

MEMO RE: Legal Standards for Inland Wetlands Commissions.

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This application is scheduled as a public meeting which does not allow for commentary of evidence by the public. No public hearing has been scheduled and for one to be scheduled there needs to be a finding that application will have significant impact, which requires expert testimony to that effect, see; *infra* and East Lyme Inland Wetlands Regulation Section 9.

Since this application is for a determination that the proposed activity is outside the upland review area, there cannot be a finding of significant impact, therefore there can be no public hearing. There is not necessarily a right to speak at a public meeting, as opposed to at a public hearing. *Third Garden Park, L.P. v. Ledyard Zoning Comm'n*, No. LNDCV126038939S, 2013 WL 6916753, at *4 (Conn. Super. Ct. Dec. 4, 2013).

Nothing can be treated as evidence which is not introduced as such.” [*Morgan v. United States*, 298 U.S. 468, 480, 56 S.Ct. 906, 80 L.Ed. 1288 (1936)]. Ex parte communications with persons outside the agency are plainly improper under this standard for administrative adjudication. Even in the absence of [General Statutes § 4-181, see now General Statutes (Rev. to 1989) § 4-181(a)], therefore, an ex parte communication by an adjudicator concerning a case before him would indicate that the decision had been “made upon unlawful procedure,” a ground for reversal specifically mentioned in [General Statutes] § 4-183(g)(3) [see now, General Statutes (Rev. to 1989) § 4-183(j)(3)]. *Mattabassett Grp., Inc. v. Inland Wetlands & Watercourses Agency of City of Middletown*, No. 60372, 1992 WL 83535, at *4 (Conn. Super. Ct. Apr. 21, 1992)

The wetlands regulation protect wetlands not the area outside the wetlands or other conditions outside the wetlands. *Mystic Auto v. Groton*. 39 Conn Law Reporter. 134 (2005). There is no authority to regulate outside the boundary. *Avalonbay*, citing, *Connecticut Fund for the Environment v. Stamford*, 192 Conn. 247,249-50 (1984).

Any claim of adverse impact must be based on substantial adverse impact. *Patchen v. Milford* 2015 WL 1244327.

Claims of adverse impact must be supported by expert testimony and cannot be speculative. *Id.*, *Patchen*' See Also; *River Bend Assoc. v. Old Saybrook* 269 Conn. 57, 79-91, (2004).

For the Commission to determine that it may regulate activity outside a wetlands area it must make a determination that the activity will have a significant impact on the wetlands. Fuller, *Connecticut Land Use* Vol. 9 Fourth Ed. Pg. 377. See also; *Ellenthal v Greenwich*, 1998 WL 764199; for commission to regulate activity outside the wetland expert testimony as to the impact is required.

Function of the commission is not protection of the upland habitat. *Avalon Bay v. IWC of Wilton*, 266 Conn 150,167 (2003).

Feasible and Prudent alternatives means consistent with sound engineering principals, and economically reasonable. Fuller, at 362.

DEEP doesn't recommend a buffer of more than 100 feet. *Queach v. Branford* 258 Conn 178, 199 (2001). The purpose is to regulate impact on wetlands not ground water. *Id.*, 204.

Agency cannot impose requirements on an applicant for changes to the regulations which occur after the application is filed. *Prestige Builders, LLC v. Ansonia*, 70 Conn. App. 710, 715 (2001).

The regulations must contain a clear and concise standards of what activity is covered by the regulations so a land owner knows what is required of him when making application.

Here because there is no activity within the regulated area, there exist no standards which an applicant could reasonably conclude this agency would exercise or attempt to exercise jurisdiction for as the activities are outside the regulated area. Therefore, any attempt to do so is impermissible.