PULLMAN & COMLEY

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Attorneys:

- **Michael A. Ceccorulli**
  mceccorulli@pullcom.com
  860-424-4394
- **Edward P. McCreery III**
  emccreery@pullcom.com
  203.330.2216
- **Gary B. O'Connor**
  goconnor@pullcom.com
  860.424.4366
- **Jean Perry Phillips**
  jphillips@pullcom.com
  860.424.4368
- **Diane W. Whitney**
  dwhitney@pullcom.com
  860.424.4330

Week of September 28

Welcome to CT Law of the Land. Developments in the law which can impact the state and municipal agency approval process for land use applications in Connecticut happen on almost a daily basis. These can range from important court decisions, to legislative changes, all of which can dramatically impact the approval and review process. On this page we will try to highlight some of those changes that might be of interest to our clients and prospective clients. We invite you to check back regularly to receive potentially important tips.

Limits of relief possible for Intervenor under CGS 22a-19

In Hunter Ridge LLC v. Planning & Zoning Commission Connecticut's Supreme Court considered whether injunctive relief was available to one intervening in a zoning appeal under CGS 22a-19, which allows intervention for the purpose of raising environmental issues. The trial court allowed intervention in a matter challenging the denial of a subdivision application and remanded the case to the commission to review environmental claims, which had not been the reason for the denial of the application. The Commission confirmed the denial on open space grounds, but the trial court, when reviewing that decision, found that there were environmental reasons to deny the application and entered an injunction prohibiting any work on the property next to a lake.

The developer appealed, the issue being whether the court had authority to enter an injunction in a zoning appeal. The Supreme Court's decision is that the court lacks that authority, finding that the intervenor must take the proceedings as he finds them, and injunctions are not allowed zoning appeals. An intervenor raising environmental issues may not expand the authority of the reviewing court. If an injunction is the relief the intervenor wants, he must bring a separate action under CGS 22a-16.

The Supreme Court also said that it was improper for the trial court to have remanded the matter to the commission because in zoning appeals, the court is limited to the administrative record.

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Rhode Island moves to Uniform Wetland Regulations

This summer, the Rhode Island legislature passed legislation giving the R.I. Department of Environmental Management authority to implement a single wetland permitting standard for the entire state. Signed into law in July, the law is a reaction to complaints that Rhode Island's 39 cities and towns employed 22 different sets of rules for wetland development, forcing developers to adjust to different standards for similar projects. It is estimated that creating uniform standards to be used throughout the state will take about a year. Those on the task force that created the plan believe that a uniform set of standards will streamline development projects while offering greater protection to the environment.

Connecticut's 169 towns and cities each have their own sets of wetland regulations.

Folsom v. Zoning Board of Appeals of the City of Milford (September 22, 2015)

A recent decision by Connecticut's Appellate Court confirms that zoning enforcement officers are entitled to governmental immunity for enforcement decisions they make that involve exercise of their discretion. The court also finds that prior action by a zoning board of appeals that is involved in ongoing litigation does not constitute a conflict of interest as to other matters between the same parties.