,200
### Median Family Income Norwich-New London HMFA

**Department of Housing and Urban Development (HUD)**

**Income Limits and Median Family Incomes - Effective May 31, 2011**

<table>
<thead>
<tr>
<th>Household Size</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
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</thead>
<tbody>
<tr>
<td>Extremely Low-Income (30 percent of the median)</td>
<td>$17,500</td>
<td>$20,000</td>
<td>$22,500</td>
<td>$24,950</td>
<td>$26,950</td>
<td>$28,950</td>
<td>$30,950</td>
<td>$32,950</td>
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<tr>
<td>Very Low-Income (50 percent of the median)</td>
<td>$29,150</td>
<td>$33,300</td>
<td>$37,450</td>
<td>$41,600</td>
<td>$44,950</td>
<td>$48,300</td>
<td>$51,600</td>
<td>$54,950</td>
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<tr>
<td>Low-Income (80 percent of the median)</td>
<td>$44,950</td>
<td>$51,400</td>
<td>$57,800</td>
<td>$64,200</td>
<td>$69,350</td>
<td>$74,500</td>
<td>$79,650</td>
<td>$84,750</td>
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<tr>
<td>150 Percent of the Median</td>
<td>$87,450</td>
<td>$99,900</td>
<td>$112,350</td>
<td>$124,800</td>
<td>$134,850</td>
<td>$144,900</td>
<td>$154,800</td>
<td>$164,850</td>
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</table>

Norwich-New London, CT HMFA

Median Family Income: $83,200

Includes the towns of: Bozrah, East Lyme, Franklin, Griswold, Groton, Ledyard, Lisbon, Lyme, Montville, New London, North Stonington, Norwich, Old Lyme, Preston, Salem, Sprague, Stonington, Voluntown, Waterford

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## Exempt from Sec 8-30(g)

<table>
<thead>
<tr>
<th>Town</th>
<th>Total Housing Units 2010 Census</th>
<th>Governmentally Assisted Units</th>
<th>Tenant Rental Assistance</th>
<th>CHFA/USDA Mortgages</th>
<th>Deed Restricted Units</th>
<th>Total Assisted Units</th>
<th>Percent Affordable</th>
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</thead>
<tbody>
<tr>
<td>Ansonia</td>
<td>8,148</td>
<td>372</td>
<td>699</td>
<td>106</td>
<td>9</td>
<td>1,186</td>
<td>14.56%</td>
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<td>Bloomfield</td>
<td>9,019</td>
<td>584</td>
<td>147</td>
<td>295</td>
<td>0</td>
<td>1,026</td>
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<td>Bridgeport</td>
<td>57,012</td>
<td>5604</td>
<td>3724</td>
<td>964</td>
<td>15</td>
<td>10,307</td>
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<td>Bristol</td>
<td>27,011</td>
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<td>791</td>
<td>1014</td>
<td>0</td>
<td>3,576</td>
<td>13.24%</td>
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<td>Derby</td>
<td>5,849</td>
<td>259</td>
<td>305</td>
<td>63</td>
<td>0</td>
<td>627</td>
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<td>East Hartford</td>
<td>21,328</td>
<td>1577</td>
<td>835</td>
<td>908</td>
<td>0</td>
<td>3,320</td>
<td>15.57%</td>
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<td>East Windsor</td>
<td>5,045</td>
<td>558</td>
<td>27</td>
<td>92</td>
<td>14</td>
<td>691</td>
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<td>Enfield</td>
<td>17,558</td>
<td>1340</td>
<td>215</td>
<td>546</td>
<td>7</td>
<td>2,108</td>
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<td>Groton</td>
<td>17,978</td>
<td>3267</td>
<td>56</td>
<td>337</td>
<td>10</td>
<td>3,670</td>
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<td>Hartford</td>
<td>51,822</td>
<td>9415</td>
<td>7577</td>
<td>1440</td>
<td>0</td>
<td>18,432</td>
<td>35.57%</td>
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<tr>
<td>Killingly</td>
<td>7,592</td>
<td>530</td>
<td>124</td>
<td>251</td>
<td>0</td>
<td>905</td>
<td>11.92%</td>
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<tr>
<td>Manchester</td>
<td>25,996</td>
<td>1813</td>
<td>1011</td>
<td>883</td>
<td>36</td>
<td>3,743</td>
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<td>Mansfield</td>
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<td>417</td>
<td>159</td>
<td>76</td>
<td>2</td>
<td>654</td>
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<tr>
<td>Meriden</td>
<td>25,892</td>
<td>1769</td>
<td>970</td>
<td>1022</td>
<td>11</td>
<td>3,772</td>
<td>14.57%</td>
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<tr>
<td>Middletown</td>
<td>21,223</td>
<td>2814</td>
<td>1295</td>
<td>590</td>
<td>25</td>
<td>4,724</td>
<td>22.26%</td>
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<tr>
<td>New Britain</td>
<td>31,226</td>
<td>3183</td>
<td>1457</td>
<td>1153</td>
<td>396</td>
<td>6,189</td>
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<tr>
<td>New Haven</td>
<td>54,967</td>
<td>8210</td>
<td>6116</td>
<td>1127</td>
<td>487</td>
<td>15,940</td>
<td>29.00%</td>
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<tr>
<td>New London</td>
<td>11,840</td>
<td>1672</td>
<td>155</td>
<td>457</td>
<td>69</td>
<td>2,353</td>
<td>19.87%</td>
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<tr>
<td>Norwalk</td>
<td>35,415</td>
<td>2248</td>
<td>982</td>
<td>238</td>
<td>559</td>
<td>4,027</td>
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<td>Norwich</td>
<td>18,659</td>
<td>1406</td>
<td>707</td>
<td>517</td>
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<td>Plainfield</td>
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<td>225</td>
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<tr>
<td>Putnam</td>
<td>4,299</td>
<td>383</td>
<td>64</td>
<td>101</td>
<td>0</td>
<td>548</td>
<td>12.75%</td>
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<tr>
<td>Stamford</td>
<td>50,573</td>
<td>4618</td>
<td>1645</td>
<td>309</td>
<td>1221</td>
<td>7,793</td>
<td>15.41%</td>
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<tr>
<td>Torrington</td>
<td>16,761</td>
<td>1082</td>
<td>301</td>
<td>611</td>
<td>17</td>
<td>2,011</td>
<td>12.00%</td>
</tr>
<tr>
<td>Vernon</td>
<td>13,896</td>
<td>1386</td>
<td>519</td>
<td>352</td>
<td>12</td>
<td>2,269</td>
<td>16.33%</td>
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<td>Waterbury</td>
<td>47,991</td>
<td>4870</td>
<td>3110</td>
<td>2256</td>
<td>333</td>
<td>10,569</td>
<td>22.02%</td>
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<tr>
<td>West Haven</td>
<td>22,446</td>
<td>1024</td>
<td>1380</td>
<td>415</td>
<td>0</td>
<td>2,819</td>
<td>12.56%</td>
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<tr>
<td>Winchester</td>
<td>5,613</td>
<td>316</td>
<td>248</td>
<td>116</td>
<td>0</td>
<td>680</td>
<td>12.11%</td>
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<tr>
<td>Windham</td>
<td>9,570</td>
<td>1692</td>
<td>560</td>
<td>427</td>
<td>0</td>
<td>2,679</td>
<td>27.99%</td>
</tr>
</tbody>
</table>
Who Needs Affordable Housing?
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-A better approach to stormwater management

The strategy includes:

1. reducing impervious cover (IC) where practical

2. disconnecting IC from the surface waterbody

3. minimizing additional disturbance to maintain existing natural buffering capacity

4. installing engineered BMPs to reduce the impact of IC on receiving water hydrology and water quality.
LID/GI Practices

- Vegetated Swales, Buffers, and Filter Strips

South Windsor, CT

Old Saybrook, CT

Waterford, CT
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
Climate Issues Facing Connecticut Communities

- Coastal Flooding and Storm Surge - damage to buildings and infrastructure
- Coastal Land Loss - erosion
- More Frequent and Serve Storms - inland flooding, street flooding, stormwater system failure,
- 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
Storm surge Milford, CT during Tropical Storm Irene
Ice and snowstorms
Conflict of Interest

Different kinds of conflicts:

- Personal
- Financial
- Perceived or potential conflicts
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.
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
"I have seen two ZBA decisions set aside and new public hearing required because in one case a Commissioner recues 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."
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)

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
Which is considered Predetermination?

A. A commissioner initially recused himself saying “I don’t even want to hear this proposal” but later participated in process
B. A commissioner told the applicant that he was “wasting his time and money” because he would never get approval
C. Both
D. Neither

Bar chart showing:
- 34 voters chose A
- 4 voters chose B
- 1 voter chose D
- 0 voters chose C
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 predilection to vote for or against a particular application.

• In certain cases bias and predetermination may both exist.

Definitions from *What is Legally Required* by Michael Zizka
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.
Hypothetical Case Study

Town of Gilgamesh, 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. The Public Health Code is not for the PZC to administer or enforce.
7. The hearsay is admissible, but the movement of groundwater through the soil is a matter requiring expert testimony. Also, Mr. Research should be listening, not testifying.
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
Website: clear.uconn.edu