



State of Connecticut -- Dept. of Environmental Protection
Gina McCarthy, Commissioner
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2008 MUNICIPAL INLAND WETLAND COMMISSIONERS TRAINING PROGRAM SEGMENT 2

Connecticut's Inland Wetlands and Watercourses Act:
A Legal, Administrative, and Resource Management Update

Presentation by
The Attorney General's Office

RECENT COURT CASES

A. Appellate Court Cases

- i. *Megin v. Zoning Board of Appeals*, 106 Conn. App. 602 (January 16, 2008)

The case pertains to the propriety of a Zoning Enforcement Official participating in the deliberations of the Zoning Board of Appeals, after the close of the public hearing, on a cease and desist order in which she had presented evidence of the violations. The issue raised by the plaintiff was that of the right to “fundamental fairness,” a standard applied to administrative decisions by Connecticut courts. The decision contains a good discussion of fundamental fairness and the ex parte receipt of evidence. The Appellate Court determined that, although the receipt of ex parte evidence is prohibited, the Zoning Enforcement Official in fact did not offer any new evidence to which the orderer should have had an opportunity to offer rebuttal evidence.

- ii. *Lord Family of Windsor, LLC, et al. v. Inland Wetlands and Watercourses Commission of the Town of Windsor* (August 21, 2007; petition for further appeal granted October 10, 2007)

The case addresses whether the stated concerns and apprehensions of an inland wetlands agency amount to substantial evidence sufficient to uphold the agency's denial of an application to modify a previously approved subdivision plan that involved regulated activities pursuant to the Inland Wetlands and Watercourses Act. The Appellate Court determined that there was not substantial evidence on the record such as to uphold the decision of the inland wetlands commission, and reversed the trial court, which had upheld the commission's denial.

B. Supreme Court Case

- i. *Gibbons v. Historic District Commission* (March 11, 2008)

Overturned the decision of the Fairfield Historic District Commission for lack of substantial evidence to support its stated reason for its decision. The court stated that when a court reviews municipal land use decisions, its review is limited to whether there is substantial evidence in the record to support the specific reasons given by the municipal agency for its decision. The court may not go behind those stated reasons and search out other reasons that may be supported by substantial evidence in the record. For a wetlands commission, this means that the factual and technical bases for its decisions need to be carefully articulated in the decision itself, because the court will review the record evidence in light only of those stated reasons in the decision.