

## Gary Goeschel

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**From:** Mark S. Zamarka <mszamarka@wallersmithpalmer.com>  
**Sent:** Tuesday, September 19, 2023 12:35 PM  
**To:** Gary Goeschel  
**Cc:** Timothy Bleasdale  
**Subject:** RE: Draft Subdivision Regulations

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Gary –

As to the proposed amendments, below are our comments in brief:

1. **Section 4-2-15**, requiring that property taxes be current at the time an application is filed or it will be deemed incomplete. The planning commission authority comes from the CT statutes. For example a commission prepares and adopts a POCD (sec. 8-23), reviews certain proposed municipal improvements (8-24) and promulgates regulations for the subdivision of land and reviews subdivision applications (8-25). Subdivision regulations can include consideration of public health and safety concerns (which include traffic, water and sewer and related matters), as well as environmental matters. However there is no statutory authority for the regulations to require that property taxes be current in order to accept or approve a subdivision application. It is our opinion that proposed 4-2-15 would not survive judicial scrutiny and **should not** be included in a final proposed amendment.
2. **Section 4-7-2** which allows the Planning Director to administratively approve, deny or modify proposed lot line revisions. Section 8-18 defines “subdivision” as the division of a tract of land into three or more parcels. A lot line revision by definition does not result in the creation of three or more lots, but instead adjusts the boundary between two existing lots. Deciding on lot line revisions is not in the commission’s statutory authority, and need not be reviewed by the commission.
3. **Section 4-10 (4-9?)** regarding incomplete applications, which deletes the requirement to offer the applicant an opportunity to withdraw. CGS 8-26(d) states that a commission is not required to consider a subdivision application while an application for the same or substantially same parcel is pending before the commission. Fuller, *Land Use Law and Practice* recommends that an applicant should be allowed the opportunity to correct deficiencies in the application, although this is not mandatory. We see no issue with this amendment.
4. **Section 4-15 (4-14-3?)** regarding an environmental impact assessment. The existing 4-14-3 requires that certain subdivision applications be made subject to a review by the Eastern CT Environmental Review Team (ECERT). We know from the pending Twin Valley appeal that ERT reviews are no longer being done for subdivision developments. Requiring compliance with the existing section results in the commission imposing a condition that cannot be met, which has been held to be an illegal act. For that reason alone the existing section must be removed. The proposed section complies with the commission’s statutory authority to consider public health, safety and environmental concerns.

5. **Section 11-3** regarding fines for violations. As a general rule ordinances, not regulations allow for the imposition of fines for violations. For example, violations of the East Lyme Zoning Regulations result in cease and desist letters and possible enforcement actions, but not fines. Similarly there is no statutory authority for a planning commission to impose fines for violations. CGS 8-25(a) does provide that “any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than \$500 for each lot sold or offered for sale or so subdivided.” However, this statute would not allow the **planning commission** itself to impose **fines** as that exceeds its legal authority. A court proceeding would be required. Since the statute designates the penalty as a fine rather than a civil penalty, a criminal prosecution is probably required. It is our recommendation that this section **should not** be added.

If you have any questions please let me know.

Mark



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**From:** Gary Goeschel <[ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)>  
**Sent:** Tuesday, September 19, 2023 10:09 AM  
**To:** Mark S. Zamarka <[mszamarka@wallersmithpalmer.com](mailto:mszamarka@wallersmithpalmer.com)>  
**Cc:** Timothy Bleasdale <[tdbleasdale@wallersmithpalmer.com](mailto:tdbleasdale@wallersmithpalmer.com)>  
**Subject:** FW: Draft Subdivision Regulations

Hello Mark,

As we didn't really discuss the substance of the Subdivision Regulation changes, I meant to follow-up on this with you yesterday as well. Did you have any comments regarding the changes? Primarily, are there any changes proposed that we cannot adopt? More specifically, Section 4-2-15 Taxes, 4-7-2 Lot Line Revision Applications (may be denied by Planning Director), 4-10 Incomplete Applications (deletes Commission's requirement to offer the Applicant an opportunity to withdraw), Section 4-15 (in lieu of the ERT Review), and Section 11-3 Fines for Violations.

Thank you,  
Gary

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**Sent:** Monday, August 14, 2023 9:35 AM

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**Subject:** Draft Subdivision Regulations

Good morning,

Attached you will find the current Draft of the Subdivision Regulations, as well as a list of changes because the changes are not noted in red.

Please note, the Public Hearing is scheduled for September 12, 2023, so please have any comments sent to Chair Michelle Williams, c/o Gary Goeschel by September 7, 2023.

If you need a hard copy, please let me know.

Thanks!

Jess

*Jessica Laroco*

**Administrative Assistant**

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