



General Assembly

Substitute Bill No. 76

February Session, 2000

An Act Concerning Transcripts Of Meetings Of Municipal Land Use Agencies.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 22a-43 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (a) The commissioner or any person aggrieved by any regulation,
4 order, decision or action made pursuant to sections 22a-36 to 22a-45,
5 inclusive, by the commissioner, district or municipality or any person
6 owning or occupying land which abuts any portion of land or is within
7 a radius of ninety feet of the wetland or watercourse involved in any
8 regulation, order, decision or action made pursuant to said sections
9 may, within the time specified in subsection (b) of section 8-8 from the
10 publication of such regulation, order, decision or action, appeal to the
11 superior court for the judicial district where the land affected is
12 located, and if located in more than one judicial district to the court in
13 any such judicial district. Such appeal shall be made returnable to said
14 court in the same manner as that prescribed for civil actions brought to
15 said court, except that the record shall be transmitted to the court
16 within the time specified in subsection [(i)] (h) of section 8-8, as
17 amended by this act. If the inland wetlands agency or its agent does
18 not provide a transcript of the stenographic or the sound recording of a
19 meeting where the inland wetlands agency or its agent deliberates or
20 makes a decision on a permit for which a public hearing was held, a

21 certified, true and accurate transcript of a stenographic or sound
22 recording of the meeting prepared by or on behalf of the applicant or
23 any other party shall be admissible as part of the record. Notice of such
24 appeal shall be served upon the inland wetlands agency and the
25 commissioner. The commissioner may appear as a party to any action
26 brought by any other person within thirty days from the date such
27 appeal is returned to the court. The appeal shall state the reasons upon
28 which it is predicated and shall not stay proceedings on the regulation,
29 order, decision or action, but the court may on application and after
30 notice grant a restraining order. Such appeal shall have precedence in
31 the order of trial.

32 Sec. 2. Section 8-8 of the general statutes, as amended by section 5 of
33 public act 99-238, is repealed and the following is substituted in lieu
34 thereof:

35 (a) As used in this section:

36 (1) "Aggrieved person" means a person aggrieved by a decision of a
37 board and includes any officer, department, board or bureau of the
38 municipality charged with enforcement of any order, requirement or
39 decision of the board. In the case of a decision by a zoning commission,
40 planning commission, combined planning and zoning commission or
41 zoning board of appeals, "aggrieved person" includes any person
42 owning land that abuts or is within a radius of one hundred feet of any
43 portion of the land involved in the decision of the board.

44 (2) "Board" means a municipal zoning commission, planning
45 commission, combined planning and zoning commission, zoning
46 board of appeals or other board or commission the decision of which
47 may be appealed pursuant to this section, or the chief elected official of
48 a municipality, or his designee, in a hearing held pursuant to section
49 22a-250, whose decision may be appealed.

50 (b) Except as provided in subsections (c), (d) and [(r)] (q) of this
51 section and sections 7-147 and 7-147i, any person aggrieved by any
52 decision of a board may take an appeal to the superior court for the

53 judicial district in which the municipality is located. The appeal shall
54 be commenced by service of process in accordance with subsections (e)
55 and (f) of this section within fifteen days from the date that notice of
56 the decision was published as required by the general statutes. The
57 appeal shall be returned to court in the same manner and within the
58 same period of time as prescribed for civil actions brought to that
59 court.

60 (c) In those situations where the approval of a planning commission
61 must be inferred because of the failure of the commission to act on an
62 application, any aggrieved person may appeal under this section. The
63 appeal shall be taken within twenty days after the expiration of the
64 period prescribed in section 8-26d, as amended, for action by the
65 commission.

66 (d) Any person affected by an action of a planning commission
67 taken under section 8-29 may appeal under this section. The appeal
68 shall be taken within thirty days after notice to him of the adoption of
69 a survey, map or plan or the assessment of benefits or damages.

70 (e) Service of legal process for an appeal under this section shall be
71 directed to a proper officer and shall be made by leaving a true and
72 attested copy of the process with, or at the usual place of abode of, the
73 chairman or clerk of the board, and by leaving a true and attested copy
74 with the clerk of the municipality. Service on the chairman or clerk of
75 the board and on the clerk of the municipality shall be for the purpose
76 of providing legal notice of the appeal to the board and shall not
77 thereby make the chairman or clerk of the board or the clerk of the
78 municipality a necessary party to the appeal.

79 (f) Service of process shall also be made on each person who
80 petitioned the board in the proceeding, provided his legal rights,
81 duties or privileges were determined therein. However, failure to
82 make service within fifteen days on parties other than the board shall
83 not deprive the court of jurisdiction over the appeal. If service is not
84 made within fifteen days on a party in the proceeding before the

85 board, the court, on motion of the party or the appellant, shall make
86 such orders of notice of the appeal as are reasonably calculated to
87 notify the party not yet served. If the failure to make service causes
88 prejudice to the board or any party, the court, after hearing, may
89 dismiss the appeal or may make such other orders as are necessary to
90 protect the party prejudiced.

91 (g) The appeal shall state the reasons on which it has been
92 predicated and shall not stay proceedings on the decision appealed
93 from. However, the court to which the appeal is returnable may grant
94 a restraining order, on application, and after notice to the board and
95 cause shown.

96 [(h) The authority issuing a citation in the appeal shall take from the
97 appellant, unless the appellant is an official of the municipality, a bond
98 or recognizance to the board, with surety to prosecute the appeal to
99 effect and comply with the orders and decrees of the court.]

100 [(i)] (h) Within thirty days after the return date to court, or within
101 any further time the court allows, the board shall transmit the record
102 to the court. The record shall include, without limitation, (1) the
103 original papers acted on by the board and appealed from, or certified
104 copies thereof, (2) a copy of the transcript of the stenographic or sound
105 recording prepared in accordance with section 8-7a, and (3) the written
106 decision of the board including the reasons therefor and a statement of
107 any conditions imposed. If the board does not provide a transcript of
108 the stenographic or the sound recording of a meeting where the board
109 deliberates or makes a decision on a petition, application or request on
110 which a public hearing was held, a certified, true and accurate
111 transcript of a stenographic or sound recording of the meeting
112 prepared by or on behalf of the applicant or any other party shall be
113 admissible as part of the record. By stipulation of all parties to the
114 appeal, the record may be shortened. A party unreasonably refusing to
115 stipulate to limit the record may be taxed by the court for additional
116 costs. The court may require or permit subsequent corrections or
117 additions to the record.

118 [(j)] (i) Any defendant may, at any time after the return date of the
119 appeal, make a motion to dismiss the appeal. If the basis of the motion
120 is a claim that the appellant lacks standing to appeal, the appellant
121 shall have the burden of proving his standing. The court may, on the
122 record, grant or deny the motion. The court's order on the motion may
123 be appealed in the manner provided in subsection [(o)] (n) of this
124 section.

125 [(k)] (j) The court shall review the proceedings of the board and
126 shall allow any party to introduce evidence in addition to the contents
127 of the record if (1) the record does not contain a complete transcript of
128 the entire proceedings before the board, including all evidence
129 presented to it, pursuant to section 8-7a, or (2) it appears to the court
130 that additional testimony is necessary for the equitable disposition of
131 the appeal. The court may take the evidence or may appoint a referee
132 or committee to take such evidence as it directs and report the same to
133 the court, with his or its findings of facts and conclusions of law. Any
134 report of a referee or committee shall constitute a part of the
135 proceedings on which the determination of the court shall be made.

136 [(l)] (k) The court, after a hearing thereon, may reverse or affirm,
137 wholly or partly, or may modify or revise the decision appealed from.
138 If a particular board action is required by law, the court, on sustaining
139 the appeal, may render a judgment that modifies the board decision or
140 orders the particular board action. In an appeal from an action of a
141 planning commission taken under section 8-29, the court may also
142 reassess any damages or benefits awarded by the commission. Costs
143 shall be allowed against the board if the decision appealed from is
144 reversed, affirmed in part, modified or revised.

145 [(m)] (l) Appeals from decisions of the board shall be privileged
146 cases and shall be heard as soon as is practicable unless cause is shown
147 to the contrary.

148 [(n)] (m) No appeal taken under subsection (b) of this section shall
149 be withdrawn and no settlement between the parties to any such

150 appeal shall be effective unless and until a hearing has been held
151 before the Superior Court and such court has approved such proposed
152 withdrawal or settlement.

153 ~~[(o)]~~ (n) There shall be no right to further review except to the
154 Appellate Court by certification for review, on the vote of two judges
155 of the Appellate Court so to certify and under such other rules as the
156 judges of the Appellate Court establish. The procedure on appeal to
157 the Appellate Court shall, except as otherwise provided herein, be in
158 accordance with the procedures provided by rule or law for the appeal
159 of judgments rendered by the Superior Court unless modified by rule
160 of the judges of the Appellate Court.

161 ~~[(p)]~~ (o) The right of a person to appeal a decision of a board to the
162 Superior Court, and the procedure prescribed in this section, shall be
163 liberally interpreted in any case where a strict adherence to these
164 provisions would work surprise or injustice. The appeal shall be
165 considered to be a civil action and, except as otherwise required by this
166 section or the rules of the Superior Court, pleadings may be filed,
167 amended or corrected, and parties may be summoned, substituted or
168 otherwise joined, as provided by the general statutes.

169 ~~[(q)]~~ (p) If any appeal has failed to be heard on its merits because of
170 insufficient service or return of the legal process due to unavoidable
171 accident or the default or neglect of the officer to whom it was
172 committed, or the appeal has been otherwise avoided for any matter of
173 form, the appellant shall be allowed an additional fifteen days from
174 determination of that defect to properly take the appeal. The
175 provisions of section 52-592 shall not apply to appeals taken under this
176 section.

177 ~~[(r)]~~ (q) In any case in which a board fails to comply with a
178 requirement of a general or special law, ordinance or regulation
179 governing the content, giving, mailing, publishing, filing or recording
180 of any notice either of a hearing or of an action taken by the board, any
181 appeal or action by an aggrieved person to set aside the decision or

182 action taken by the board on the grounds of such noncompliance shall
183 be taken within two years of the date of that decision or action.

PD Committee Vote: Yea 16 Nay 1 JFS