



Land Use Academy

Center for Land Use Education and Research

Basic Legal Procedures

Welcome!



UCONN
COLLEGE OF AGRICULTURE,
HEALTH AND NATURAL
RESOURCES

Basic Training for Connecticut Land Use Commissioners



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University of Connecticut

Center for Land Use Education and Research

Department of Extension

College of Agriculture, Health and Natural Resources

Website: clear.uconn.edu



Topics

**Legal Basis for
Land Use
Regulation**

**Types of Power of
Land Use
Commissions**

**Public Hearings
and Timeframes**

**Running a
Meeting**

Alternates

Sitewalks

**Responsibilities –
Fundamental
fairness**

**Conflict of
Interest**

**Bias and
Predetermination**

**Representation
by Commission
Members**

Social Media

Case Study

Important Information

- Training is not legal advice
- Case study and factsheets
(<https://clear.uconn.edu/lua/>)
- Slides
- **Polling instructions**
- Questions may have multiple answers
- Have fun



Polling Instructions

pollev.com/snazzytree942

**Text the word: SNAZZYTREE942
to 37607**



An Awesome Responsibility



- CGS Sec. 8-4c
- 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.

Sometimes there will be tough decisions...



An Awesome Responsibility



An Awesome Responsibility



An Awesome Responsibility

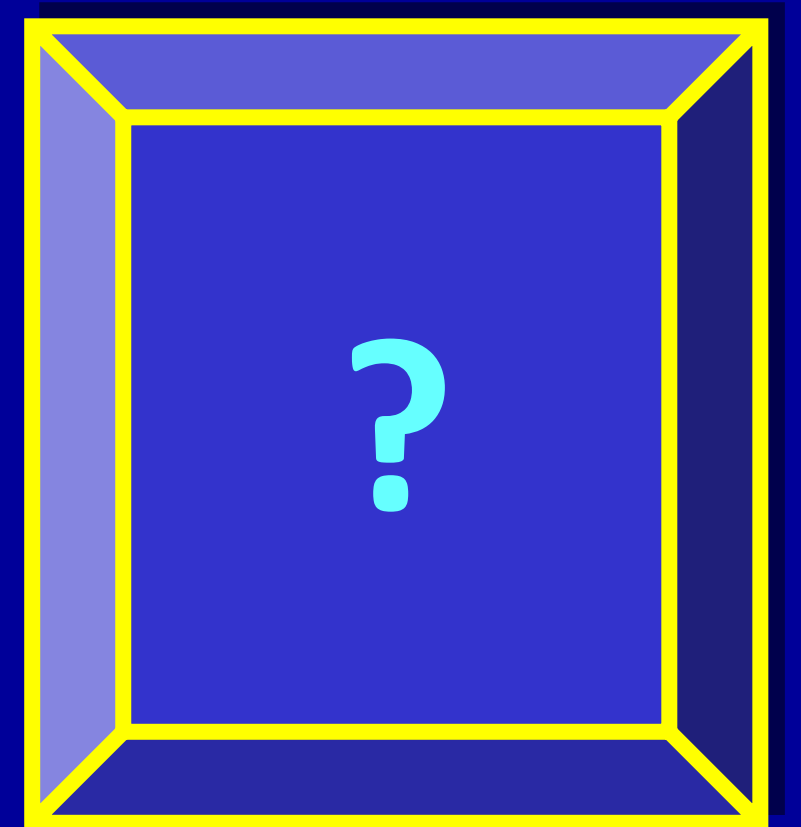
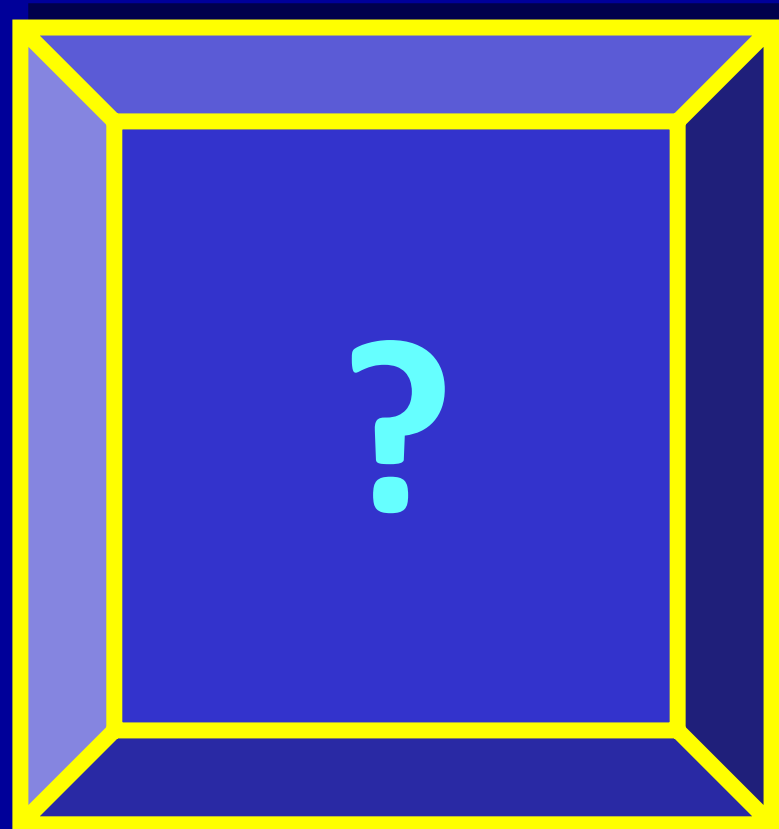
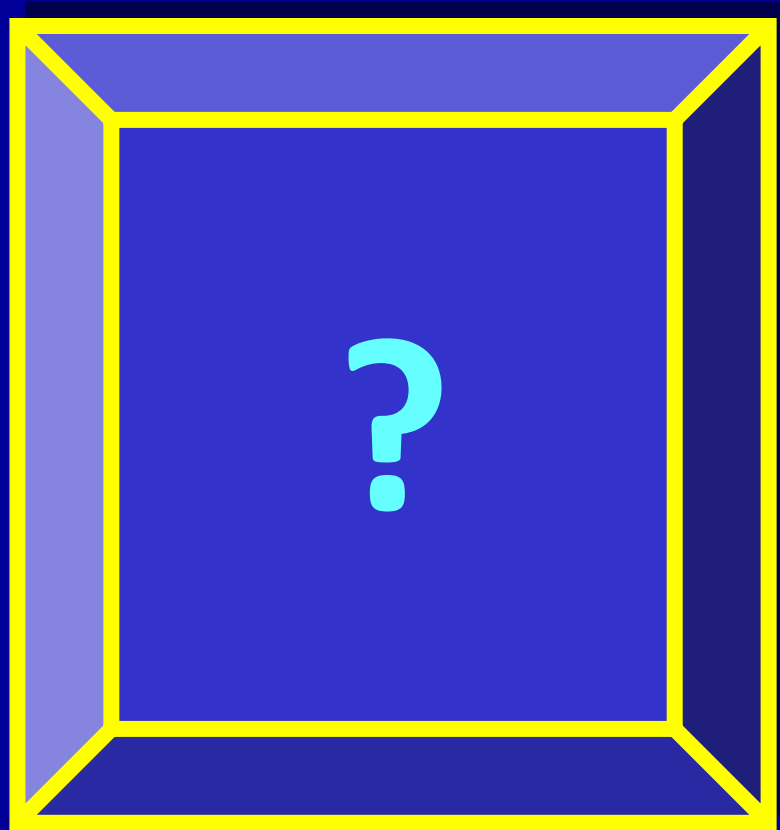


An Awesome Responsibility

"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.



Legal Basis for Local Land Use Regulations



Polling Instructions

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

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

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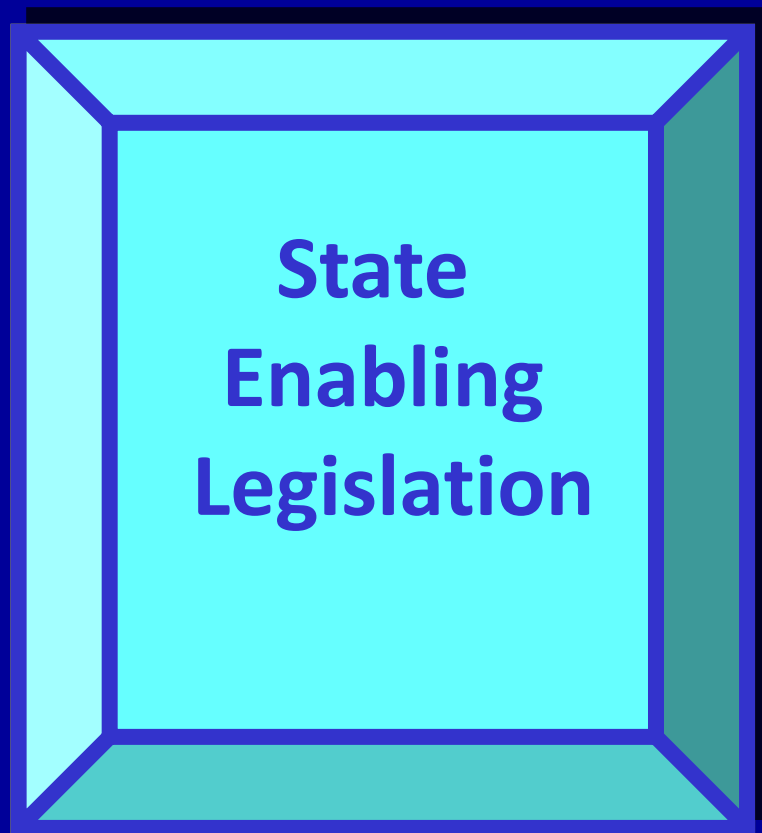
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Legal Basis for Local Land Use Regulations



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)



State Enabling Legislation Provides the Foundation and Limits of Power



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

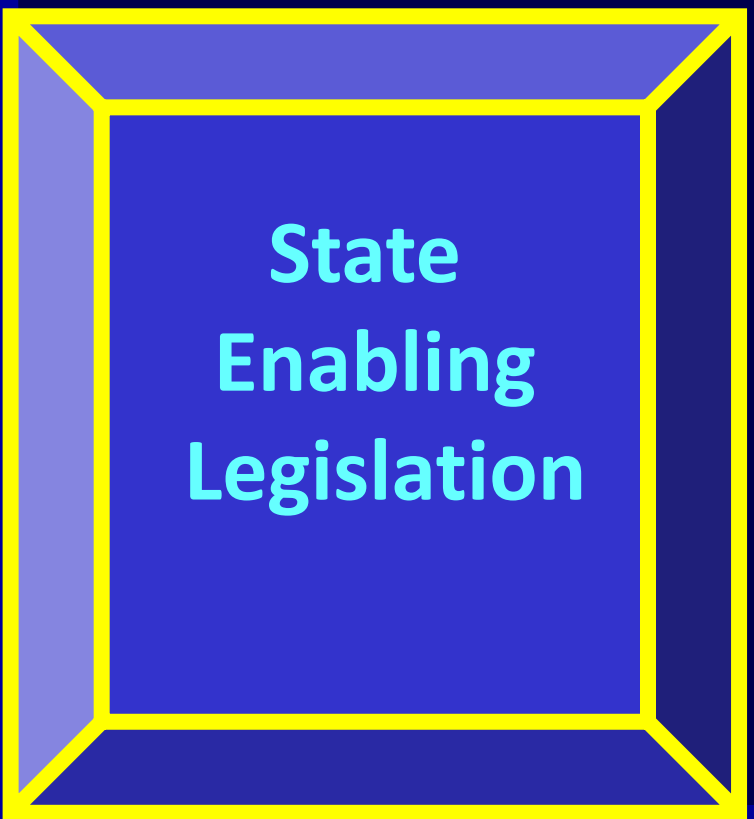


Police Power = The right or need of government to protect the public health, safety, and welfare



Basis of all land use regulation and all sections of the regulations must achieve this end

Legal Basis for Local Land Use Regulations



**State
Enabling
Legislation**



**Court
Decisions**



**Local
Regulations**

Court Decisions

Provide legal review and interpretation

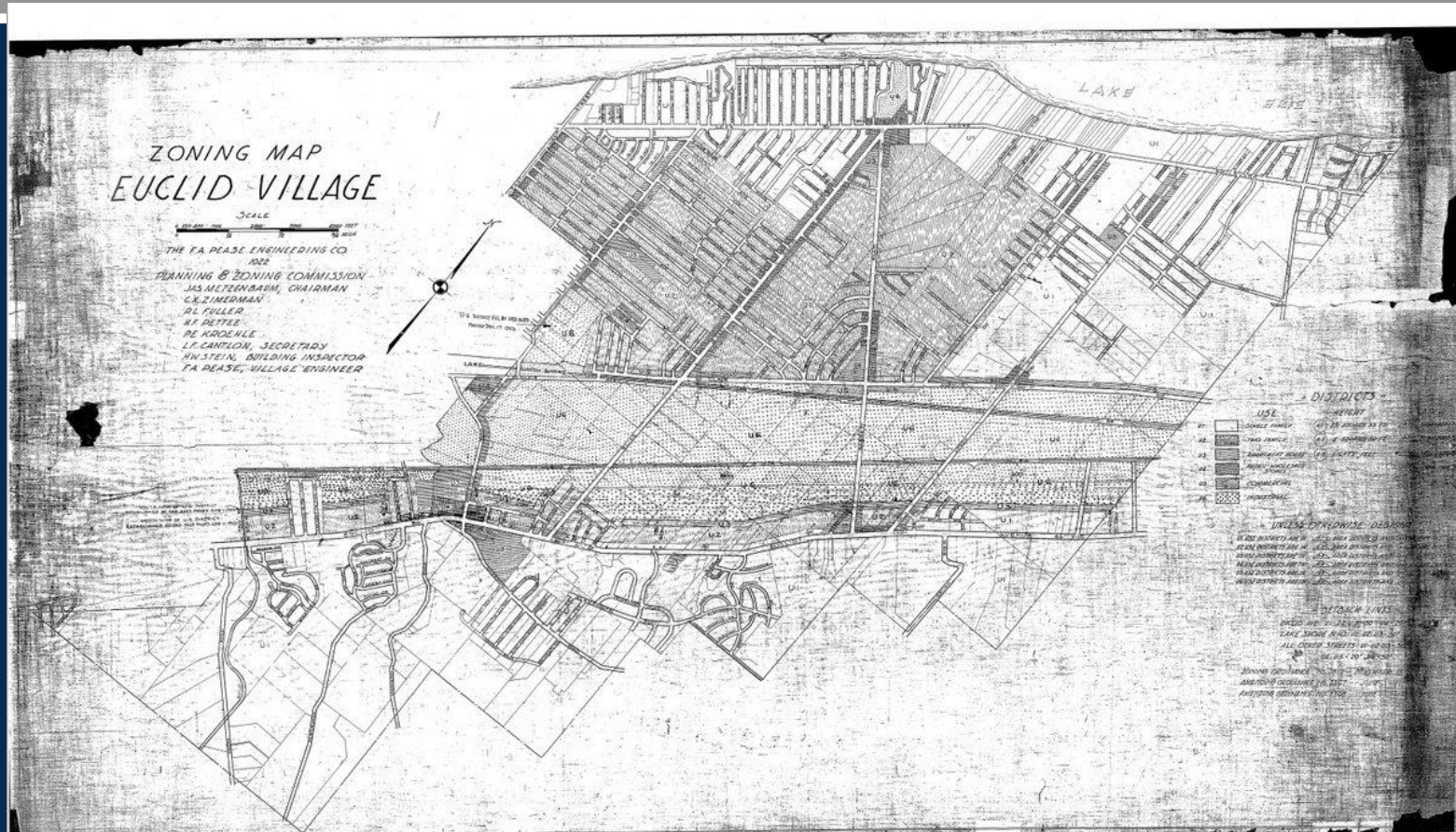


Federal Level

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

Euclid v. Ambler Realty

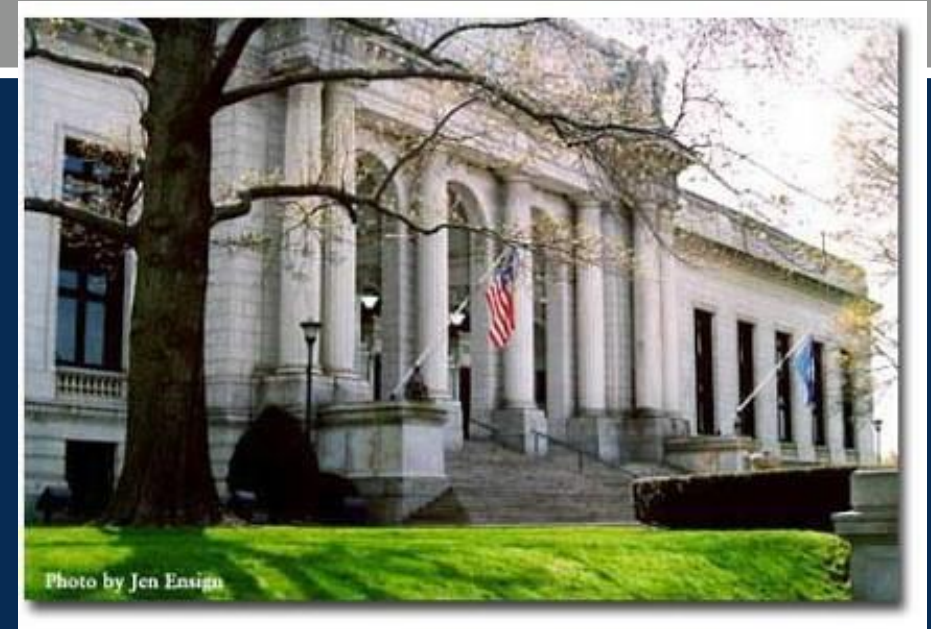


Supreme Court Ruled:

- 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

State Level



1. Courts provide local land use officials wide and liberal discretion
2. Fell 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

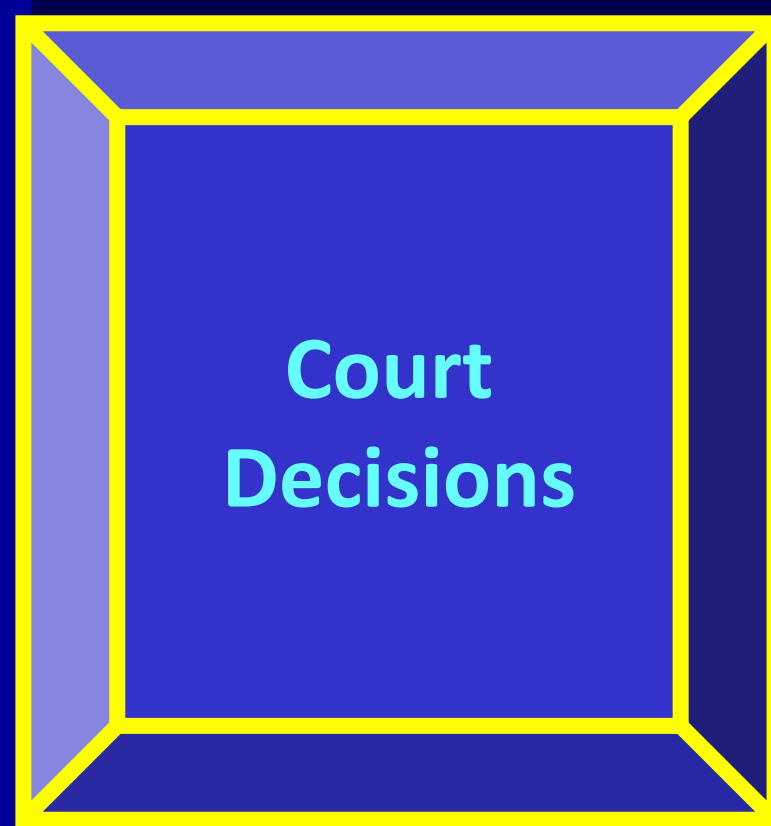
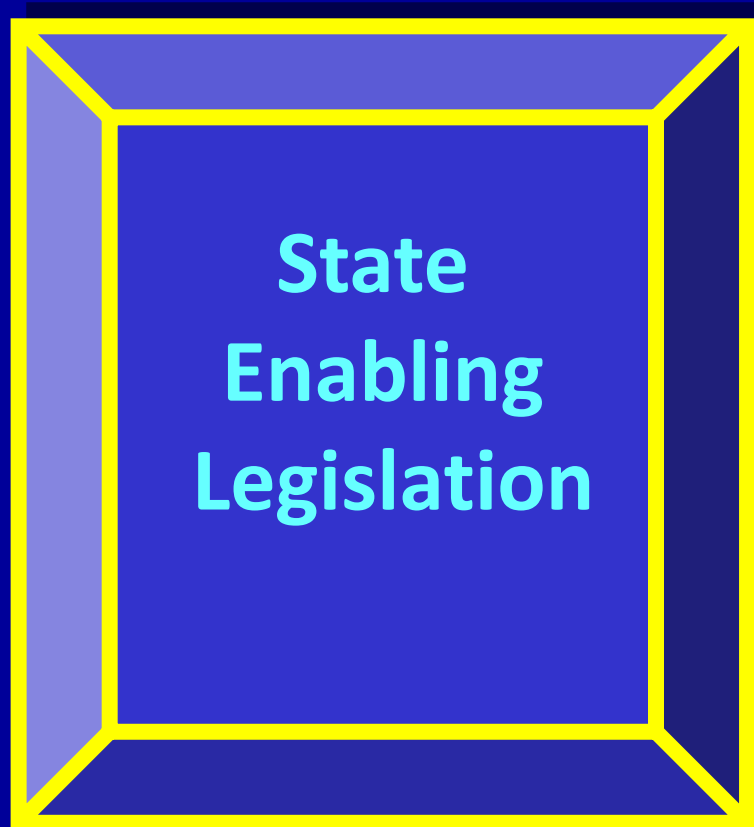
Illegal Commission Acts:

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



Legal Basis of Land Use Regulation

Local Regulations:



When drafting regulations, commissions serve in what capacity?

- 1. Administrative**
- 2. Police**
- 3. Judicial**
- 4. Legislative**
- 5. Parliamentary**

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When drafting regulations, commissions serve in what capacity?

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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.



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?

- 1. Planning Commission**
- 2. Zoning Commission**
- 3. Zoning Board of Appeals**
- 4. Inland Wetlands and Watercourses Agency**
- 5. Conservation Commission**
- 6. Everything BUT a Conservation Commission**

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

1. Planning Commission
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5. Conservation Commission
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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. Whenever the Commission wants

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Zoning Board of Appeals

Must Hold a Public Hearing on Everything



Planning and Zoning Commissions

Public Hearings Required for:

- Zone and Regulation Changes
- Adoption/amendment to POCD
- Special Permit/Exception
- Resubdivision
- 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)



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".

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

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Application Fees & Incomplete Applications

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.



Which applications are automatically deemed to have been approved if the agency does not act on them within the statutory time periods?

1. Subdivision application
2. Site plan application
3. Variance application
4. 8-24 referral
5. Special permit application

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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

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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



Decision on the record

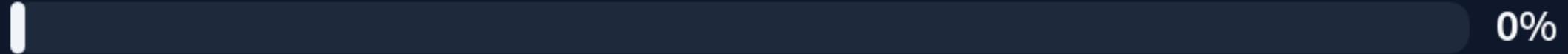
1. Must make your decision based on *what you heard at the public hearing*
2. You cannot ignore uncontradicted expert testimony if you do not question it. If you have doubts, question the expert on the record
3. If you have special expertise upon which you will rely, say so on the record (while hearing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

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

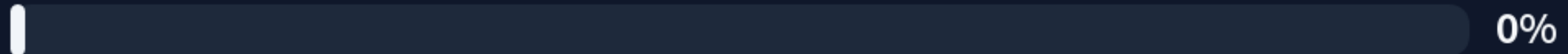
- 1. The applicant**
- 2. Neighbors opposed to an application**
- 3. Residents of another town**
- 4. Representatives of trade associations**
- 5. Convicted felons**
- 6. All of the above**

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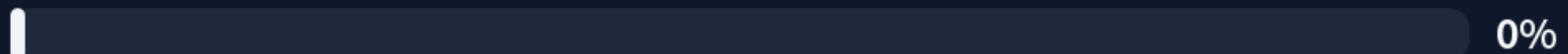
The applicant



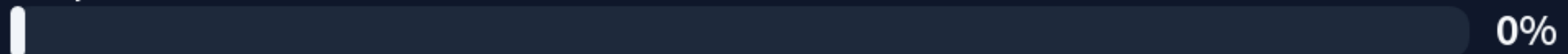
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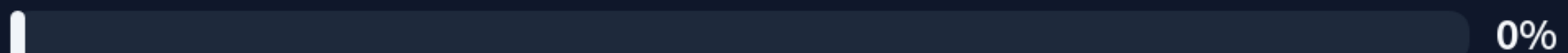
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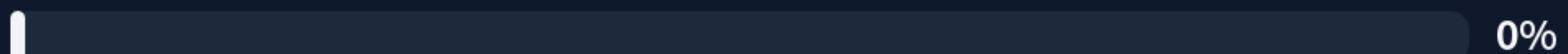
Representatives of trade associations



Convicted felons



All of the above



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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 the deliberations have started.**
- 4. The chairman may not vote except in case of a tie**
- 5. An abstention counts as a no vote**

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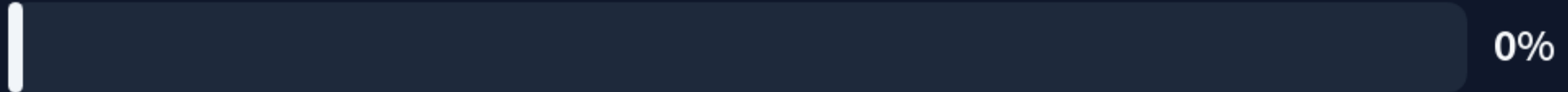
The Chairperson of a zoning commission or combined PZC can appoint whomever he/she chooses to be an alternate.

1.TRUE

2.FALSE

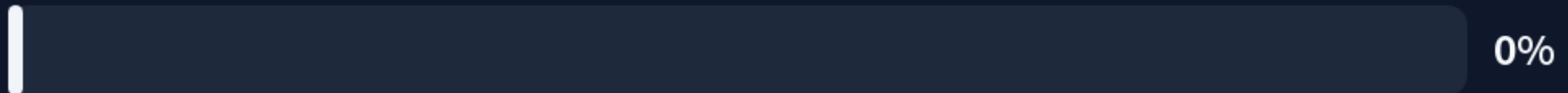
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True



0%

False



0%

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

1. TRUE

2. FALSE

Alternates

Sec. 8-1b. Alternate members of zoning commission or combined planning and zoning commission.

Any town, city or borough, in addition to such powers as it has under the provisions of the general statutes or any special act, shall have **the power to provide by ordinance for the appointment or election of alternate members to its zoning commission or combined planning and zoning commission.** Such alternate members shall, when seated as herein provided, have all the powers and duties set forth in the general statutes or any special act relating to such municipality for such commission and its members. Such alternate members shall be electors and **shall not be members of the zoning board of appeals or planning commission. Such ordinance shall provide for the manner of designating alternates to act.**

Sec. 8-5a. Designation of alternate members to act.

If a regular member of a **zoning board of appeals** is absent, **he may designate an alternate from the panel of alternates to act in his place. If he fails to make such designation or if he is disqualified, the chairman of the board shall designate an alternate from such panel, choosing alternates in rotation** so that they shall act as nearly equal a number of times as possible. If any alternate is not available in accordance with such rotation, such fact shall be recorded in the minutes of the meeting.



Alternates

Section 2 amends CGS § 8-19a to allow alternate members of planning commissions to also serve on the zoning commission or zoning board of appeals of the municipality.

However, any alternate member who holds or held such dual positions must recuse themselves from participating in any appeal before the zoning board of appeals from a decision of the planning commission if such alternate member participated in such decision.

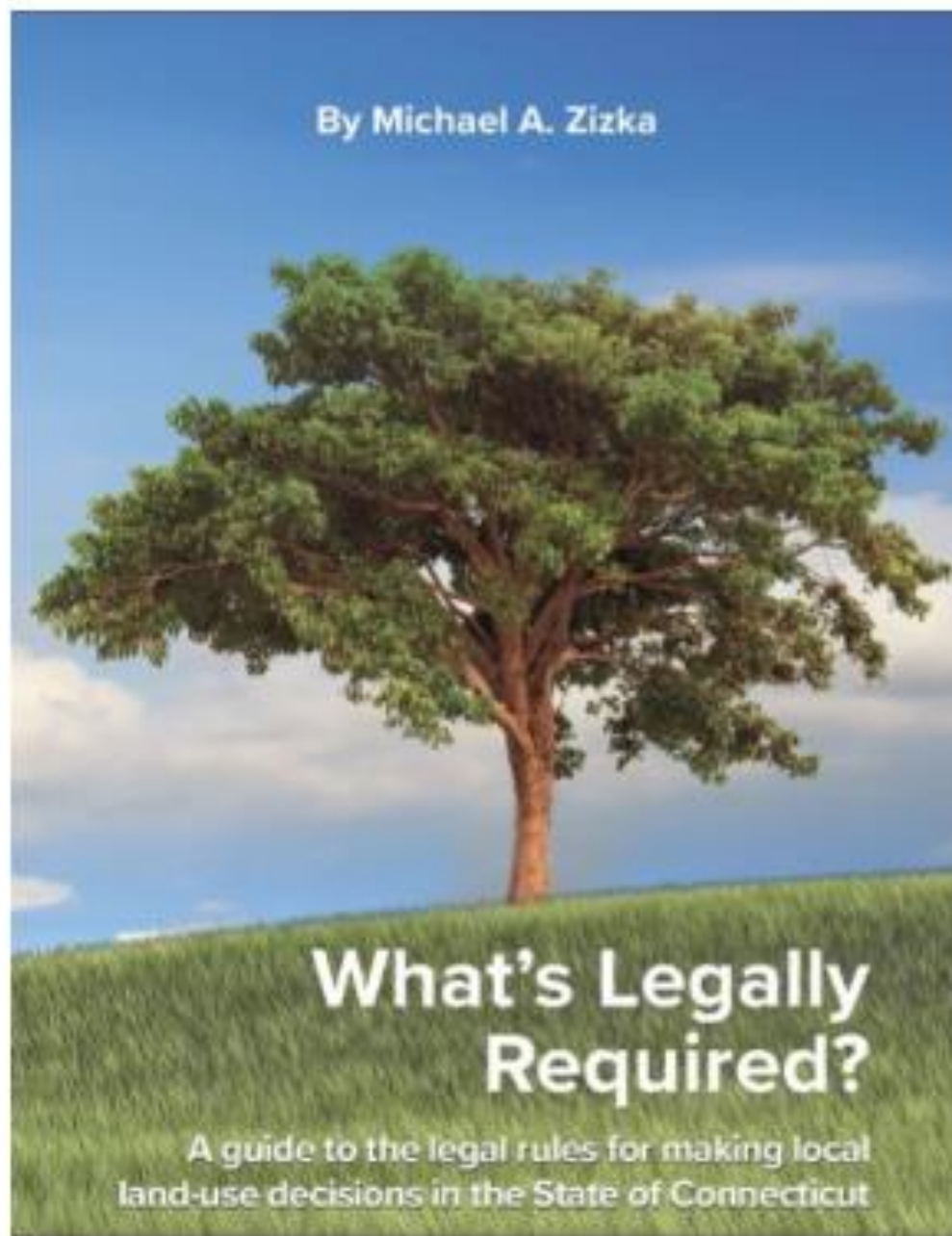


Site Walks

- 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?



What's Legally Required + Updates



WHAT'S LEGALLY REQUIRED
EIGHTH EDITION UPDATES By
Michael A. Zizka As of August
3, 2023 (Includes statutory
changes from the 2023
Connecticut legislative 2023
session)

<https://clear.uconn.edu/lua/resources/>

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

**BIG
LEGAL
MESS**



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.

1. True

2. False

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**The commissioner has a conflict and should
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True

False

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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

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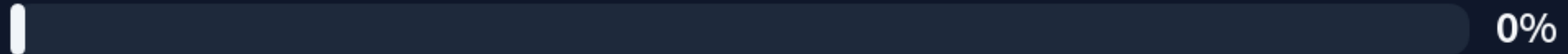
If a Commissioner has a perceived conflict of interest, he/she should:

- 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**

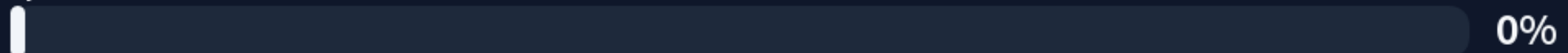


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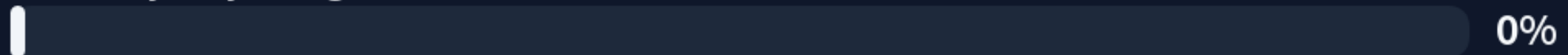
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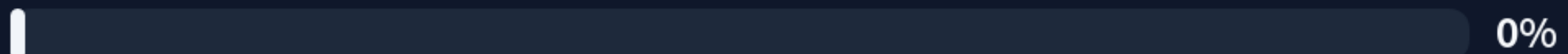
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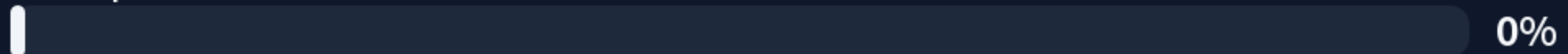
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It depends on the circumstances



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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**



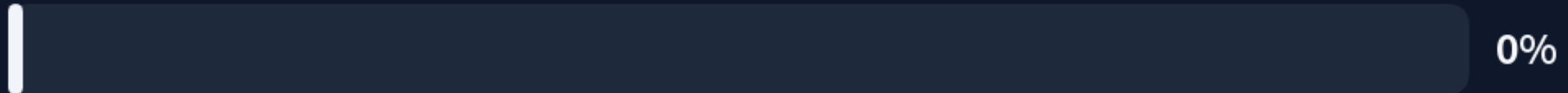
A planning commission member may represent his/her neighbor at a zoning commission hearing so long as he/she declares that he/she is a member of the planning commission but is not acting in that capacity.

1. True

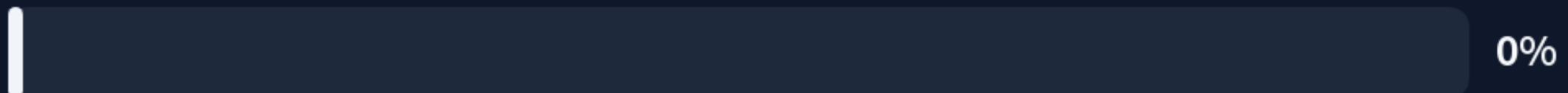
2. False

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True



False



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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



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

When poll is active, respond at pollev.com/snazzytree942

Text **SNAZZYTREE942** to **37607** once to join

Did Commissioner Borne's actions constitute:

Bias

Predetermination

Both

Neither

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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

When poll is active, respond at pollev.com/snazzytree942

Text **SNAZZYTREE942** to **37607** once to join

Was there impermissible predisposition or bias?

Yes

No

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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

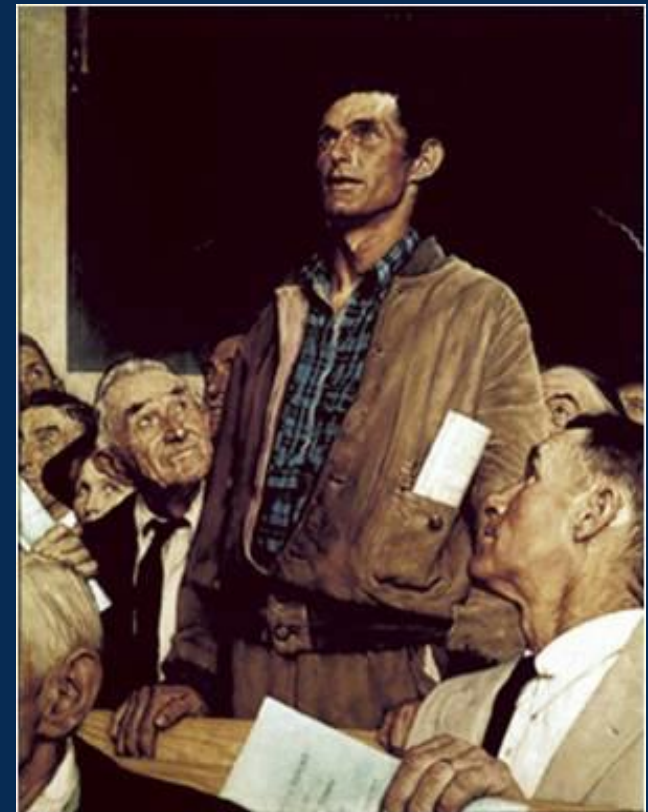
Freedom of Information Act

- 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



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 to everyone during a meetings.
- 4) Be prepared.



Legal and Procedural Considerations-Special Mention

When in doubt, call the town

attorney



Hypothetical Case Study

Town of East Northport





- 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**

Thanks for participating

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