



General Assembly

January Session, 2001

Raised Bill No. 1037

LCO No. 3193

Referred to Committee on Planning and Development

Introduced by:

(PD)

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 Section 8-8 of the general statutes is repealed and the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 designee, in a hearing held pursuant to section
17 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 of the adoption of
36 a survey, map or plan or the assessment of benefits or damages.

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

40 ~~[(e)]~~ ~~(f)~~ Service of legal process for an appeal under this section shall
41 be directed to a proper officer and shall be made by leaving a true and
42 attested copy of the process with, or at the usual place of abode of, the
43 chairman or clerk of the board, and by leaving a true and attested copy
44 with the clerk of the municipality. Service on the chairman or clerk of
45 the board and on the clerk of the municipality shall be for the purpose

46 of providing legal notice of the appeal to the board and shall not
47 thereby make the chairman or clerk of the board or the clerk of the
48 municipality a necessary party to the appeal.

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

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

66 [(h)] (i) Within thirty days after the return date to court, or within
67 any further time the court allows, the board shall transmit the record
68 to the court. The record shall include, without limitation, (1) the
69 original papers acted on by the board and appealed from, or certified
70 copies thereof, (2) a copy of the transcript of the stenographic or sound
71 recording prepared in accordance with section 8-7a, and (3) the written
72 decision of the board including the reasons therefor and a statement of
73 any conditions imposed. If the board does not provide a transcript of
74 the stenographic or the sound recording of a meeting where the board
75 deliberates or makes a decision on a petition, application or request on
76 which a public hearing was held, a certified, true and accurate
77 transcript of a stenographic or sound recording of the meeting

78 prepared by or on behalf of the applicant or any other party shall be
79 admissible as part of the record. By stipulation of all parties to the
80 appeal, the record may be shortened. A party unreasonably refusing to
81 stipulate to limit the record may be taxed by the court for additional
82 costs. The court may require or permit subsequent corrections or
83 additions to the record.

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

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

102 [(k)] (l) The court, after a hearing thereon, may reverse or affirm,
103 wholly or partly, or may modify or revise the decision appealed from.
104 If a particular board action is required by law, the court, on sustaining
105 the appeal, may render a judgment that modifies the board decision or
106 orders the particular board action. In an appeal from an action of a
107 planning commission taken under section 8-29, the court may also
108 reassess any damages or benefits awarded by the commission. Costs
109 shall be allowed against the board if the decision appealed from is

110 reversed, affirmed in part, modified or revised.

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

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

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

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

135 [(p)] (q) If any appeal has failed to be heard on its merits because of
136 insufficient service or return of the legal process due to unavoidable
137 accident or the default or neglect of the officer to whom it was
138 committed, or the appeal has been otherwise avoided for any matter of
139 form, the appellant shall be allowed an additional fifteen days from
140 determination of that defect to properly take the appeal. The

141 provisions of section 52-592 shall not apply to appeals taken under this
142 section.

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

150 Sec. 2. (NEW) (a) As used in this section, "mediation" means the
151 process where the parties in an appeal filed under section 8-8 of the
152 general statutes, as amended by section 1 of this act, meet with an
153 impartial third party to work toward resolution of the issues in the
154 decision that was the subject of the appeal in accordance with the
155 principles of mediation commonly used in labor management disputes
156 and other mediation programs set forth in the general statutes.

157 (b) The parties to an appeal under section 8-8 of the general statutes,
158 as amended by section 1 of this act, shall consider whether the issues
159 may be resolved through mediation for not more than forty-five days
160 after the filing of the appeal. Not more than five days after the
161 conclusion of the time for consideration, the parties shall file a
162 statement with the superior court requesting either that the action be
163 resolved by mediation or that court proceedings be resumed. The
164 statement shall include reasons for the selection. Mediation shall take
165 place with the consent of each party.

166 (c) Mediation shall begin on the date the statement is filed under
167 subsection (b) of section 2 of this act and conclude not more than one
168 hundred eighty days after such filing. Such period may be extended
169 for an additional one hundred eighty days upon mutual agreement of
170 the parties. A party may submit a petition to the court requesting
171 another extension or stating why no other extension should be
172 granted. The court, in its discretion, may extend the time for mediation

173 after the second period.

174 (d) Mediation sessions between all parties shall be open to the
175 public. Notice of the time and place of each such session shall be given
176 to each party and shall be posted in the office of the town clerk in the
177 municipality not less than twenty-four hours before each such session.
178 Mediating sessions between a mediator and an individual party shall
179 not be subject to the provisions of the Freedom of Information Act, as
180 defined in section 1-200 of the general statutes, and shall not be subject
181 to discovery. A mediator shall not act as or be summoned as a witness
182 in a court proceeding on an appeal if mediation has not resolved the
183 issues of the appeal.

184 (e) A mediator may require the participation in mediation of any
185 person deemed by the mediator necessary for effective resolution of
186 the issues, including representatives of governmental agencies,
187 abutting property owners, intervenors or other persons significantly
188 involved in the decision being appealed.

189 (f) Not more than fifteen days after the conclusion of mediation, the
190 mediators shall file a report with the court describing the proceedings
191 and specifying the issues resolved. If no resolution is made, the
192 mediators shall file a report with the court indicating the reasons for
193 the failure to resolve the issues and stating the terms of any agreement
194 that may have been reached.

195 (g) The cost of mediation shall be distributed equally among the
196 parties.

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

199 (a) The commissioner or any person aggrieved by any regulation,
200 order, decision or action made pursuant to sections 22a-36 to 22a-45,
201 inclusive, by the commissioner, district or municipality or any person
202 owning or occupying land which abuts any portion of land or is within

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

228 (b) The court, upon the motion of the person who applied for such
229 order, decision or action, shall make such person a party defendant in
230 the appeal. Such defendant may, at any time after the return date of
231 such appeal, make a motion to dismiss the appeal. At the hearing on
232 such motion to dismiss, each appellant shall have the burden of
233 proving his standing to bring the appeal. The court may, upon the
234 record, grant or deny the motion. The court's order on such motion
235 may be appealed in the manner provided in subsection [(o)] (p) of
236 section 8-8, as amended by this act.

237 (c) No appeal taken under subsection (a) of this section shall be
238 withdrawn and no settlement between the parties to any such appeal
239 shall be effective unless and until a hearing has been held before the
240 Superior Court and said court has approved such proposed
241 withdrawal or settlement.

242 (d) There shall be no right to further review except to the Appellate
243 Court by certification for review in accordance with the provisions of
244 subsection [(o)] (p) of section 8-8, as amended by this act.

Statement of Purpose:

To authorize mediation as an alternative to litigation in planning and zoning issues.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]