



Senate

General Assembly

File No. 528

January Session, 2001

Substitute Senate Bill No. 1037

Senate, May 1, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MEDIATION OF APPEALS OF DECISIONS OF PLANNING AND ZONING COMMISSIONS.

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

1 Section 1. Section 8-8 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) As used in this section:

4 (1) "Aggrieved person" means a person aggrieved by a decision of a
5 board and includes any officer, department, board or bureau of the
6 municipality charged with enforcement of any order, requirement or
7 decision of the board. In the case of a decision by a zoning commission,
8 planning commission, combined planning and zoning commission or
9 zoning board of appeals, "aggrieved person" includes any person
10 owning land that abuts or is within a radius of one hundred feet of any
11 portion of the land involved in the decision of the board.

12 (2) "Board" means a municipal zoning commission, planning

13 commission, combined planning and zoning commission, zoning
14 board of appeals or other board or commission the decision of which
15 may be appealed pursuant to this section, or the chief elected official of
16 a municipality, or [his] the chief elected official's designee, in a hearing
17 held pursuant to section 22a-250, whose decision may be appealed.

18 (b) Except as provided in subsections (c), (d) and [(q)] (r) of this
19 section and sections 7-147 and 7-147i, any person aggrieved by any
20 decision of a board may take an appeal to the superior court for the
21 judicial district in which the municipality is located. The appeal shall
22 be commenced by service of process in accordance with subsections
23 [(e)] (f) and [(f)] (g) of this section within fifteen days from the date that
24 notice of the decision was published as required by the general
25 statutes. The appeal shall be returned to court in the same manner and
26 within the same period of time as prescribed for civil actions brought
27 to that court.

28 (c) In those situations where the approval of a planning commission
29 must be inferred because of the failure of the commission to act on an
30 application, any aggrieved person may appeal under this section. The
31 appeal shall be taken within twenty days after the expiration of the
32 period prescribed in section 8-26d for action by the commission.

33 (d) Any person affected by an action of a planning commission
34 taken under section 8-29 may appeal under this section. The appeal
35 shall be taken within thirty days after notice to [him] such person of
36 the adoption of a survey, map or plan or the assessment of benefits or
37 damages.

38 (e) The proceedings of the court for an appeal shall be stayed until
39 conclusion of the mediation process established pursuant to section 2
40 of this act.

41 [(e)] (f) Service of legal process for an appeal under this section shall
42 be directed to a proper officer and shall be made by leaving a true and

43 attested copy of the process with, or at the usual place of abode of, the
44 chairman or clerk of the board, and by leaving a true and attested copy
45 with the clerk of the municipality. Service on the chairman or clerk of
46 the board and on the clerk of the municipality shall be for the purpose
47 of providing legal notice of the appeal to the board and shall not
48 thereby make the chairman or clerk of the board or the clerk of the
49 municipality a necessary party to the appeal.

50 [(f)] (g) Service of process shall also be made on each person who
51 petitioned the board in the proceeding, provided [his] such person's
52 legal rights, duties or privileges were determined therein. However,
53 failure to make service within fifteen days on parties other than the
54 board shall not deprive the court of jurisdiction over the appeal. If
55 service is not made within fifteen days on a party in the proceeding
56 before the board, the court, on motion of the party or the appellant,
57 shall make such orders of notice of the appeal as are reasonably
58 calculated to notify the party not yet served. If the failure to make
59 service causes prejudice to the board or any party, the court, after
60 hearing, may dismiss the appeal or may make such other orders as are
61 necessary to protect the party prejudiced.

62 [(g)] (h) The appeal shall state the reasons on which it has been
63 predicated and shall not stay proceedings on the decision appealed
64 from. However, the court to which the appeal is returnable may grant
65 a restraining order, on application, and after notice to the board and
66 cause shown.

67 [(h)] (i) Within thirty days after the return date to court, or within
68 any further time the court allows, the board shall transmit the record
69 to the court. The record shall include, without limitation, (1) the
70 original papers acted on by the board and appealed from, or certified
71 copies thereof, (2) a copy of the transcript of the stenographic or sound
72 recording prepared in accordance with section 8-7a, and (3) the written
73 decision of the board including the reasons therefor and a statement of

74 any conditions imposed. If the board does not provide a transcript of
75 the stenographic or the sound recording of a meeting where the board
76 deliberates or makes a decision on a petition, application or request on
77 which a public hearing was held, a certified, true and accurate
78 transcript of a stenographic or sound recording of the meeting
79 prepared by or on behalf of the applicant or any other party shall be
80 admissible as part of the record. By stipulation of all parties to the
81 appeal, the record may be shortened. A party unreasonably refusing to
82 stipulate to limit the record may be taxed by the court for additional
83 costs. The court may require or permit subsequent corrections or
84 additions to the record.

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

92 [(j)] (k) The court shall review the proceedings of the board and
93 shall allow any party to introduce evidence in addition to the contents
94 of the record if (1) the record does not contain a complete transcript of
95 the entire proceedings before the board, including all evidence
96 presented to it, pursuant to section 8-7a, or (2) it appears to the court
97 that additional testimony is necessary for the equitable disposition of
98 the appeal. The court may take the evidence or may appoint a referee
99 or committee to take such evidence as it directs and report the same to
100 the court, with [his or its] findings of facts and conclusions of law. Any
101 report of a referee, [or] committee or mediator under subsection (f) of
102 section 2 of this act shall constitute a part of the proceedings on which
103 the determination of the court shall be made.

104 [(k)] (l) The court, after a hearing thereon, may reverse or affirm,

105 wholly or partly, or may modify or revise the decision appealed from.
106 If a particular board action is required by law, the court, on sustaining
107 the appeal, may render a judgment that modifies the board decision or
108 orders the particular board action. In an appeal from an action of a
109 planning commission taken under section 8-29, the court may also
110 reassess any damages or benefits awarded by the commission. Costs
111 shall be allowed against the board if the decision appealed from is
112 reversed, affirmed in part, modified or revised.

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

116 [(m)] (n) No appeal taken under subsection (b) of this section shall
117 be withdrawn and no settlement between the parties to any such
118 appeal shall be effective unless and until a hearing has been held
119 before the Superior Court and such court has approved such proposed
120 withdrawal or settlement.

121 [(n)] (o) There shall be no right to further review except to the
122 Appellate Court by certification for review, on the vote of two judges
123 of the Appellate Court so to certify and under such other rules as the
124 judges of the Appellate Court establish. The procedure on appeal to
125 the Appellate Court shall, except as otherwise provided herein, be in
126 accordance with the procedures provided by rule or law for the appeal
127 of judgments rendered by the Superior Court unless modified by rule
128 of the judges of the Appellate Court.

129 [(o)] (p) The right of a person to appeal a decision of a board to the
130 Superior Court, and the procedure prescribed in this section, shall be
131 liberally interpreted in any case where a strict adherence to these
132 provisions would work surprise or injustice. The appeal shall be
133 considered to be a civil action and, except as otherwise required by this
134 section or the rules of the Superior Court, pleadings may be filed,
135 amended or corrected, and parties may be summoned, substituted or

136 otherwise joined, as provided by the general statutes.

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

145 [(q)] (r) In any case in which a board fails to comply with a
146 requirement of a general or special law, ordinance or regulation
147 governing the content, giving, mailing, publishing, filing or recording
148 of any notice either of a hearing or of an action taken by the board, any
149 appeal or action by an aggrieved person to set aside the decision or
150 action taken by the board on the grounds of such noncompliance shall
151 be taken within two years of the date of that decision or action.

152 Sec. 2. (NEW) (a) As used in this section, "mediation" means the
153 process where the parties in an appeal filed under section 8-8 of the
154 general statutes, as amended by this act, meet with an impartial third
155 party to work toward resolution of the issues in the decision of the
156 board that was the subject of the appeal in accordance with generally
157 accepted principles of mediation.

158 (b) (1) At any time after filing of the appeal, the parties may agree to
159 mediate the decision that was appealed. The parties shall file a
160 statement advising the court that the dispute may be resolved by
161 mediation. The parties shall cause notice of the mediation to be
162 published in a newspaper having a substantial circulation in the
163 municipality not more than fifteen days after the statement is
164 submitted to the court. Not more than seven days after such notice is
165 published, any aggrieved party, as defined in section 8-8 of the general
166 statutes, as amended by this act, may petition the court to participate

167 in the mediation process. The court shall make a determination on
168 inclusion of the petitioner in the mediation process not more than
169 seven days after submittal of the petition. The decision of the court
170 may not be appealed. Mediation shall take place with the consent of
171 each party.

172 (2) If there is no agreement to mediate, the parties shall file a
173 statement with the superior court requesting that the action be
174 resumed not more than thirty days after the filing of the appeal.

175 (c) Mediation shall begin on the date the statement is filed under
176 subsection (b) of this section and conclude not more than one hundred
177 eighty days after such filing. Such period may be extended for an
178 additional one hundred eighty days upon mutual agreement of the
179 parties. A party may submit a petition to the court requesting another
180 extension or stating why no other extension should be granted. The
181 court, in its discretion, may extend the time for mediation after the
182 second period. A party may withdraw from mediation at any time
183 after notification to other parties and to the superior court.

184 (d) The contents of mediating sessions shall not be admissible as
185 evidence. A mediator shall not act as or be summoned as a witness in a
186 court proceeding on an appeal if mediation has not resolved the issues
187 of the appeal.

188 (e) A mediator may request the participation in mediation of any
189 person deemed by the mediator necessary for effective resolution of
190 the issues, including representatives of governmental agencies not a
191 party to the action, abutting property owners, intervenors or other
192 persons significantly involved in the decision being appealed.

193 (f) Not more than fifteen days after the conclusion of mediation, the
194 mediators shall file a report with the court describing the proceedings
195 and specifying the issues resolved. If no resolution is made, the
196 mediators shall file a report with the court stating that the issues have

197 not been resolved.

198 (g) The cost of mediation shall be distributed equally among the
199 parties.

200 Sec. 3. Section 22a-43 of the general statutes is repealed and the
201 following is substituted in lieu thereof:

202 (a) The commissioner or any person aggrieved by any regulation,
203 order, decision or action made pursuant to sections 22a-36 to 22a-45,
204 inclusive, by the commissioner, district or municipality or any person
205 owning or occupying land which abuts any portion of land or is within
206 a radius of ninety feet of the wetland or watercourse involved in any
207 regulation, order, decision or action made pursuant to said sections
208 may, within the time specified in subsection (b) of section 8-8, as
209 amended by this act, from the publication of such regulation, order,
210 decision or action, appeal to the superior court for the judicial district
211 where the land affected is located, and if located in more than one
212 judicial district to the court in any such judicial district. Such appeal
213 shall be made returnable to said court in the same manner as that
214 prescribed for civil actions brought to said court, except that the record
215 shall be transmitted to the court within the time specified in subsection
216 [(h)] (i) of section 8-8, as amended by this act. If the inland wetlands
217 agency or its agent does not provide a transcript of the stenographic or
218 the sound recording of a meeting where the inland wetlands agency or
219 its agent deliberates or makes a decision on a permit for which a public
220 hearing was held, a certified, true and accurate transcript of a
221 stenographic or sound recording of the meeting prepared by or on
222 behalf of the applicant or any other party shall be admissible as part of
223 the record. Notice of such appeal shall be served upon the inland
224 wetlands agency and the commissioner. The commissioner may
225 appear as a party to any action brought by any other person within
226 thirty days from the date such appeal is returned to the court. The
227 appeal shall state the reasons upon which it is predicated and shall not

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: See Explanation Below

Affected Agencies: Judicial Department

Municipal Impact: Potential Cost Avoidance

Explanation

State and Municipal Impact:

The bill could result in cost avoidance for municipalities by allowing them to resolve disputes involving certain land use decisions through mediation instead of litigation. Under current law, appeals of land use decisions can be made within thirty days after decisions are rendered. Approximately 350 administrative appeals of land use decisions are filed with the superior court each year. These appeals represented less than one per cent of the 56,045 civil cases filed with the superior court in FY 00. A land use appeal typically costs a municipality \$20,000.

The bill allows parties to engage in mediation any time after their appeal has been filed in superior court. An impartial third party would conduct the mediation. It is unknown to what extent the formal mediation process would be used, and the extent to which it would decrease: (1) the workload of the Judicial Department; and (2) the cost of litigation to municipalities, respectively.

OLR BILL ANALYSIS

sSB 1037

AN ACT CONCERNING MEDIATION OF APPEALS OF DECISIONS OF PLANNING AND ZONING COMMISSIONS.**SUMMARY:**

This bill allows parties to resolve disputes involving land use decisions or locally cited violations of state dumping laws through mediation instead of litigation. One of the parties must first file an appeal to Superior Court before mediation can be tried. The parties must comply with the bill's requirements for starting, conducting, and concluding a mediation, which must be conducted by an impartial third party using generally accepted mediation principles. All must agree to the mediation, but they can withdraw from it at any time.

The mediator can ask anyone to participate in the process needed to resolve the dispute. The court cannot require the mediator to testify if the mediation fails and the appeal resumes. Nor can it admit the contents of the mediation sessions as evidence. The mediator must report the mediation's results to the court.

EFFECTIVE DATE: October 1, 2001

APPLICABILITY

The bill allows the parties involved in two types of appeals to resolve the dispute through mediation instead of litigation. They can do this for appeals from decisions of zoning commissions, planning commissions, combined planning and zoning commissions, and zoning boards of appeals. They can also try mediation for appeals from local decisions enforcing state dumping laws.

The parties directly affected by a decision can try to resolve it through mediation if they all agree to do so. Parties owning land within 100 feet of the land involved in the decision must petition the court if they

want to be included in the mediation. All of the parties must agree to the mediation before the process can begin. They must share equally the costs of conducting the mediation.

NOTICE REQUIREMENTS

The parties can agree to try mediation any time after the appeal is filed in Superior Court. They must notify the court about their intention and publish a newspaper notice to that effect within 15 days after notifying the court. Other aggrieved parties must obtain the court's permission in order to join the mediation. They must do so within seven days after the newspaper notice was published. The court has seven days to decide. Its decision cannot be appealed.

In any case, the eligible parties must agree to the mediation before it can go forward. They have 30 days from when the appeal was filed to determine if they could actually resolve the dispute through mediation. They must notify the court within the 30 days if they decide not to mediate.

MEDIATION DEADLINE

The parties must begin mediating on the same day they notify the court that they intend to try this option. They must finish mediating within 180 days of that date. They can extend the deadline for another 180 days if they all agree to do so but must get the court's approval for a subsequent extension. Any party to the mediation can request the extension; any party can also ask the court not to grant it. The court can set any deadline for the extension. Any party can end the mediation by withdrawing from it.

MEDIATOR POWERS AND DUTIES

The mediator can ask anyone he believes is needed to resolve the issue to participate in the mediation. Potential participants include intervenors, people who own land abutting the land that is the subject of the appeal, representatives of government agencies not involved in the mediation, and other people significantly involved in the issue being mediated.

Within 15 days after the mediation ends, the mediator must report to the court about the process and its outcome. His report becomes part of the court's record if the mediation failed to resolve the issue.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Change of Reference
Yea 17 Nay 1

Judiciary Committee

Joint Favorable Substitute
Yea 35 Nay 0