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CITY OF MIDDLETOWN
MAYOR'S OFFICE

REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE
(Submit to Mayor in Duplicate)

TO: MAYOR'S OFFICE
FROM: William Warner, Planning Director
SUBJECT: Subdivision Application

FACTS: (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY, & HOW.) 26 lot subdivision not submitted in accordance with CGS8-26 with regard to "Applications involving wetland and watercourses". Applicant submitted P & Z application and indicated he already had a wetlands permit. Staff discovered IW permit had expired. Applicant was notified of problem, applied for wetland permit, and choose to proceed with P & Z application. Prior to P & Z hearing applicant secured a new IW permit.

LAW: (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that you think applies to this question.)
CGS 8-26, Page 31-32 from "What's Legally Required", Atty. Michael Zizka

QUESTION: What, in your own words is the precise question you wish to have answered?)

How should the P & Z Commission handle this problem?
Is this a fatal flaw in the application?

ESTIMATE OF PRIORITY: Check One.
 EMERGENCY STANDBY FOR FUTURE ACTION
 X URGENT APPLICANT SHOULD KNOW FOR FUTURE ACTION
by 7/28/93

Date: 7-15-93

[Signature]
Signed:

What's Legally Required?

By

Michael A. Zizka
Attorney

A Guide to
the Legal
Rules for
Making
Local
Land-Use
Decisions

Published by

The Natural Resources Center
Connecticut Department of
Environmental Protection

S T A T E O F C O N N E C T I C U T

1988

Receiving The Application

State Statute Section

By state statute, both zoning and subdivision applications must contain detailed plans for soil erosion and sediment control if the development will have a disturbed area of more than one-half acre. Single-family dwellings not part of a subdivision are exempt. In addition, a subdivision applicant must demonstrate that passive solar energy techniques have been considered during the planning process. Municipal agencies may, by regulation, require other specific documents or technical information to be filed with any land-use application.

8-2, 8-25

A common problem arises when an application is submitted which is either not in the proper form or which does not contain all of the information required under the applicable statutes or regulations. Many commissions in this situation will "deem the application incomplete" and refuse to give it further consideration. Such a refusal is probably safe if the proper application *form* or the required *fees* have not been submitted. However, if the defect in the application is merely the lack of certain information, a refusal to accept the application is risky at best. The submission of even an incomplete application may be deemed by a court to fix the "day of receipt," requiring the commission to render *some* decision within a specified time. If the commission fails to act within the proper time, the defective application may be automatically "approved" by operation of law.¹²

To avoid such an unfortunate result, the author believes that a commission receiving an application it believes to be incomplete should assume that the timetable for rendering a decision has started anyway. If the applicant fails to provide the necessary additional information before the time for decision runs out, the commission should deny the application on the grounds that the information provided does not satisfy the standards in the relevant regulations or statutes. When a denial is based on incomplete information, however, the commission should allow the applicant to resubmit the application.

D. Coordination of Inland Wetlands Applications with Planning and Zoning Applications

Under recent revisions to the General Statutes, if an application made to a zoning or planning commission for a zoning site plan, special permit, special exception, or subdivision involves an activity regulated under the inland wetlands act, the applicant must submit an application for a permit to the inland wetlands agency *no later than* the day the zoning or planning application is filed. In most cases, no decision may be made on the application by the planning or zoning commission, as the case may be, until the inland wetlands agency has rendered its decision and submitted a report containing the results of the decision to the planning or zoning commission. Unfortunately, the statutes do not tell the affected commission what to do in the event the required inland wetlands application has *not* been submitted in a timely manner.

8-3(g), 8-3c, 8-26,
Public Act 87-533

To help assure proper coordination, it is recommended that planning commissions and zoning commissions ask applicants at the time their applications are submitted (preferably by written questions on the application forms themselves) whether any inland wetlands application is required for the proposed activity and whether any such application has been filed. This will let the commission know whether it will have to wait for the inland wetlands agency to act before it can make its own decision.

It is *not* recommended that a commission refuse to receive a zoning or planning application in the event a required inland wetlands application was not submitted. The statutes provide that no decision need be made on the zoning or planning application until 35 days after the inland wetlands agency has rendered its decision and report. (See section entitled "Special Extensions for Applications Involving Inland Wetlands.") Therefore, it is safer for the commission to accept the zoning or planning application when first submitted and to follow the usual timetable for scheduling a public hearing, if necessary.

Receiving The Application

State Statute Section

Since the recent statutory amendments do not expressly allow a commission to postpone or continue a *hearing* (as opposed to the decision itself) indefinitely, the commission should hold and conclude the hearing by the normal deadlines. If the inland wetlands agency's report has not been submitted as of the time the hearing is formally closed, the commission should notify those attending the hearing that the report will be included in the public record when received. Following its receipt of the inland wetlands agency's decision and report, the commission may (if it has sufficient additional time) give the applicant and other interested parties an opportunity to respond in writing to the inland wetlands agency's action.

E. Separation of Agency Functions

Care should be taken to distinguish between the functions performed by planning and zoning commissions and inland wetlands agencies. Planning and zoning functions are often combined in a single commission. In some towns, planning or zoning commissions also serve as inland wetlands agencies. Where regulatory functions have been combined in this manner, it is important for the commission to assure that planning, zoning, and inland wetlands aspects of a project are treated separately and distinctly. For example, a proposed residential development may require zone change approval, a zoning permit, subdivision approval, and approval of one or more inland wetlands activities. The specific procedures prescribed for *each* aspect of the project must be carefully followed. For this reason, it is probably best for the commission to require separate application forms to be filled out for each required permit. A bit of extra paperwork at the outset may help guarantee that a commission decision is not ultimately overturned in court.

F. Fees

1. General Provisions

The statutes provide alternate methods for the adoption of fees to cover the processing of land-use applications. Under the first method, the commission itself adopts a fee in accordance with the specific statutes governing the particular land-use application. These statutory provisions are discussed in detail below.

Under the second method, a municipality may adopt a reasonable fee schedule for any land-use agency by ordinance. Fees established under an ordinance may be greater than the fees provided by specific statutes, and the ordinance will supersede any specific fees previously set by the affected agency. Under an ordinance, the costs of inspection and construction supervision, among other items, can be reflected in the new fee schedule.

8-1c

2. Specific Provisions

a. Zoning Commissions

Zoning commissions are allowed to charge a fee to cover the cost of publishing the notices required for a hearing on an application to change a zoning regulation or boundary.

8-3(a)

An applicant for a certificate of approval of a motor vehicle junkyard location must pay a fee of \$25 plus the costs of publishing notice of the required public hearing and "the reasonable expenses of such hearing" to the municipality's treasurer.

14-67k

An applicant for a crematory must pay a fee of \$10 plus the costs of publishing notice and "the reasonable expense of [the] hearing" to the treasurer.

19a-320(b)