

Watersheds, Zoning & Wetlands

Working Together &
Common Issues and Goals

#1 Goal - Build a Friendly Relationship

Put a face to the name - be sure to exchange contact information

Stop in to say Hi, not just when a problem

Get to know who's in the office

Know the office hours / Let them know yours

Protecting our Resources is not a one-person job



*We have different roles and authority, but the
same objective*





Inland Wetlands and Watercourse

CT General Statutes 22a-36 through 22a-45

Wetlands Commissions are charged with protecting all inland wetlands and watercourses because they are an indispensable and irreplaceable, but fragile resource that is an interrelated web of nature essential to an adequate supply of surface and ground water; to hydrological stability and control of flooding and erosion; to recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life"

Planning and Zoning

CT General Statutes 8-1 through 8-30i

Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements.

Inland Wetlands Activities Requiring a Permit

- ▶ Regulated Activity is any operation or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, and any earth-moving, filling, construction, or clear-cutting of trees within 100 feet of wetlands or watercourses, but shall not include activities specified in Section 4 of these Regulations.

Planning and Zoning Activities Requiring a Permit

- ▶ Change of Use
- ▶ New construction Commercial and Residential properties
- ▶ Change of a structure - additions, decks, dormers
- ▶ Accessory Structures - Sheds, detached garages
- ▶ Earth Excavation Permits - Sand and Gravel Operations
- ▶ Erosion & Sediment Control Permits - typically when more than a ½ acre is disturbed.
- ▶ Subdividing property

What is a Violation?

- ▶ When someone conducts an activity without a permit
 - “Rater ask for forgiveness rather than permission”
- ▶ When someone doesn't follow all conditions of their approved permit
- ▶ How do Z/WEO find out about violations?
 - ▶ Routine inspections
 - ▶ Notified by neighbor, watershed inspector, Health District etc...
 - ▶ ZEO & WEO CAN NOT go on to private property looking for violations unless invited.
 - Bozrah Vs. Chumrynski - says if we want to do that we need to get a search warrant by a judge.
 - ▶ CGS 25-51 -51 provides water companies, local health departments and their agents the authority to enter and inspect premises within public water supply source areas.

How to work together to resolve violations

- ▶ Watershed Inspectors can go on private property and may be able to see violations that a ZEO/WEO can not see or does not know about.
- ▶ The ZEO /WEO may have enforcement “power” that watershed inspectors don’t
- ▶ Tag Team - Send both violations notices out at the same time, resolve situation so they don’t have to deal with the consequences

Enforcement “Powers”

Wetlands

- ▶ Cease & Desist Order
 - ▶ Show Cause Hearing in front of Wetlands Commission within 10 days of order - mandatory
 - ▶ Appeal decision to superior court within 15 days or order is final
- ▶ File order on the Land Records
- ▶ Or CGS 22a-44b can take person who commits, takes part of or assist in any violation straight to court. In addition to directing the violator to correct or remove the violation the court can impose civil penalties:
 - ▶ Fines of up to \$1,000 per day for each violations PLUS damages and “reasonable” attorney’s fees.
 - ▶ If found to have conducted violation “willfully” civil penalties can also include imprisoned for to 6 months for the first offense. Any subsequent offense fines are double to \$2,000 and imprisoned can be up to one year

Zoning

- ▶ Cease & Desist Order
 - ▶ Appeal to Zoning Board of Appeals - not mandatory
 - ▶ Appeal ZBA’s decision to court within 15 days
- ▶ ZEO can issue citations of up to \$150/day - If adopted ordinance
- ▶ File order on land records and lien property if citations are not paid.
- ▶ ZEO can file a civil suit - must issue C&D order first (unlike wetlands). Superior court can order corrective action as well as civil penalties.
 - ▶ shall be fined not less than ten dollars or more than one hundred dollars for each day that such violation continues; but, if the offense is willful, the person convicted thereof shall be fined not less than one hundred dollars or more than two hundred fifty dollars for each day that such violation continues, or imprisoned not more than ten days for each day such violation continues not to exceed a maximum of thirty days for such violation, or both

Finding out When an Application is Submitted.

- ▶ Ask your ZEO / WEO to email you a copy of the agenda every month
- ▶ Sign up on the website for automatic delivery of agendas
- ▶ Know when the meetings are and stop by the City Clerk's office 24 hours prior to the meeting
- ▶ CGS 8-3i

Sec. 8-3i. Notice to water company re projects within aquifer protection area or watershed of water company. (a) As used in this section "water company" means a water company, as defined in section 25-32a, and "petition" includes a petition or proposal to change the regulations, boundaries or classifications of zoning districts.

(b) When an application, petition, request or plan is filed with the zoning commission, planning and zoning commission or zoning board of appeals of any municipality concerning any project on any site that is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company, the applicant or the person making the filing shall provide written notice of the application, petition, request or plan to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application, petition, request or plan is made and with the planning commission, zoning commission, planning and zoning commission or zoning board of appeals of such municipality or the aquifer protection area has been delineated in accordance with section 22a-354c, as the case may be. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date of the application. Such water company and the Commissioner of Public Health may, through a representative, appear and be heard at any hearing on any such application, petition, request or plan.

(c) Notwithstanding the provisions of subsection (b) of this section, when an agent of the zoning commission, planning and zoning commission or zoning board of appeals is authorized to approve an application, petition, request or plan concerning any site that is within the aquifer protection area delineated pursuant to section 22a-354c or the watershed of a water company without the approval of the zoning commission, planning and zoning commission or zoning board of appeals, and such agent determines that the proposed activity will not adversely affect the public water supply, the applicant or person making the filing shall not be required to notify the water company or the Commissioner of Public Health.

“What’s free Advice worth? What You Make it Worth!” – Mark Branse

We know there is case law that says Commissions can “heed your advice” but how do you make them listen:

- ▶ Know the Ground Rules
- ▶ Know the Facts
- ▶ Know the Schedule
- ▶ Be Honest
- ▶ Be Specific
- ▶ Be Constructive
- ▶ Be There
- ▶ Be Respectful
- ▶ Be Watchful
- ▶ Infiltrate
 - ▶ Set an Example
 - ▶ Help Make the Laws

Know the Ground Rules

- ▶ Scope of Authority & discretion
- ▶ What are the criteria of the Regulations that the agency is applying?
 - ▶ Do not recommend something that, by its own regulations, the Commission is not authorized to do. You will lose credibility and expose them to successful court appeal
- ▶ Time frames in which permits must be approved
 - ▶ Site plans & Subdivisions - 65 days or automatic approval
 - ▶ Special Exceptions - re-subdivisions - public hearing are required - 65/35/65 days - no automatic approval
 - ▶ Wetlands - Non-Significant Activity 65 days - no automatic approval
Significant Activity (public hearing required) 65/35/35 days
- ▶ Different permits have different levels of discretion
- ▶ Wetlands must give a “favorable report” to Planning and Zoning prior to them making a decision

Know the Facts

- ▶ 8-3i requires applicants to send you a copy of the plans for their proposal. Still call the City Staff to make sure it is the most accurate information.
 - ▶ Plans change and revised plans may not be submitted to you
 - ▶ May not submit all plans
- ▶ Talk to your ZEO & WEO
- ▶ Do Site Visits
- ▶ “Whatever it takes , know what you are talking about”
- ▶ If you need more information ask! “Asking for information provides you with the facts that you need” to make good recommendations
 - ▶ Commissions have the right to ask for more information “Unistar Properties, LLC v. Conservation & Inland Wetlands Commission”

Know the Schedule

“A last-minute recommendation is less likely to be heeded by either the applicant or the receiving agency. I represent applicants, and they always try to accommodate every possible concern *if they hear it early enough*. Once the final drainage calculations are completed, it is a lot more expensive and time-consuming to make what would otherwise be a small tweak in the stormwater management plan. So try to get into the process as early as possible”

- ▶ Applicant is only required to send you application when submitting to P&Z. Build a relationship with ZEO/WEO so that you are invited to the table during Wetlands Submission or before
- ▶ Remember some applications have automatic approval, by statute. Commission may not have time to address your concerns if they are not submitted in a timely manner
- ▶ Commissions may not want to delay a project if there is a potential to loose it or if there is political motivation.

Be Honest

- ▶ Care about all projects in the Watershed that have a potential of affecting the Watershed
- ▶ Don't try to waive the "environmental protection flag" to stop or slow down a project you just don't like
- ▶ Don't be a NIMBY (Not in My Back Yard)
- ▶ "Be consistent [with recommendations] to demonstrate to both the Commission and the applicant that you are playing fair.

Be Specific

- ▶ “State precisely as you can WHAT should change about the proposal and WHY.
- ▶ Vague recommendations like “the development is too dense” is likely to be and should be ignored
- ▶ If going to deny a permit, need expert testimony (that’s you)
- ▶ If going to condition a permit, need specific conditions and can not be dependent on a third party
- ▶ If you want specific conditions on a project spell them out, so that the applicant can easily incorporate them into the plans or the Commission can make it a condition of approval

Examples:

- ▶ Vehicles should not be fueled on site. Spill kits should be on site
- ▶ Hay Bales should be installed in the northerly swale during construction to act as a temporary check dam
- ▶ The oil tank should be encased in a spill proof container
- ▶ The sump pump should not discharge to the storm drainage system

Be Constructive

- ▶ “Seek ways that the proposal can reasonably be modified to achieve both your goals and the applicants”
- ▶ Commissions’ authority to deny a permit is much less than its authority to modify or condition one

“Remember: An applicant would like to go to the Commission with a positive recommendation from you, so if they can make changes to their plan to achieve that, they will”

Be There

- ▶ Applicant will be there with their experts
- ▶ If you want to make sure your position is heard be there to submit your letter and to amplify on it if need be and respond to questions or comments

Be Respectful

- ▶ Don't throw temper tantrums
- ▶ Give alternate suggestions, "although we feel the method described in our letter is the best solution, we realize there may be more than one way to stabilize the steep bank"
- ▶ You also want to gain the respect of the Commission and ZEO/WEO (and vice versa). When planning a project come and talk to the Commission or ZEO/WEO during the planning stages. Submit complete applications and follow conditions of the permit.

Be Watchful

- ▶ “Use past mistakes to make your point, but don’t humiliate the ones who made those mistakes - they’re probably the people whose support you are seeking”

Infiltrate

“Many land use agencies have trouble getting volunteers to serve, and with the long hours, lack of public gratitude and low “wages” it’s no wonder. You are prime candidates. Volunteer”

Set an Example

- ▶ When doing a project on your own property, use this as an opportunity to Boast about yourself to the Commission, the LID stormwater treatment system you are installing, the green building you are construction. Talk about how well past projects have gone
- ▶ Use good contractors. Make sure they do what they are supposed to do, it is a reflection of you

Help Make the Laws Zoning Regulations

- ▶ Watershed Overlay or Zone - with more strict requirements.
- ▶ Low Impact Development Regulations
- ▶ Review and comment on all Regulations changes
- ▶ This is where Planning and Zoning have the most authority, they are making the laws.

Summary

- ▶ Build a friendship with the Zoning and Wetlands Enforcement Officer
- ▶ Build a team to gain compliance
- ▶ Build mutual respect and trust with Board and Commissions

QUESTIONS?

Rista Malanca, CZ & WEO

City of Torrington

Zoning and Wetlands Enforcement Officer

Rista_Malanca@torringtonct.org

860-489-2221