



# Welcome!

## Land Use Commissioner Basic Training

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## CLEAR Program Areas

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UConn Center for Land Use Education and Research  
Department of Extension  
College of Agriculture, Health, and Natural Resources



# Overview

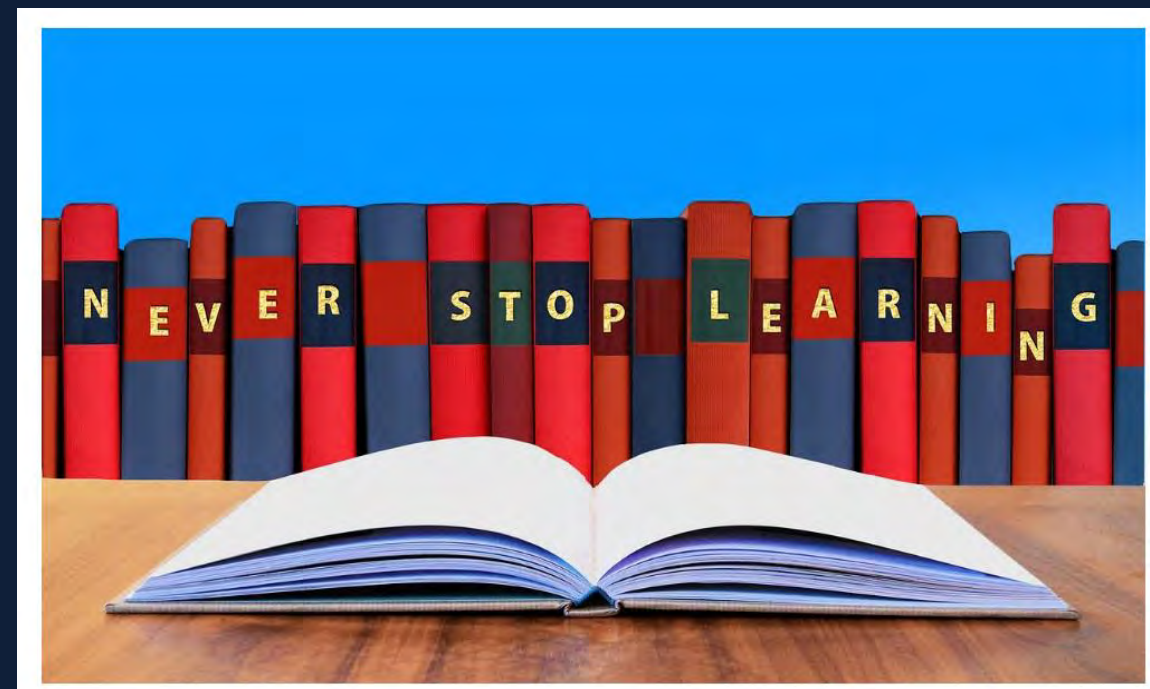
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1. Legal Basis for Land Use Regulation
2. Types of Power
3. Public Hearings and Timeframes
4. Running a Meeting
5. Alternates
6. Site walks
7. Commissioner roles and responsibilities
8. Conflict of Interest
9. Bias and Predetermination
10. Representation by Commission Members
11. Social Media

# Important Information

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- Training is not legal advice
- Upcoming training  
<https://clear.uconn.edu/lua/upcoming/>
- Training is recorded
- Slides and recording will be posted  
<https://clear.uconn.edu/lua/past/>
- Interactive
- Questions may have multiple answers
- Try to have fun





## What Land Use Commission/Board are you on?




**Which of the following does the State of CT REQUIRE a municipality to have?**

# An Awesome Responsibility

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- 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.
- CGS Sec. 8-4c



**HIKERS and BIKERS**  
Move to the side of  
the road when a  
vehicle approaches

# An Awesome Responsibility

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# An Awesome Responsibility



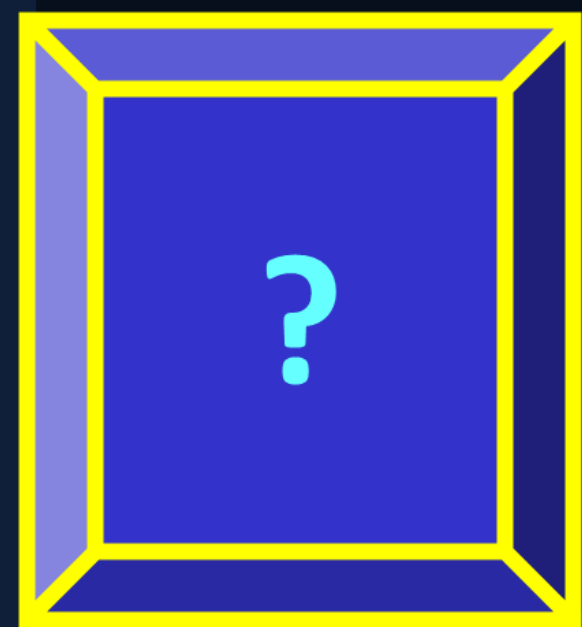
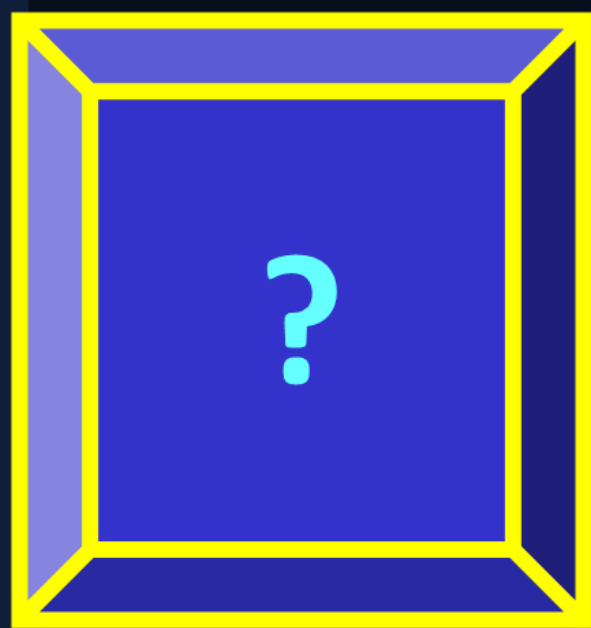
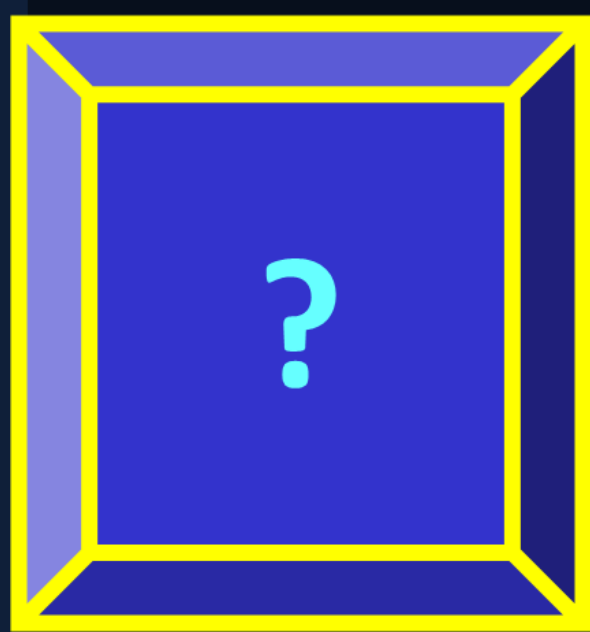
# An Awesome Responsibility

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# Legal Basis for Local Land Use Regulations

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**Which of the following provides the legal basis for a local commission's land use authority?**

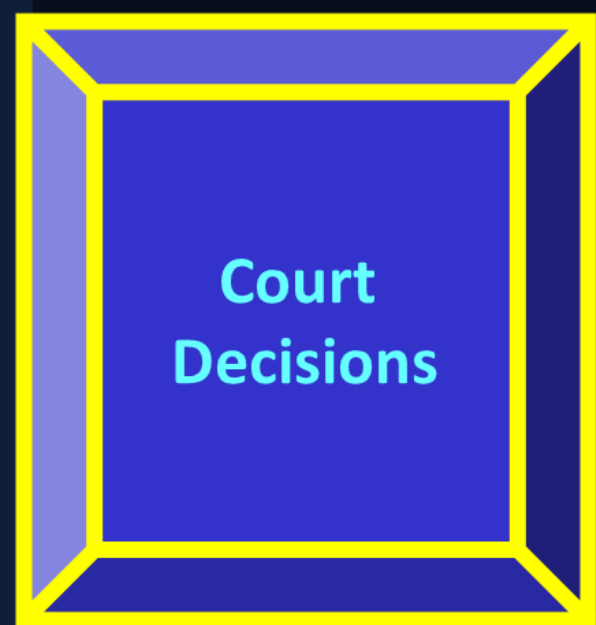
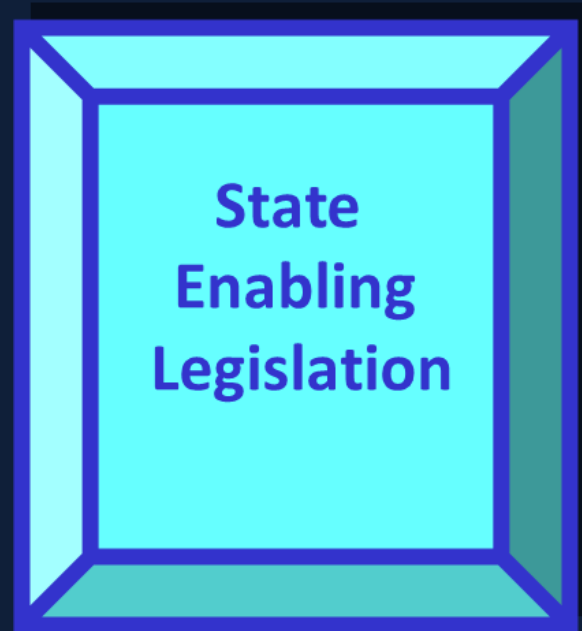
# Which of the following provides the legal basis for a local commission's land use authority?

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1. Legislation through state statutes
2. A vote of the City Council/Board of Selectmen
3. Court decisions
4. Duly adopted local regulations
5. Governor's Executive Order
6. Public opinion

# Legal Basis for Local Land Use Regulations

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# Sources of Power

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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)

# State Enabling Legislation Provides the Foundation and Limits of Power

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The STATE will let you....



State Government



# 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

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State  
Enabling  
Legislation

Court  
Decisions

Local  
Regulations

# Court Decisions

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Provide legal review and interpretation of  
your regulations

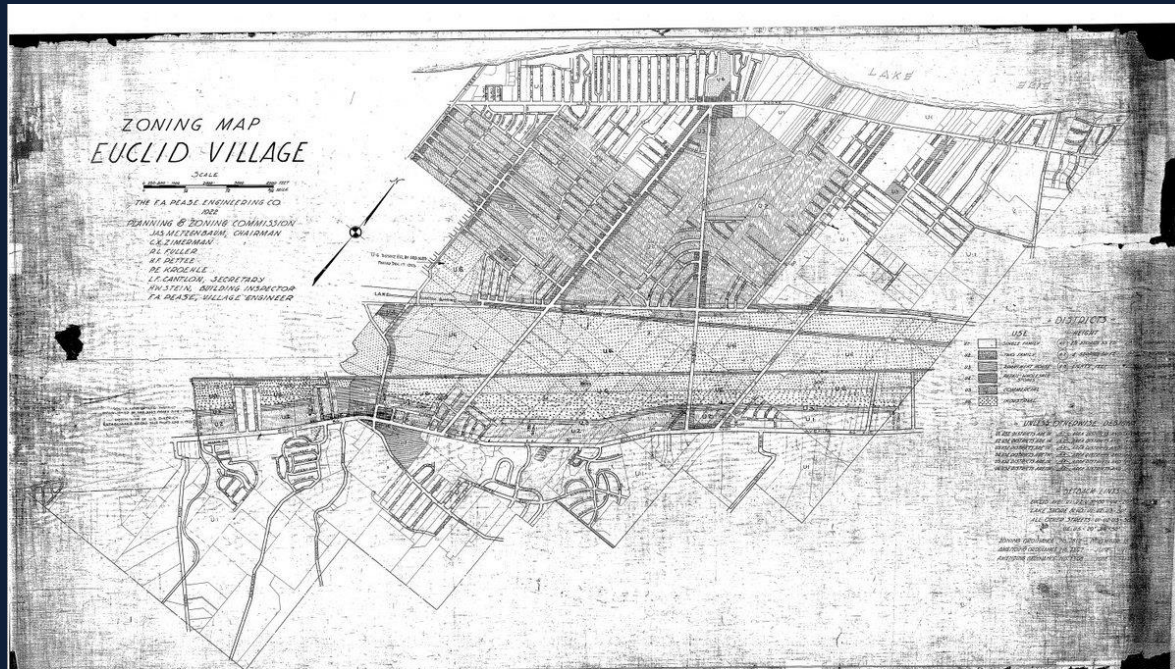


## Federal Level

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

# Euclid v. Ambler Realty

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Supreme Court Ruled:

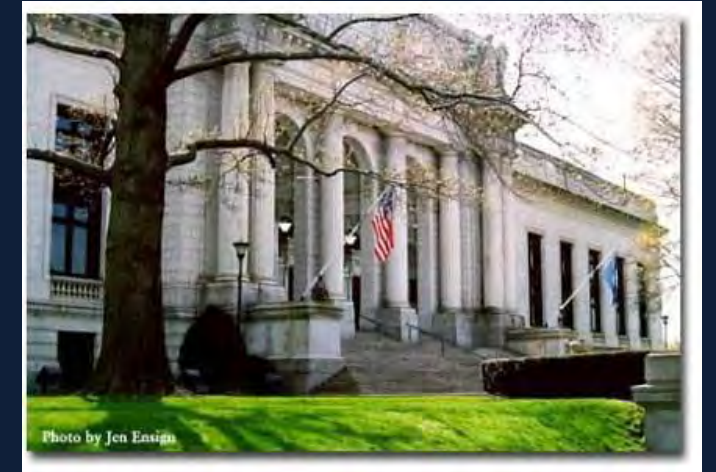
- Not a taking as Ambler could make use of the land, (not the use they wanted)
- Zoning's purpose is to protect public health, safety and welfare not personal financial gain
- Village can establish districts and exclude certain uses from certain districts

# Court Decisions

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## State Level

1. Courts provide local land use officials wide and liberal discretion
2. Feel local officials are best suited to make local land use decisions
3. Courts will not interfere in local matters unless commissions act illegally



# Court Decisions

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## 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

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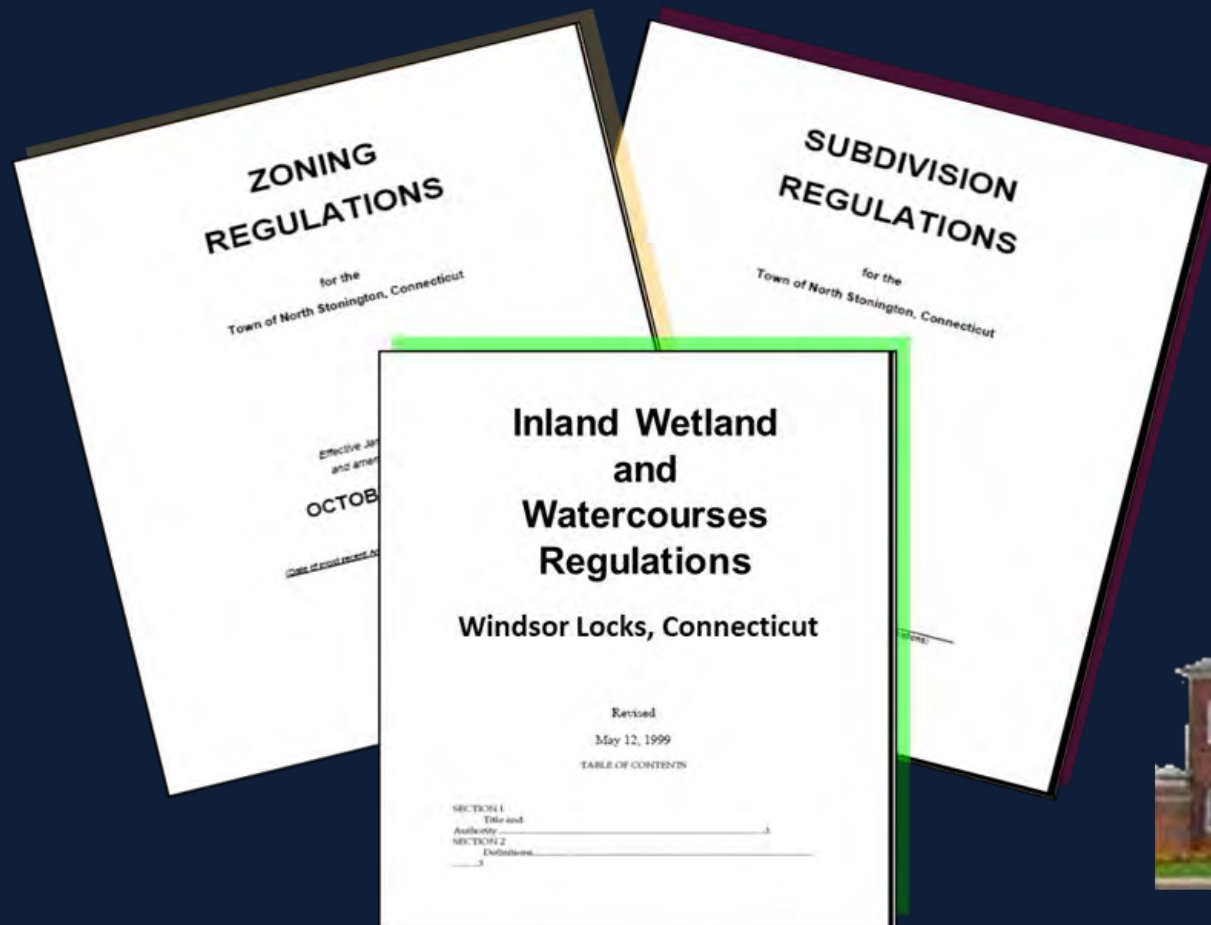
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# Legal Basis for Local Land Use Regulations

## Local Regulations:



# Commissioner Training Requirements

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- CGS 22a-42(d) – IWWC (1987)
- CGS Sec. 22a-354o – APA (1989-2004)
- CGS 8-4c, P, Z, P&Z and ZBA (2021)

# Planning, Zoning, Combined P&Z and the ZBA

- CGS Sec. 8-4c
- On and after January 1, 2023, each member of a municipal planning commission, zoning commission, combined planning and zoning commission and zoning board of appeals shall complete at least four hours of training.

# Planning, Zoning, Combined P&Z and the ZBA

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- At least 1 hour out of the 4-hour training requirement must come from the Affordable and Fair Housing Policies Section
- Remaining 3 hours may consist of:
  - (1) process and procedural matters, including the conduct of effective meetings and public hearings and the Freedom of Information Act
  - (2) the interpretation of site plans, surveys, maps and architectural conventions, and
  - (3) the impact of zoning on the environment, agriculture and historic resources.

# Planning, Zoning, Combined P&Z and the ZBA

- Initial training must be completed within one year of being elected or appointed to the board or commission.
- Subsequent training - training once every four years or once per term, if the term is longer than four years.

# Planning, Zoning, Combined P&Z and the ZBA

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- Land use enforcement officers and Connecticut-licensed attorneys who served at least four years on planning commission, zoning commission, combined planning and zoning commission or zoning board of appeals are exempt from the training requirement.

# OPM Training Guidelines

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- Under CGS Section 8-4c, the Office of Policy and Management (OPM) was tasked with developing the land use training guidelines.
- Guidelines can be found here [Land-Use-Training-Guidelines-PA-2129-S-9.pdf \(ct.gov\)](#)
- Wide variety of training topics may be eligible – refer to guidelines to verify or contact OPM if you have questions.

# Certification / Reporting

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CGS 8-4 (c) states:

Not later than March 1, 2024, and annually thereafter, the planning commission, zoning commission, combined planning and zoning commission and zoning board of appeals, as applicable, in each municipality shall submit a statement to such municipality's legislative body or, in a municipality where the legislative body is a town meeting, its board of selectmen, affirming compliance with the training requirement established pursuant to subsection (a) of this section by each member of such commission or board required to complete such training in the calendar year ending the preceding December thirty-first.

# Certification / Reporting

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Different towns allow different methods of self certification:

- Require their members to attend in person training and obtain copies of provider's verification of attendance.
- Accept webinar attendance self certification from commission/board members without proof of attendance.
- Group webinar attendance or watching of training videos.
- Accept self certification for individual watching of training videos.

# Inland Wetlands and Watercourses Agency Members

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CGS Sec. 22a-42.(d) can be viewed online at [Chapter 440 - Wetlands and Watercourses \(ct.gov\)](#) - Note that as of date CGS 24a-42(d) has not been updated to reflect changed requirements of PA 25-73

- Under PA 25-73: As of January 1, 2026, all members of the inland wetlands agency or staff of the agency must complete the comprehensive training program developed pursuant to section 22a-39 by the DEEP by January 1, 2027.
- After that, subsequent training is required every 4 years.
- There are no exemptions.
- Reporting of training compliance must be submitted to legislative body or board of selectman by March 1, 2027, and then annually thereafter.

# Inland Wetlands and Watercourses Agency Members

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CLEAR hosts the DEEP training here: [CT DEEP Municipal Inland Wetlands Agency Comprehensive Training Program | Center for Land Use Education and Research \(uconn.edu\)](#)

- Online format / 8 modules with text and video content / 8 hours to complete (but it must be completed within 60 days of registering) / certificates issued by DEEP

”This course assists agencies with their responsibilities by examining key sections of the IWWA, important procedures and critical legal concepts for conducting agency business, stream crossing guidelines, habitat enhancement and restoration techniques, maps and site plans, and more!”

# Aquifer Protection Agency Members

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CLEAR hosts the DEEP training here:

[https://clear.uconn.edu/training/DEEP\\_APA\\_training.htm](https://clear.uconn.edu/training/DEEP_APA_training.htm)

- Online format / 13 modules with text and video content / 8 hours to complete (but it must be completed within 60 days of registering)
- The course:
  - (1) provides an overview of the regulatory requirements for local implementation,
  - (2) instructs agency members and staff responsible for knowing the law, and
  - (3) assists them in complying with the law.

” This is a proactive program, intended to prevent contamination of public water supplies by managing land use activities in critical aquifer areas.”



# Types of Local Commissions

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## •Regulatory

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

## •Nonregulatory

- Conservation
- Economic Development
- Design Review
- Agricultural Commission





**When drafting regulations, commissions serve in what capacity?**

# Types of Power

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- When writing regulations, a commission is acting in a **legislative capacity**
- When reviewing development applications, a commission is acting in an **administrative capacity**
- When hearing appeals, a commission is acting in a **quasi-judicial capacity**



# Why does this matter – Level of Discretion

- Regulation amendments and zone changes = broad discretion
- Special Permits/Exceptions = limited discretion
- Site plans and Summary reviews = no discretion - must be approved if the application meets regulations



# Regulation and Map Changes /Legislative

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- Broad discretion
- Courts allow wide discretion
- Must be consistent with legislative purposes set forth in CGS



# Special Permits / Administrative

- Discretion is more limited
- Decision must be consistent with criteria set by regulation



# Special Permit/Exception

“Special permit process permits a generally compatible use in a zoning district but because of the nature of the proposed use, special attention must be given to its location and method of operation in order to keep such special uses compatible with uses as of right in that district.”  
(Brian-R-Smith-CBA-Seminar-3\_21\_2015.pdf  
(r)c.com)

# Site Plan / Administrative

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- No discretion
- Must be approved when it meets regulations

“Unlike a special permit, a site plan application by itself is for a use already permitted “as of right” in the particular area so long as it meets the standards required by the regulations.” ([Brian-R-Smith-CBA-Seminar-3\\_21\\_2015.pdf \(rc.com\)](#))

# New as of 2026: Summary Review

- Variances are the least understood form of land-use approvals
- They are to be granted sparingly –  
“A variance is actually a license to violate the zoning regulations.” (Zizka)

# On Variances...

- Variances are the least understood form of land-use approvals
- They are to be granted sparingly –  
“A variance is actually a license to violate the zoning regulations.”  
(Zizka)



# Zoning Hardship

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**In Moon v. Zoning Board of Appeals , 291 Conn. 16, 24-25 (2009), Connecticut's Supreme Court concisely stated certain basic rules for the granting of variances:**

[T]he granting of a variance must be reserved for unusual or exceptional circumstances.... An applicant for a variance must show that, because of some peculiar characteristic of his property, the strict application of the zoning regulation produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone.... Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance.... A mere economic hardship or a hardship that was self-created, however, is insufficient to justify a variance ... and neither financial loss nor the potential for financial gain is the proper basis for granting a variance.



## When is a Public Hearing by a Commission Required?

# When is a Public Hearing by a Commission Required?

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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. Whenever the Commission wants\*



# Public Hearings

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- Special Exceptions / Permits
  - Public hearing is required
  - Discretion is limited
- Site Plan / Subdivision
  - Public hearing is optional
  - No discretion



\*Public feedback **can only** influence the land use decision-making process **within the limits** of the Federal and State laws and the local regulations.

# Planning and Zoning Commissions

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## Public Hearings Required for:

- Zone and Regulation Changes
- Adoption/amendment to POCD
- Special Permit/Exception
- Resubdivision
- May be required for site plan and subdivision applications but won't extend your time limits for action



- Summary reviews under PA 25-1 – Public Hearing cannot be required

# Zoning Board of Appeals

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Must Hold a Public Hearing on Everything





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

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

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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



**When is an application considered to be received?**

**i** The Slido app must be installed on every computer you're presenting from

# When is an application considered to be received?

1. On the day it is received in the land use office
2. The next business day following its submission
3. At the next regularly scheduled meeting
4. On the date the next regularly scheduled meeting even if the meeting has been cancelled
5. **At the next regularly scheduled meeting or 35 days after submission whichever is sooner**

# 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

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- 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".

# Application Fees & Incomplete Applications

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- Incomplete applications or failure to pay application fees are 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 Public Hearing

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- No specific requirements for order of speaking, except that applicant should always be allowed to go first
- All materials to be considered must be available for inspection
- Hearings must be audio-recorded or video-recorded
- Parties should be allowed to ask questions of presenters
- Time limits may be placed on initial presentations so long as speaker has subsequent opportunities to add to previous comments

# Before Closing the Public Hearing

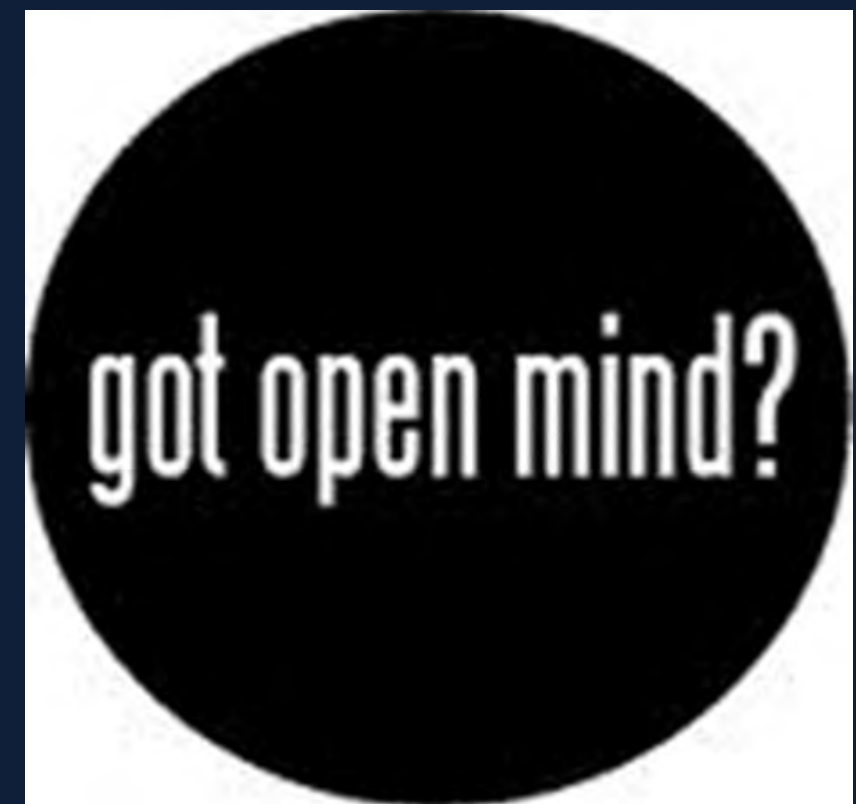
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1. Must make your decision based on what you heard at the public hearing
  - No new information allowed after public hearing is closed. Make sure you ask your questions prior to closing of public hearing.
2. You cannot ignore uncontradicted expert testimony if you do not question it. If you have doubts, question the expert on the record during the public hearing.
3. If you have special expertise upon which you will rely, say so on the record (while hearing is open).
4. Once hearing is closed, it cannot be reopened unless reopening occurs before anyone has left the hearing room.

# RESPONSIBILITIES

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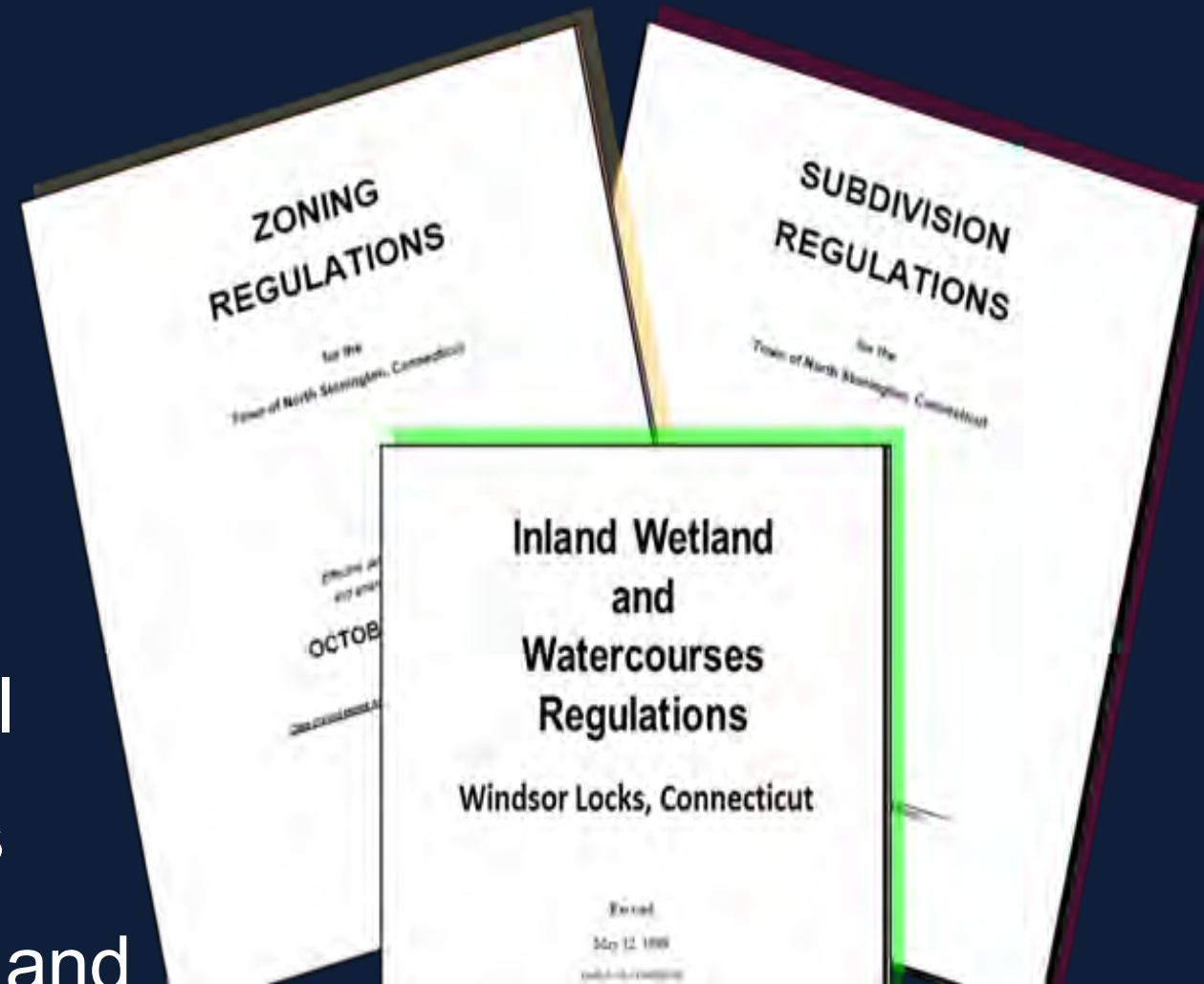
- Be fair to all parties
- Open mind = Listen to all the facts before rendering a decision
- Does everyone have the same information?
- Treat applicants with respect
- Treat public with respect
- Treat staff with respect



# RESPONSIBILITIES

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- Be prepared
- Understand the details of the proposal
- Review it to see if it meets regulations
- Understand the social, environmental and economic impact of the proposed change



# RESPONSIBILITIES

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- Take time to read the POCD
- Know limits of your powers and know your responsibilities
- Understand, know and apply your regulations consistently



# Rules for running a meeting

- Chair is in control –no speaking unless recognized, comments directed to commission
- Let everyone know the rules
- Decorum-no interruptions/talking to each other
- Crowd control/Hostility
- Try to run an efficient meeting
- Meeting Logistics





**Which of the following statements are generally true?**

# 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 replaced by an alternate for a public hearing cannot vote
3. A commissioner cannot replace a seated alternate after deliberations have started
4. The chairman may not vote except in case of a tie
5. An abstention counts as a no vote



**The Chairperson of a zoning commission or combined PZC can appoint whomever he/she chooses to be an alternate**

**The Chairperson of a PZC or zoning commission  
appoint whomever he/she chooses to be an alternate**

1. TRUE

2. FALSE



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

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

1. A chance social gathering of a quorum of the members
2. A planned meeting of a quorum of the commission members all from one political party
3. A quorum of the commission discussing a pending application while standing in the parking lot after a meeting
4. An email exchange among a quorum of the commission discussing a pending application

# Site Walks

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- Site walks are “meetings” and are subject to all of the FOIA requirements pertaining to meetings, including posting of agendas in advance and allowing the public to attend
- “Meetings” may include gatherings of less than a quorum of the agency if the participating members have the ability to act on behalf of the agency
- Even if a non-quorum gathering of members is not a “meeting,” doing this still can potentially raise questions about ex parte communications
- Site walks that occur after the commencement of a public hearing must be recorded

# Site Walks

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- Must be noticed. It is a meeting.
- No comments or questions, take notes
- Public and applicants may attend
- Stay together
- Do not conduct site walks after public hearing has closed
- Does everyone have the same information?



# Conflict of Interest

Different kinds of conflicts:

- Personal
- Financial
- Perceived or potential conflicts



# 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.**





**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?**

# 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**

**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:**

# 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**

# 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**





**A planning commission member may represent his/her neighbor at a zoning commission hearing so long as he/she declares that he/she is a member of the planning commission but is not acting in that capacity**

**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.**

**1. TRUE**

**2. FALSE**

## 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**

# 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





**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:**

The Slido app must be installed on every computer you're presenting from





**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?**

# 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

# 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.



# Emails disclose school board's misplaced priorities



Published January 06, 2020 7:29PM | Updated January 07, 2020 7:48AM

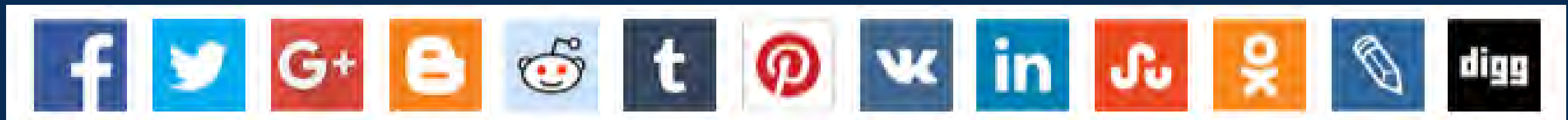
By **The Day Editorial Board**

... school board member Alisa M ... tried to do the right thing. For years, female high school students had complained to administration officials about what they considered invasive and inappropriate touching by a male teacher and coach, yet the teacher long remained in place.

It was disclosed only because of the digging of Wojtas, who used the state's Freedom of Information Commission law to access emails between board members in their capacities as public officials.

# Two Words About Social Media

**DO NOT** post your feelings about a project/application/applicant on Facebook/twitter/snapchat/etc.



# Ex parte Communications

- Should be avoided
- 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



# Legal and Procedural Considerations-Special Mention

**When in doubt, call the town  
attorney**



