

Elizabeth Burdick

EX#49
RECEIVED

From: Robert Avena <RAvena@sswbogg.com>
Sent: Thursday, July 31, 2025 2:21 PM
To: Elizabeth Burdick
Subject: Re: PZ25-2ZRA/ Follow up Legal Opinion on Changes Number 22

JUL 31 2025

Land Use Department

Dear Ms. Burdick : I have received your request for a legal opinion to the Planning and Zoning Commission regarding the Application from Mr. Treaster and his proposed changes to the Zoning Regulations. More specifically, you asked our legal opinion on proposed change number 22, of which there were 2 different versions proposed by Mr. Treaster.

I recommend that the Commission deny both versions of the proposed changes. The proposals are not consistent with Connecticut statutory law which limits the jurisdictions of both the Wetlands Commission and the Planning and Zoning Commission.

Connecticut General Statutes, Chapter 8, establishes the power of a municipality to create a Planning and Zoning Commission. In Connecticut General Statutes Chapter 22, the state legislature created the Wetlands and Watercourses Act. Both statutes are completely distinct jurisdictional municipal powers, and each municipal commission legally acts separately from one another. Therefore, the Planning and Zoning Commission has no legal authority to impose any of its regulations on the other respective Commission.

In this case, the first proposal is about an 'application' requiring Wetlands Commission approval. A Wetlands Commission application is separate and distinct under law from a Planning and Zoning Commission application. If someone has wetlands on their property, they may need to apply to the Wetlands Commission under State Chapter 22. Moreover, that application may require a permit, which may be granted or denied. The permit is often good, if granted, for up to 5 years, and applies only to the wetlands activity on the parcel. I cannot recommend, nor would it be legal, for the zoning regulations to apply to a P and Z application for that parcel, which may be submitted some 3 years later, to zoning regulations in effect 3 years earlier. Each type of 'application' is to be treated separately under Connecticut law.

The same logic applies to the alternative change number 22 of Mr. Treaster. The applicant cannot be allowed to choose which Zoning Regulations the applicant wishes to follow, as such an option would violate Connecticut Zoning Law. At the time the applicant applies to the Wetlands Commission, the regulations to be followed are the existing Wetlands Regulations. When an applicant then decides to file a Planning and Zoning Application, the law states that the zoning regulations in effect at the time of the zoning application are to be followed. To apply any other process as suggested by Mr. Treaster would cause confusion, and be contrary to the statutory authority, and case law.

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