



STATE OF CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION



To: Connecticut's Municipal Inland Wetlands Agencies

From: Betsey Wingfield *BW*
Bureau Chief
Bureau of Water Protection and Land Reuse

Dated: October 14, 2008

Re: 2008 Legislation and Regulations Advisory

In 2005, the Connecticut Legislature passed Public Act 05-124. Sections 1 and 2 of such Public Act affect municipal inland wetlands agencies when acting on certain permit applications relating to property subject to conservation or preservation restrictions. These Public Act sections have been codified into sections 47-42a and 47-42d of the Connecticut General Statutes and became effective on October 1, 2005.

To assist Municipal Inland Wetlands Agencies in amending their regulations, we have attached a copy of Sections 1 and 2 of Public Act 05-124 and we are providing suggested revisions to the Inland Wetlands and Watercourses Model Regulations.

Inland Wetlands Agencies should plan to revise their regulations in the near future to conform to these changes. The provisions of sections 47-42a and 47-42d of the Connecticut General Statutes govern until such time that your municipal regulations are amended.

In order to conform to these changes, the following changes to the Inland Wetlands and Watercourses Model Regulations, Fourth Edition, dated May 1, 2006 are made:

A new section 7.11 is added to read as follows:

7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:

a. for purposes of this section, "conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

b. for purposes of this section, "preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political

subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

c. no person shall file a permit application, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filling of the permit application.

d. in lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction.

A new section 10.8 is added to read as follows:

10.8 In the case of an application where the applicant has provided written notice pursuant to subsection 7.11c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the inland wetlands agency shall not grant the permit approval.

A new section 10.9 is added to read as follows:

10.9 In the case of an application where the applicant fails to comply with the provisions of subsections 7.11c or 7.11d of these regulations, the party holding the conservation or preservation restriction may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

Should you have any further questions regarding the above changes, please feel free to contact the Wetlands Management Section at (860) 424-3019.



Substitute House Bill No. 6783

Public Act No. 05-124

AN ACT CONCERNING THE PRESERVATION AND USE OF AGRICULTURAL LANDS AND CONSERVATION AND PRESERVATION RESTRICTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 47-42a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

For the purposes of sections 47-42b, [and] 47-42c and section 2 of this act, the following definitions shall apply:

(a) "Conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

(b) "Preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

Sec. 2. (NEW) (*Effective October 1, 2005*) (a) For purposes of this section, "state or local land use agency" includes, but is not limited to, a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands and watercourses agency, a municipal historic district commission and any state agency that issues permits for the construction or improvement of real property.

(b) No person shall file a permit application with a state or local land use agency or a local building official or director of health, other than for interior work in an existing building or for exterior work that does not expand or alter the footprint of an existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the

applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction not later than sixty days prior to the filing of the permit application. In lieu of such notice, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction. If the applicant has provided written notice pursuant to this subsection, the holder of the restriction may provide proof to the state or local land use agency or local building official or director of health that granting of the permit application will violate the terms of the restriction and such agency, official or director shall not grant the permit.

(c) If the applicant fails to comply with the provisions of subsection (b) of this section, the party holding the conservation or preservation restriction may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the state or local land use agency or local building official or director of health, subject to any rules of such agency, official or director relating to appeals. The agency, official or director shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction.

Sec. 3. Section 22-6e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The commissioner may develop a program to encourage the use of vacant public land owned by the state for gardening or agricultural purposes. In order to carry out said program, the commissioner shall: (1) In cooperation with other state agencies, compile a list of all vacant public land owned by the state, that in the opinion of such agencies and the commissioner may be feasibly used for gardening or agriculture, and (2) establish a procedure for application to the department on a form to be furnished by the commissioner for a permit to use available vacant public land for gardening or agricultural purposes. The commissioner shall adopt regulations pursuant to chapter 54 to carry out the provisions of this section, including but not limited to requirements for agreements to use vacant public land for gardening or agricultural purposes, establishment of a fee for such permit, except that no fee shall be charged for gardening permits, and requirements for the use of such land for agricultural purposes based on competitive open bidding. Permits shall be for a period prescribed by the commissioner but shall not exceed [seven] ten years from the date of issuance. After such period permit holders may apply for a new permit or renewal of the permit. Applicants shall submit a plan for such use and shall agree to maintain the land in a condition consistent with such land use plan, and shall agree to abide by regulations adopted by the department pursuant to chapter 54. Failure to carry out the conditions of agreement shall result in the forfeiture of the garden or agriculture permit. Any applicant who is granted the use of vacant public land for gardening or agricultural purposes shall indemnify and save harmless the state and all of its officers, agents and employees against suits and claims of liability of each name and nature arising out of, or in consequence of the use of vacant public land.

(b) Any permit issued pursuant to subsection (a) may be terminated by the commissioner, without cause, upon written notice to the permittee.

(c) A sponsor who has a gardening permit may assess a fee to individual gardeners for the sole