

From: [Robert Avena](#)
To: [Elizabeth Burdick](#)
Subject: Treaster Zoning Regulation Amendment Application Number 25-2 ZRA
Date: Thursday, June 5, 2025 10:54:41 PM

Dear Ms. Burdick and Members of the Planning and Zoning Commission :

I have been asked to offer my legal opinion regarding the above -referenced application presently set down for Public Hearing on June 12th. A previous text amendment application was submitted by Mr. Treaster last fall, but that amendment also included changes to large scale excavation projects and affordable housing applications under 8-30g of the Connecticut General Statutes. This current submission focuses only on proposed changes to various sections of the multifamily regulations previously adopted by the Commission in consistency with the 2020 Plan of Conservation and Development.(POCD). Nonetheless, as explained below, I am still advising the Commission to deny without prejudice these amendments to your regulations regarding multifamily proposals while the same property owner application is pending before any of your Land Use Boards.

As your Land Use Counsel, I legally advise you that your Commission acts in a legislative capacity when determining whether or not to amend your regulations as time and experience , and your updated POCD, may dictate. The Connecticut Courts give a wide leeway to Planning and Zoning Commissions when reviewing Commission decisions on Zone regulation amendments, paying particular attention to proper procedure of public notice and other statutory procedures, along with reviewing whether the proposed changes are consistent with your most recent POCD.

Most importantly however, I want to advise the Commission over another important consideration by the Court in the case of Marmah, Inc. v Greenwich, 176 Conn 116 (1978). In that case, a recent set of regulation changes were instituted in Greenwich zoning just prior to an application to the Commission. The Court found that the particular changes in the zoning regulations were enacted primarily for the purpose of preventing the property owner from going forward with its contemplated building project. It was held improper and illegal to allow the new regulations to apply to and bar the project as proposed. See Fuller, Land Use Law And Practice, Volume 9B, page 37. (2019)

As the Commission is aware, there is a pending multifamily project before the Wetlands Commission on a parcel in the Gales Ferry section of town. It has been proposed on a parcel there under the existing multi-family zoning regulations for that location and zoning district. Contemplating, and voting to change, these particular regulations as proposed by Mr. Treaster

may be seen as a predetermination by the Commission that it intended to prevent the approval of this particular project under the regulations existing at the time it was designed by the property owner, who has begun the town permitting process for the proposal. Therefore, notwithstanding any of the substantive elements of Mr. Treaster's amendments, I advise the Commission to deny without prejudice any contemplated amendments to your multifamily zoning regulations until a time when there is not a pending application filed with Wetlands, or the Commission itself, that was designed and conceived under your present Regulations.

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