



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

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SIMSBURY BOARD OF SELECTMEN

Main Meeting Room – Simsbury Town Hall – 933 Hopmeadow Street, Simsbury

Regular Meeting – June 10, 2019 – 6:00 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC AUDIENCE

PRESENTATIONS

- a) 1st Annual Tourism Committee Award
- b) Farmington Valley Health District Five-Year Strategic Plan

FIRST SELECTMAN'S REPORT

TOWN MANAGER'S REPORT

SELECTMEN ACTION

- a) Tax Refund Requests
- b) Vacation Carryover Requests
- c) Delegation of Open Space Stewardship and Land Management Duties
- d) Proposed Ordinance Regarding the Election of Alternates to the Planning and Zoning Commissions
- e) Simsbury High School Roof Replacement Project

APPOINTMENTS AND RESIGNATIONS

- a) Resignation of Brian Doonan from Simsbury Housing Authority

REVIEW OF MINUTES

- a) Regular Meeting of May 29, 2019

SELECTMEN LIAISON AND SUB-COMMITTEE REPORTS

- a) Personnel
- b) Finance
- c) Welfare
- d) Public Safety
- e) Board of Education



COMMUNICATIONS

- a) connecticutmag.com, "A Day in Simsbury," by Erik Ofgang, June 2019

ADJOURN



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** 1st Annual Tourism Committee Award
2. **Date of Board Meeting:** June 10, 2019
3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager; Dominique Avery, Vice Chair & Co-Secretary,
Simsbury Tourism Committee *Maria E. Capriola*
4. **Action Requested of the Board of Selectmen:**
None
5. **Summary of Submission:**
The Simsbury Tourism Committee is launching a new annual tourism award to recognize outstanding efforts of town residents or businesses that support tourism in Simsbury. The recipients will be announced at the meeting by Dominique Avery, Tourism Committee Vice Chair and presented by Joe Buda, Tourism Committee Chair.
6. **Financial Impact:**
None
7. **Description of Documents Included with Submission:**
None



Town of Simsbury

933 HOPMEADOW STREET

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BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Farmington Valley Health District Five-Year Strategic Plan
2. **Date of Board Meeting:** June 10, 2019
3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager; Melissa A.J. Appleby, Deputy Town Manager
Maria E. Capriola
4. **Action Requested of the Board of Selectmen:**
No action requested. This item is informational.

5. **Summary of Submission:**

At the end of 2018, the Farmington Valley Health District (FVHD) developed a five-year strategic plan to improve and expand the district's community health efforts, pursue national accreditation, and align its services to meet the ten statutorily required mandates for local health departments according to Section 19a-207a of the Connecticut General Statutes. This plan includes the projected costs associated with meeting these objectives, and lays out the budgetary impacts to member towns.

At your budget workshop on March 2, 2019, there were several questions regarding the details of the strategic plan, including the related budget impacts. During budget season, staff provided the letter from FVHD sent in December 2018, the staff memo prepared for the January 14 Board of Selectmen packet, and copies of the presentation made to the Farmington Valley Collaborative on January 3. At that time, staff also indicated that the executive director and board chair for FVHD would present at a future Board of Selectmen meeting. Jennifer Kertanis, Executive Director, and David Kilbon, chair of the FVHD board, will present the details of the five-year strategic plan this evening. Melissa Appleby, Jeff Shea, and Director of Health Services at Simsbury High School Susan Beardsley are Simsbury's representatives to the Health District Board of Directors.

6. **Financial Impact:**

In order to meet its objectives as laid out in the strategic plan, the FVHD board adopted a 10% increase in the per capita amount for FY 19/20, from \$5.50 to \$6.05. Because Simsbury's population has increased since last year, this results in a total increase of \$16,721, or 12.5% over FY 18/19.

FVHD projects additional increases in each year of the strategic plan. However, even with these increases, the projected per capita amount of \$7.70 in FY 22/23 would still

fall below the current average assessment charged by health districts in FY 18/19, which is \$8.36.

7. Description of Documents Included with Submission:

- a) FVHD Letter to Simsbury, dated December 21, 2019
- b) Memo to Board of Selectmen, dated January 7, 2019
- c) Presentation Slides, June 10, 2019



Farmington Valley Health District

95 River Road, Suite C ▪ Canton, CT 06019 ▪ Phone (860) 352-2333 ▪ Fax (860) 352-2542

Avon • Barkhamsted • Canton • Colebrook • East Granby • Farmington • Granby • Hartland • New Hartford • Simsbury

December 21, 2018

Maria Capriola
933 Hopmeadow Street
Simsbury, CT 06070

Dear Maria:

I'm writing about the new strategic direction the Farmington Valley Health District (FVHD) is undertaking. I expect that you have already heard about this direction from your representatives on the FVHD Board but wanted to follow up on those discussions.

The FVHD is one of the most enduring and successful examples of regional cooperation in the state, functioning as the municipal health department for Simsbury and nine other communities with a total population of about 110,000. The District provides a diverse array of services including restaurant inspections, septic system approvals, disease outbreak investigations and health education. Under the guidance of the FVHD Board, District staff works hard to meet its obligations, contributing to the overall quality of life in the communities that we serve.

This past fall the Board's Personnel Committee met to discuss issues of staff recruitment and retention. The Committee quickly realized that to resolve these issues we had to look at the future direction of the District, especially given the changes in the state's regulatory landscape and the needs of our member communities. That led to the Board's discussion and consensus at our November meeting that a new strategic direction for the District is needed.

The FVHD's last strategic plan was completed in early 2009. Since then the regulatory environment and the demands on the District have changed significantly. In 2014 the state adopted a law (CGS 19a-207a), which stipulates ten specific responsibilities each health department and district is supposed to meet. Along these lines the state Department of Public Health has become accredited through the Public Health Accreditation Board (PHAB) and has strongly suggested it will require local departments and districts to achieve accreditation. Accreditation directly aligns with the statutory demands contained in CGS. 19a-207a and serves as a means of identifying and implementing best practices.

Many municipal health departments and regional districts have already begun making progress towards accreditation. The Board understands that even if accreditation is ultimately not required there are still significant benefits to going through the process: encouraging greater accountability, meeting our fiduciary responsibilities to our member towns, enhancing workforce development and staff retention and, last but not least, qualifying for grants.

We cannot meet these demands without a recalibration of the organization and an increase in staffing. We have begun implementing a plan in the current fiscal year as funds allow. However, additional staff will be necessary in the coming years with expertise in epidemiology and health education. It will also allow us to invest in a community health assessment and community health improvement plan.

To achieve these goals we anticipate a phase-in of the plan over the next four fiscal years. The FVHD's per capita assessment of \$5.50, our largest source of operating revenue, is among the lowest in Connecticut, falling well below the current statewide average of \$8.36. Based on our assumptions, we estimate the final per capita at the end of the four year phase-in will increase from \$5.50 to approximately \$7.70 in FY23.

It's important to note that this is still below the average FY19 average per capita assessment (the \$8.36 I mentioned earlier) charged by health districts.

The District is committed to working with our member communities to ensure the health and well-being of our population. The choice before us is whether we should be proactive and dictate our own future and pace of progress or wait until we are forced to make change at which point we lose our options. The Board has chosen to be proactive.

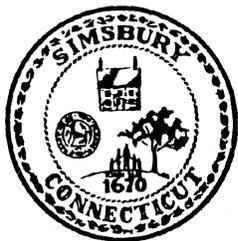
If you would like further information about the District and about the direction we are taking please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "DK Kilbon", with a horizontal flourish extending to the right.

David K. Kilbon
Chair, Farmington Valley Health District Board

cc: Jennifer Kertanis, FVHD Director
Susan Beardsley
Melissa Appleby
Jerome Shea



Town of Simsbury

933 HOPMEADOW STREET ~ SIMSBURY, CONNECTICUT 06070

Maria E. Capriola - Town Manager

MEMORANDUM

To: Board of Selectmen
From: Maria E. Capriola, Town Manager
Date: January 7, 2019
Subject: Farmington Valley Health District Strategic Direction & Anticipated Budget Increases

At the January 3, 2019 Farmington Valley Collaborative meeting, the Director of the Farmington Valley Health District (FVHD) and the FVHD Board of Directors Chairman presented the district's recently developed strategic plan. The purpose of this five-year plan is to improve and expand the district's community health efforts, pursue national accreditation, and align its services to meet the ten statutorily required mandates for local health departments according to Section 19a-207a of the Connecticut General Statutes.

FVHD's five-year strategic plan includes the projected costs associated with meeting these objectives, and lays out the budgetary impacts to member towns. FVHD's revenue sources include fees, grants, state funding, and funding from member towns. Towns are assessed a per capita amount, which is applied to their total population. The FY19 per capita fee of \$5.50 resulted in a total contribution of \$134,239 from Simsbury. In order to meet its objectives as laid out in the strategic plan, FVHD is proposing a ten percent increase in the per capita amount for FY20 to \$6.05. Because Simsbury's population has increased since last year, this will result in a total increase of \$16,721, or 12.5% over FY19.

FVHD projects additional increases in each year of the strategic plan. However, even with these increases, the projected per capita amount of \$7.70 in FY23 would still fall below the current average assessment charged by health districts in FY19, which is \$8.36.

Representation on the FVHD Board of Directors is based on each town's population. Simsbury has three representatives on the Board: Deputy Town Manager Melissa Appleby, Town Engineer Jeff Shea, and Director of Health Services at Simsbury High School Susan Beardsley. Melissa also serves on the Finance Sub-Committee.

Attached is the presentation given by the FVHD at the Farmington Valley Collaborative meeting, as well as a letter sent to the chief executive officers of each member town in December 2018. This information will be provided during FY20 budget development, but I wanted to share it ahead of time due to the projected increase in our contribution to FVHD. Staff will also provide this information to the Board of Finance at its next meeting.

Telephone (860) 658-3230
Facsimile (860) 658-9467

townmanager@simsbury-ct.gov
www.simsbury-ct.gov

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8:30 - 4:30 Tuesday through Thursday
8:30 - 1:00 Friday



Five Year Strategic Direction

Presentation to the Simsbury Board of Selectmen
June 2019



Goals for Today

- Outline FVHD's Strategic Direction for FY19-FY23
- What It Means for the District and Member Towns
 - Organizational Implications
 - Financial Implications



How We Got Here

- Personnel Committee started with specific issues of staff recruitment and retention
- Realized to resolve these longer term we need to look at the future of FVHD
- Challenged Jennifer and the Board to look at what the District needs to be and needs to be doing in the next five years



January 13, 2009 Board Meeting

During this meeting members engaged in an informal discussion about the strategic planning process. In that discussion, members agreed on several points:

1. The principal focus for the strategic planning process should be to assure that FVHD is "***the best health district it can be***".
2. Members want FVHD to be to truly be, and have the public perceive, **that FVHD is the preeminent public health district organization in Connecticut.**
3. They expressed a desire to focus the planning process on **excelling in meeting FVHD's core public health mission** before proceeding with exploration of possible options to branch into different service functions or modes.

They wanted to know in specific practical terms what would be required for FVHD to be the best. It's been 10 years since this conversation.

What's Changed Since 2009: External Forces

- Statutory Mandates- CT DPH Annual Report
 - Grounded in years of research regarding public health infrastructure and outcomes
- 58/67 local health departments report completing a CHA
- Regionalization/Consolidation
- CT DPH –Accredited
 - DPH has stated it is a goal of theirs to have all local health departments become accredited.
- 3 Local Health Departments accredited-3 planning on applying within a year
- 22/67 local health departments report preparing for accreditation



Connecticut Law (adopted 2014)



Sec. 19a-207a. Basic health program.

Each district department of health and municipal health department shall ensure the provision of a basic health program that includes, but is not limited to, the following services for each community served by the district department of health and municipal health department:

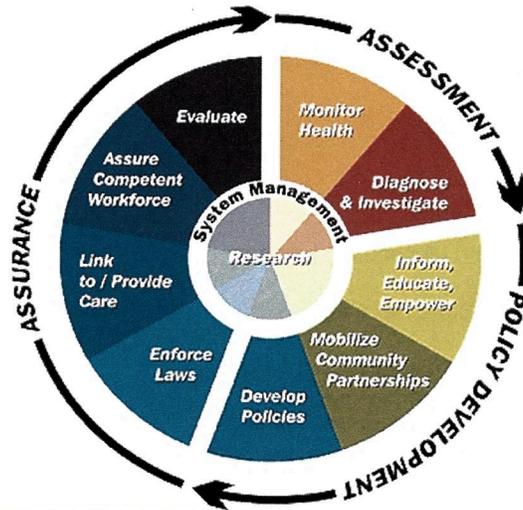
- (1) Monitoring of health status to identify and solve community health problems;
- (2) Investigating and diagnosing health problems and health hazards in the community;
- (3) Informing, educating and empowering persons in the community concerning health issues;
- (4) Mobilizing community partnerships and action to identify and solve health problems for persons in the community;
- (5) Developing policies and plans that support individual and community health efforts;
- (6) Enforcing laws and regulations that protect health and ensure safety;
- (7) Connecting persons in the community to needed health care services when appropriate;
- (8) Assuring a competent public health and personal care workforce;
- (9) Evaluating effectiveness, accessibility and quality of personal and population-based health services; and
- (10) Researching to find innovative solutions to health problems.



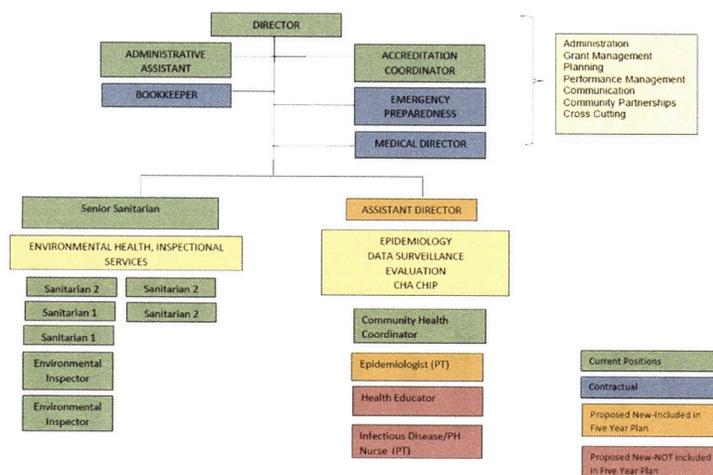
What FVHD Needs to Do:

- Increase investment in additional staff and expertise:
 - Epidemiology
 - Health Education
 - Partnership/grant writing/evaluation capacity
- Invest in Community Health Assessment
- Invest in Community Health Improvement Plan
- Increase investment in accreditation pursuit:
 - Additional Staff time
 - Accreditation fees

PHAB Domains Based on Core Functions of Public Health & Align with CT Statutory Mandates



FVHD 2022



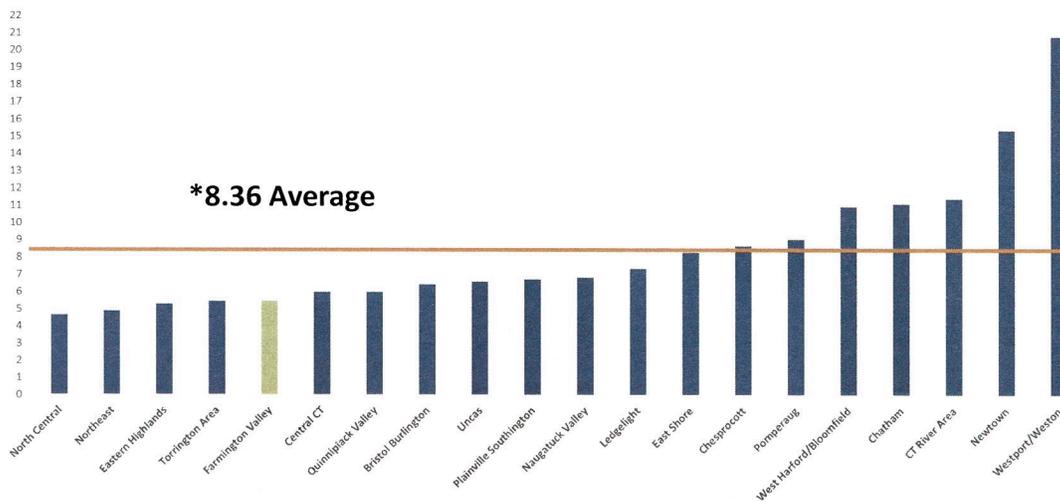
	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
INVESTMENTS	<ul style="list-style-type: none"> • Full-time accreditation Coordinator • Funding for CHA 	<ul style="list-style-type: none"> • Part-time Epidemiologist • Funding for CHA 	<ul style="list-style-type: none"> • Funding for CHIP 	<ul style="list-style-type: none"> • Asst. Director (6 Months) • Funding For CHIP 	<ul style="list-style-type: none"> • Asst. Director (12 Months) • Accreditation Fees
Per Capita	5.50	6.05	6.50-6.60	6.90-7.10	7.60-7.80
Percent Change		10%	7%-10%	5%-9%	7%-13%

ASSUMPTIONS for FY21-FY23:

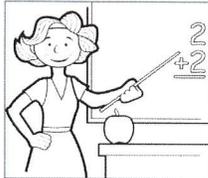
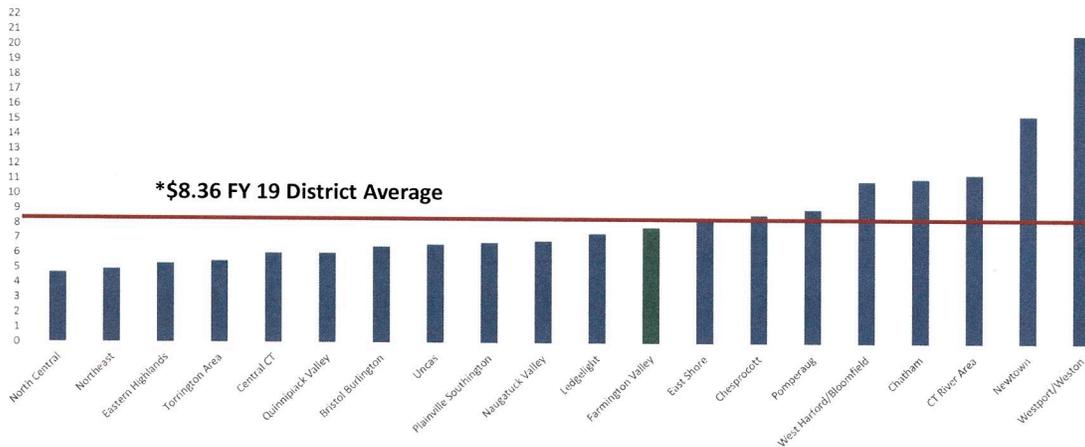
- Balanced budget each year; no use of cash balance
- District population remains flat
- No Increase nor Decrease in State Per Capita
- No Increase in Fee Revenue
- Loss of Men’s Health Grant but modest grant revenue
- 3% increase to non-personnel expenses per year
- Personnel salary increases range from 2-3% per year
- No reductions in environmental health staffing nor salary reductions



FY 18-19 District Per Capita Rates



Where We End Up



To Sum It All Up

- FVHD's last Strategic Plan was done in 2009
- The **regulatory environment and demands** on the District have **changed** since then
- The **Department of Public Health** is "encouraging" accreditation as a means to meet statutory demands
- We cannot meet these demands without **organizational change including an increase in staffing**
- To accomplish this will require an **increase in member towns' per capita charges starting in FY2019-2020**, but
- Even after this increase FVHD per capita charges in FY2022-2023 **will still be below the current year average for CT health districts.**

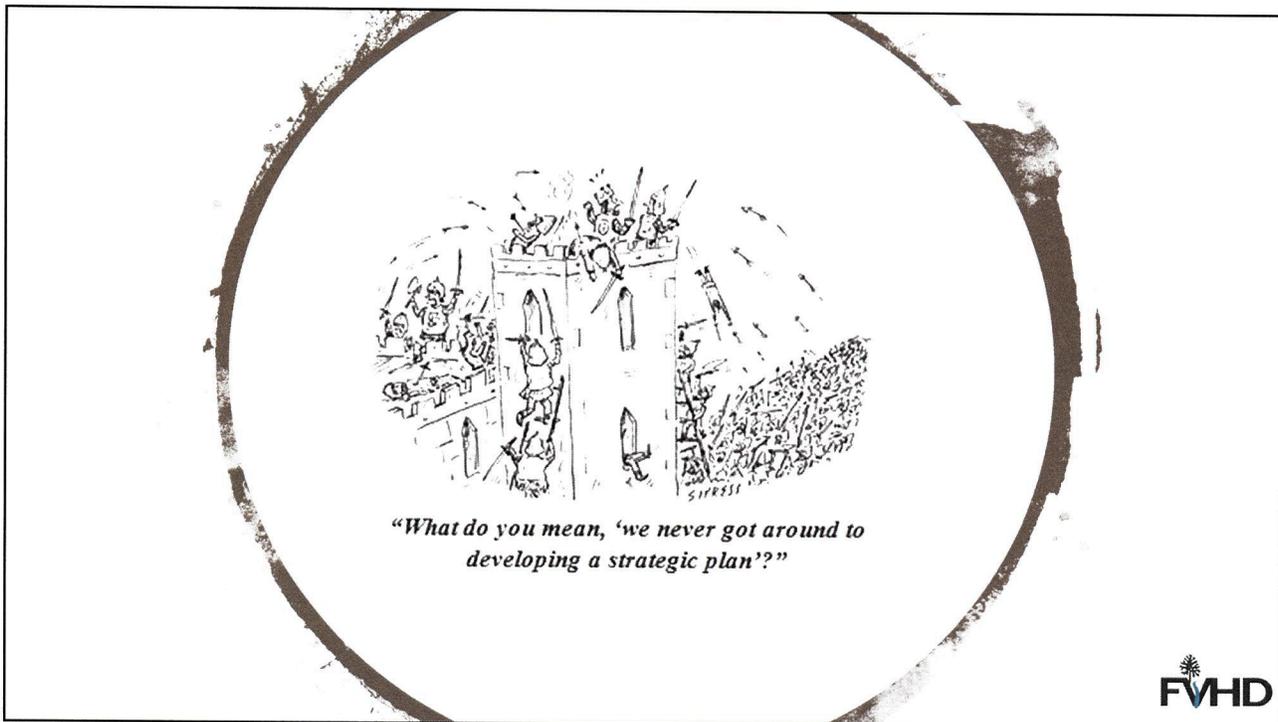
FVHD has a choice:



- Dictate our own future and pace of progress
- OR*
- Wait until we are forced to make changes at which point we lose our options

The Board Has Chosen to Be Proactive

- Meet Statutory Mandates
- Meet Fiduciary Responsibilities to Towns
- Greater Accountability
- Improve Access to Grant Funding
- Align Resources with Strategic Objectives
- Promote Continuous Quality Improvement
- Enhance Workforce Development/Staff Retention





Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Tax Refund Requests
2. **Date of Board Meeting:** June 10, 2019
3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager; Colleen O'Connor, Tax Collector
Maria E. Capriola
4. **Action Requested of the Board of Selectmen:**
If the Board of Selectmen supports approving the tax refunds as presented, the following motion is in order:

Move, effective June 10, 2019, to approve the presented tax refunds in the amount of \$1,035.62 and to authorize Town Manager, Maria E. Capriola, to execute the tax refunds.

5. **Summary of Submission:**
Tax refunds need to be issued from time to time for motor vehicles, real property, and personal property. Some of the most common reasons tax refunds need to be issued for motor vehicles include: sale of the vehicle; the vehicle is destroyed; the vehicle is donated; the owner has moved out of state; or, the owner has successfully appealed the taxes. Real estate refunds are typically due to the fact that during the sale or refinancing of a property, both a bank and an attorney's office have paid taxes owed, resulting in an overpayment to the Town. Overpayments of personal property taxes are rare; often overpayments of personal property are due to a person or entity forgetting that they paid in full in July and then also sending the January installment.

In a legal opinion from the Town Attorney dated May 22, 2001, he stated that CGS §12-129 "requires that all applications for tax refunds be referred to the Board (of Selectmen) for their consideration and action." Once approved by the Board of Selectmen, the Town Manager will sign off on tax refund applications. As a reminder, the Tax Collector's Office is responsible for collecting revenue for the Fire District pursuant to Special Act #264 of the Legislature in 1945. However, tax refunds for the Fire District are not under the jurisdiction of nor approved by the Board of Selectmen and are therefore not included in the requested tax refunds presented.

6. **Financial Impact:**
The aggregate amount of all tax refunds as presented is \$1,035.62. The attachment dated June 10, 2019 has a detailed listing of all requested tax refunds.
7. **Description of Documents Included with Submission:**
 - a) Requested Tax Refunds, dated June 10, 2019

REQUESTED TAX REFUNDS
JUNE 10, 2019

	BILL NUMBER	TAX	INTEREST	TOTAL
List 2017				
Cohen Judith A	17-03-53462	\$279.71		\$279.71
Nissan Infiniti LT	17-03-63822	\$30.42		\$30.42
Nissan Infiniti LT	17-03-63767	\$336.19		\$336.19
Nissan Infiniti LT	17-03-71382	\$364.64		\$364.64
Wilkes Jefferson L	17-03-70598	\$24.66		\$24.66
Total 2017		\$1,035.62	\$0.00	\$1,035.62
TOTAL ALL YEARS		\$1,035.62	\$0.00	\$1,035.62



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Vacation Carryover Requests

2. **Date of Board Meeting:** June 10, 2019

3. **Individual or Entity Making the Submission:**

Maria E. Capriola, Town Manager *Maria E. Capriola*

4. **Action Requested of the Board of Selectmen:**

If the Board of Selectmen supports approving the vacation carryover requests, the following motion is in order:

Move, effective June 10, 2019, to approve the vacation carryover requests, as presented in the table below and requiring Selectmen action. Further stipulate that the approved excess vacation days must be used on or before December 31, 2019. Any unused approved excess vacation days still on the books as of January 1, 2020 will be forfeited. Should the employee leave service for any reason, including but not limited to retirement or resignation, they will not be paid out for the approved unused excess vacation days authorized by the Board of Selectmen.

5. **Summary of Submission:**

During Fiscal Year 18/19, the Public Works Department experienced two administrative staffing transitions. Due to having to recruit and train two direct reports during the fiscal year, a new Administrative Secretary II – DPW and a new Project Administrator, Public Works Director Tom Roy was unable to fully utilize his earned vacation time.

PFC Todd Kushman's request is due to his role as the school resource officer. The Police Department encourages officers in this role to use vacation time during times that the schools are on vacation or holidays, thus allowing the school resource officers to maintain a constant presence while school is in session.

My understanding is that traditionally, vacation carryover requests in excess of ten days have been reviewed and approved or denied by the Board of Selectmen. Most recently this was done at the June 25, 2018 Board of Selectmen meeting. It is standard practice for vacation carryover requests of up to ten days to be reviewed and approved or denied by the Chief Executive.

The vacation carryover requests are as follows:

Name of Staff	Vacation Carryforward Request CEO/Department Head Approval	Vacation Carryforward Request Amount Needing BOS Approval	Total Vacation Carryforward Total Request
Tom Roy	10 days	8 Days	18 Days
PFC Todd Kushman	10 days	4 Days	14 Days

If the Board of Selectmen supports granting the excess vacation carryover requests above the normally permitted ten days, I would recommend you do so with the following caveats:

- The approved excess vacation days must be used on or before December 31, 2019. Any unused approved excess vacation days still on the books as of January 1, 2020 will be forfeited.
- Should an employee leave service for any reason, including but not limited to retirement or resignation, they will not be paid out for the approved unused excess vacation days.

6. Financial Impact:

There is no direct financial impact associated with Tom Roy carrying forward the requested earned vacation time.

Since PFC Kushman is on an administrative schedule, we will not need to backfill his shifts. Therefore there is no direct financial impact associated with PFC Kushman carrying forward the requested earned vacation time.

7. Description of Documents Included with Submission:

None



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Delegation of Open Space Stewardship and Land Management Duties

2. **Date of Board Meeting:** June 10, 2019

3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager *Maria E. Capriola*

4. **Action Requested of the Board of Selectmen:**

The Board of Selectmen has two options as follows:

- **Option A** is to approve the Open Space Committee's request and grant delegation of open space stewardship and land management advisory duties to the Open Space Committee.
- **Option B** is to deny the Open Space Committee's request.

If the Board of Selectmen is in support of **Option A**, the following motion is in order:

Move, effective June 10, 2019, to delegate advisory duties related to the supervision and management of open space, including but not limited to stewardship and land management, to the Open Space Committee and to rescind those responsibilities from the Conservation Commission.

If the Board of Selectmen is in support of **Option B**, the following motion is in order:

Move, effective June 10, 2019, to reject the Open Space Committee's request and for the Conservation Commission to retain open space stewardship and land management advisory duties.

5. **Summary of Submission:**

At the March 25, 2019 Board of Selectmen meeting, you reviewed the request from the Open Space Committee to delegate the duties for open space stewardship and land management to them. The Town Attorney has prepared an opinion in which he states that the Board of Selectmen has the authority to delegate supervision and management of Open Space to the Open Space Committee (attached). Because these duties are currently held by the Conservation Commission, the Board voted to refer consideration of the Open Space Committee's request to the Conservation Commission. The Conservation Commission discussed this matter at several recent meetings and their response is included in the attached letter.

Staff supports delegating the advisory duties for open space stewardship and land management to the Open Space Committee. The Open Space Committee consists of 8 members representing key stakeholders: Board of Selectmen; Culture Parks and Recreation Commission; Conservation Commission; Planning Commission; Zoning Commission; and three community members with an interest in and/or expertise in open space. Delegating advisory authority to Open Space would bring all groups together and focus management efforts.

6. Financial Impact:

Staff time devoted to open space management activities is duplicated if not tripled due to the current structure and assignment of duties to multiple commissions. Delegating these duties to the Open Space Committee will help focus staff time and efforts to one group responsible for advising on open space stewardship and land management.

The Open Space Committee could work on developing land management plans that can be implemented with current resources, and identify areas in need of additional resources.

7. Description of Documents Included with Submission:

- a) Stewardship Letter from M. Winters, dated May 21, 2019
- b) Correspondence from R. DeCrescenzo re: Management of Town Open Space, dated March 20, 2019
- c) Excerpt of Meeting Minutes of March 6, 2019 Open Space Committee
- d) Connecticut Association of Conservation and Inland Wetland Commissions: Position Paper Concerning Combined versus Separate Conservation and Inland Wetland Commissions
- e) UCONN Land Use Academy Informational Sheet Concerning Roles and Responsibilities of Conservation Commission
- f) UCONN Land Use Academy Informational Sheet Concerning Roles and Responsibilities of Inland Wetlands Commission

May 21, 2019

Maria Capriola, Town Manager
Town of Simsbury
933 Hopmeadow Street
Simsbury, CT 06070

Eric Wellman, First Selectman
Town of Simsbury
933 Hopmeadow Street
Simsbury, CT 06070

Dear Maria and Eric,

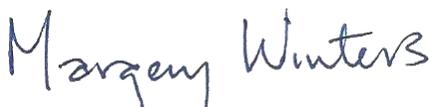
As requested, the Conservation Commission at its April 16 and May 7 meetings discussed the proposal that stewardship of town-owned open space be delegated to the Open Space Committee. The commissioners were uniform in their belief that such a delegation would be ill-advised.

Stewardship of land is an executive function requiring hands-on day-to-day work. Delegating this task to a committee that has no employees, no equipment, no budget, and no accountability to the Town manager does not make organizational sense. Furthermore, as was discussed at the last Open Space Committee meeting, it is premature to task any committee or commission with land stewardship before the Town has established management goals for its open space properties.

The commissioners also questioned whether such a delegation to the Open Space Committee would be permissible under the Charter which provides that any delegation of responsibilities to the committee must not be inconsistent with the rest of the Charter. The Charter provisions dealing with the Conservation Commission assigns to it all matters covered by CGSA 7-131a. That statutory provision includes the language: "It may supervise and manage municipally-owned open space or park property upon delegation of such authority by the entity which has supervisory or management responsibilities for such space or property." If there were to be such a delegation, the Charter contemplates that it would be the Conservation Commission.

The Conservation Commission has a proper role in advising the Town about open space and other land matters, but neither it nor any other commission, board, or committee is a logical place to lodge the executive function of land stewardship.

Sincerely,

A handwritten signature in blue ink that reads "Margery Winters". The signature is written in a cursive, flowing style.

Margery Winters, Chair
On behalf of the Commission



Robert M. DeCrescenzo
(t) 860.548.2625
(f) 860.548.2680
rdcrescenzo@uks.com

March 20, 2019

Maria E. Capriola, M.P.A.
Town Manager
Town of Simsbury
933 Hopmeadow Street
Simsbury, CT 06070

Re: Management of Town Open Space

Dear Maria:

You have asked me to outline the roles and responsibilities of the Open Space Committee and confirm that the Committee may be delegated the stewardship and management of the Town's open space areas.

The Open Space Committee is defined in Charter Section 616. That Section states the following:

The Board of Selectmen shall appoint, in accordance with the provisions of Section 602 of this Charter, an Open Space Committee to assist and advise the Board of Selectmen identifying and evaluating land deemed suitable for acquisition and preservation, and in administering the fund for land acquisition and preservation. ... The Committee shall have such other powers and duties not inconsistent with this Charter as may be prescribed by the Board of Selectmen. The Committee shall establish rules of procedure for the conduct of its business.

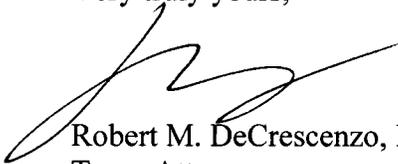
Charter Section 616 authorizes the Board of Selectmen to assign the Open Space Committee "other powers and duties" not inconsistent with the Charter. Town property may be maintained under authority of General Statutes §7-148(c)(6)(A). Therefore, it is within the authority of the Board of Selectmen to assign the Open Space Committee the supervisory and management responsibilities for the Town's open space areas.¹

¹ Please see my October 21, 2016 letter on the same subject. In my letter, I outline the authority of the Board of Selectmen to delegate the responsibility for the management of open space areas to the Conservation Commission under General Statutes §7-131a. To my knowledge, the Board of Selectmen has not delegated that authority to the Conservation Commission.

Maria E. Capriola, M.P.A.
Page 2
March 20, 2019

I trust this responds to your inquiry. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. DeCrescenzo', written over the typed name.

Robert M. DeCrescenzo, Esq.
Town Attorney

RMDe/psm

Excerpt from March 6, 2019 Open Space Committee Minutes

Discussion Regarding the Open Space Committee's Role in Open Space Stewardship

Mr. Wellman asked commission members to indicate whether they are interested in this commission having oversight of Open Space stewardship in Town.

Ms. Peterson supports the Open Space Commission having stewardship duties. She said the public comes to this commission with Open Space issues, not the Conservation Commission where this authority currently resides. She also mentioned that the Open Space Commission is made of representatives of different land use boards and this gives this group a unique perspective on issues.

Ms. Winters said it would be wise for the Open Space Commission to come up with suggested goals and policies for Open Space stewardship to then refer to the Conservation Commission. She agreed that this group's diverse land use representation would be a benefit in developing stewardship policies and procedures.

Mr. Bush agreed with Ms. Winters, the Open Space Commission would likely produce more practical policies due to the variety of stakeholders represented on the commission.

Ms. Masino echoed Mr. Bush's and Ms. Winters sentiments.

Mr. Wellman asked Town Manager Capriola if staff saw value in one commission having oversight of Open Space stewardship, rather than splitting out parts of too different groups. Ms. Capriola noted this commission's broad representation as ideal reason why she would feel comfortable with stewardship of Open Space being placed with the Open Space Commission. She also let the group know that the Board of Selectmen would have to officially delegate this responsibility to the Open Space Commission.

Mr. Rice questioned whether their needed to be language in the Open Space Commission's request to the Board of Selectman regarding the Forest Commission. Ms. Capriola will confer with the Town's attorney regard this issue.

Motion: Mr. Bush made a motion that Open Space Commission recommends to the Board of Selectman that the Open Space Commission manage stewardship of open space. Ms. Winters seconded the motion and it was unanimously approved.



POSITION STATEMENT

Combined versus Separate Conservation and Inland Wetland Commissions

"It is CACIWC's position that every Connecticut town should have a Conservation Commission, and that the duties and responsibilities of that commission should not be combined with another town board or agency."

BACKGROUND

Enabling legislation for establishment of municipal Conservation Commissions was passed in 1961, and by 1975 a total of 152 Conservation Commissions had been established. Following passage of Connecticut's Inland Wetlands and Watercourses Act in 1973, many of those commissions accepted the regulatory responsibility of that legislation and became combined Conservation and Inland Wetlands Commission.

By May 2002 there were only 79 Conservation Commissions that spent 100% of their time on conservation commission responsibilities. Fifty-nine commissions had the dual responsibility of both a conservation and an inland wetlands commission, and 31 towns had no conservation commission authority. Polls conducted by CACIWC in 1993 and 1998 indicate that a combined Conservation and Inland Wetlands Commission spends less than 10% of its time on conservation responsibilities and 90% of its time on inland wetlands regulatory duties.

POSITION

CACIWC's goal is to reinvigorate and support the intent of the 1961 enabling legislation by encouraging the establishment of separate Conservation Commissions in all Connecticut towns. We are committed to the promotion, support and facilitation of a separate, single-agency Conservation Commission in towns that have no active Conservation Commission, or in towns that combine Conservation Commission duties with another board or agency.

The 1961 enabling legislation states that the purpose and responsibility of Conservation Commissions is the "...development, conservation, supervision, and regulation of natural resources". The legislation further states that this responsibility shall be carried out by (1) conducting research into the utilization and possible utilization of land areas, and (2) keeping an index of all open space areas within the community. (1961 enabling legislation, codified in CT General Statutes, Chapter 97, Section 7-131a).

CACIWC's research supports the position that only a separate, Conservation Commission has the time and commitment to achieve the purpose and carry out the responsibilities of the enabling legislation and subsequent revisions.

The 1961 enabling legislation gave Connecticut towns the discretion to form Conservation Commissions and to tailor their duties according to community needs. The intent of the legislation was to provide each community and municipal agency responsible for regulating land use with a resource of information that would assist them in making informed decisions on the development, management and conservation of the town's natural resources. The Conservation Commission was to serve as that resource in a research and advisory capacity.

In the 79 communities that still have separate Conservation Commissions, the intent of the legislation has been achieved. CACIWC firmly believes that with the increasing development pressure on natural resources within communities, now more than ever the need to establish and support separate, single-agency Conservation Commissions is critical.

RATIONALE

Land use decisions made at the local level have significant impact on the long range economics, public health and environmental stability of a community, a region and the state. In Connecticut there are approximately 600 municipal land use commissions and estimated 5000 volunteers that serve on these commissions.

Since 1995 community volunteers have approved over 25,000 land use permits per year. The time commitment required for these volunteers to make increasingly more complex land use decisions has significantly increased. They have little time to investigate the potential environmental impact of cumulative land use changes on their community's natural resources and environmental infrastructure. Conservation Commissions have the responsibility for such action and for advising the appropriate authorities on how that information can be used for the, "development, conservation, supervision and regulation of natural resources."

The legislature has recognized the growing development pressures on communities and the need to encourage and support the establishment of Conservation Commissions by giving them additional responsibilities:

- In 1993 a revision to the enabling legislation expanded the abilities and opportunities of Conservation Commissions by giving them the right (not the mandate) to inventory natural resources, make recommendations to all other land use agencies on proposed land use changes, formulate watershed and drought management plans and supervise and manage municipally-owned open space.
- In 1995 an Act Concerning Greenways changed the Plan of Development for a municipality to the Plan of Conservation and Development, and enabled Conservation Commissions to propose greenway plans for inclusion in the Plan of Conservation and Development. The revisions in this Act clarify the importance of planning for conservation at the local level and emphasize the need for the Planning and Conservation Commissions to collaborate on the formulation of comprehensive and rational conservation plans for their municipality.
- In 1997 an Act Concerning Acquisition of Open Space Land established an unprecedented five-year open space grant program for municipalities. The program provides funding for towns with open space plans, and requires Conservation Commission approval of open space grant applications submitted by a town.

There are presently only 79 towns that have separate Conservation Commissions. This means that only 47% of Connecticut's towns have a municipal agency that focuses exclusively on the duties defined in the enabling legislation and subsequent revisions. The history of Conservation Commissions in Connecticut suggests that, given the opportunity and direction, concerned citizens will respond to and address the environmental needs of the community. Please join CACIWC in supporting the establishment of a separate Conservation Commission in each of the 90 towns that do not have one.

- Approved by CACIWC Board of Directors on 5/29/02

Conservation Commission



Land Use Academy Fact Sheets

clear.uconn.edu/lua

Legal Basis of Authority

The Connecticut General Statutes (CGS) allow municipalities to establish Conservation Commissions, if they so desire, in Chapter 97 Section 7-131a.

Any municipality may establish a Conservation Commission by vote of its legislative body, for the development, conservation, supervision and regulation of natural resources, including water resources, within its territorial limits.

Membership

The Conservation Commission shall consist of not fewer than 3, nor more than 11 members and not more than 3 alternates. Alternate members, when seated, shall have all the powers and duties of a commission member.

Appointments and Removal

Members and alternates are appointed by the chief executive officer of the municipality. The chief executive officer may remove any member or alternate only for cause and has the power to fill any vacancy.

Terms of Office

The legislative body establishing the commission shall designate terms of office.

Powers and Duties

Conservation Commissions Shall:

1. Conduct research into the utilization and possible utilization of land areas of the municipality;
2. Keep an index of all open areas, publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information on the proper use of such areas;

3. Keep records of its meetings and activities and make an annual report to the municipality in the manner required of other municipal agencies.

Conservation Commissions May:

1. Make recommendations to Zoning Commissions, Planning Commissions, Inland Wetlands Agencies and other municipal agencies on proposed land use changes;
2. Recommend to the Planning Commission (or if none, to the chief executive officer or the legislative body) plans and programs for the development and use of all open areas;
3. Exchange information with the Commissioner of Environmental Protection and said Commissioner may, on request, assign technical personnel to the commission for assistance in planning its overall program and for coordinating state and local conservation activities;
4. Coordinate the activities of unofficial bodies organized for the purpose of conducting land use research;
5. Advertise, prepare and distribute books, maps, charts, plans and pamphlets necessary for its purposes;
6. Propose a greenways plan for inclusion in the Plan of Conservation and Development prepared by the local Planning Commission;
7. Inventory natural resources;
8. Formulate watershed management plans consistent with water supply management plans prepared under Section 25-32d of the General Statutes (plans prepared by water companies and submitted to the Commissioner of Health Services);

*Bracketed numbers reference sections of the Connecticut General Statutes, visit cga.ct.gov/2009/pub/title7.htm



Land Use Academy

Conservation Commission

Powers and Duties con't.

Conservation Commissions May:

9. Formulate drought management plans;
10. With the approval of such legislative body, acquire land and easements in the name of the municipality;
11. Promulgate rules and regulations, such as the establishment of reasonable charges for the use of lands and easements for any of its purposes;
12. Receive gifts on behalf of the municipality for any of its purposes and administer the gifts for those purposes, subject to the terms of the gift;
13. Approve, prior to submission, state grant applications for programs to preserve or restrict the use of open space land to conservation or recreation purposes.
14. Apply, if the municipality so designates, for state grants to preserve or restrict to conservation or recreation purposes, the use of open space;
15. Supervise and manage municipally owned open space or park property when the agency normally responsible for such duties delegates that power;

CHECK OUT THESE ONLINE TOOLS AND RESOURCES

- *CT Association of Conservation and Inland Wetland Commissions* - provides resources for Inland Wetland and Conservation commissioners. Visit caciwc.org
- *Online Academy* - provides online resources for those who want a quick refresher or are unable to attend a training. Visit clear.uconn.edu/lua/online
- *Community Resource Inventory Online* - provides organized maps, tutorials and case examples that assist you in developing a basic inventory of your towns natural and cultural resources.
- *Connecticut's Changing Landscape* - provides data about how CT's landscape has changed since 1985. Local Land Use officials can use this resource to evaluate the environmental, social and economic impacts of development that guide their decision making.

For more information

Call: 860-345-4511

Email: clear@uconn.edu

Disclaimer: The materials contained in this fact sheet are a general, lay summary of the roles and responsibilities of local land use commissioners. They should not be relied on as a valid legal opinion or position. As such, these materials should not be used in place of consulting an attorney about the roles and responsibilities of a local land use commissioner.



The Land Use Academy is a program of the Center for Land Use Education and Research (CLEAR). Land, Sea and Space Grant collaborating.

Inland Wetlands Commission



Land Use Academy Fact Sheets

clear.uconn.edu/luu

Legal Basis of Authority

Under Section 22a-42c of the Connecticut General Statutes (CGS) each municipality is required to establish an inland wetlands and watercourses agency (IWWA). The local legislative body may authorize an existing board or establish a new board.

Once established the IWWA must develop regulations that conform to regulations adopted by the state DEP. Local agencies may adopt additional regulations as long as they conform with the Commissioner's regulations.

CT DEP Role

Unlike zoning and subdivision regulation, the local wetland agency regulates activities pursuant to state regulations developed by the DEP Commissioner. The statutes states that the Commissioner of DEP:

1. Shall promulgate regulations to protect inland wetlands and watercourses;
2. Is empowered to regulate wetlands if a community that fails to do so; and
3. May appeal decisions of a local agency if s/he feels those decisions do not properly protect wetlands.
4. Has exclusive jurisdiction over tidal wetlands and all regulated activities undertaken by any State agency or department.
5. Will provide training for members of local IWWAs

The Commissioner is empowered to issue orders for violations if the municipality fails to do so.

Membership

The ordinance establishing the IWWA must state the number of members and alternates, the length of their terms, the

method of selection and removal, and the manner of filling vacancies.

At least one member of the IWWA or its staff must complete an Inland Wetland training program developed by DEP and set aside at least one meeting per year to receive information from the training program. However failure to do so does not affect the validity of actions taken by the IWWA.

Powers and Duties

The following are powers and duties of Inland Wetlands and Watercourses Agencies as set forth in the CGS;

1. To establish, change or repeal inland wetlands regulations and boundaries; [22a-42a(b)]
2. To hear, consider and decide upon petitions for changes in the inland wetlands regulations or boundaries. [22a-42a(b)];
3. To hear, consider and decide upon applications for regulated activities involving inland wetlands and determine if proposed activities are exempt from the regulations. [22a-42a];
4. To enforce inland wetlands regulations and conditions of permits. [22a-42a (d), 22a-44 (a)];
5. May delegate to a duly authorized and trained agent (typically an Inland Wetland Enforcement officer), the authority to approve or extend an activity that is not located in an inland wetland when the agent finds that the activity would have minimal wetland impact;
6. To hear appeals from any decision of its duly authorized agents (see #5 above). The IWWA shall sustain, alter or reject that decision or require that an application be made directly to the agency.

Unlike Zoning Commissions, Inland Wetland Commissions can hear appeals on decisions of their Inland Wetlands Enforcement Officer. There is no separate wetlands appeals board.

*Bracketed numbers reference sections of the Connecticut General Statutes, visit cga.ct.gov/2009/pub/title22a.htm



Land Use Academy

Inland Wetlands Commission

Inland Wetland Key Terms and Concepts

Regulated Areas

Inland Wetlands

Inland wetlands are land including submerged land, not regulated under the Tidal Wetlands Act which consists of soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the USDA Natural Resources Conservation Service Soil Survey. [22a-38]

Watercourses

Watercourses are rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private which are contained within, flow through or border upon this state and are not regulated by the Tidal Wetlands Act. [22a-38]

Intermittent Watercourses

Intermittent watercourses have a defined permanent channel and bank and two or more of the following:

- Evidence of scour or recent alluvium or detritus deposits;
- Standing or flowing water of a duration longer than any particular storm or;
- Presence of vegetation that grows in water or very wet soils.

Buffer/Upland Review Areas

A local wetland agency regulates activities within areas around wetlands and watercourses such regulations shall:

- Be in accord with the wetlands regulations concerning activities in wetlands and;
- Apply only to activities that are likely to adversely affect the physical characteristics of a wetlands or watercourse.

Regulated Activities

Any operation within or use of a wetlands or watercourse involving:

- Removal or deposition of material, or
- Any obstruction,
- Construction,
- Alteration or,
- Pollution of such wetlands or watercourses

This does not include the activities permitted as of right (see below). Hence, not all activities taking place within a wetland area require a permit.

Activities "Permitted As of Right"

The following uses are permitted as of right in wetlands and watercourses:

1. Grazing, farming, nurseries, gardening and harvesting of crops;
2. Farm ponds of three acres or less that are essential to the farming operation.
3. Residential homes for which a building permit has been issued on or before July 1, 1987;
4. Boat anchorage or mooring;
5. Uses incidental to the enjoyment and maintenance of residential property including maintenance of existing structures and landscaping, but not including removal or deposition of significant amounts of material from or onto a wetland or diversion or alteration of a watercourse;
6. The operation of dams, reservoirs and similar facilities by water companies;
7. Maintenance on existing drainage pipes on residential property where the area to be disturbed does not contain vegetation growing in water or very wet soils;
8. Conservation of soil, vegetation, water, fish, shellfish and wildlife provided such activities do not disturb the natural and indigenous character of the wetland;
9. Outdoor recreational activities that do not disturb the natural and indigenous character of the wetland.

The courts have ruled that a wetlands agency may require someone claiming to be engaged in an "as of right" activity to appear before the agency and submit such information as it deems necessary to make a determination as to whether the activity is, in fact, exempt.

Inland Wetlands Commission

Factors To Be Considered When Reviewing An Inland Wetlands Application

Section 22a-41(a) of the CGS states the Inland Wetland Commissioner shall take into consideration all relevant facts and circumstances when reviewing applications including, but not limited to:

1. The environmental impact of the proposed action;
2. The purpose for, and any feasible and prudent alternatives to, the proposed action:
 - feasible is defined as able to be constructed consistent with sound engineering principles.
 - prudent is defined as economically and otherwise reasonable in light of the social benefits to be derived from the proposed activity. Cost may be considered, however, a mere showing of expense will not necessarily mean an alternative is imprudent.
3. The relationship between short-term uses and the maintenance and enhancement of long term productivity of such wetland;
4. Irreversible and irretrievable loss of resources which would be involved in the proposed activity;
5. The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened by the proposed activity; and
6. Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity

CHECK OUT THESE ONLINE TOOLS AND RESOURCES

- *CT Association of Conservation and Inland Wetland Commissions* - provides resources for Inland Wetland and Conservation commissioners. Visit caciwc.org
- *CT DEP Municipal Inland Wetland Commissioners Training Program* - ct.gov/dep
- *Online Academy* - provides online resources for those who want a quick refresher or are unable to attend a training. Visit clear.uconn.edu/lua/online
- *Community Resource Inventory Online* - provides organized maps, tutorials and case examples that assist you in developing a basic inventory of your towns natural and cultural resources.
- *Connecticut's Changing Landscape* - provides data about how CT's landscape has changed since 1985. Local Land Use officials can use this resource to evaluate the environmental, social and economic impacts of development that guide their decision making.

To learn more visit nemo.uconn.edu/tools.htm

For more information

Call: 860-345-4511

Email: clear@uconn.edu

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Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Proposed Ordinance Regarding the Election of Alternates to the Planning and Zoning Commissions
2. **Date of Board Meeting:** June 10, 2019
3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager *Maria E. Capriola*

4. **Action Requested of the Board of Selectmen:**

If the Board of Selectmen supports forwarding the proposed Ordinance Regarding the Election of Alternates to the Planning and Zoning Commissions to a public hearing, the following motion is in order:

Move, to schedule a public hearing for 6:00PM at the Board of Selectmen's regular meeting on June 24, 2019 to solicit public comment on the proposed Ordinance Regarding the Election of Alternates to the Planning and Zoning Commissions.

5. **Summary of Submission:**

Due to a scrivener's error, the text outlining the number of alternates elected to the Planning Commission and the Zoning Commission was omitted during the last Charter revision. The Town Attorney has prepared a draft ordinance to clean up any perceived ambiguity regarding the number of alternate members elected to these commissions (attached). The number of alternates elected to the Zoning Board of Appeals need not be listed in the Charter or by ordinance as this is covered by state statute.

Due to existing case law in Connecticut, alternate members do not have full participatory rights unless they are officially seated at the table (see attached legal opinion). Therefore, the Ordinance can't grant alternate members full participatory rights at all times.

Section 404 of the Town Charter sets forth the requirements for a public hearing on and publication of an ordinance. The Board of Selectmen is required to have at least one public hearing on a new or amended ordinance. We are required to give at least 7 days' notice in a newspaper having general circulation in the town. The Town Clerk also posts the notice in a public place, and copies of the ordinance must be available at the Town Clerk's Office. We also post the ordinance on the Town's webpage. A second hearing must be held if substantive changes are made to the ordinance (as determined by Town Counsel).

Once the ordinance is passed, it must be filed with the Town Clerk and posted in its entirety or in summary form within 10 days after final passage. The Board of Selectmen would have to approve use of a summary. The ordinances would become effective on the twenty-first day after final publication.

6. Financial Impact:

None

7. Description of Documents Included with Submission:

- a) Draft Ordinance Regarding the Election of Alternates to the Planning and Zoning Commissions
- b) Letter from Attorney R. DeCrescenzo re: Land Use Board of Commission Unseated Alternates: Participation in Agency Deliberations Decision Making, dated April 26, 2016

TOWN OF SIMSBURY

PROPOSED ORDINANCE

**Election of Alternates to the
Planning and Zoning Commissions**

Section 1. Zoning Commission Alternates

There shall be three (3) alternates to the Zoning Commission elected in accordance with Section 302 of the Simsbury Town Charter. Alternate Members shall, when seated as herein provided, have all the powers and duties set forth in the Town Charter, general statutes or any special act for the Zoning Commission and its members. Alternates may attend all meetings and executive sessions of the Zoning Commission. Zoning Commission Alternates shall be electors and shall not be members of the Zoning Board of Appeals or the Planning Commission. Alternates shall be designated by the Chairman of the Commission, or their designee, to act in the absence of Regular Members according to a policy to be adopted by the Commission.

Section 2. Planning Commission Alternates

There shall be three (3) alternates to the Planning Commission elected in accordance with Section 302 of the Simsbury Town Charter. Alternative Members shall, when seated as herein provided, have all the powers and duties set forth in the Town Charter, the general statutes or any special act for the Planning Commission and its members. Alternates may attend all meetings and executive sessions of the Planning Commission. Planning Commission Alternates shall be electors and shall not be members of the Zoning Board of Appeals or the Zoning Commission. Alternates shall be designated by the Chairman of the Commission, or their designee, to act in the absence of Regular Members according to a policy to be adopted by the Commission.

Effective Date: _____

Public Hearing: _____

Adopted: _____

Published: _____

Town Clerk Attest: _____



III MERITAS LAW FIRMS WORLDWIDE

Robert M. DeCrescenzo
(t) 860.548.2625
(f) 860.548.2680
rdecrescenzo@uks.com

April 26, 2016

James D. Rabbitt, AICP
Director of Community Planning
And Development
Town of Simsbury
933 Hopmeadow Street
Simsbury, CT 06070

Re: Land Use Board of Commission Unseated Alternates:
Participation in Agency Deliberations Decision Making

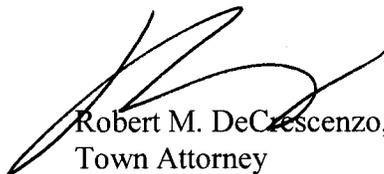
Dear Mr. Rabbitt:

You have asked me to outline the Connecticut law regarding participation by unseated alternates in land use agency deliberations and decisions. It is well established law that even if an alternate member attended all the agency's meetings on the application, the alternate should not participate in the agency's deliberations or decision making unless needed as a voting member.

According to Fuller, unseated alternate members of a land use agency are not precluded from participating in the public hearing, but only alternate members who are seated on the application in the place of regular members can participate in the deliberations after the close of the public hearing and in the agency decision making process. Fuller, Land Use Law and Practice, Section 21:4; Komondy v. Zoning Board of Appeals of the Town of Chester, 127 Conn. App. 669, 680-83 (2011). Whether the illegal participation by an alternate will lead to court reversal of the decision is based on whether the participation had a material effect on the deliberations. The test is whether the participation of the alternate resulted in material prejudice, and the factors in making that determination, which are not exclusive, include (a) the extent of participation of the alternate, (b) the substance of the comments made, and (c) whether the alternate attempted to influence or sway the other members of the agency. The same standards on participation of alternate members apply to alternates on a separate planning commission enacted pursuant to General Statutes §8-19a.

I trust this responds to your inquiry. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert M. DeCrescenzo, Esq.
Town Attorney

RMDe/psm

Updike, Kelly & Spellacy, P.C.

100 Pearl Street ■ PO Box 231277 ■ Hartford, CT 06123 (t) 860.548.2600 (f) 860.548.2680 www.uks.com

9 Conn. Prac., Land Use Law & Prac. § 21:4 (4th ed.)

Connecticut Practice Series TM

Land Use Law & Prac.

Database updated November 2015

Robert A. Fuller

Part II. The Application Process to Municipal Land Use Agencies

Chapter 21. The Agency Decision Making Process

§ 21:4. Agency members eligible to participate and vote on the application

In most cases, all of the regular members of the agency are eligible to vote on an application before it. Where an agency member is disqualified from discussing and voting on the application, it is usually for one of two reasons: (1) conflict of interest or (2) insufficient familiarity with the application due to failure to attend the public hearing or agency meetings where the application was previously discussed. In unusual cases, one or more members of the agency may be disqualified based on the concept of predetermination although it is difficult to prove and is rarely successful on appeal.¹ As discussed in § 21:3, agency members must be present to vote on any application.

An agency member may have a personal or a financial conflict of interest requiring disqualification from both participation in discussions and the final vote on the application. The cases and statutes defining what is a conflict of interest are discussed in § 47:3. Whether a conflict of interest exists depends upon the facts of each situation. The decision of whether to abstain from participation and voting on the application must be made by the agency member even though it may be difficult for the member to objectively make that decision. The other agency members cannot disqualify one of their colleagues because they think he or she may have a conflict of interest. The decision must be made by the agency member. Since the test is whether there is the appearance of a conflict, and an actual conflict does not have to be shown, most agency members will take the prudent course and step down. While other agency members cannot compel disqualification, if one of them has a private conversation with the member who may have a conflict of interest the matter is usually resolved in that way. If nothing else, the agency member subject to challenge avoids being subjected to claims of improper conduct and the risk that the agency's final decision may be overturned on appeal due to conflict of interest. When the agency member has decided to withdraw from the application the best procedure is to announce that fact when the matter is reached on the agency's agenda. If the basis for disqualification is raised or known at the time of the public hearing, disqualification should occur then. If it is raised later, disqualification should occur at the latest at the meeting when the application is discussed and acted upon. While it probably looks better for the agency member to get up from the table and sit in the audience while the application is being discussed this is not legally required. Where the agency member believes he or she does not have a conflict of interest and can fairly decide the application there should be some statement made on the record giving the basis for that belief and addressing the facts of the claimed conflict. Where the claim of disqualification was made by the applicant, the matter is best dropped at that point. The record has been made, the agency member has made a decision, and the possibility that the member will actually vote for the application is undermined by further debate on the issue.

Unlike conflict of interest, the problem of the uninformed agency member has a solution. Sufficient review of the tape recording or transcript of the public hearing and the documents filed on the application cure the failure to attend prior agency meetings as long as the member becomes sufficiently familiar with the application to intelligently discuss and vote on it.²

Where one or more agency members are disqualified for any reason, alternate members of the agency should be used as replacements where there are alternate members who are sufficiently familiar with the application to vote on it. This is not always possible as some alternate members rarely attend agency meetings unless specifically requested to do so. At other times the problem may arise at the last minute, such as a personal reason why a regular member of the agency could not attend the decision-making session. The alternate members may not be sufficiently familiar with the application to vote on it, and unless they are, they should not participate.

The cases discussing disqualification usually place participation in discussions and voting on the application in the same category; agency members who cannot vote on an application should not discuss it, particularly where the claim is conflict of interest rather than insufficient knowledge of the application itself.

Even if an alternate member attended all the agency's meetings on the application, the alternate should not participate in the agency's deliberations unless needed as a voting member.³

Unseated alternate members of a zoning board of appeals are not precluded by General Statutes § 8-5(a) or § 8-6(a) from participating in the public hearing,⁴ but only alternate members who are seated on the application in the place of regular members can participate in the deliberations after the close of the public hearing, which is also supported by the same statutes and is analogous to alternate jurors in a trial.⁵ Whether the illegal participation by an alternate requires the reversal of the decision of the zoning board of appeals is based on whether the participation had a profound effect on the deliberations; the test is whether the participation of the alternate resulted in material prejudice, and the factors in making that determination, which are not exclusive, include the extent of participation of the alternate, the substance of the comments made, and whether the alternate *attempted* to influence or sway the other members of the board.⁶ The statute on alternate members of zoning commissions and combined planning and zoning commissions, General Statutes § 8-1b, contains similar provisions to General Statutes §§ 8-5a and 8-5(a) and the same standards on participation of alternate members would apply to them, and presumably to **alternates** on a separate planning commission under an ordinance enacted pursuant to General Statutes § 8-19a.

Even though there was a similar application for property as in a prior appeal from a decision of a zoning enforcement officer, the chairman of the zoning board of appeals exceeded his authority by dismissing an appeal without first consulting with and obtaining the vote of the other members of the zoning board of appeals; the agency must act collectively.⁷

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Footnotes

- 1 See § 47:2.
- 2 See § 47:1.
- 3 *Weiner v. New Milford Zoning Com'n*, 14 Conn. L. Rptr. 245, 1995 WL 320015 (Conn. Super. Ct. 1995); *Komondy v. Zoning Bd. of Appeals of Town of Chester*, 127 Conn. App. 669, 683–686, 16 A.3d 741 (2011), which extensively discusses the participation of alternate members of a zoning board of appeals in appeals to the board and variance applications.
- 4 *Komondy v. Zoning Bd. of Appeals of Town of Chester*, 127 Conn. App. 669, 680–683, 16 A.3d 741 (2011).
- 5 *Komondy v. Zoning Bd. of Appeals of Town of Chester*, 127 Conn. App. 669, 683–686, 16 A.3d 741 (2011).
- 6 *Komondy v. Zoning Bd. of Appeals of Town of Chester*, 127 Conn. App. 669, 687–690, 16 A.3d 741 (2011).
- 7 *Grasso v. Zoning Bd. of Appeals of Groton Long Point Ass'n, Inc.*, 69 Conn. App. 230, 236–238, 794 A.2d 1016, 1021 (2002).

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er, 118 Conn.App. 355, 356, 984 A.2d 71 (2009).

After examining the record on appeal and considering the briefs and the arguments of the parties, we conclude that the judgment of the trial court should be affirmed. Because the court's memorandum of decision resolves properly the issues raised in this appeal, we adopt the court's well reasoned decision as a statement of the facts and the applicable law on the issue. See *Boulanger v. Old Lyme*, 51 Conn.Supp. 636, 16 A.3d 889 (2010). Any further discussion by this court would serve no useful purpose. See, e.g., *Woodruff v. Hemingway*, 297 Conn. 317, 321, 2 A.3d 857 (2010).

The judgment is affirmed.



127 Conn.App. 669

Marguerite A. KOMONDY

v.

ZONING BOARD OF APPEALS OF
the TOWN OF CHESTER.

No. 31944.

Appellate Court of Connecticut.

Argued Jan. 5, 2011.

Decided April 5, 2011.

Background: Property owner, who sought extension of permit to install temporary mobile home on property during reconstruction of home destroyed by fire, appealed from decision of town zoning board of appeals which denied her appeal from two decisions of zoning enforcement officer and her application for variance from town zoning regulations. The Superior Court, Judicial District of Middlesex,

Jones, J., dismissed appeal. Owner appealed.

Holdings: The Appellate Court, Gruendel, J., held that:

- (1) unseated alternate was precluded from participating in board's deliberations, but
- (2) participation of unseated alternate did not result in material prejudice to owner.

Affirmed.

1. Statutes ⇌174, 212.3

Common sense must be used in statutory interpretation, and courts will assume that the legislature intended to accomplish a reasonable and rational result.

2. Zoning and Planning ⇌1458, 1550

Participation of unseated alternate in public hearing portion of proceedings of town zoning board of appeals, on applications of property owner who sought extension of permit to install temporary mobile home on property during reconstruction of home destroyed by fire and sought variance from town zoning regulations, did not contravene plain languages of statute governing designation of alternate members to act; participation in public hearing was neither power nor duty set forth in statutes relating to zoning boards of appeal and their members. C.G.S.A. §§ 8-5(a), 8-6(a).

3. Zoning and Planning ⇌1685, 1691

Whether it is an appeal from a decision of the zoning enforcement officer, a variance application or another matter specified by statute, the burden rests with the applicant to demonstrate its entitlement to the requested relief.

4. Zoning and Planning ⇌1333(1)

Zoning board of appeals possesses a limited authority, as circumscribed by stat-

ute, the scope of which cannot be enlarged or limited by either the board or the local zoning regulations. C.G.S.A. § 8-5(a).

5. Zoning and Planning ⇌1458, 1550

Unseated alternate was precluded from participating in deliberations of town zoning board of appeals, following close of public hearing, on applications of property owner who sought extension of permit to install temporary mobile home on property during reconstruction of home destroyed by fire and sought variance from town zoning regulations; participation of unseated alternate tarnished board's deliberations, and unseated alternate's participation, whether by design or inadvertence, injected improper influence into board's decision-making process. C.G.S.A. §§ 8-5(a), 8-6(a).

6. Statutes ⇌206, 212.6

In construing statutory language, no part of a legislative enactment is to be treated as insignificant or unnecessary, there is a presumption of purpose behind every sentence, clause or phrase, and no word in a statute is to be treated as superfluous.

7. Statutes ⇌181(1)

Appellate court's objective in construing statutory language is to give effect to the apparent intent of the legislature.

8. Zoning and Planning ⇌1653

Participation of unseated alternate in deliberations of town zoning board of appeals, following close of public hearing, on applications of property owner who sought extension of permit to install temporary mobile home on property during reconstruction of home destroyed by fire and sought variance from town zoning regulations, did not result in material prejudice to owner; unseated alternate participated only in deliberations on owner's variance request. C.G.S.A. §§ 8-5(a), 8-6(a).

9. Zoning and Planning ⇌1340(2), 1653

Proper measure to evaluate the participation of an unseated alternate in deliberations of town zoning board of appeals is an inquiry into whether the participation resulted in material prejudice to the applicant; among the factors relevant to that inquiry is a determination of whether the participation impacted the board's decision-making process, the frequency and severity of the unseated alternate's participation, and whether alternate attempted to influence or sway the other members of the board. C.G.S.A. §§ 8-5(a), 8-6(a).

10. Zoning and Planning ⇌1479

Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance.

Christina P. Burnham, Old Saybrook, for the appellant (plaintiff).

John S. Bennet, Essex, for the appellee (defendant).

GRUENDEL, ALVORD and DUPONT, Js.

GRUENDEL, J.

1671In this certified zoning appeal, the plaintiff, Marguerite Komondy, appeals from the judgment of the Superior Court dismissing her appeal from the decision of the defendant, the zoning board of appeals (board) of the town of Chester (town), which denied her appeal from two decisions of the zoning enforcement officer and her application for a variance from § 113B.5 of the town zoning regulations (regulations). She contends that the board acted illegally in permitting an unseated alternate member to participate in

both the public hearing and the board's deliberations thereon. We affirm the judgment of the Superior Court.

This appeal concerns the use of a mobile home on 29 Liberty Street in Chester (property), which is located in an R-1 residential district of the town and at all relevant times was owned by the plaintiff. Section 113B.5 of the regulations permits the temporary use of a mobile home on a property during the construction of a permanent dwelling. That regulation requires notification of such use to the zoning enforcement officer and expressly limits the use to a period of six months.¹

¹The property contained a 6531 square foot historic single-family residence, which a fire destroyed in March of 2005. Days later, the plaintiff, pursuant to § 113B.5, applied for a six month use permit to install a temporary mobile home on the property during the reconstruction of her home, which was granted on March 14,

2005. Approximately one year and four months later, Zoning Enforcement Officer Judith R. Brown issued a cease and desist order regarding the use of the mobile home on the property. In response, the plaintiff requested an extension of the permit originally issued in March, 2005, which Brown denied on August 25, 2006.

On August 28, 2006, the plaintiff filed an appeal with the board from both the cease and desist order and the denial of her request for an extension. In addition, the plaintiff applied for a variance from the "[six] months time limit" contained in § 113B.5.² The board held a public hearing on the plaintiff's applications on December 18, 2006. In attendance at that hearing were regular board members Mario Gioco, Jim Miller, Tom Englert and Mark Borton, and three alternate board members, Dan Bednarz, Theresa Myers and Andy Vomastek. Because only four regular members were present, Bednarz was seated pursuant to General Statutes § 8-5a.³

1. Titled "Temporary Use During Construction of Home," § 113B.5 provides: "When used, after notification to the Zoning Compliance Officer, as a temporary dwelling on premises of the owner thereof during construction of such owner's permanent dwelling upon the same premises, provided that such mobile home shall not remain upon said premises for more than six months from the time that it is first placed thereon; and provided such mobile home shall be connected to a water supply and sewage disposal system approved by the Town Director of Health in conformity with the requirements of the State Health Code and regulations enacted by the State Department of Health thereunder and to the requirements of any Town regulations pertaining thereto."

2. Under Connecticut law, a property owner is permitted to simultaneously file with the zoning board of appeals a variance application and an appeal from the decision of the zoning enforcement officer. As this court has observed, "[t]he plain language of [General Statutes] § 8-6a clearly allows a party to file a bifurcated claim with a zoning board relying on both [General Statutes] § 8-6(1) and § 8-

6(3) and requesting simultaneous relief under each of these subsections. Simply put, § 8-6a permits the concurrent filing of both an appeal from a zoning enforcement officer's ruling and a request for a variance. When a party applies for a review under both §§ 8-6(1) and 8-6(3), § 8-6a specifically requires that a zoning board first decide the issues presented by the § 8-6(1) application for a building permit. Should the board uphold the denial of the building permit, it must then act upon the § 8-6(3) request for a variance of the zoning ordinance." *Miniter v. Zoning Board of Appeals*, 20 Conn.App. 302, 306, 566 A.2d 997 (1989). It is undisputed that the board complied with the foregoing in the present case.

3. General Statutes § 8-5a, titled "Designation of alternate members to act," provides: "If a regular member of a zoning board of appeals is absent, he may designate an alternate from the panel of alternates to act in his place. If he fails to make such designation or if he is disqualified, the chairman of the board shall designate an alternate from such panel, choosing alternates in rotation so that they

¹⁶⁷³After the public hearing concluded, the board deliberated the merits of the plaintiff's applications. The board then voted to deny both the appeal from the decisions of the zoning enforcement officer and the application for a variance from § 113B.5. From that decision, the plaintiff appealed to the Superior Court, which rendered judgment dismissing her appeal. In so doing, the court rejected the plaintiff's claim that the board acted illegally in allowing Myers, an unseated alternate, to participate in the public hearing and the board's deliberations. In addition, the court concluded that the board properly denied the variance application because the requisite hardship was lacking.⁴

On appeal to this court, the plaintiff challenges only the court's determination regarding Myers' participation in the public hearing and the board's deliberations. She does not challenge its determination that no unusual hardship existed to warrant a variance of the zoning regulations. Accordingly, we focus our attention on the propriety of Myers' involvement in the December 18, 2006 proceedings.

The record before us contains a transcript of the December 18, 2006 proceedings on the plaintiff's applications. It substantiates the court's finding that Myers was an alternate who, despite not being seated to act on the plaintiff's applications pursuant to § 8-5a, participated in both the public hearing and the subsequent deliberations of the board. During the public hearing, Myers asked more than a doz-

en questions, the majority ¹⁶⁷⁴of which were directed at the plaintiff's husband, Christopher Komondy, who offered testimony in support of the plaintiff's applications. Her participation in the board's subsequent deliberations on the plaintiff's variance application was even more extensive.⁵ The transcript of the deliberations thereon contains more than twenty separate statements by Myers.⁶ Myers posed various questions to the town's attorney and articulated her opinion on various aspects of the variance at issue during those deliberations. For example, Myers expressed her view that "we have a larger obligation to the greater good if you want to call it that. And if we decide to write and grant a variance where we put limitations in, first of all, without knowing what enforcement is, what is the good of having a limitation or making a law or saying this is what's going to happen if we don't know (a) if we can enforce it and (b) how we're going to enforce it. And who's going to be responsible for . . . checking all this out and monitoring this, and, you know, we've already had months of delays and people in the town waiting on this decision as well as the applicant. You know, this could drag out to have a life of its own and by the time we're even getting to the point of figuring out how to handle it, the building could be gone or could be up, could be not, God knows what could happen in any part of this process in two to three years. . . ."

On the issue of hardship, Myers questioned whether this is "a financial hardship or a hardship with [the] land." When

shall act as nearly equal a number of times as possible. If any alternate is not available in accordance with such rotation, such fact shall be recorded in the minutes of the meeting."

4. In its August 17, 2009 memorandum of decision, the court also found that "[t]he mobile home remains on the property today, three and one half years later, without the construction of the new house."
5. The transcript indicates that Myers did not participate in the deliberations on the appeal from the decisions of the zoning enforcement officer.
6. In addition, the transcript is punctuated by numerous statements for which the identity of the speaker is referred to as "unknown."

Gioco and Miller discussed potential conditions related to the timing of the reconstruction on the property, Myers opined that “it was a chronological argument, very well said, and, I mean, you could argue either way, but that is not necessarily a solid grounding for a hardship.” She concluded that statement by noting that “[y]ou can’t talk yourself into a hardship, either it is a hardship or it isn’t.” Similarly, when another board member raised the possibility of attaching a condition to the variance that would limit the use of a mobile home on the property “by time,” Myers stated that “then it’s two months back, three months later, where do you just cut it off and stop the bleeding, I mean, when are you, obviously, we are all sympathetic, but you know what I mean. You let them go for two years and then they guarantee that they got three more months and then you’re going to say, well, sorry, and then in three more months it’s like, you know, the world fell apart, and it’s going to take three or four more months. That’s the problem with this . . . as much as we want to do this, that’s the problem with this, how, where does it end; it ends when they’re done, not when we decide to grant a variance.” Near the end of the board’s deliberations, Gioco, the board’s chairman, opined that “really this . . . should have been handled by [the] planning and zoning [commission] because it is not clear . . . Maybe we should give them the chance to fix it as opposed to us.” In response, Myers stated that “if we really have gone through this whole process and decided that we shouldn’t be hearing this and then we shouldn’t have accepted the application . . . We have heard it, it is on the books . . . I think *we have to make a decision*. I mean, if the applicants or if we want to talk to [the planning and zoning commission] about modifying [§ 113B.5] . . . but I don’t think *we* can postpone *our decision* based on that . . .”

(Emphasis added.) Plainly, Myers was an active participant in the board’s deliberations on the variance application.

I

The plaintiff claims that Myers’ participation in the proceedings ran afoul of General Statutes § 8-5(a), rendering the board’s action on her applications illegal. She argues that the plain language of that statute forbids an alternate member from participating in either the public hearing or board deliberations on an application unless that alternate has been seated pursuant to § 8-5a. Her claim presents a question of statutory construction, over which our review is plenary. See *Buttermilk Farms, LLC v. Planning & Zoning Commission*, 292 Conn. 317, 328, 973 A.2d 64 (2009).

[1] “The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one rea-

sonable interpretation.” (Internal quotation marks omitted.) *Id.* In addition, “common sense must be used in statutory interpretation, and courts will assume that the legislature intended to accomplish a reasonable and rational result.” (Internal quotation marks omitted.) *Cannata v. Dept. of Environmental Protection*, 239 Conn. 124, 141, 680 A.2d 1329 (1996).

[2] We thus begin with the language of the statute. Section 8-5(a) provides in relevant part: “In each municipality having a zoning commission there shall be a zoning board of appeals consisting of five regular members and three alternate members, unless otherwise provided by special act. Such alternate members, also referred to as ‘the panel of alternates’, shall, when seated as herein provided, have all the powers and duties set forth in the general statutes relating to zoning boards of appeals and their members. . . .” General Statutes § 8-6(a) enumerates the “powers and duties” of a zoning board of appeals as follows: “(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions and special exemptions under section 8-2g upon which it is required to pass by the specific terms of the zoning bylaw, ordinance or regulation; and (3) to determine and vary the application of the zoning bylaws, ordinances or regulations. . . .”⁷

7. We note that General Statutes §§ 8-7, 8-7a, 8-7d and 8-11 also contain provisions pertaining to the activities of zoning boards of appeals. Those statutory provisions require, *inter alia*, the board to “state upon its records the reason for its decision”; General Statutes § 8-7; to ensure proper recordation of evidence submitted at public hearings; to publish notice of public hearings; to permit any person to “appear and be heard”; General

A

The first question we must ask in considering the aforementioned statutory language is whether it precludes the participation of an unseated alternate in the public hearing portion of a board’s proceedings. We conclude that it does not. While quite specific in other regards; see, e.g., General Statutes § 8-7 (requiring board to “state upon its records the reason for its decision”); General Statutes § 8-7a (requiring evidence to be taken by stenographer or recording device); General Statutes § 8-7d (a) (requiring that “[a]ll applications and maps and documents relating thereto shall be open for public inspection” and permitting any person to “appear and be heard” at public hearing); our General Statutes do not prescribe any protocols or duties regarding the *participation* of board members in the public hearing. See generally R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 20:1, p. 556 (“[t]he general procedures followed by most land use agencies are similar, and acceptable procedures have evolved by custom and experience rather than from statutory requirements”).

[3] This legislative silence on the issue of participation by board members in the public hearing is understandable. Whether it is an appeal from a decision of the zoning enforcement officer, a variance application or another matter specified by

Statutes § 8-7d (a); and further require the disqualification of any board member from “any matter in which he is directly or indirectly interested in a personal or financial sense.” General Statutes § 8-11. Because none of those statutes bears on the issue of board member participation in public hearings or board deliberations, we focus our inquiry on §§ 8-5(a) and 8-6(a), as have the parties to this appeal.

statute, the burden rests with the applicant to demonstrate its entitlement to the requested relief. See, e.g., *Cumberland Farms, Inc. v. Zoning Board of Appeals*, 74 Conn.App. 622, 630, 814 A.2d 396 (“the board properly exercised its discretion in upholding the decision of the zoning enforcement officer [because] the plaintiff had not satisfied its burden of establishing the validity of the proposed gasoline station use as a preexisting, nonconforming use”), cert. denied, 263 Conn. 901, 819 A.2d 836 (2003); *Pike v. Zoning Board of Appeals*, 31 Conn.App. 270, 274, 624 A.2d 909 (1993) (applicant bears burden of demonstrating existence of hardship). It thus is incumbent on an applicant to provide an evidentiary basis, whether through testimony, documentation or a combination thereof, in support of its plea for relief. Under Connecticut law, active participation by board members in a public hearing is not statutorily required. Rather, it is 1679entirely permissible, if nevertheless uncommon,⁸ for a board to passively observe the applicant’s presentation without asking questions or otherwise making inquiry as to the specifics of the application. We are aware of no authority to the contrary, nor has the plaintiff provided any.

The plaintiff argues that the word “hear,” as that term is used in the phrase to “hear and decide” contained in § 8-6(a)(1) and (2), connotes active participation in public hearings. We disagree.

8. One commentator has described the typical public hearing as follows: “The applicant must be allowed to present documentary evidence and speakers supporting the application to build a record. After the applicant’s presentation, the agency members may ask questions about the application and for input from the staff or consultants to the agency who are present. The chairman then generally asks if there are any other persons present who support the application. If so they are allowed to make or file statements in support of the proposal. . . . After that, opponents of

Rather, we read that term as one indicating that the zoning board of appeals is the proper forum for certain appeals and matters as specified therein. Put differently, the term expresses the board’s power to entertain such matters.

[4] Such expression is necessary because zoning boards of appeal are creatures of statute, as every Connecticut municipality having a zoning commission is required to have a zoning board of appeals. General Statutes § 8-5(a). They possess a limited authority, as circumscribed by statute, the scope of which cannot be enlarged or limited by either the board or the local zoning regulations. See *Langer v. Planning & Zoning Commission*, 163 Conn. 453, 458, 313 A.2d 44 (1972) (board’s powers “stem directly from the statute” and “are not subject 1680to restriction by provisions contained in the ordinance or amendments thereto”); *Bora v. Zoning Board of Appeals*, 161 Conn. 297, 302, 288 A.2d 89 (1972) (holding that board acted illegally by exceeding its power in granting variance); 2 P. Salkin, *American Law of Zoning* (5th Ed. 2010) § 13-27, p. 13-82 (zoning boards of appeal “are constrained by the limitations of the power granted to them by law”). As often is noted, “[s]ubject matter jurisdiction is the power of the court to *hear and determine* cases of the general class to which the proceedings in question belong. . . . The same principle applies to administrative agencies . . . in-

the application are allowed to make statements and presentations against it or to ask questions of the applicant and its representatives. After the opponents conclude their remarks and the agency members ask other questions, the applicant is usually given the opportunity to rebut the opposition and make concluding remarks. The chairman then declares the hearing closed or suspends it to another date so that additional evidence can be presented.” (Emphasis added.) 9 R. Fuller, *supra*, § 20:3, p. 558.

cluding zoning authorities.” (Citations omitted; emphasis added; internal quotation marks omitted.) *Lauer v. Zoning Commission*, 220 Conn. 455, 460, 600 A.2d 310 (1991); see also *Konover v. West Hartford*, 242 Conn. 727, 740–41, 699 A.2d 158 (1997) (no jurisdiction to act unless under precise circumstances and in manner particularly prescribed by enabling legislation); cf. *Mitchell Land Co. v. Planning & Zoning Board of Appeals*, 140 Conn. 527, 531, 102 A.2d 316 (1953) (explaining that “[p]rior to 1947, the statutes did not specifically refer to . . . special exceptions [which] the General Assembly [recently] empowered zoning boards of appeal ‘to hear and decide’”). By delineating precisely what matters properly may be acted upon by a zoning board of appeals, § 8–6(a) sets forth the confines within which zoning boards of appeals operate.

In addition, we note that § 8–6(a)(3) does not contain the particular language relied on by the plaintiff. If the plaintiff is correct in her contention that the term “hear,” as it is used in the phrase to “hear and decide,” constitutes active participation in public hearings, then its omission from § 8–6(a)(3) suggests that the legislature, in enacting this statute, sought to vest in board members the power to actively participate in public hearings on the matters set forth in § 8–6(a)(1) and § 8–6(a)(2) but not in hearings where a variance is sought. The legislature could not have intended such a bizarre result. See *S.I.S. Enterprises, Inc. v. Zoning Board of Appeals*, 33 Conn.App. 281, 286, 635 A.2d 835 (1993) (principles of statutory construction require court to construe statutes in manner that will not lead to absurd results). That § 8–6(a) concludes by providing that the board shall not be required “to hear any application for the same variance . . . for a period of six months after a decision by the board or by a court on an earlier such application” further indicates that the

term “hear” refers to the board’s power to entertain certain matters.

Common sense also persuades us that the legislature did not intend to preclude the participation of unseated alternate members in public hearings. The convening of a public hearing affords an opportunity for the applicant to demonstrate its entitlement to the requested relief and for other members of the community “to register their approval or disapproval and to state the reasons therefor.” *Couch v. Zoning Commission*, 141 Conn. 349, 357, 106 A.2d 173 (1954); see also *Clifford v. Planning & Zoning Commission*, 280 Conn. 434, 443, 908 A.2d 1049 (2006) (purpose of local zoning body in holding public hearing is to afford opportunity to interested parties to make views known and to enable board to be guided thereby). Thus, the aim of the public hearing is to obtain any and all information relevant to the inquiry on hand, so as to facilitate the rendering of an informed decision by the board. See *Loh v. Town Plan & Zoning Commission*, 161 Conn. 32, 42, 282 A.2d 894 (1971) (board members must be sufficiently acquainted with issues raised and arguments presented at public hearing “in order to exercise an informed judgment”); *Strain v. Mims*, 123 Conn. 275, 282, 193 A. 754 (1937) (“[t]he purpose of the public hearing is, of course, to inform the members of the commission as to the reasons why the change should or should not be made”); T. Tondro, Connecticut Land Use Regulation (2d Ed.1992) p. 405 (“the purpose of the hearing is to provide the board with information to improve the quality of its decision”). In light of that central aim, we perceive no good reason why unseated alternate members should be relegated to bystander status during public hearings. Indeed, we cannot envision any prejudice to an applicant resulting from their participation, particularly in

light of the mandatory disqualification of any board member from “any matter in which he is directly or indirectly interested in a personal or financial sense.” General Statutes § 8–11.

We also are mindful of the fact that an alternate member who is not seated for a public hearing may well be called on to act in the place of a regular member in the board’s subsequent deliberations. It seems incongruous to vest in such an alternate the statutory power to decide the substantive matter before the board yet preclude that alternate from asking pertinent questions or otherwise commenting during the public hearing. Permitting that alternate to explore the merits of the application through participation in the public hearing contributes to the ultimate aim of an informed decision and assures that the applicant and other interested members of the community have the opportunity to address whatever concerns the alternate has regarding the application.

As a final matter, we note that a degree of deference generally is accorded to local land use agencies. See, e.g., *Fedorich v. Zoning Board of Appeals*, 178 Conn. 610, 614, 424 A.2d 289 (1979) (“because the local authority is closer to the circumstances and conditions which create the problem and shape its solution, zoning authorities are given wide discretion in determining public need and the means of meeting it”); *Couch v. Zoning Commission*, supra, 141 Conn. at 359, 106 A.2d 173 (“[t]he history of zoning legislation indicates a clear intent on the part of the General Assembly that, subject to certain underlying principles, the solution of zoning questions is for the local agencies”); *Megin v. Zoning Board of Appeals*, 106 Conn.App. 602, 607, 942 A.2d 511 (courts generally employ deferential standard of review to actions of zoning board), cert.

denied, 289 Conn. 901, 957 A.2d 871 (2008). It is plausible, if not probable, that the legislature’s silence on the issue of board member participation in public hearings simply reflects a willingness to let local agencies fashion their own protocols or duties related thereto.

In sum, a review of our General Statutes reveals that they do not address the issue of board member participation in the public hearing. Mindful that we must avoid a construction that fails to attain a rational and sensible result; see *S.I.S. Enterprises, Inc. v. Zoning Board of Appeals*, supra, 33 Conn.App. 281, 635 A.2d 835; we reject the plaintiff’s interpretation of § 8–5(a). Because participation in the public hearing is neither a power nor duty set forth in the General Statutes relating to zoning boards of appeal and their members, we cannot accept the plaintiff’s contention that Myers’ participation in the December 18, 2006 public hearing contravened the plain language of § 8–5(a).

B

[5] We next turn our attention to whether the statutory language at issue precludes the participation of an unseated alternate in the board’s deliberations. We answer that query in the affirmative.

Section 8–6(a) vests the board with the power to “decide” certain matters and to “determine and vary the application of the zoning bylaws, ordinances or regulations” The board accomplishes those tasks by engaging in deliberations following the close of the public hearing. See, e.g., *Hescock v. Zoning Board of Appeals*, 112 Conn.App. 239, 246–47, 962 A.2d 177 (2009) (reviewing portions of transcript of both “the public hearing” and “the board’s decision-making process”).

One judge who considered the question before us analogized the unseated alter-

nate board member to an alternate juror. See *Weiner v. Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-94-0066607, 1995 WL 320015 (May 23, 1995) (*Pickett, J.*) (14 Conn. L. Rptr. 245). The comparison is apt. To deliberate is to “weigh, ponder, discuss, regard upon, consider . . . to weigh in the mind; to consider the reasons for and against.” (Internal quotation marks omitted.) *State v. Washington*, 182 Conn. 419, 428, 438 A.2d 1144 (1980). Just as deliberation is “the process by which a jury reaches a verdict, as by analyzing, discussing, and weighing the evidence”; Black’s Law Dictionary (9th Ed. 2009) p. 492; the act of deliberating is the process by which the board reaches its decision.⁹

For good reason, the General Assembly has seen fit to require alternate jurors in civil and criminal cases alike to “be segregated from the regular panel . . . when the case is given to the regular panel for deliberation . . .” General Statutes §§ 51-243(e) and 54-82h¹⁶⁸⁵(c). “[T]he primary if not exclusive purpose of jury privacy and secrecy is to protect the jury’s deliberations from improper influence.” *United States v. Olano*, 507 U.S. 725, 737-38, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993); see also *Turk v. Silberstein*, 48 Conn.App. 223, 224 n. 1, 709 A.2d 578 (1998) (“[t]he risks involved in allowing an alternate to sit in during deliberations are obvious”). Partic-

ipation by an unseated alternate tarnishes the jury’s deliberations. See *State v. Murray*, 254 Conn. 472, 495, 757 A.2d 578 (2000) (en banc) (jury deliberations tarnished when jurors come into contact with outside influences). Similarly, the participation of an unseated alternate tarnishes the deliberations of a zoning board of appeals, as it permits one not authorized to vote on the matter before the board to nevertheless pass on the merits thereof. See *Clifford Development Corp. v. Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-95-0068705, 1996 WL 289159 (May 17, 1996) (“[a]n alternate member of the agency who is not needed for the vote should not participate in the deliberations”); 9 R. Fuller, supra, § 21:4, p. 606 (same). The unseated alternate’s participation, whether by design or inadvertence, injects an improper influence into the board’s decision-making process.

[6, 7] That the board’s decision-making process includes its deliberations is evidenced by the linguistic distinction contained in the plain language of §§ 8-5(a) and 8-6(a). Section 8-5(a) provides in relevant part that “[t]he board shall keep minutes of its proceedings showing the vote of each member and each alternate member when seated upon each question . . .” (Emphasis added.) By contrast, § 8-6(a), in enumerating the powers and

9. We emphasize that the analogy to alternate jurors pertains to the sanctity of the decision-making process and do not suggest that the proceedings of a zoning board of appeals otherwise are comparable to the work of a jury in judicial proceedings. Plainly, local land use proceedings are informal and transpire without regard to strict rules of evidence; see *Megin v. Zoning Board of Appeals*, supra, 106 Conn.App. at 608, 942 A.2d 511; due in large measure to the fact that such proceedings are conducted by boards “comprised of citizens from all walks of life, serving their communities on a voluntary basis . . . who may not

always express themselves with the nicety of a Philadelphia lawyer.” (Internal quotation marks omitted.) *Anatra v. Zoning Board of Appeals*, 127 Conn.App. 125, 145, 14 A.3d 386 (2011) (*Gruendel, J.*, concurring). Similarly, our Supreme Court has explained that the procedural right involved in such administrative proceedings properly is described as a right to fundamental fairness, as distinguished from the due process rights implicated in judicial proceedings. *Grimes v. Conservation Commission*, 243 Conn. 266, 273 n. 11, 703 A.2d 101 (1997).

duties of the zoning board of appeals, states that it is authorized to “decide” and to “determine” the specified matters. It is well established that, in construing statutory language, “[n]o part of a legislative enactment is to be treated as insignificant or unnecessary,¹⁶⁸⁶ and there is a presumption of purpose behind every sentence, clause or phrase . . . and no word in a statute is to be treated as superfluous.” (Internal quotation marks omitted.) *State v. Anderson*, 227 Conn. 518, 528, 631 A.2d 1149 (1993); see also *Vibert v. Board of Education*, 260 Conn. 167, 176, 793 A.2d 1076 (2002) (every word in statute presumed to have meaning). Our interpretation thus must give meaning to that distinction. Had the legislature intended to permit the participation of unseated alternates in the board’s deliberations on an application but to preclude their involvement in the vote thereon, it simply could have used the term “vote” in § 8-6(a), as it did in § 8-5(a). That the legislature instead utilized “decide” and “determine” to describe the powers and duties of the board indicates that the board’s power in this regard includes something other than simply voting on a particular matter. Our objective in construing statutory language is to give effect to the apparent intent of the legislature. *Buttermilk Farms, LLC v. Planning & Zoning Commission*, supra, 292 Conn. at 328, 973 A.2d 64. We conclude that the apparent intent of the legislature was to include the deliberations of a zoning board of appeals among the powers and duties set forth in § 8-6(a).

Because under § 8-5(a) only alternate members seated pursuant to § 8-5a possess the powers and duties set forth in § 8-6(a), § 8-5(a) precludes the participation of an unseated alternate in board deliberations following the close of the public hearing. We therefore agree with the plaintiff that Myers improperly partici-

pated in the deliberations on the variance application.

II

[8] That conclusion does not end our inquiry. We also must determine whether that impropriety mandates a reversal of the judgment of the Superior Court dismissing the plaintiff’s appeal.

1687A

At the outset, we note that the court employed, in essence, a harmlessness test in evaluating Myers’ conduct. It determined that although Myers “was an alternate that was not seated,” her participation in the board’s deliberations did not have a profound effect on the voting members. Three other Superior Court judges have employed a similar test. See *Optiwind v. Planning & Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. CV-08-4007819-S, 2010 WL 4070580 (September 15, 2010) (*Roche, J.*) (limited participation of unseated alternate “did not have a profound effect on the deliberations”); *Winston v. Zoning Board of Appeals*, Superior Court, judicial district of Litchfield, Docket No. CV-04-0092297-S, 2005 WL 375016 (January 6, 2005) (*Bozzuto, J.*) (“[t]he record is devoid of any evidence that the alternate . . . had any sort of ‘profound’ [e]ffect upon the voting members”); *Weiner v. Zoning Commission*, supra, 14 Conn. L. Rptr. at 246 (concluding that unseated alternate “had a profound effect upon the deliberation”).

The “profound effect” test adopted in those cases is akin to the standard utilized in *Murach v. Planning & Zoning Commission*, 196 Conn. 192, 491 A.2d 1058 (1985), in which a salaried member of the local fire department who statutorily was proscribed from membership on the local planning and zoning commission participated in the approval of a zone reclassifi-

cation. *Id.*, at 200, 491 A.2d 1058. In considering “the legal effect” of his participation; *id.*; our Supreme Court explained that “we have not always adhered to a per se rule of invalidation when a member of a board or commission had a conflict of interest that should have counseled disqualification in a matter upon which the member should not have participated.” *Id.*, at 202, 491 A.2d 1058. Instead, the court indicated that the burden rested with the appellant property owner “to show that [the improper member’s] disqualification ¹⁶⁸⁸tainted the entire proceeding . . .” *Id.*, at 204, 491 A.2d 1058; see also *Grimes v. Conservation Commission*, 243 Conn. 266, 278, 703 A.2d 101 (1997) (“the burden is on the plaintiff to show that the commission acted improperly”). The court continued: “[N]ot all procedural irregularities require a reviewing court to set aside an administrative decision; *material prejudice* to the complaining party must be shown.” (Emphasis added; internal quotation marks omitted.) *Murach v. Planning & Zoning Commission*, *supra*, at 205, 491 A.2d 1058; accord *Anziano v. Board of Police Commissioners*, 229 Conn. 703, 713, 643 A.2d 865 (1994) (“a demonstration of procedural irregularities would not require us to set aside the board’s decision in the absence of a showing of material prejudice”); *Owens v. New Britain General Hospital*, 32 Conn.App. 56, 69 n. 5, 627 A.2d 1373 (1993) (“[a]n administrative proceeding is not ‘tainted’ by procedural irregularities unless substantial rights of the parties have been prejudiced”), *aff’d*, 229 Conn. 592, 643 A.2d 233 (1994). Because the disqualified member’s “role in this matter was minimal” and “he made no attempt to influence or sway the other members of

the commission”; (internal quotation marks omitted) *Murach v. Planning & Zoning Commission*, *supra*, at 204, 491 A.2d 1058; the court concluded that the appellants failed to demonstrate any resulting prejudice. *Id.*, at 206, 491 A.2d 1058.

A similar standard is employed in the context of juror misconduct. In evaluating the intrusion of an alternate into a jury’s deliberations, our Supreme Court has noted that “prejudice will . . . be presumed [where] an alternate juror actually participated in jury deliberations.” *State v. West*, 274 Conn. 605, 651, 877 A.2d 787, cert. denied, 546 U.S. 1049, 126 S.Ct. 775, 163 L.Ed.2d 601 (2005), citing *United States v. Olano*, *supra*, 507 U.S. at 739–41, 113 S.Ct. 1770. At the same time, that presumption may be rebutted by evidence that no harm resulted from the participation of the alternate. *State v. West*, *supra*, at 650–51, 877 A.2d 787.

[9] ¹⁶⁸⁹In our view, the proper measure to evaluate the participation of an unseated alternate in a board’s deliberations is an inquiry into whether the participation resulted in material prejudice to the applicant.¹⁰ See *Murach v. Planning & Zoning Commission*, *supra*, 196 Conn. at 205, 491 A.2d 1058. Among the factors relevant to that inquiry is a determination of whether the participation impacted the board’s decision-making process. See *Weiner v. Zoning Commission*, *supra*, 14 Conn. L. Rptr. at 246 (concluding that unseated alternate “had a profound effect upon the deliberation”). Also relevant is the frequency and severity of the unseated alternate’s participation. Cf. *State v. Stevenson*, 269 Conn. 563, 573, 849 A.2d 626

10. In light of our conclusion in part I B of this opinion, we emphasize that the participation of an unseated alternate in the board’s deliberations is not to be condoned. Even if that participation ultimately is deemed harm-

less, it nevertheless raises the specter of impropriety. For that reason, the prudent course is to prohibit such participation in all instances.

(2004) (evaluation of claims of prosecutorial impropriety includes inquiry as to frequency and severity of misconduct); *State v. Joyner*, 225 Conn. 450, 473, 625 A.2d 791 (1993) (prosecutor's single questionable statement will not, in all probability, impair effectiveness or integrity of defendant's trial); *State v. Orellana*, 89 Conn. App. 71, 105, 872 A.2d 506 (isolated misstatement not prosecutorial impropriety), cert. denied, 274 Conn. 910, 876 A.2d 1202 (2005). Though not dispositive, a finding that the alternate's participation was minimal militates against a finding of material prejudice. *Murach v. Planning & Zoning Commission*, supra, at 204, 491 A.2d 1058; see also *Optiwind v. Planning & Zoning Commission*, supra, Superior Court, Docket No. CV-08-4007819-S (unseated alternate's "limited participation" consisted of "two short statements"); *Winston v. Zoning Board of Appeals*, supra, Superior Court, Docket No. CV-04-0092297-S (unseated alternate made only one comment during deliberations that was consistent with sentiments of other members). In addition, apart from the persuasiveness of the unseated alternate's participation is the question of whether that alternate attempted "to influence or sway the other members" of the board. (Internal quotation marks omitted.) *Murach v. Planning & Zoning Commission*, supra, at 204, 491 A.2d 1058. The aforementioned factors are not exclusive, but rather are cornerstones of an inquiry into whether an unseated alternate's participation in the board's deliberations resulted in material prejudice.

B

[10] Having clarified that standard, the present case nevertheless does not require its application. The record indicates that Myers participated only in the deliberations on the plaintiff's variance request. Although that participation was improper, it remains that the court determined that

no unusual hardship existed to warrant a variance from § 113B.5 of the regulations. "Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance." *Bloom v. Zoning Board of Appeals*, 233 Conn. 198, 207-208, 658 A.2d 559 (1995); see also *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 143, 215 A.2d 104 (1965) ("[t]he hardship requirement is a fundamental one in zoning law"). The plaintiff has not challenged the court's determination that the requisite hardship was lacking. "This court does not presume error on the part of the trial court; error must be demonstrated by an appellant. . . ." *State v. Tocco*, 120 Conn.App. 768, 781 n. 5, 993 A.2d 989, cert. denied, 297 Conn. 917, 996 A.2d 279 (2010). Thus, irrespective of the impropriety of Myers' participation in the board's deliberations, we must conclude that the court properly dismissed the plaintiff's appeal.

The judgment is affirmed.

In this opinion the other judges concurred.



127 Conn.App. 801

Richard KOSLIK

v.

COMMISSIONER OF CORRECTION.

No. 31232.

Appellate Court of Connecticut.

Argued Feb. 4, 2011.

Decided April 12, 2011.

Background: After affirmance, 80 Conn. App. 746, 837 A.2d 813, of his convictions



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Simsbury High School Roof Replacement Project
2. **Date of Board Meeting:** June 10, 2019
3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager; Burke LaClair, Business Manager, Simsbury Public Schools
Maria E. Capriola
4. **Action Requested of the Board of Selectmen:**
Action of the Board of Selectmen is required to authorize the Board of Education to apply for a Connecticut school construction grant for the partial roof replacement project at Simsbury High School. Additionally, a referral of the project to the Public Building Committee and authorization of preparation of schematic drawings and specifications must be made.

The following three resolutions must be read into the record.

- a. **"RESOLVED** that the Board of Selectmen authorizes the Town of Simsbury Board of Education to apply to the Commissioner of Education and to accept or reject a grant for the Simsbury High School Partial Roof Replacement Project."
 - b. **"RESOLVED** that the Board of Selectmen hereby establishes the permanent Public Building Committee as the building committee to the proposed Simsbury High School Partial Roof Replacement Project."
 - c. **"RESOLVED** that the Board of Selectmen authorizes the preparation of schematic drawings and outline specifications for the proposed Simsbury High School Partial Roof Replacement Project."
5. **Summary of Submission:**
The Simsbury High School Roof Replacement Project was included in year one of the Town's Capital Improvement Program for 2019-24, at an estimated cost of \$2,600,000 and an estimated state reimbursement of \$780,000. On May 14, 2019 the voters approved the project funding at referendum.

The next step is for the Board of Education to apply to the Office of School Construction Grants & Review. The resolutions above are required by the state as part of the grant process.

Once the project is referred to the Public Building Committee, an architect's agreement needs to be finalized and the project needs to be designed. These items would be reviewed with the state in anticipation of going out to public bid. The construction period is estimated to start in the spring of 2020 and be completed over that summer.

6. Financial Impact:

At the May 14, 2019 referendum, voters approved a capital project to "appropriate \$2,600,000 for partial roof replacement at Simsbury High School; and authorize bonds and notes in the same amount to finance said appropriation." This grant would make the project eligible for partial reimbursement from the Connecticut Office of School Construction Grants and Review.

7. Description of Documents Included with Submission:

- a) Project Summary
- b) May 14, 2019 Referendum Results

Simsbury High School Partial Roof

\$2,600,000

- 105,645 SF of 2-ply modified roof reached 20 years old in 2018
- Cost estimate is based on new EPDM roof at \$22/SF
- Eligible for Partial Reimbursement from Connecticut Office of School Construction Grants and Review
- Grant application would be filed in June 2019 with construction in Summer 2020

Town of Simsbury
933 Hopmeadow Street, Simsbury, Connecticut

HEAD MODERATOR'S RETURN
Municipal Referendum held on May 14, 2019

Henry James Memorial School
155 Firetown Road, Simsbury, Connecticut



Part I - Questions on Ballot

Question Number	Designation of Questions (from ballot label)	Yes Votes	No Votes
1.	"Shall the appropriation recommended and approved by the Board of Finance for the purposes of paying the expenses of the Board of Selectmen annual budget for the fiscal year ending June 30, 2020, be approved and implemented in the amount of \$23,970,138?"	636	387
2.	"Shall the appropriation recommended and approved by the Board of Finance for the purposes of paying the expenses of the Board of Education annual budget for the fiscal year ending June 30, 2020, be approved and implemented in the amount of \$70,880,978?"	696	331
3.	"Shall the appropriation recommended and approved by the Board of Finance for the purposes of paying the expenses of Sewer Use Fund (Sewer Treatment Plant), Residential Rental Properties, Simsbury Farms/Special Programs, Non-Public Schools, Debt Retirement / Capital and Capital Non-Recurring annual budgets for the fiscal year ending June 30, 2020, be approved and implemented in the amount of \$12,242,717?"	736	290
4.	"Shall the Town of Simsbury appropriate \$2,600,000 for partial roof replacement at Simsbury High School; and authorize bonds and notes in the same amount to finance said appropriation?"	806	220

Part II - Official Check List Report

A. Total number of names on official check list (Include only the active registry list and names restored to it on referendum day):

17929

B. Total number of names checked as having voted, by machine and by absentee ballot (as counted on official check list):

1024

C. Total number of names of Property Owners checked as having voted:

3

D. Total number of voters checked as having voted:

1027

I hereby certify that the foregoing are the returns of the municipal referendum in the above-named municipality, legally warned and held on May 14, 2019.

SIGN HERE: X Mary Ellen Long Head Moderator
Mary Ellen Long

DATE: May 14, 2019

Head Moderator's Telephone Numbers: (800) 658-3267 (Home) (800) 658-3267 (Work/Cell)



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of Submission:** Resignation of Brian Doonan from the Simsbury Housing Authority

2. **Date of Board Meeting:** June 10, 2019

3. **Individual or Entity Making the Submission:**
Maria E. Capriola, Town Manager; Ericka L. Butler, Town Clerk
Maria E. Capriola

4. **Action Requested of the Board of Selectmen:**

The following motion is in order:

Move, effective June 10, 2019, to accept the resignation of Brian Doonan (D) as a regular member of the Simsbury Housing Authority retroactive to May 28, 2019.

5. **Summary of Submission:**

The Town Clerk has received the resignation of Brian Doonan as a regular member of the Simsbury Housing Authority. Mr. Doonan's replacement will fill a term with an expiration date of April 1, 2024.

6. **Financial Impact:**

None

7. **Description of Documents Included with Submission:**

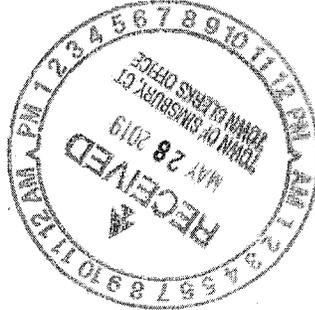
a) Copy of Brian Doonan's Resignation Letter, dated May 28, 2019

Erika,

My MassMutual job responsibilities and location have changed and I will no longer be available to participate in the Simsbury Housing Authority meetings. Effective immediately I resign from my position as Vice Chairman and Commissioner. Thank you for the opportunity and I wish you all the best in the future.

Regards,

Brian Doonan



CALL TO ORDER

The Regular Meeting of the Board of Selectmen was called to order at 6:00 p.m. in the Main Meeting Room of the Simsbury Town Offices. Present were: First Selectman Eric Wellman; Board members Michael Paine, Sean Askham, Cheryl Cook and Chris Peterson. Absent was Christopher Kelly. Others in attendance included: Town Manager Maria Capriola; Deputy Town Manager Melissa Appleby; Culture, Parks and Recreation Director Tom Tyburski; Director of Planning Mike Glidden; Town Engineer Jeff Shea; Finance Director/Treasurer Amy Meriwether; Tax Collector Colleen O’Connor; Chair of Aging & Disability Commission Ed LaMontagne; and other interested parties.

PLEDGE OF ALLEGIANCE

Everyone stood for the Pledge of Allegiance.

PUBLIC HEARING

a) Neighborhood Assistance Act Program Proposals

Mr. Wellman said the Public Hearing is to hear comments on the Neighborhood Assistance Act Program Proposals, which provides tax credits to tax exempt organizations that qualify for community programs, such as energy conservation projects, neighborhood assistance, and crime prevention.

Scott Riley, from the Simsbury Grange, said this is the third year they applied for this grant. They are looking to do some energy improvements on the building. There is no cost to the Town as the State has set aside a block of money that goes to the organizations that apply for the grants.

Mr. LaMontagne, Executive Director of the Simsbury Housing Authority, spoke about the 20 year capital plan for the Virginia Connolly and Owen Murphy properties. They would use this money to replace 35 apartment doors. This grant would cover 50% of what is needed.

With no further public comment, Ms. Cook made a motion to close the Public Hearing at 6:05 p.m. Mr. Askham seconded the motion. All were in favor and the motion passed.

PUBLIC AUDIENCE

Joan Coe, 26 Whitcomb Drive, said she is very disappointed that only 6% of residents participated in the budget referendum. She spoke about the budget, tax abatements, the accomplishments of the Town Manager, buildings for sale in Town, school management plans, volunteer ambulance issues, and other issues.

Joe Treacy, 40 Berkshire Way, spoke about the solar farm project. He has concerns about the elimination of trees and buffering issues. He also has concerns about the soil management plans and monitoring for water quality.

Steve Sutton, 45 Berkshire Oval, said he appreciated Mr. Wellman going to look at the solar farm land. He is also concerned about buffering and the characteristic changes to the land.

PRESENTATIONS

a) Proclamation – National Gun Violence Prevention Day

Mr. Wellman said there were some members of Mothers Demand Action here at this meeting. Mr. Wellman read the Proclamation and said there will be an orange light at Eno Memorial Hall the first week in June.

Dr. Meredith Barrows gave some background on this National Gun Violence Prevention Day. She said 100 people die each day from gunshot wounds and gunshots are the second leading cause of death in children in the U.S. She said Connecticut does have good gun safety laws. She does respect hunting and having guns in your house. Safely storing guns does decrease gun violence.

b) Deepwater Wind Update

Mr. Glidden and Mr. Shea gave an update on the solar project. Mr. Glidden said the development and management plans were approved by the CT Siting Council on March 28, 2019. Mr. Glidden said DESRI purchased the project from Deep Water Wind and purchased the properties from Griffin Land. He went through key highlights such as traffic management, well testing, storm water management, erosion controls, soil protection, etc.

Mr. Glidden said the estimated project completion date is October 15, 2019.

Mr. Glidden said anyone who has questions can contact Aaron Svedlow at Tobacco Valley Solar. Mr. Wellman said if there are questions, anyone on the Board would be able to discuss the issues.

FIRST SELECTMAN’S REPORT

First Selectman, Wellman, reviewed his First Selectman’s report.

TOWN MANAGER’S REPORT

Town Manager, Capriola, reviewed her Town Manager’s report.

SELECTMEN ACTION

a) Handicapped Parking Awareness Month

Mr. LaMontagne said the mission of the Aging & Disability Commission is to educate people on topics relative to seniors and the disabled. Once again they are trying to inform everyone of parking illegally in handicapped parking areas. People are not supposed to be parking in the cross hatches either. They also work closely with the Simsbury Police Department.

Ms. Cook made a motion, effective May 29, 2019, to designate June of 2019 as Handicapped Parking Awareness Month in the Town of Simsbury. Mr. Paine seconded the motion. All were in favor and the motion passed.

b) Neighborhood Assistance Act Program Proposals

Mr. Wellman said there was a Public Hearing earlier tonight on two Neighborhood Assistance Act Program Proposals. One is for the Simsbury Grange and the other one is for the Housing Authority.

Ms. Cook made a motion, effective May 29 2019, to approve the Neighborhood Assistance Act Program applications as presented and to designate Deputy Town Manager, Melissa A. J. Appleby as the municipal liaison. Mr. Askham seconded the motion. All were in favor and the motion passed.

c) Public Gathering Permit – 2019 Simsbury High School Graduation

Ms. Cook made a motion, effective May 29, 2019, to approve the public gathering application for the Simsbury High School Graduation Ceremony for the Class of 2091 at the Simsbury Meadows on Friday, June 14, 2019 as presented and to authorize the issuance of the public gathering permit. Mr. Peterson seconded the motion. All were in favor and the motion passed.

d) Public Gathering Permit – 2019 Farmington Valley Jewish Congregational Sabbath Worship

Mr. Wellman said Schultz Park is a beautiful park right next to Town Hall.

Mr. Paine made a motion, effective May 29, 2019, to approve the public gathering application for the Farmington Valley Jewish Congregation Sabbath Worship at Schultz Park on Friday, June 28, 2019 as presented and to authorize the issuance of the public gathering permit. Mr. Askham seconded the motion. All were in favor and the motion passed.

e) Proposed Easement – 87 Riverside Road

Mr. Wellman said the Board discussed this easement at their last meeting. The Town currently maintains a small piece of the property along Riverside Road next to the Flower Bridge. This easement will help formalize this practice.

Ms. Capriola said if the property ever changes ownership this piece will remain with the property. We will keep maintaining this area. The homeowner did request replacing a small area of the fencing for security purposes. This would be a nominal cost and will come out of the Parks and Recreation budget.

Ms. Cook made a motion, effective May 29, 2019, to approve the recreational area easement for the parcel at 87 Riverside Road as presented and to authorize Town Manager Maria E. Capriola to execute the easement documents. Mr. Paine seconded the motion. All were in favor and the motion passed.

f) Naming of 1 Old Bridge Road Park

Mr. Wellman recused himself and asked Mr. Peterson to take over on this item.

Mr. Askham made a motion, effective May 29, 2019, to establish the 1 Old Bridge Road Park Naming Rights Committee. The Committee is tasked with reviewing suggested names for the park and with recommending a name for the new park to the Board of Selectmen. Further move to appoint the following people to the 1 Old Bridge Road Park Naming Rights Committee:

Chris Peterson, Board of Selectmen liaison to Culture, Parks and Recreation

Sharene Wassell, representing the Old Drake Hill Flower Bridge Executive Committee and Rachel Wellman, representing the Culture, Parks and Recreation Commission
Ms. Cook seconded the motion. All were in favor and the motion passed.

Mr. Wellman rejoined the meeting.

g) Budget Status Report

Ms. Meriwether went through the quarterly budget status report. She said, as of March 31, 2019, revenues total \$93,574,253 or 97% of the budget. Expenditures total \$72,317,435 or 75% of the budget.

She said the State recently released finalized ECS entitlements. Simsbury’s 2018/19 entitlement is reported at \$6,028,199, which exceeds budgetary estimates by \$626,094.

The building permit revenue is not reflected in this report. The Deepwater Wind project brought in approximately 613,000 in permit fees.

Ms. Meriwether said she still doesn’t know what State money is going to be coming to Simsbury for FY20. Ms. Capriola said she has been advised that it should be \$7,000 to the good, from the projected that was budgeted, but there is no final number.

There was some discussion on Culture, Parks and Recreation and the new minimum wage law.

There is no action needed at this time.

h) Fiscal Year 2019/2020 Fund Balance Appropriation

Mr. Wellman said the Board of Finance voted to utilize \$420,000 of fund balance reserves in FY 2019/2020 to create mill rate relief for the FY2019/2020 adopted budget. The mill rate of 37.32 mills for the FY2019/2020 was set.

After some discussion, Mr. Askham made a motion to table discussion and possible action on the Fiscal Year 2019/2020 Fund Balance Appropriation. Mr. Paine seconded the motion. All were in favor and the motion passed.

APPOINTMENTS AND RESIGNATIONS

a) Resignation of Steve Spalla from the Culture, Parks & Recreation Commission

Ms. Cook made a motion, effective May 29, 2019, to accept the resignation of Steve Spalla (D) as a regular member of the Culture, Parks & Recreation Commission retroactive to March 25, 2019, with our thanks. Mr. Askham seconded the motion. All were in favor and the motion passed.

REVIEW OF MINUTES

a) Special Meeting of May 10, 2019

There were no changes to the Special Meeting Minutes of May 10, 2019, and, therefore, the minutes were adopted.

b) Regular Meeting Minutes of May 13, 2019

There were no changes to the Regular Meeting Minutes of May 13, 2019, and, therefore, the minutes were adopted.

SELECTMEN LIAISON AND SUB-COMMITTEE REPORTS

- a) **Personnel** – there was no report at this time.
- b) **Finance** - there was no report at this time.
- c) **Welfare** – there was no report at this time.
- d) **Public Safety** – there was no report at this time.
- e) **Board of Education** – there was no report at this time.

Ms. Cook encourages volunteers to reach out and join the 350th Anniversary Committee. She also said everyone is invited to join their open meetings.

Mr. Peterson said the Friends of Simsbury Farms will be holding their golf tournament on Friday June 21, 2019. This tournament will include raffles and donations are needed. For more information people can google Friends of Simsbury Farms.

EXECUTIVE SESSION

a) Pursuant to CGS §1-200(6)(E), discussion of correspondence exempt from disclosure: Attorney – Client Privilege (Upcoming Tax Sale)

Mr. Askham made a motion to adjourn to Executive Session pursuant to CGS §1-200(6)(E), discussion of correspondence exempt from disclosure: Attorney Client Privilege (Upcoming Tax Sale) and to include Town Manager Maria E. Capriola, Deputy Town Manager Melissa Appleby, Tax Collector Colleen O’Connor, and Attorney Bob DeCrescenzo at 7:18 p.m. Ms. Cook seconded the motion. All were in favor and the motion passed.

ADJOURN

Mr. Askham made a motion to adjourn from Executive Session. Mr. Wellman seconded the motion and it passed unanimously. Executive Session adjourned at 8:00 pm.

Mr. Askham made a motion to adjourn the meeting. Mr. Wellman seconded the motion and it passed unanimously. The meeting adjourned at 8:00 pm.

Respectfully submitted,
Kathi Radocchio, Clerk



A Day in Simsbury

WITH PICTURE-PERFECT VISTAS AND TOP-SHELF DINING,
THIS FARMINGTON VALLEY TOWN IS PEAK ENJOYMENT

BY ERIK OFGANG

Halfway up Talcott Mountain I have a crisis of faith. I'm hoping to reach the mountain's ridge but the trail is steeper than I remember, and a once-brisk day is starting to feel hot. I have a lot of places to visit today and this hike is more tiring and taking longer than anticipated. I've been to the top before, I reason; I don't *have* to return. Reluctantly, I push through to the mountain's peak. I'm rewarded with a panoramic vista of the Connecticut countryside. It's picture-perfect enough to compete with the likes of New Hampshire and Vermont, and, minus a few modern dwellings and roads, unspoiled enough to stand in for a backdrop in Westeros (warning: more *Game of Thrones* references are coming). It is, in short, well worth a steep hike to get here, and one of many reasons Simsbury is a town worth visiting.

Incorporated as a Connecticut town way back in 1670, Simsbury remains a classic New England location with an abundance of farmland, bike trails, and natural beauty visible almost everywhere you look. At the same time, it is home to some of the state's most acclaimed restaurants. There's too much to see and do in Simsbury to fit it all in a single day, but I tried my hardest.

9 a.m. Bagels and bacon

Brookside Bagels is a family-run, breakfast-and-lunch spot that comes highly recommended. Located in a freestanding building off Hopmeadow Road, it has the feel of a coffee shop with wooden tables and some regulars set up with laptops. A bacon, egg and cheese on an everything bagel is a solid choice for breakfast, and the bagel itself live up to the hype: less doughy than too many bagel options this side of New York City, it is crisp and flavorful. The coffee is standard and, though it gets the job done, there are better alternatives in town.

10 a.m. Bridging the gap

Talk to anyone familiar with Simsbury and you are likely to be told to visit the "flower bridge." Officially the Old Drake Hill Flower Bridge, it is a metal-truss structure spanning the Farmington River that was originally built for vehicular traffic but was converted for pedestrian use in the 1990s. Each year local volunteers adorn it with a floral shop's worth of flowers. This morning in early spring, the bridge is sadly free of vegetation, but in the past I've

Above:
Heublein
Tower at
Talcott
Mountain
State
Park

**Next
page:** The
Old Drake
Hill Flower
Bridge

seen it in full bloom and it is a striking sight and good spot for Instagram selfies and wedding photos. It will close for most of this summer as construction on an adjacent park begins. The good news is this will ultimately make the bridge more enjoyable to visit, so mark it down as an attraction for 2020 and beyond.

11 a.m. Climb every (or at least this) mountain

Talcott Mountain State Park is worth a trip to Simsbury all on its own. The centerpiece of the park is Heublein Tower, a 165-foot-high, Bavarian-style tower with white walls and a pointed steeple that dominates the ridgeline and is visible from many areas in Simsbury. The current tower is the fourth built on the site and dates to 1914. It houses a museum that is open from Memorial Day weekend through Sept. 30. Even when the museum is closed, it is worth the 1¼-mile, 30-40 minute trek to the tower site. Much of the trail hugs the ridgeline, offering views along the way. On the trip, I didn't make it all the way to the tower, but as noted at the start of this story, I did make it to the ridge and took in that spectacular view. Looking carefully along Route 185, I'm able to spot the white branches of the Pinchot Sycamore, where I'm heading next.

1 p.m. Ancient trees and lunch with a ghost

It's easy to drive past the Pinchot Sycamore, one of Simsbury's most intriguing attractions, without realizing it. Off Route 185 not far from Talcott Mountain State Park, just before the Pinchot Sycamore Bridge, this sprawling sycamore is Connecticut's largest tree with a trunk measuring 28 feet in circumference, and

a 121-foot canopy. Nestled near the Farmington River, the amazing tree has a small park dedicated to it. It's not yet in bloom today, but even so, the 200-plus-year-old tree is amazing. Touching it, I feel dwarfed by its size. Its white and gray bark and sheer mammoth-ness are the closest thing I've ever seen to, yes, the weirwood trees from *Game of Thrones*.

Across the bridge from the tree is Abigail's Grill and Wine Bar. Opened in 1803 as Pettibone's Tavern, the building is more than 200 years old and is supposedly haunted by the ghost of Abigail Pettibone. According to one version of the legend, poor Abigail was axed to death by her whaling captain husband when he caught her in bed with another man. It's tales of this haunting that draw me to the current restaurant, which opened in 2008 after extensive renovations to the building. Sadly, there were no ghost sightings during my visit and the vibe was decidedly, if somewhat disappointingly, friendly, welcoming and non-spooky. But the upscale restaurant, with a nice bar and two-floor dining area, did offer a solid three-course prix fixe menu for \$16.95. Ghost of an adulterous whaler's wife sighting or not, that lunch deal is scary good.

2 p.m. Farm living

Part of what makes Simsbury such a picture-perfect town is its abundance of farmland. Tulmeadow Farm has been operated by members of the same family since 1768. "We are very determined and not very mobile," jokes Don Tuller, who owns the 265-acre farm with his cousin. Today the farm has a store that offers freshly grown vegetables. They have also served homemade ice cream since 1994, and the frozen treat has a 16 percent butterfat mix. A sample of the vanilla is creamy and delicious, as is the farm's

five facts about Simsbury

1 Simsbury's name either comes from the English town of Symondsbury or was inspired by prominent early resident Simon Wolcott. Because early records burned in a fire, we're not sure.

2 It is home to the Pinchot Sycamore, the largest tree in the state with a trunk that is 28 feet in circumference.

3 John Martin of Heublein Inc., whose family built Heublein Tower, helped popularize vodka in the U.S. and developed the Moscow Mule cocktail.

4 In 1944 and 1947, Martin Luther King Jr. spent the summer in Simsbury working for a shade tobacco company.

5 Many world-class figure skaters have trained at the International Skating Center of Simsbury, including Sasha Cohen and Oksana Baiul.



best-selling flavor: red raspberry with chocolate chip.

Adjoining Tulmeadow Farm is Flamig Farm, an entertainment- and education-oriented location offering hayrides and a petting zoo. Nevin Flamig owns and runs the farm with his wife, Julie, and their son, Pete. As Nevin takes me on a tour, I meet horses, ducks, peacocks, llamas, alpacas, emus and pigs. By tour's end I'm considering becoming a vegetarian and regret having bacon for breakfast.

4 p.m. Cigars and pastries

Downtown Simsbury consists of a scenic and sparsely developed stretch of historic buildings, shops and restaurants along Hopmeadow Street. The shopping center at 933 Hopmeadow St. has several gift stores that look intriguing, but I pass them by in favor of Torpedoes Smoke Shop. Owner Robert Hodge is behind the counter, which is where he says you'll find him seven days a week, 365 days a year. This cigar aficionado's shop is crammed with hundreds of cigars that on average go for between \$25 and \$30, with some selling for several hundred dollars. I opt for a \$12.50 cigar recommended by Hodge.

Nearby, the Popover Bistro and Bakery offers locally sourced and organic breakfast, lunch and pastries. I enjoy a chocolate chip cookie and a good coffee from a house blend provided by Giv Coffee in neighboring Canton.

5 p.m. Evening eating

When it comes to elite restaurants with celebrated chefs, Simsbury has an abundance of riches, or, should we say, calories. Present Company and Metro Bis were both highly recommended and I'll flip a coin to decide which one to visit on my next trip. Although I couldn't fit dinner into this most recent excursion, on past visits, I — along with everyone else who eats there — have been impressed with Millwrights. The flagship of chef Tyler Anderson's growing collection of restaurants, it is one of the most visually striking places to eat in the state. Housed in a historic space that traces its origins back to a 1600s grist and sawmill, Millwrights is in a red-wood building with a stone fence sitting beside a cascading waterfall on Hop Brook. Inside the dining room there are exposed wooden beams and wall-to-ceiling windows offering views of the brook. For food, Anderson combines New England traditions and ingredients with French culinary techniques to create an unforgettable experience. He's earned many accolades in this magazine and has been nominated for awards by the James Beard Foundation and is a veteran of Bravo's *Top Chef* and won Food Network's *Chopped*. To get the full experience, I recommend the seven-course tasting experience for \$80. ■



Real estate

Sandy Fine, a real estate agent with Berkshire Hathaway, says the quality of life is one of the main reasons buyers purchase homes in town. "Simsbury has the Rails to Trails bike path, a walkable town center, Simsbury Performing Arts Center, numerous restaurants, town and state parks," she says, adding that there are many popular recurring events.

For \$194,900:

A three-bedroom, two-bathroom 1,265-square-foot house on a 1.07-acre lot on Climax Road.

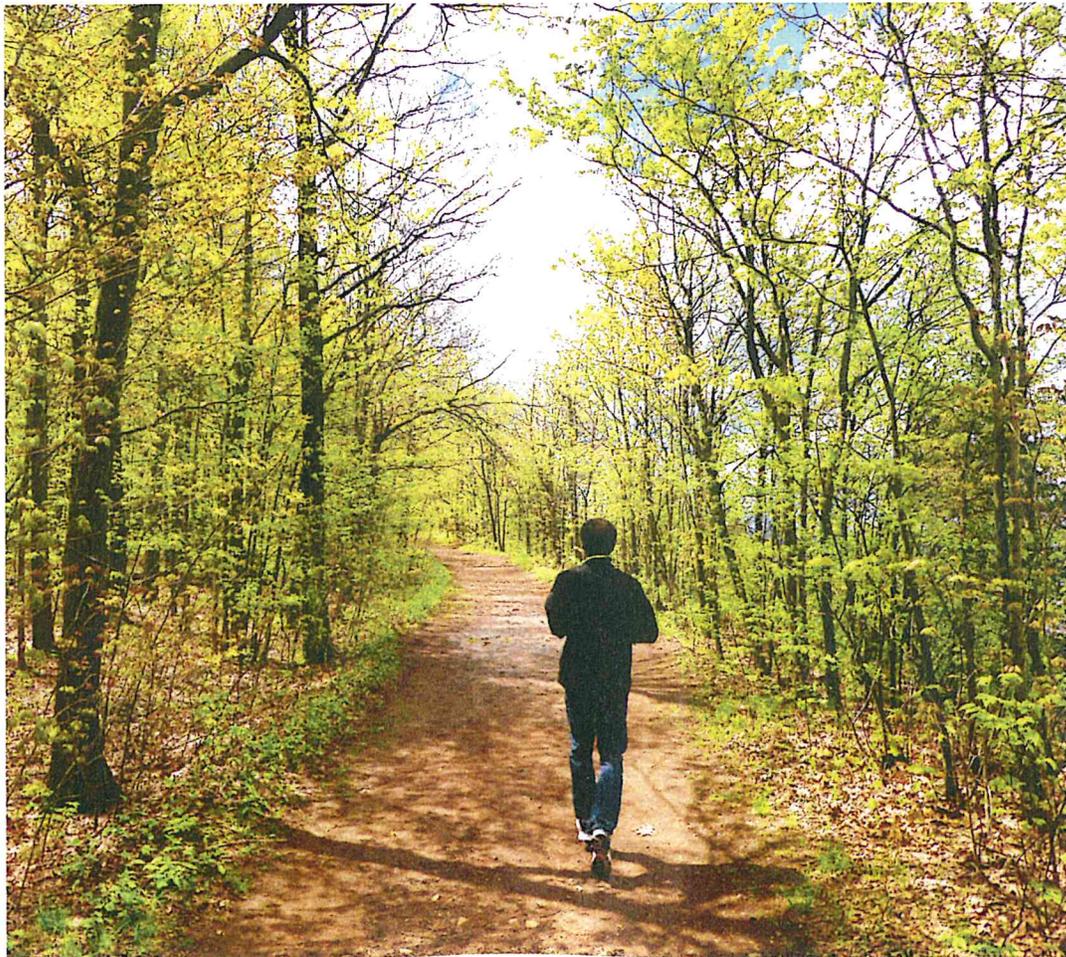
For \$379,900:

A four-bedroom, 2½-bath, 2,533-square-foot house on a 1.06-acre lot on Echo Lane.

For \$739,900:

An eight-bedroom, 7½-bath, 4,951-square-foot house on Sand Hill Road.

Mill rate: 37.12



Outdoor activities abound, including trail running in Talcott Mountain State Park.