



# Connecticut Association of Conservation and Inland Wetlands Commissions, Inc.

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## POSITION STATEMENT

### **Inland Wetlands and Watercourse Commissions: Separate Versus Combined with Planning and Zoning Commissions**

*CACIWC's mission is "To promote the statutory responsibilities of Connecticut Conservation Commissions and Inland Wetlands Commissions, and to foster environmental quality through education and through the conservation and protection of wetlands and other natural resources."*

**Therefore, it is CACIWC's position that a municipal commission or agency established to carry out the regulatory and administrative functions and responsibilities of Connecticut's Inland Wetlands and Watercourses Act should not be combined with a Planning, Zoning or Planning and Zoning Commission.**

### **BACKGROUND**

When the Inland Wetlands and Watercourses Act (Act) was passed in 1972 the resulting statutes required Connecticut towns to establish a commission or agency to carry out the intent of the Act. The statutes expressly allowed towns to appoint an existing land use board or establish a new commission to carry out the regulatory functions and responsibilities enabled by the Act. While most towns chose to establish new commissions, many (57 by 1993) chose to combine the responsibilities of the new Act with the responsibilities of the Conservation Commission. Only a few (5 or 6) towns made the Act's regulatory function a responsibility of the Planning and Zoning Commission.

### **POSITION**

CACIWC has long held a policy that even conservation and inland wetlands commissions should not be combined. In 2002 we published a position paper that encouraged combined wetlands and conservation commissions to separate. In the process we surveyed combined conservation and inland wetlands commissions and found that the combined commissions did not have the time to fulfill their statutory requirements as a conservation commission. In the last three years the trend has been to establish separate conservation and inland wetlands commissions.

In 2004 and 2005 CACIWC testified against legislative bills that would combine municipal land use commissions. More recently we have been working with residents and commissioners in four communities that believe the inland wetlands commission in their town should be separate from planning and zoning. We have also discussed this issue with land use attorneys. We have found that the issue of combined regulatory commissions revolves around several questions that, when answered, provide a rationale for our position.

## **RATIONALE**

### **Do combined commissions give adequate attention to each of their component functions?**

CACIWC's investigation of this question for combined conservation and inland wetlands functions indicates that they do not and cannot. The wetlands component function is time and energy consuming. CACIWC has received similar view points, and complaints, from citizens in towns that have commissions that combine planning, zoning and inland wetlands functions. Similar time-related problems exist for towns with just combined planning and zoning commissions. Commissioners indicate that they can be overwhelmed with the zoning function and find it difficult to expend enough time to carry out planning functions such as updating the Plan of Conservation and Development. Considering the time and energy needed to review technical data and conduct site walks for wetlands applications, it would be extremely difficult for a commission to give adequate attention to two or more regulatory functions.

### **Do the different land use agencies require different kinds of expertise?**

An inland wetlands commissioner must have a working knowledge of Connecticut's Inland Wetlands and Watercourses Act and the town's inland wetlands regulations. Inland Wetlands commissioners must be knowledgeable about the processes and functions of the wetlands and watercourses they are asked to protect. They must also have a broad understanding of soil science, hydrology, non-point source pollution controls, storm water management "best management practices", and soil and erosion controls. A wetlands commissioner must also be able to understand and consider court actions that shape the legal boundaries of the Act.

Municipalities are able to recruit people with special environmental expertise pertinent to inland wetlands regulation. These volunteers may not be interested in the broader land use subject matter addressed by other boards. Over time, even lay commission members learn and acquire expertise in the topical area of their commission (whatever commission it is). But it is unreasonable to expect a single local volunteer to adequately master the wetlands body of knowledge, as well as the mandates of planning and/or zoning laws. Having a single knowledgeable commission that knows its own regulations and understands the science involved can result in a more efficient application process. Informed commission members make decisions on fact rather than public outcry or gut reaction. A construct that forces commission members to learn more, learn it faster, and apply it sooner than they are ready to do so is not good for the community or the applicant.

For specific information on the duties and legal responsibilities of municipal land use commissions/agencies we refer you to: *What's Legally Required? A guide to the legal rules for making local land-use decisions in the State of Connecticut*, 7<sup>th</sup> edition, DEP Bulletin 39, by Michael A Zizka.

### **Can a combined commission improve coordination, adoption and administration of local land use policies and regulations--a so called "stream lining" of the review process?**

In the last two sessions of Connecticut's legislature, bills were introduced that would combine municipal land use commissions, with the intent of streamlining the review process (2004 - Raised Bill No. 5515, An Act Concerning Consolidation of Local Land Use Boards; 2005-SB 1083, An Act Reorganizing Local Land Use Commissions, Boards and Agencies). Inland wetlands applications take a considerable amount of time and energy. Commissions often convene late into the night during the review and decision process of an application. If the commission then has to review the application for planning and or zoning functions, the applicant

and commission will look for ways to make the review process “more efficient”. CACIWC testified against both bills noted above because, in the course of streamlining and supposedly becoming more efficient, the consideration of the technical and administrative requirements of the wetlands regulatory function would not receive adequate attention, particularly in towns with limited staff support for wetlands agencies.

### **Is the combined job too much for volunteers?**

This is a corollary to the preceding item. Most volunteers for land use commissions have paying jobs and a family to support. The time, energy and potential for stress that is associated with serving on combined planning, zoning, and wetlands agencies is likely to limit the pool of community volunteers willing to serve on the commission. Those who have to report to work at 8 am would be less likely to make the commitment to serve. Continual late hours and multiple nights grappling with different sets of municipal land use responsibilities is likely to reduce the numbers of volunteers that the municipality must recruit in order to carry out its land use responsibilities. The heavy workload is also likely to cause higher turnover rates on a combined commission, thus limiting its efficiency.

### **How would members of the combined agency be selected?**

Many (most) local planning and zoning commissioners are elected, but few, if any, wetlands commissioners are elected. Running for election forces a commission member to be very attentive to the public mood, whether they agree with it or not and whether it is rational or not. If the inland wetlands function were combined with planning and/or zoning they would likely become part of the zoning and planning electoral process. This could be very undesirable. Land use decisions should not turn on popularity or the will of the majority. Elected wetlands agencies would inject electoral politics into a very technical review process and could force wetlands agency members to be more attuned to the ballot box than to the resources they are supposed to protect.

### **Is prejudice or predisposition a problem for combined agencies?**

The question often asked is how two or more very separate roles can be performed without violating applicable laws. For example, is there prejudice (conflicting interests) where general statements made about conservation topics could be viewed as an indication of predisposition for or against a particular application? This is a concern of citizens and community organizations who, in opposing an application, question the ability and/or credibility of a commission, combined or not. The key lies in keeping the roles and functions of each commission separate. The question then is - can this be realistically done when a combined commission is being pummeled with information over the course of multiple public hearings and late nights.

Case law has held that a statement by a wetlands commissioner in voting on a wetlands permit application is NOT prejudice by the same person while seated as a P & Z Commission member because that person is applying different regulations and hence different criteria for decision-making. CACIWC believes that a separate Inland Wetlands and Watercourse Commission would relieve commissioners and the community of any “conflict of interest” or prejudice concern.

— *Approved by the CACIWC Board of Directors February 28, 2006*