

Client Information

Land Use Law and Regulation in Connecticut

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INTRODUCTION

The legal status of land, particularly watershed, has changed tremendously since the beginning of this century. The ownership of land no longer presumes control of the use of the land. Population pressures and environmental concerns have spawned a flurry of legislation that has effectively placed the right to determine the use of land into the public domain.

While the modern owner of land still has rights of title (legal ownership) that are very traditional and can only be limited through due process, the use of land is now exercised subject to regulation by administrative agencies at federal, state, and municipal levels, with the burden placed on the landowner to demonstrate compliance.

The goal of this pamphlet is to make the reader aware of the regulatory environment that has replaced traditional concepts of property rights.

ZONING

All Connecticut municipalities are empowered by Connecticut statute with broad discretion to adopt zoning regulations. Zoning regulations typically divide towns or cities geographically into zones with a corresponding list of permitted or prohibited uses applied within each zone. Regulations within a zone are typically highly specific, regulating not only primary and accessory uses but minimum lot size, lot shape, setbacks to streets or property lines, heights of buildings, steepness of driveways, out-buildings, fences, etc. There is no typical format, however, and neighboring towns will often have entirely different uses allowed within zones that are nominally the same.

To be upheld in court, a municipality's zoning regulations need only meet a two-part test: (1) to promote the public welfare and (2) to do so in a reasonable manner. Virtually every activity or use of land can be regulated through zoning, and nearly all court challenges to broad zoning regulations have failed.

Complex zoning issues are decided by review of an application made to a municipality's zoning board, which is usually composed of appointed volunteers from the community and assisted by paid staff. Issues involving the subdivision of land or a zone change may also have to be presented to a separate planning board. In many cases, the planning and zoning functions are united in a single board. In some municipalities, simple compliance matters may be decided without board review by a zoning enforcement officer acting with powers delegated by the board. Again, there is no typical format and hours (or months) of frustration can often be saved by early consultation with a seasoned professional such as a surveyor, civil engineer, or attorney who is familiar with local procedure.

WETLANDS

Regulation of wetlands is divided into two categories: inland wetlands and tidal wetlands. Inland wetlands are regulated by local appointed boards that review appli-

cations in a manner similar to zoning boards. Tidal wetlands are regulated at the state level by the Connecticut Department of Environmental Protection (DEP).

INLAND WETLANDS

Since 1972, Connecticut municipalities have been empowered by state statute to regulate wetlands within their boundaries. As of 1988, state statutes make municipal regulation of inland wetlands mandatory. As in zoning, each municipality has a board that enacts and enforces wetland regulations. Wetlands agencies are supervised by the DEP, and an applicant can apply directly to the DEP where a municipal wetlands agency fails to respond to an application within statutory time limits. While wetlands regulations tend to be more uniform than zoning regulations, towns still have discretion to be more stringent than DEP standards. Setback distances from wetlands may vary in different towns by as much as three hundred percent. Application procedures and documentation requirements may also differ. Wetlands regulations apply to all ecologically disturbing activities that are within a wetland, within the setback area next to a wetland, or have the potential to affect a wetland.

Wetlands are defined by soil type in Connecticut and need not be visibly wet to qualify. They also need not be naturally formed, and many man-made wetlands, such as old drainage ditches or gravel pits, usually receive full protection.

As in zoning, the burden is on the owner or developer of land to present the local board with an application for the proposed activity. In the best case, there are no affected wetlands on the property or adjacent properties, and the activity will be determined to be a nonregulated activity.

The next best case occurs when an activity that has the potential to affect wetlands (usually up-slope grading or excavation) can be contained by erosion and sedimentation controls. Typically the applicant will be required to present a detailed site plan, prepared by a surveyor or engineer, showing erosion control measures to protect wetlands from areas of activity. The board will usually make a site visit before granting approval, and the applicant can expect a minimum of three meetings before obtaining a permit. Many towns (particularly larger towns employing wetlands staff personnel) will also monitor the maintenance of the erosion controls throughout the duration of the project. Some towns will request the applicant to post a bond.

Activities that will have a definite effect on wetlands or their setback area are not necessarily prohibited, but a wetlands board has broad discretionary power to deny the application outright, request alternatives that have less impact on the wetlands, or consider proposals for mitigation of the impact. Boards are duty bound to examine alternatives and allow only the alternative that has the least impact on the wetlands. As part of the application process, boards can request environmental impact studies, detailed surveys of natural resources, and public hearings. The application process itself can become prohibitively expensive and time consuming, and mitigation measures are often expensive (such as extensive planting of wetlands flora) or restrictive of other uses of the property (such as designation of conservation easements).

Existing or proposed dams are regulated by the DEP at:

Inland Water Resources Division, DEP 79 Elm Street, Hartford, CT 06106-5127; (860)424-3706; <http://dep.state.ct.us/>

TIDAL WETLANDS

Any activities adjacent to the shore or tidal wetlands of Long Island Sound are highly regulated by the DEP and possibly the U.S. Army Corps of Engineers for activities involving dredging or filling.

Activities regulated include the erection of structures (such as breakwaters, docks, pilings, booms, marine railways, culverts, floats, jetties, ramps, utility lines/cables, roadways, walkways, buildings, decks, etc.), dredging for the purposes of maintaining existing channels, turning basins, vessel berths, mooring areas and other waterfront facilities, and removal of vegetation or shore stabilization.

For coastal activities the DEP can be contacted at:

Office of Long Island Sound Programs, DEP 79 Elm Street, Hartford, CT 06106-5127; (860)424-3034; <http://dep.state.ct.us/>

HISTORIC DISTRICTS

The legislative body of any municipality is empowered to pass an ordinance establishing historic districts to preserve structures and places having architectural or historic significance. Historic districts are established through a statutory procedure and are subsequently governed by a commission empowered to regulate changes or additions to buildings, structures, and parking areas. Historic district commissions usually have application procedures similar to zoning boards.

THE CONNECTICUT TRANSFER ACT

Any change of ownership of real estate which has had a business establishment that generated, or was likely to generate, a release of hazardous waste may be subject to the Transfer Act. "Establishment" is a defined term and includes:

- Properties at which more than one hundred kilograms of hazardous waste were generated in any one month since 1980;
- properties at which hazardous waste was recycled, reclaimed, treated, or transported;
- properties at which dry cleaning activities occurred after May 1, 1967;
- furniture strippers after May 1, 1967; and
- automobile body and paint shops after May 1, 1967.

A party to the transaction must submit one of four forms to the DEP depending on whether or not a release of hazardous waste has occurred and, if it has, the status of any cleanup. The purpose of the Transfer Act is to provide notice to the buyer and the DEP and establish the identities of the parties responsible for the cost of cleanup. If the property is contaminated, one of the parties must agree to remediate in accordance with DEP standards.

Any property which has had any business use or contains existing or prior underground oil storage tanks should be examined by trained environmental professionals prior to purchase or lease. Most banks will require this as a condition of financing.

CONSTRUCTION REGULATION

New construction, additions to an existing structure, and remodeling are all subject to building permits. Typically an applicant will need to present plans and an application to a building inspector along with approvals from zoning, wetlands, and possibly the health department where a new or expanded septic system is required. The feasibility of the soil to accept a septic system must be demonstrated. In many areas of Connecticut, suitable areas for septic systems are difficult to find due to high ledge, groundwater, protected aquifers, steep slopes, or water supply watershed.

Other approvals that may be required include sewer hookups, well permits, or driveway permits. Many building departments will provide a checklist or sign-off sheet to guide the applicant through the process.

CONCLUSION

A thorough discourse of each type of regulation would fill several volumes. Many of the pitfalls of land use regulations can be avoided by observing the following suggestions:

- Investigate each issue within the framework of the governing regulations. Never make assumptions.
- Purchase, rent, or lease property subject to approval and/or compliance with regulations.
- Engage the services of seasoned professionals early in the process.
- Open and maintain a dialogue with authorities. More often than not they are helpful in solving problems.
- Be patient and courteous, and allow a realistic amount of time in which to obtain approvals.

