

DEEP: 2019 VOLUNTEER WATER MONITORING CONFERENCE

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Municipal Land Use Boards Generally

- Created by statute
- Jurisdiction is delineated by statute
- Decisions must be based on factors the board is allowed to consider (in other words, within its jurisdiction) or the decision may be overturned on appeal
- Typically, complex technical information or causation (if ... then) requires an expert

Different kinds of land use boards and how your data may be relevant

1. Inland Wetlands Commissions

A. Act on permit applications for “regulated activities”

- “Regulated” activities are those that may affect wetlands/watercourses – removing material from, depositing material in a wetland/watercourse, polluting, obstructing, crossing wetlands
 - “Pollution” includes “harmful thermal affects” – **possible relevance for cold water bodies**
- Regulated activities include activities in upland review areas that may affect wetlands/watercourses – to deny permit, activity must be likely to impair **physical characteristics**.
- BIG QUESTION – Will proposed activities impact the wetlands – requires expert testimony on causation. Your data may show baseline quality, sensitivity or existing degradation. It will not show causation.
- If an activity may have a significant impact on a wetland, the commission cannot grant the permit if there are feasible and prudent alternatives. **Sensitivity of water bodies on-site might be relevant to what is feasible or prudent. More sensitive more significant?**
- Factors wetlands commissions consider in acting on a permit (see CGS § 22a-41)
 - Feasible and prudent alternatives that would cause less impact
 - Maintenance and enhancement of long-term productivity of wetland/watercourse
 - Irreversible and irretrievable loss
 - Mitigation measures that might be considered as a condition of permit issuance:
 - prevent or minimize pollution
 - maintain or enhance existing quality
 - Restore, enhance and create productive wetlands/watercourses
 - Impacts on wetlands outside the permit area

B. Enforcement

- Data may show **condition before activity is established or degradation afterwards**
- Data DOES NOT show causation – need expert for this
- Bring information to wetlands enforcement officer

2. Planning Commissions (or P&Z wearing planning hat)

- Act on subdivision applications
 - Consider whether development complies with subdivision regulations and lots comply with zoning regulations – water quality data not relevant
 - Can require open space (regular or open space subdivisions) – **quality of on-site or downgradient water bodies may be relevant**
- Prepare the town's Plan of Conservation and Development – update every 10 years
 - Opportunities to participate on committees that include residents or at hearings
 - **Considerations include areas for conservation, need to protect existing and potential public surface and ground drinking water supplies.**

3. Zoning Commissions (Or P&Z wearing zoning hat)

- Considerations limited to whether an application complies with zoning regulations – water quality data is unlikely to be relevant
- May be worthwhile to attend to understand project and whether applicant intends to apply for a wetlands permit

4. Conservation Commissions

- Advisory board – research use of land, prepare information, **inventory natural resources, formulate watershed management plans**, maintain index of open spaces including wetlands, can **acquire/manage land** (with permission)

Sec. 22a-41. Factors for consideration of commissioner. Finding of no feasible and prudent alternative. Wetlands or watercourses. Habitats. Jurisdiction of municipal inland wetlands agencies. (a) In carrying out the purposes and policies of sections 22a-36 to 22a-45a, inclusive, including matters relating to regulating, licensing and enforcing of the provisions thereof, the commissioner shall take into consideration all relevant facts and circumstances, including but not limited to:

- (1) The environmental impact of the proposed regulated activity on wetlands or watercourses;
 - (2) The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity which alternatives would cause less or no environmental impact to wetlands or watercourses;
 - (3) The relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
 - (4) Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority: Restore, enhance and create productive wetland or watercourse resources;
 - (5) The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
 - (6) Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.
- (b) (1) In the case of an application which received a public hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a finding by the inland wetlands agency that the proposed activity may have a significant impact on wetlands or watercourses, a permit shall not be issued unless the commissioner finds on the basis of the record that a feasible and prudent alternative does not exist. In making his finding, the commissioner shall consider the facts and circumstances set forth in subsection (a) of this section. The finding and the reasons therefor shall be stated on the record in writing.
- (2) In the case of an application which is denied on the basis of a finding that there may be feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands or watercourses, the commissioner or the inland wetlands agency, as the case may be, shall propose on the record in writing the types of alternatives which the applicant may investigate provided this subdivision shall not be construed to shift the burden from the applicant to prove that he is entitled to the permit or to present alternatives to the proposed regulated activity.
- (c) For purposes of this section, (1) "wetlands or watercourses" includes aquatic, plant or animal life and habitats in wetlands or watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.
- (d) A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.