



Land Use Academy

Center for Land Use Education and Research

Advanced Legal Procedures Training Fall 2024



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HEALTH AND NATURAL
RESOURCES

EXTENSION

Land Use Advanced Training Fall 23



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Running a Meeting and Making a Decision

Atty. Ken Slater, Halloran & Sage



Fair & Affordable Housing

Atty. Mark Branse, Halloran & Sage



Bias, Predisposition and Conflicts

Atty. Rich Roberts, Halloran & Sage



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Please take note

- Training is NOT legal advice
- Discussion is encouraged but beating a dead horse is not
- Polling instructions
- Questions may have multiple answers
- Have fun
- For additional training visit our website

[Land Use Academy | Center for Land Use Education and Research \(uconn.edu\)](https://uconn.edu)



Land Use Commissioner Training

[Land Use Academy | Center for Land Use Education and Research \(uconn.edu\)](https://uconn.edu)

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CLEAR

Water - Land & Climate - Mapping - STEM - Food Training Media - Abc

Land Use Academy

Home Basic Training Advanced Training Topical Training Resources About

We are currently expanding the Land Use Academy program to offer more trainings in both in-person and virtual settings, cover additional topics, and provide new video training modules for commissioners. Keep an eye out for new exciting changes.

Land Use Commissioner Training

As of January 1, 2023, planning and zoning commissioners in the State of Connecticut are required to complete **at least four hours of training** as required under the [Section 8-4c](#) of Connecticut General Statutes. For more information on these requirements, review the [CT Office of Policy and Management \(OPM\) guidelines here](#).

UConn CLEAR, in collaboration with OPM, has set up a statewide Land Use Academy's Commissioner Training Calendar to help towns and commissioners locate training opportunities in line with these requirements. This includes events from providers throughout the state. Click under each date on the calendar for further information about training. There are also ongoing virtual trainings offered by CLEAR and CT DEEP that may meet training requirements. Explore the CT DEEP and UConn CLEAR Training tabs above for self-paced online training courses and other opportunities.

[MORE INFORMATION ABOUT LAND USE ACADEMY TRAINING](#)

Date	Event
Saturday, October 19	8:30am CLEAR Advanced Land Use Academy - In-person
Thursday, November 21	12:00pm Basic Training Webinar Series - Virtual/online
Thursday, December 19	12:00pm Basic Training Webinar Series - Virtual/online

Basic Training

The *Legal Requirements and Procedures, Roles and Responsibilities* training has been split into two modules. This

Advanced Training

We offer an all-day Advanced Training covering three topics in-depth: *Bias, Predisposition and Conflicts; Implementing and*

Topical Training

These trainings cover supplemental and "hot" topics to assist with the Land Use Commissioner trainings. These

Resources

A pit stop for all Land Use Commissioner resources. Here you will find more information the What's Legally Required by

Center for Land Use Education and Research



Water



Land Use &
Climate Resiliency



Geospatial Tools &
Training



Food Systems



STEM Education &
Local Conservation

<https://clear.uconn.edu>

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Q A-Z

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Search this site...

Water - Land & Climate - Mapping - STEM - Food Training Media - About -

Training

This page provides links to key areas of training provided by both UConn CLEAR and CT DEEP. For more information on these training courses or certificates, click below.



Land Use Academy's Commissioner Training

The statewide Land Use Commissioner Training Calendar as well as information on upcoming virtual and in-person trainings to assist in new requirements for planning and zoning commissioners.

LEARN MORE



CT DEEP Training / Certificate Courses

A variety of trainings provided by CT DEEP to assist municipal staff in completing regulatory requirements as well as other informational courses.

LEARN MORE



UConn CLEAR Training Courses

Training courses offered to a wide audience range and spanning several topics, such as green stormwater infrastructure, land use, farming, climate resilience, and geospatial training.

LEARN MORE



CLEAR Webinar Library

The CLEAR webinar library offers free webinars dating back to 2009. Users can pick and choose which webinars are most informative to them.

LEARN MORE

[Training | Center for Land Use Education and Research \(uconn.edu\)](#)



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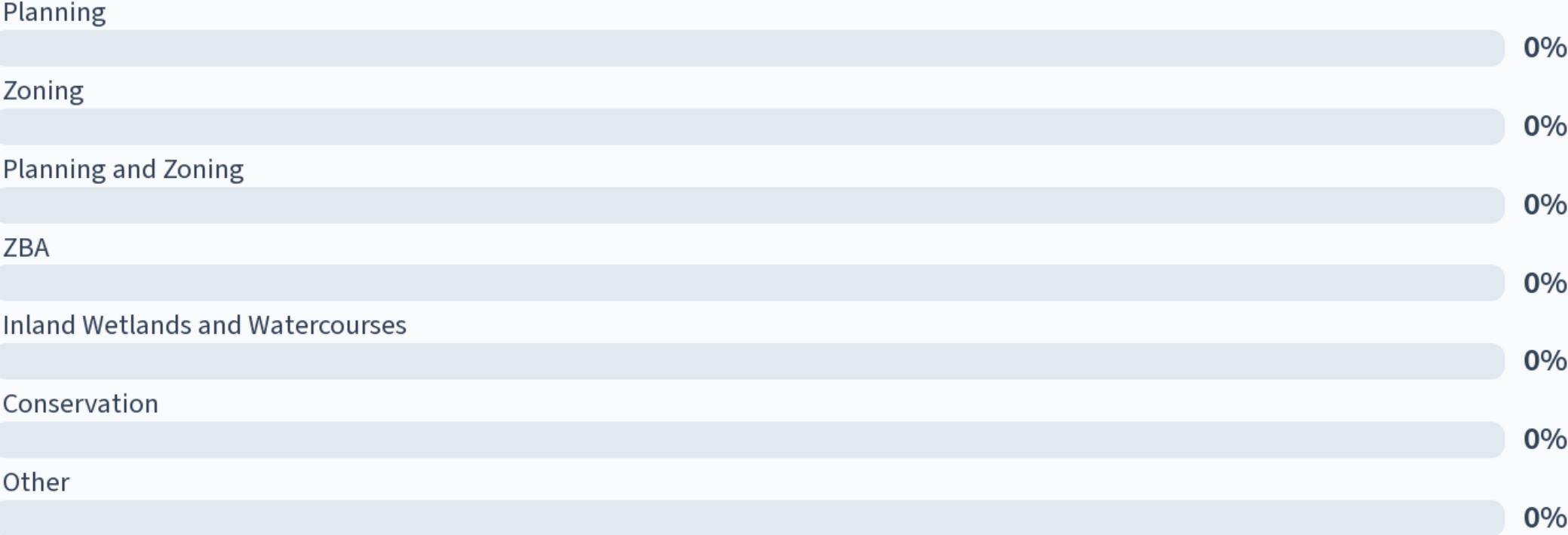
EXTENSION

On what commission do you serve?

1. Planning
2. Zoning
3. Planning and Zoning
4. ZBA
5. Inland Wetlands and Watercourses
6. Conservation
7. Other

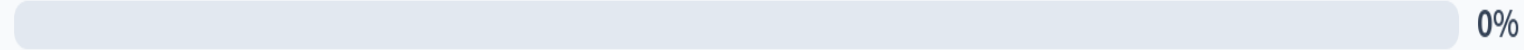


On what commission do you serve?



How long have you served?

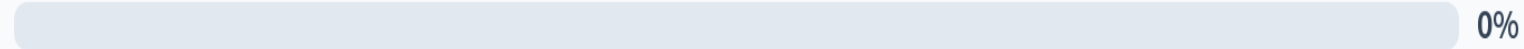
New on my Board/Commission - less than one year



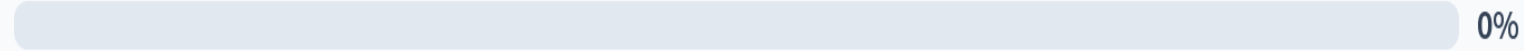
1-4 years



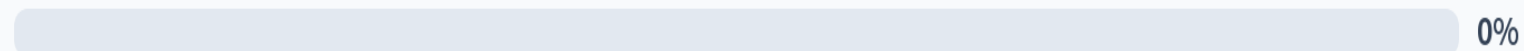
5-10 years



More than 10 years

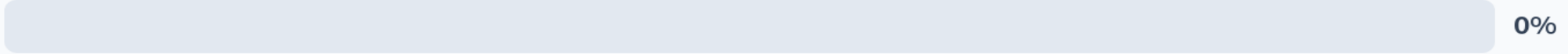


None of the above



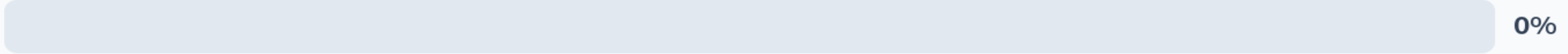
Are you:

Elected



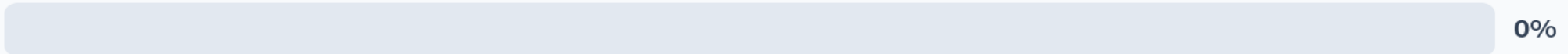
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Appointed



0%

N/A



0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app



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CLEAR

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Have you taken the UConn LUA Basic Training within the past 2 years?

Yes

0%

No

0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app



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Running a Meeting & Making a Decision



Kenneth R. Slater, Jr.
Managing Partner, Halloran & Sage LLP



Land Use Academy



Pre-application Conferences

- Valuable procedure but, until recently, no case law or statute allowing it
- Should have a procedure in your regulations
- Be careful of appearing to make a judgment

With the staff

- common, informal
- non-binding and advisory

With the commission

- permitted by statute (CGS 7-159b)
- non-binding



When is a Public Hearing by a Commission Required?

1. When required by the statutes
2. When required by the regulations
3. When ordered by the City Council/Mayor
4. Settlement of Litigation
5. With the exception of IWWA, whenever the Commission wants



When is a Public Hearing by a Commission Required?

(1) When required by the statutes

0%

(2) When required by the regulations

0%

(3) When ordered by the City Council/Mayor

0%

(4) Settlement of Litigation

0%

(5) With the exception of IWWA, whenever the Commission wants

0%

Zoning Board of Appeals

- **Must hold a public hearing on everything**
- **Can deny if a previously denied application is resubmitted as a new application with no changes**



Planning and Zoning Commissions



Public Hearings Required for:

- Zone and Regulation Changes
- Adoption/amendment to Plan of Development
- Special Permit/Exception
- Resubdivision
- Subdivision if required by the regulations
- May be required for site plan review but won't extend your time limits for action



Inland Wetlands and Watercourses Agency



- For “Significant Activity” a public hearing is required.
- For other activities a hearing may be held when it is in the public interest
- Upon petition of 25 residents of the town (within 14 days of the application date of receipt)



How is a “significant activity” defined?

1. Judgment call of the IWWA
2. When more than 5% of a watercourse or wetland is destroyed
3. When more than 20% of a watercourse or wetland is destroyed
4. One that meets the definition contained in your wetlands regulations.



How is a "significant activity" defined?

(1) Judgment call of the IWWA

0%

(2) When more than 5% of a watercourse or wetland is destroyed

0%

(3) When more than 20% of a watercourse or wetland is destroyed

0%

(4) One that meets the definition contained in your wetlands regulations.

0%

Application Fees

- **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.**



Conducting the hearing-what does the law require?

- Procedural Due Process vs. Substantive Due Process
- Review the application against the regulations as they are written
- Conduct hearings so that no one is intimidated, harassed or disadvantaged, regardless of their position



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



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.



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.**



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



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



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

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, 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?

- 1. The Applicant**
- 2. Neighbors opposed to an application**
- 3. Residents of another town**
- 4. Representatives of trade associations**
- 5. Convicted felons**
- 6. All of the above**



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

The applicant

0%

Neighbors opposed to an application

0%

Residents of another town

0%

Representatives of trade associations

0%

Convicted felons

0%

All of the above

0%

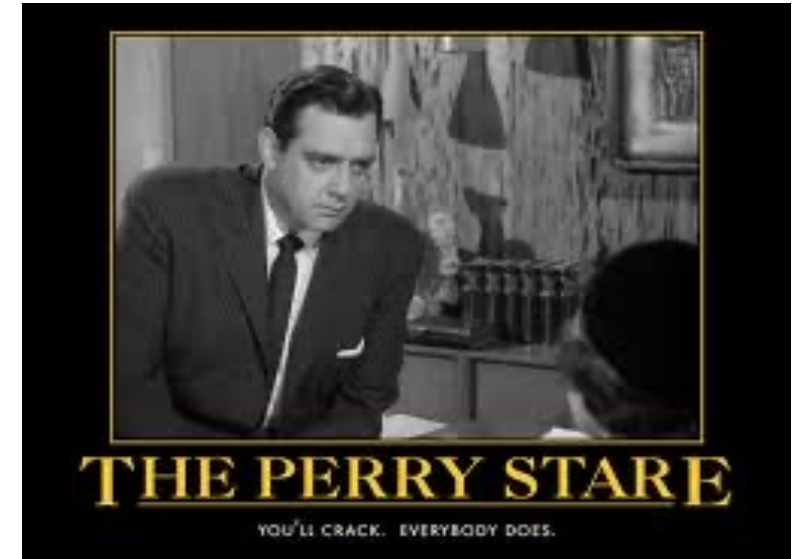
Who gets to speak?

- Typically, applicant speaks first to present application
- Can have proponents, then opponents, or take turns
- Intervenors under CGS 22a-19 can speak even if no public hearing
- Can allow people to speak if no public hearing at the discretion of the chair



Cross examination

- If a person request to cross examine a person rather than ask questions through the chair, explain to the public/applicant why cross examination and questions must be permitted, despite formality.
- Refusal of witness to be cross-examined should cause you to expressly/formally strike or disregard that witnesses testimony



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?



Subpoenas

- One superior court decision ruled that an attorney can subpoena parties to appear with documents (“*duces tecum*”), before a land use agency
- Municipal agencies alone (without an attorney) can’t issue or enforce subpoenas

SUBPOENA/CIVIL

JD-CL-43 Rev. 3-09
C.G.S. § 52-143, 52-144
Pr. Bk. Secs. 7-19, 24-22

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov



Court Use Only

SUBISSU



Instructions:

1. Do **Not** use this subpoena if the witness is being summoned by the state or by the attorney general or an assistant attorney general or by any public defender or assistant public defender acting in his/her official capacity.

2. The person being subpoenaed and the items they are ordered to bring as listed below must be identical to the names and items as ordered on the Application for Issuance of Subpoena, form JD-CV-62.

Name of Case				Docket Number	
<input type="checkbox"/> Judicial District	<input type="checkbox"/> Housing Session	<input type="checkbox"/> Geographical Area Number _____	<input type="checkbox"/> Small Claims Area	Address of Court (Number, street and town)	
To: (Name and address)					
Date and time you are to appear			Time	Report to	<input type="checkbox"/> Clerk's office <input type="checkbox"/> Courtroom number



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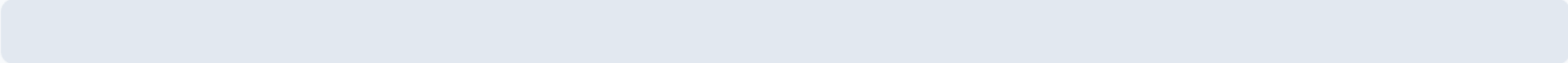
Continuation of a public hearing requires an additional published notice stating the time and location of the meeting

1. True
2. False



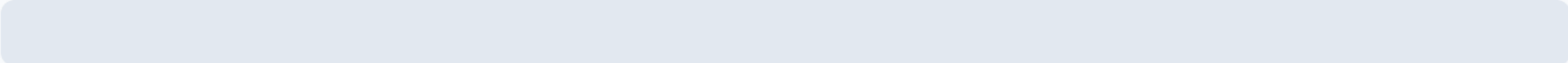
Continuation of a public hearing requires an additional published notice stating the time and location of the meeting

True



0%

False



0%

Extensions

- Always get them in writing, even handwritten at the table
- Specify how many days, not just "extension"
- Make sure the applicant understands: if you don't extend, the Commission will make its decision on what it has in front of it or call special meeting within the time limit



Testimony

- Everyone must identify themselves
- During deliberations-no new evidence and no direct input from applicants or opposition
- Commissioners should take care not to “testify”
- If you start to testify to facts or “special expertise” the applicant or his attorney may be able to question you
- Your job is to listen, question and consider what you hear



Decorum

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



Reports, Exhibits, Letters

- Note at the opening of the hearing exhibits that have been received
- Time to evaluate and examine material-open question
- Reading reports and letters out loud
- What to do with reports from other agencies, experts, staff, etc.
- Electronic presentations



Staff Input

- Normal rule is that your staff and other objective advisors, such as State or other government agencies, can comment even after the public hearing closes but not totally new material
- You are not bound by staff opinion
- Note special case for ZBA appeal of ZEO: contrary to the normal situation, the ZEO cannot speak after the close of the public hearing when his/her decision is subject of the appeal.



Evidence

- Numbering and logging
- Substantial Evidence
- Burden is on the applicant to provide evidence to support approval



Expert Input



- **Don't be afraid to challenge an expert**
- **Get opinions on both sides of technical issue**
- **Who gets the "last word"?**



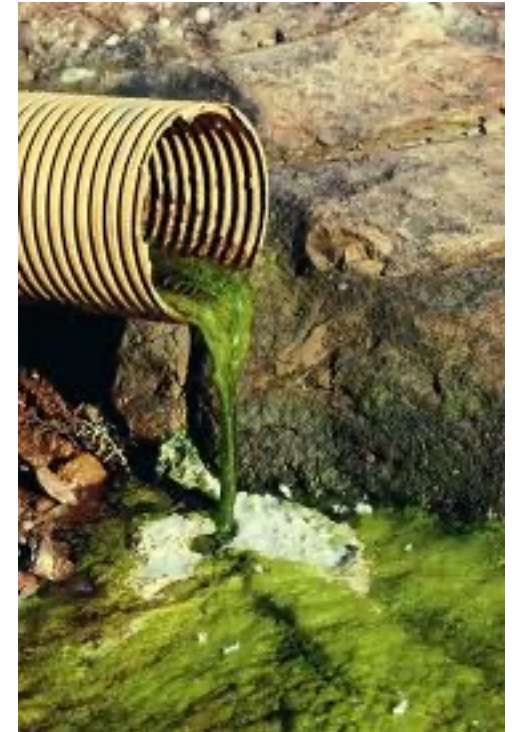
CEPA/22a-19a Interventions

- Opportunity for intervenor to speak, with or without public hearing
- Can raise environmental issues but also procedural issues
- Intervenors must allege specific adverse impacts of the proposed activity.



CEPA/22a-19a Interventions

- Impacts must be within the commission's jurisdiction
- Impacts must be proven by substantial evidence
- If allegations proven, then the commission must deny the application if there are "feasible and prudent alternatives" with no or less adverse impacts



Keeping the record

- Record everything, even if it is not a formally advertised public hearing
- 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



Which of the following statements are generally true?

1. An alternate who has not been seated should not participate in deliberations
2. A commissioner who was elected or appointed after the public hearing began is not eligible to vote
3. A commissioner should not vote on an application in which he has a pecuniary or other personal interest
4. The chairman may not vote except in case of a tie
5. A tie vote means that a motion carries



Which of the following statements are generally true?

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0%

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0%

A commissioner should not vote on an application in which he has a pecuniary or other personal interest

0%

The chairman may not vote except in case of a tie

0%

A tie vote means that a motion carries

0%

Making the Decision-Who Votes?

- If you were absent, must listen to the tapes, review all of the documents submitted
- 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
 - Chairman votes – not just if a tie
 - Tie vote – motion does not carry – so work for a majority vote



Making the Decision-Counting the votes

- What constitutes a quorum
- ZBA is always four out of five
- Tie vote=defeat of the motion
- Abstentions
- Extraordinary Majority---zone change; negative recommendation from Planning Commission; 20% petition for map amendment; ZBA 4 out of 5
- Ex Officio Members



Decision on the record

- Must make your decision based on *what you heard at the public hearing*
- You cannot ignore uncontradicted expert testimony if you do not question it. If you have doubts, question the expert on the record
- If you have special expertise upon which you will rely, say so on the record (while hearing is open).



"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



Decision Based on Regulations

- Must make your decision based on the criteria in your regulations; or, if variance, what is stated in the case law. Be sure to use regulatory standards to focus your discussion
- Interpretation of regulations
- No "waiver" of zoning regulations, per the McKenzie case, but requirement could be triggered or not triggered by particular circumstances, per the Santarsiero case

Town of Madison, Connecticut



Zoning Regulations

Please note that this online version of the Zoning Regulations is provided for the convenience of the general public. Some sections are not yet available online. Page numbers may differ from those in the paper copy.

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**



The Decision

- Denial "Without Prejudice"
- Statement of reasons for the decision
- Reconsideration
- Precedent
- Post decision notice



The Decision

- Time limits
- Effective date--- set it in the appropriate motion
- Conditions and modifications
- Stating the motion
- Restate complicated motions



The Decision

- Be specific with stipulations and comments
- Integral conditions
- Approval of the application, not the applicant
- Defeating motion to deny does not automatically equal approval



Interagency Overlapping Jurisdiction

- Local Overlaps in General--Erosion and Sedimentation
- Zoning/Wetlands/Subdivision
- Zoning/Subdivision Regulations--Zoning Contracts
- Planning and Zoning Commission/Zoning Board of Appeals
 - ZBA only grants variances
- State/Federal Overlaps--ADA/FHA, RLUIPA, Telecommunications Act
- Agency/Administrative --Public Health Code vs. Inland Wetlands
- Inland Wetlands and Watercourses Jurisdiction--Dams, water company projects, farming, wells



Jurisdiction to hear/decide the application



Agency must have jurisdiction to hear the application and/or to impose its regulations, and jurisdiction must be established before the merits of the issue will be reached

- Wetlands – exemptions
- Ownership Interest
- Pre-emption by State or Federal law
- Statutory limits – zoning, mobile manufactured housing, family day care
- Inland Wetlands – Dams, water company projects, farming, wells



Most Important

Be prepared

- review the materials before the meeting starts
- have access to the regulations
- view the subject property
- have good regs that say what you want them to say



QUESTIONS?



Friendly reminder: Hypotheticals only!

Thanks for participating



s.uconn.edu/haddam-12.9.23

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