



Providing information, education and assistance to land use decision makers, in support of balancing growth and natural resource protection.

# Land Use Commissioner Training Webinar – Module 6

<https://landusecommissionertraining.com> | Center for Land Use Education and Research ([uconn.edu](https://uconn.edu))

September 19, 2024



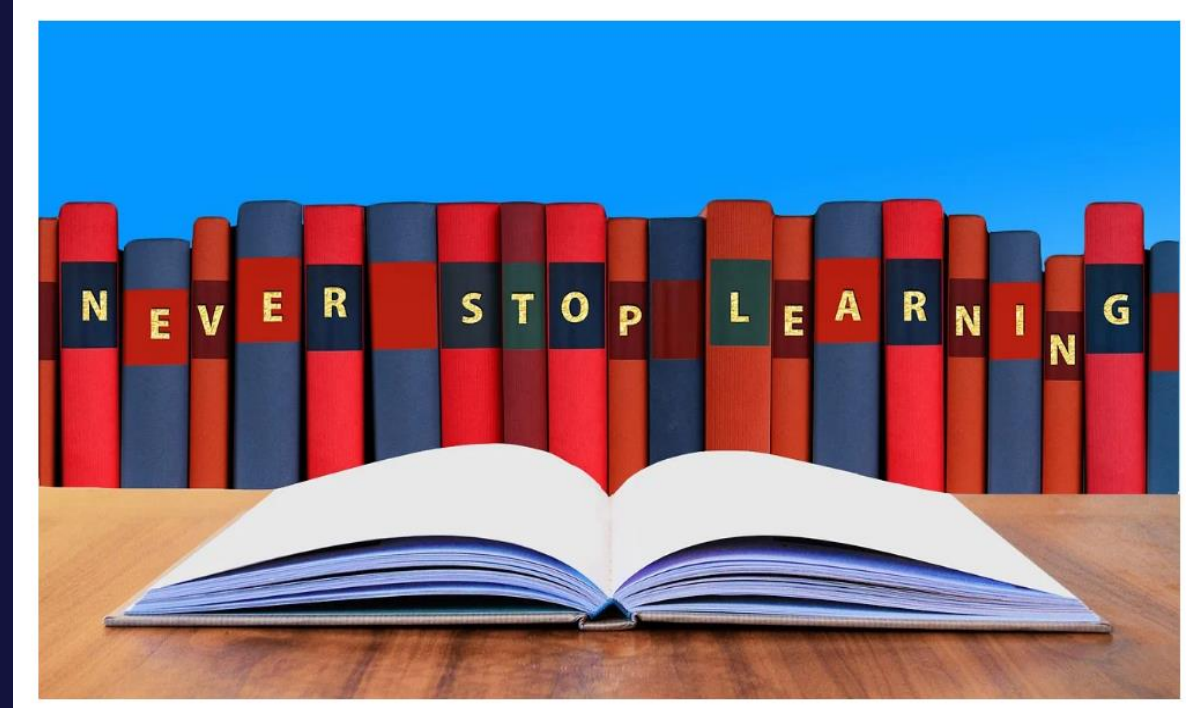
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# Basic Training for Connecticut Land Use Commissioners

# Important Information

- Training is not legal advice
- More training at:  
<https://clear.uconn.edu/training/land-use-commissioner-training/>
- Training is recorded
- Slides and recording will be posted  
<https://clear.uconn.edu/lua/>
- Interactive / use polling and chat
- Let's have fun!



- Attendance will be confirmed via email after each webinar  
**Please keep copy of the email for your records**

# About This 2024 Webinar Series

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- Third Thursday of each month except for August
- 30-40 min duration
- Attendance will be confirmed via email after each webinar / **Please keep copy of the email for your records**
- Completing Basic Training (such as CLEAR LUA) is strongly recommended by the OPM to new members



# Recap

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## So far, we covered:

- Legal Basis for Land Use Regulations
- Commissioner Training Requirements (Planning, Zoning, ZBA, Inland Wetlands and Watercourse and Aquifer Protection Commissions)
- Types of Power of Land Use Commissions
- Zone Change and Regulation Amendments v. Special Permit v. Site Plan
- Responsibilities / Fundamental Fairness
- Running a Meeting
- Role and Participation of Alternate Commission/Board Members
- Best Practices when Conducting Site Walks
- Public Hearings

# Webinar Overview: Topics Covered Today

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- Conflict of Interest
- Bias and Predisposition
- FOIA (if we have the time)

# Upcoming Webinars -

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Oct 17, 2024 –

FOIA

Representation by Commission Members

Social Media

Nov 15, Dec 20, 2024 –

Fundamentals of Site Plan Reading





# RESPONSIBILITIES

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- Be fair to all parties
- Listen to all the facts before rendering a decision
- Treat all parties with respect
- Be prepared & Follow the rules
  
- Rules exist to:
  - Ensure governmental decisions and policies are made through the proper channels.
  - Prevent public office from being used for personal gain
  - Promote public confidence in the integrity of its government

# Why do we care?

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- Like it or not, you are engaged in public service, whether elected or appointed, paid or volunteer
- You are subject to enhanced scrutiny of your moral character
- You are required to comply with State and local laws regarding ethics
- The failure to act properly could have legal, financial and/or embarrassing consequences

**BIG  
LEGAL  
MESS**



# What is a conflict of interest?

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A situation in which a public official, instead of acting for the benefit of public, exploits their position for personal benefit, typically but not always for some form of financial gain.

# Conflict of Interest

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- Different kinds of conflicts:
  - Personal
  - Financial
  - Professional

**Actual, Potential or Perceived**



# Conflict of Interest

- Personal interest includes close friendships or other association with the applicant



# Conflict of Interest

- Financial interest includes any financial interest of a commissioner or members of his immediate family. It also includes anything where there is a financial benefit to the commissioner which may be greater than the benefit to the community at large or to a substantial segment of the community.





[pollev.com/snazzytree942](https://pollev.com/snazzytree942)

- Once logged in you will be prompted to next question automatically each time a new question is asked

A Planning Commissioner's cousin has proposed a subdivision for a piece of land that is adjacent to the commissioner's fourth 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.

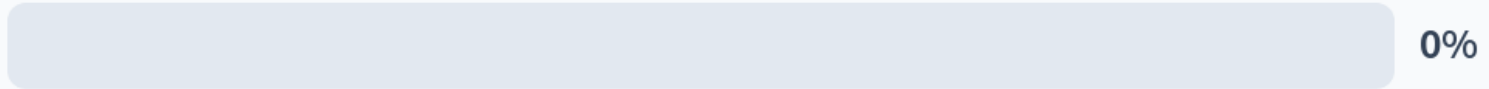
**1.TRUE**

**2.FALSE**

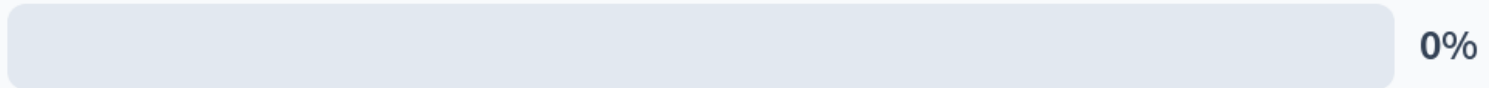


## The Commissioner has a conflict and should recuse him/herself?

TRUE



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 fourth 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.

**1. True**

**2. False**

**When a commissioner has a conflict the chairperson of the commission may remove that member and seat an alternate**

**1.TRUE**

**2.FALSE**

When a commissioner has a conflict the chairperson of the commission may remove that member and seat an alternate

TRUE

0%

FALSE

0%

**When a commissioner has a conflict the chairperson of the commission may remove that member and seat an alternate**

**1. TRUE**

**2. FALSE**

# **If a Commissioner has a perceived conflict of interest, he/she should:**

- 1. State the nature of the conflict and assure the public and the applicant that it will not influence his/her judgment**
- 2. State the nature of the conflict and say that it really isn't a conflict, just perceived**
- 3. Not say anything because it isn't a conflict**
- 4. Recuse himself/herself because the appearance of a conflict is just as bad as a real conflict**
- 5. It depends on the circumstances**



## If a Commissioner has a perceived conflict of interest, he/she should:

State the nature of the conflict and assure the public and the applicant th... 0%

State the nature of the conflict and say that it really isn't a conflict, just ... 0%

Not say anything because it isn't a conflict 0%

Recuse himself/herself because the appearance of a conflict is just as bad... 0%

It depends on the circumstances 0%

## If a Commissioner has a perceived conflict of interest, he/she should:

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4. Recuse himself/herself because the appearance of a conflict is just as bad as a real conflict
5. It depends on the circumstances



# Conflict of Interest

- **Perceived or potential conflicts—even though a conflict might not be an actual conflict, it may be perceived by the public to be one**
- **The action taken by the Commissioner may depend on the individual circumstances**

# 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



# Is it Bias or Predetermination or both?

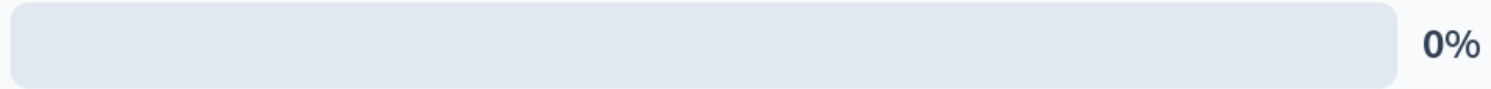
The Town Planning and Zoning Commission opened a public hearing on a proposed amendment to the zoning regulations. Commissioner Stu Borne submitted correspondence for the record at the hearing advocating denial of the pending amendment. He had previously sent the letter to many people in town and posted his objections on facebook. After the hearing ended and deliberations began, despite being warned by the town attorney not to introduce new evidence, he set up easels and presentation boards stating why the application should be denied. He made the motion to deny the proposal and it passed.

Did Commissioner Borne's actions constitute:

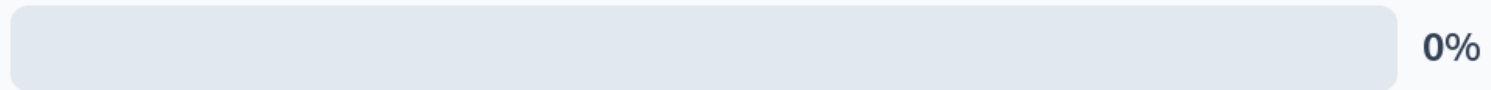
1. Bias
2. Predetermination
3. Both
4. Neither

## Did Commissioner Borne's actions constitute:

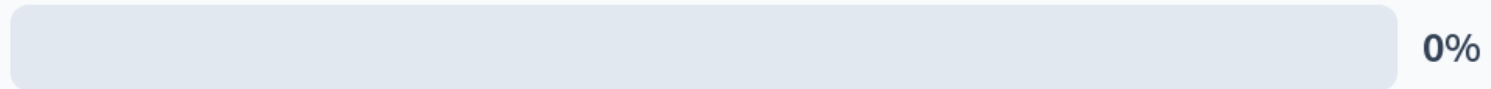
Bias



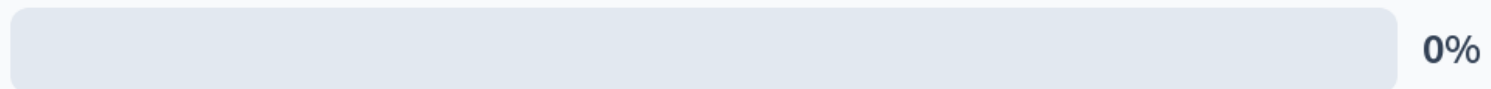
Predetermination



Both



Neither





# Did Commissioner Borne's actions constitute:

1. Bias
2. Predetermination
3. Both
4. Neither

# Was there impermissible bias or predetermination?

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.

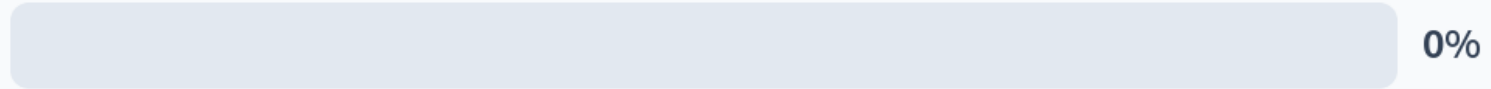
Was there impermissible  
predetermination or bias?

1. Yes

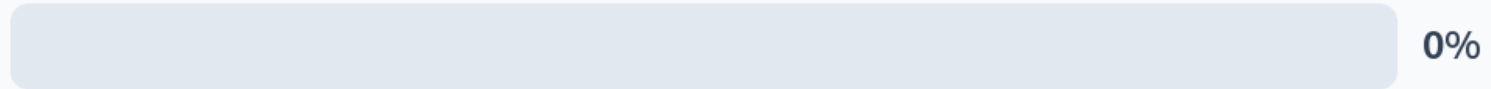
2. No

## Was there impermissible predetermination or bias?

Yes



No



# ANSWER: NO

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

# Questions?

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# Evaluation- Please respond in chat:

My knowledge on Bias and Predisposition:

- A. Significantly improved
- B. Somewhat improved
- C. Did not change