Office of the **PLANNING & ZONING OFFICIAL**
JEREMY DECARLI, AICP
jdecarli@easthamptonct.gov

To: Planning and Zoning Commission
Re: Verified Pleading for Intervention
PZC-21-021
Date: January 5, 2022

This morning, a verified pleading for an Environmental Intervention as allowed in Section 22a-19 of the Connecticut General Statutes was delivered to the office. The purpose of this memo is to explain the intervention process and what it means for the Commission. The Statutory language is included at the end of this memo along with a summary prepared by Attorney Janet Brooks.

Background and Authority

The Connecticut Environmental Protection Act (CEPA), General Statutes Section 22a-14 through 22a-20, was enacted in May 1971 with the purpose of protecting the public trust in the air, water, and other natural resources within the State of Connecticut. The act created two remedies to protect the natural resources of the State including bringing an action in court for injunctive and declaratory relief, and the authority for anyone, broadly defined, to intervene in an administrative proceeding to raise environmental issues in accordance with Section 22a-19.

The law allows for the filing of an intervention when the intervenor contends that the proposed activities are *"reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, or other natural resources of the state."* An intervention must be done through a "verified pleading," but there are no specific forms that must be submitted. In 1982, the law was extended to apply to "*the unreasonable destruction of historic structures and landmarks of the state*" which include those listed on the National Register of Historic Places and those that have been determined by the State Historic Preservation Board to contribute to the historic significance of such a district.

In short, the law allows for this intervention to be submitted to the Planning and Zoning Commission and requires that the petitioner be heard as a party to the application. The Land Use Office must notify the petitioner of any meetings, hearings, new material submitted, etc as if the petitioner were the applicant and the Commission must allow for the petitioner to voice their environmental concerns, offer evidence/testimony, offer rebuttal evidence and cross examine any witnesses during the proceedings.

Content of Intervention Petition

The law allows for the intervenor to raise only environmental concerns that are within the jurisdiction of the particular agency conducting the proceeding. Furthermore, the intervention must include *"specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment, or destruction..."* The burden of proof is on the intervenor. Simply put, an intervention does not supply sufficient evidence for denial of the application if it simply recites the statutory language.

Commission Consideration

The Commission must first make a determination as to its authority over the environmental concerns raised. There are several concerns raised in this particular pleading. The Commission should first

determine what actions it is taking. The existing storage use of the property has already been approved. The current application is entirely related to exterior site changes to the property. The use of the property as a Storage facility was previously approved under a separate application for which the Commission held a Public Hearing.

Once jurisdiction is determined, reaching a decision on the application is a two-step process:

First, the commission must consider the alleged unreasonable pollution. Based on the evidence presented, the Comission must determine if the proposed activity is "reasonably likely to unreasonably pollute, impair, or destroy the public trust". The Commission must determine whether there is sufficient proof to support the allegation.

Second: If the Commission determines that the project *is* reasonably likely to unreasonably harm the public trust based on the evidence provided, it must determine whether there are reasonable and prudent alternatives.

If the Commission determines that the the application *is not* reasonably likely to unreasonably harm the public trust, the Commission may then proceed with the application without considering alternatives.

Commission Decision

If the Commission denies the application due to the evidence presented as part of the CEPA intervention, the Commission must explicitly reference the CEPA findings as part of the motion.

If the Commission approves the application, the Commission should include in the motion to approve its finding that the application complies with the applicable statutes and regulations.

Statute

Sec. 22a-19. Administrative proceedings. (a)(1) In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.

(2) The verified pleading shall contain specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates an issue within the reviewing authority's jurisdiction. For purposes of this section, "reviewing authority" means the board, commission or other decision-making authority in any administrative, licensing or other proceeding or the court in any judicial review.

(b) In any administrative, licensing or other proceeding, the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

ENVIRONMENTAL INTERVENTIONS BEFORE MUNICIPAL LAND USE AGENCIES

Section 22a-19
of the
Connecticut Environmental Protection Act

Janet P. Brooks
Attorney at Law, LLC
1224 Mill Street, Bldg. B, Suite 212
East Berlin, Connecticut 06023
(860) 828-2092
jb@attorneyjanetbrooks.com

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For more detailed analysis of legal considerations, please refer to chapters 7 and 8 of 15 Connecticut Practice Series, Connecticut Environmental Protection Act. *D. Sherwood and J. Brooks (2006).*

I. Introduction

- The Connecticut Environmental Protection Act, General Statutes §§ 22a-14 through 22a-20, was enacted in May, 1971.

- Commonly referred to as "CEPA" and "CEPA intervenors."

- Beware: not the same as the Connecticut Environmental *Policy* Act, General Statutes §§ 22a-1a through 22a-1h, also referred to as CEPA, which requires *state agencies* to make a written evaluation of environmental impacts before proceeding with actions which may potentially adversely affect the environment.

- The purpose of CEPA, as set forth in Section 22a-15, is to create a **"public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement"** of them. Further: **"it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction."**

- CEPA creates two remedies to protect the natural resources of the state, (1) the authority for anyone, broadly defined, to bring an action in court for injunctive and declaratory relief to stop unreasonable pollution, impairment or destruction (no money damages); (2) the authority for anyone, broadly defined, to intervene in administrative agency proceedings to raise environmental issues.

- In 1982 CEPA was amended, by creating § 22a-19a, to extend CEPA to protect historic structures and landmarks of the state from unreasonable destruction.

- In one of the earliest court cases CEPA was described as "expanding [the] doctrine of 'private attorneys general,' " expanding the number of potential guardians of the public interest in the environment into the millions, instead of relying on government to enforce the laws. Greenwich v. Connecticut Transportation Authority, 166 Conn. 337, 343 (1974).

- CEPA applies to a proceeding only when invoked.

- CEPA is supplementary to existing environmental laws.

II. General Statutes Section 22a-19

- "(a) (1) In any administrative, licensing or other proceeding and in any judicial review thereof made available by law, the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state."

- (a) (2) "The verified pleading shall contain specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates an issue within the reviewing authority's jurisdiction. For purposes of this section, 'reviewing authority' means the board, commission or other decision-making authority in any administrative, licensing or other proceeding or the court in any judicial review."

- "(b) In any administrative, licensing or other proceeding, the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare."

III. General Statutes Section 22a-19a

- "The provisions of sections 22a-15 to 22a-19, inclusive, shall be applicable to the unreasonable destruction of historic structures and landmarks of the state, which shall be those properties (1) listed or under consideration for listing as individual units of the National Register of Historic Places (16 USC 470a, as amended) or (2) which are a part of a district listed or under consideration for listing on said national register and which have been determined by the State Historic Preservation Board to contribute to the historic significance of such district."

IV. Intervention Before Municipal Land Use Agencies[1]

A. Who may intervene

- "the Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity"

- Examples: Mashantucket Pequot Nation, municipalities, municipal conservation commissions, abutters, town residents, out-of-state persons, LLCs, LLPs, associations, unincorporated associations.

- "[T]he legislature employed broad and all-inclusive language . . . the repeated use in § 22a-19 of the word 'any' . . . indicates an intention to allow the broadest possible range of parties to intervene in an expansive spectrum of proceedings." AvalonBay Communities, Inc. v. Zoning Commission, 280 Conn. 405 (2006). The court looked to the purpose of CEPA as stated in § 22a-15: "to provide *all persons* with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction." (Emphasis added.)

- Town Council authorized per § 22a-19 to intervene in zoning and wetlands appeals. AvalonBay Communities, Inc. v. Zoning Commission, 280 Conn. 405 (2006).

- Motive not a consideration: CEPA intervenor can be business competitor (Rite-Aid as CEPA intervenor in Stop & Shop applications), disgruntled next-door neighbor, persons/entities motivated by "social engineering" (those wanting to keep something out of the neighborhood, affordable

[1] This outline addresses the law and procedure before municipal land use agencies which act at duly noticed meetings in a public setting. Much, although not all, of this outline is applicable to interventions in state agency proceedings. Differences will arise if the agency is not a board that must be acting at a duly noticed meeting, such as the Department of Energy and Environmental Protection. Even then, differences will arise between circumstances when a public hearing must precede DEEP action.

housing, social services, etc.). Regardless of motive, the only issues that may be pursued are environmental. See IV, D below.

B. What kind of proceeding

- § 22a-19: "In any administrative, licensing or other proceeding"
- Municipal land use agencies are administrative agencies
- Licensing includes any form of the granting of an approval; need not be called a "license." The legislature used "broad and all-inclusive language" to describe proceedings. AvalonBay Communities, Inc. v. Zoning Commission, 280 Conn. 405 (2006).
- Applications for permits, enforcement actions (cease and desist orders), adopting/amending regulations.
- The word "proceeding" is not restricted to hearings. TeleTech of Connecticut Corp. v. Dept. of Public Utility Control, 270 Conn. 778, 799 (2004).
- "Proceeding" not likely to include staff communications with applicant, whether by telephone or in person.
- A Superior Court has held the issuance of a zoning compliance certificate by a zoning enforcement officer who determined whether the applicant's plans were consistent with the modified site plan and special permit does NOT constitute a "proceeding." Stop & Shop Supermarket Co. v. Zoning Board of Appeals, Superior Court, judicial district of Tolland, Docket No. CV 04 40084630 S (February 3, 2005), 2005 WL 590085 (Conn. Super. 2005).

C. How to intervene

- no required use of a form.
- "on the filing of a verified pleading" per § 22a-19 (a).
- "verified" is defined in Black's Law Dictionary as "[t]o confirm or substantiate by oath or affidavit; to swear to the truth of." Nizzardo v. State Traffic Commission, 259 Conn. 131, 162-63 (2002).

D. Content of intervention petition

- Environmental issues only: "§ 22a-19 grants standing to intervenors to raise only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the part seeks to intervene." Nizzardo v. State Traffic Commission, 259 Conn. 131, 148 (2002).

- In 2013 the legislature amended § 22a-19 to codify (put into statute) the specific requirements that must be in an intervention petition as stated by the Connecticut Supreme Court decision in Nizzardo v. State Traffic Commission, 259 Conn. 131, 164-65 (2002).

- Section 22a-19 (a) was amended to add a subsection (2) which requires "specific factual allegations setting forth the nature of the alleged unreasonable" harm. Cf. Nizzardo, 259 Conn. 131, 164-65 (2002) (intervention petition must "contain specific factual allegations setting forth the environmental issue that the intervenor intends to raise.")

- Section 22a-19 (a) was also amended to require facts in the petition to allow the agency to determine if it has jurisdiction over the environmental issue. Cf. Nizzardo v. State Traffic Commission, 259 Conn. 131, 165 (2002) ("[t]he facts contained therein should be sufficient to allow the agency to determine from the face of the petition whether the intervention implicates an issue within the agency's jurisdiction.")

- An intervention petition is not sufficient if it merely recites the statutory language such as the following:

  This application "involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state."

- The 2013 amendments do not pose new requirements. The statute now reflects the case law, in effect since 2002.

- In Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247 (1984) the Connecticut Supreme Court held that § 22a-19 does not expand the jurisdiction of the agency to consider any environmental issue raised in the intervention petition. Thus, an intervenor could not raise air pollution issues before a wetlands agency. Fifteen years later, the highest court reaffirmed this holding and added the required elements of an intervention petition listed above. Nizzardo v. State Traffic Commission, 259 Conn. 131 (2002).

- "Natural resource": In the first case on this issue, the Connecticut Supreme Court held that "prime agricultural land" is not a natural

resource. Red Hill Coalition, Inc. v. Town Plan & Zoning Commission, 212 Conn. 727 (1989). Six years later, the court abandoned the reasoning in Red Hill Coalition, Inc. and held that "trees and wildlife" are natural resources. Paige v. Town Plan & Zoning Commission, 235 Conn. 448, 452-53 (1994).

E. Status of intervenor in proceeding

- § 22a-19: "may intervene as a party . . ." – upon the filing of an intervention petition, the CEPA intervenor is a party. "Section 22a-19(a) makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded. We have declared that the statute 'permits any person, on the filing of a verified pleading, intervene in any administrative proceeding for the limited purpose of raising environmental issues.' Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984)." (Emphasis added.) Red Hill Coalition, Inc. v. Town Plan & Zoning Commission, 212 Conn. 727, 734 (1989); Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 489, 499 (1978).

- CEPA intervenors must be given actual notice of site walks and hearings. FOIA notice of meetings not sufficient for party. Grimes v. Conservation Commission, 243 Conn. 266, 281 n.18 (1997).

- Extreme caution: whether CEPA intervenor has a "right" to enter onto applicant's property vs. land use agency's authority to enter onto private property to process application (no authority absent consent of land owner) vs. FOIA (public meetings open to the public). Site walks may be necessary for agency members to evaluate an application. The purpose of a site walk is "to acquaint the members of a commission with the property at issue." Grimes v. Conservation Commission, 243 Conn. 266, 278 (1997). Site walks are distinguished from hearings where parties are afforded "the opportunity to present and rebut evidence." Id. Site walks are "not an integral part of the hearing process." It is appropriate to notice a site walk as a special meeting and report observations at regular meeting. Note: The Supreme Court found no evidence in Grimes that the abutter would have been denied access to the site walk and pointed out the requirement in the Freedom of Information Act that meetings be open to the public. General Statutes § 1-225 (a). The Court had no occasion to resolve whether applicants can be required to allow meetings on their private property in order to qualify to receive a land use permit.

- Intervenor vs. member of public: intervenor's rights (and obligations) personal to the person/entity alleging unreasonable pollution. While an agency in response to a petition, may (if within the agency's discretion) decide to hold a public hearing, the rights of the public are not expanded

when an intervention petition is filed. The restrictions on the public's right to speak at a public hearing (time limit, no cumulative testimony) can not be applied to the CEPA intervenor which has the burden of proof on the allegations in the petition. (See below).

- As a party, the CEPA intervenor has the right to: offer evidence/testimony to prove the allegations in the petition, offer rebuttal evidence, cross-examine witnesses.

F. **Burden of proof: intervenor's burden**

- CEPA intervenor has the burden of proving the allegations in the petition:

> "that the proceeding or action for judicial review involves conduct which has or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state."

- Why is the burden of proof on the CEPA intervenor? "It is an elementary rule that whenever the existence of any fact is necessary in order that a party may make out his case or establish his defense, the burden is on such party to show the existence of such fact." (Internal quotation marks omitted.) *Nikitiuk v. Pishtey*, 153 Conn. 545, 552, 219 A.2d 225 (1966)." Zhang v. Omnipoint Communications Enterprises, Inc., 272 Conn. 627, 645 (2005).

- In general, expert evidence will be necessary. Pollution control is a technically sophisticated and complex subject. Feinson v. Conservation Commission, 180 Conn. 421, 429 (1980). "A lay commission acts without substantial evidence, and arbitrarily, when it relies on its own knowledge and experience concerning technically complex issues . . ." River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 80 (2004).

- In order to prevail on appeal to court, the intervenor must prove that the conduct likely would cause unreasonable harm (pollution, impairment or destruction) or the intervenor must establish that the agency "decision was not based on a determination, supported by substantial evidence, that the development complied with governing statutes and regulations." Finley v. Inland Wetlands Commission, 289 Conn. 12, 40 (2008). There, the agency approved a permit with conditions that the Supreme Court deemed were too broad, not specific enough, and left open the question of "whether the regulated activities should be approved in the first instance." Finley v. Inland Wetlands Commission, 289 Conn. 12, 42 (2008).

G. Agency consideration

- The agency shall "consider the alleged unreasonable pollution, impairment or destruction . . ." presented by the CEPA intervenor. The agency considers the evidence in the record.

- No conduct may be authorized or approved if the agency makes two CEPA findings.

- Conduct: Is the agency "approving" conduct in the proceeding? Yes, if it involves a license or an order. An application for a zone change is not approving a development. There is no intervention available in such proceedings. The proper time to intervene is in the special permit application or site plan approval. Pond View, LLC v. Planning & Zoning Commission, 288 Conn. 143 (2008). The conduct that concerns CEPA is the development of the property, not the change in the zone.

- Is the agency "approving" conduct in the proceeding to determine if activity is exempt from regulation or to approve an amendment to a wetlands map? No. Intervention applies to approving conduct, such as permit applications and orders.

- The agency engages in a 2-step process: 1) a finding of unreasonable conduct; then 2) a determination about feasible and prudent alternatives. If no finding of unreasonable pollution, impairment or destruction is made, the agency does not proceed to determine feasible and prudent alternatives. The Connecticut Supreme Court so concluded in Paige v. Town Plan & Zoning Commission, 235 Conn. 448, 462-63 (1995); it has been followed in Quarry Knoll II Corp. v. Planning & Zoning Commission, 256 Conn. 674 736 n.33 (2001) and Evans v. Plan & Zoning Commission, 73 Conn. App. 647, 657 (2002).

- STEP 1: The agency must determine if the proposed activity is "reasonably likely to unreasonably pollute, impair or destroy . . ." Is there sufficient expert evidence in the record to support a finding?

- Is the pollution, impairment or destruction "unreasonable"? An early court decision set the standard: "The question of what is reasonable is one of fact." Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 503 (1979). Each CEPA inquiry is fact-specific. A finding of pollution is necessary, but not sufficient. "Reasonableness" is a matter for the agency to decide and articulate.

- "Evidence of general environmental impacts, mere speculation or general concerns do not qualify as substantial evidence. Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 250, 470 A.2d 1214

(1984)." River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 71 (2004).

- An agency acts without substantial evidence if it infers from expert testimony of pollution that an adverse impact will occur to a natural resource. River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 78 n.27 (2004).

- STEP 2: If the agency makes a finding of unreasonable pollution, it must next determine whether "considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare."

- "feasible" and "prudent" have been defined in federal cases; those definitions have been adopted by the Connecticut Supreme Court in CEPA cases. Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 61-63 (1981). The Inland Wetlands & Watercourses Act has been amended to include these definitions.

- "feasible" means able to be constructed or implemented "as a matter of sound engineering." Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 62 (1981).

- "prudent" alternatives "are those which are economically reasonable in light of the social benefits derived from the activity. . . Cost may be considered . . . A mere showing of expense, however, will not mean that an alternative is imprudent." Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 63 (1981).

- Caution: The law is unsettled on the burden of proof regarding alternatives. The courts have dismissed an argument that the applicant had the burden of proof on alternatives; Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 726 (1989); later held that it fell to the CEPA intervenor; Gardiner v. Conservation Commission, 222 Conn. 98, 111 (1992); and dismissed the notion that an agency must explicitly consider every alternative raised. Samperi v. Inland Wetlands Agency, 226 Conn. 579, 587, 593 (1993). The Connecticut Supreme Court considered the duties of the agency under the affordable housing statute (to make reasonable changes to the affordable housing development) and CEPA (finding of no feasible and prudent alternative) and held the agency "should attempt to make all reasonable changes to an application before denying it." Quarry Knoll II Corp. v. Planning & Zoning Commission, 256 Conn. 674, 732 (2001).

- Can an intervenor raise procedural violations of an environmental statute? Where the intervenors' issues include interpretation of the supermajority provision of the

zoning statute provision (CGS § 8-3(b)) regarding a zone change and the notice provision in § 8-3(a), the court in Pond View, LLC v. Planning & Zoning Commission, 288 Conn. 143, 159 (2008), ruled that "these issues are not environmental issues traditionally within the scope of § 22a-19."

- However, the Supreme Court has ruled that: "The right to a **fundamentally fair hearing** is implicit in the right to intervene pursuant to CEPA." FairwindCT, Inc. v. Connecticut Siting Council, 313 Conn. 669, 714 (2014), even though in that case it held that the right to cross-examine a witness was not a basis to sustain the intervenor's appeal. Caution: *your commission may not be so fortunate. Think twice, or better yet, get legal advice before you refuse to let an environmental intervenor cross-examine a witness, especially if it is the applicant's representative/expert, etc.*

- Procedural issues that implicate "fundamental fairness" in agency proceedings may be raised by environmental intervenors. (See previous bullet point.) Although the Supreme Court declined in prior cases to decide whether "purely" procedural issues are within the scope of § 22a-19 (a) intervention; Rocque v. Northeast Utilities Service Co., 254 Conn. 78, 85-86 (2000), Gardiner v. Conservation Commission, 222 Conn. 98, 106-07 (1992); it appears undecided whether procedural issues that are linked to violation of substantive provisions of an environmental statute are. Pond View, LLC v. Planning and Zoning Commission of Town of Monroe, 288 Conn. 143, 160 n. 14, 953 A.2d 1 (2008) ("Even if we were inclined to consider procedural issues that bear a nexus to substantive environmental concerns covered by § 22a-19, such as those related to § 8-3 (a) and (b) in the present case, it is clear to us that no significant nexus exists between those issues and the environmental claims pleaded in the intervenors' verified complaint.)

- **Include in a motion to deny:** To be done if agency ***denies*** an application based on CEPA: If the agency makes the requisite CEPA findings (unreasonable conduct, no alternatives) and wants to deny an application based on CEPA, in its motion to deny the application, it must explicitly reference the CEPA findings. River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 83-85 (2004).

- **Include in a motion to approve:** To be done if agency ***approves*** an application where intervenor in application: The agency should include in its motion to approve a finding that the application complies with the applicable statutes and regulations. The Supreme Court has held that an intervenor on appeal may prove either (1) unreasonable harm to a natural resource or (2) that the agency's decision "was not premised on a determination, supported by substantial evidence, that the proposed development complied with applicable statutes and regulations . . ." Finley v. Inland Wetlands Commission, 289 Conn. 12, 41-42 (2008). This

holding arose in a wetlands appeal. Perhaps, in the future this will be limited to wetlands appeals.

- If an agency votes to issue a permit and has failed to rule on the CEPA issue, it will most likely be judicially inferred that the agency found no unreasonable conduct. Evans v. Plan & Zoning Commission, 73 Conn. App. 647 (2002); Keiser v. Conservation Commission, 41 Conn. App. 39 (1996).

V. Intervention in Judicial Proceedings

A. CEPA intervenor may bring an appeal, where appeal provided

- CEPA does not create a right to appeal from an administrative proceeding. Fort Trumbull Conservancy, LLC v. Planning & Zoning Commission, 266 Conn. 338, 361-63 (2003).

- Where person became CEPA intervenor in an administrative proceeding and a statutory right to appeal exists, CEPA intervenor has standing to initiate appeal. Finley v. Inland Wetlands Commission, 289 Conn. 12, 34 (2008); Branhaven Plaza, LLC v. Inland Wetlands Commission, 251 Conn. 269, 276 n.9 (1999); Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 715 (1989); Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 489 (1978).

- However, where a person did not become a CEPA intervenor before the agency and no one else commenced an appeal, a person had no standing to initiate an appeal and claim that CEPA is the source of authority to proceed. Hyllen-Davey v. Plan & Zoning Commission, 57 Conn. App. 589, cert. denied, 253 Conn. 926 (2000).

- If an appeal has been filed in court by others (the applicant, an abutter) a person who did *not* intervene before the commission has the right to intervene pursuant to § 22a-19 in the court appeal. Hunter Ridge, LLC v. Planning and Zoning Commission, 318 Conn. 431 (2015).

B. "Any person" may intervene in other's court appeal

- Where a party has initiated an administrative appeal, "any person" may intervene pursuant to CEPA § 22a-19 in that appeal to raise environmental issues, upon the filing of a verified notice of intervention. Red Hill Coalition, Inc. v. Conservation Commission, 212 Conn. 710, 716 (1989). This has been followed on numerous occasions and most recently included a "town council" as an entity that could intervene into pending zoning and wetlands appeals. AvalonBay Communities, Inc. v. Zoning Commission, 280 Conn. 405 (2006).

- Affirmed in: Hunter Ridge, LLC v. Planning and Zoning Commission, 318 Conn. 431 (2015).

C. "Any person" may intervene in court enforcement proceeding

- "Any person" may intervene in pending court enforcement proceedings (e.g., zoning enforcement and environmental enforcement actions) upon the filing of a verified notice of intervention. Zoning Commission v. Fairfield Resources Management, Inc., 41 Conn. App. 89 (1996); Keeney v. Fairfield Resources, Inc., 41 Conn. App. 120 (1996).

- CEPA authorizes "injunctive and declaratory relief but not a claim for damages. Connecticut Water co. v. Beausoleil, 204 Conn. 38, 44 (1987). "There can be no award of damages to the intervenor." Id., 45.

D. Intervention in "other proceeding"

- The Appellate Court reversed the trial court's denial of a § 22a-19 intervenor in a mandamus action. Although a mandamus action generally seeks a court order for a governmental official to perform a non-discretionary duty and thus does not involve environmental issues, in Diamond 67, LLC v. Planning & Zoning Commission, 117 Conn. App. 72 (2009) the court noted that the settlement in the mandamus action included settlement of the appeal on the merits of the site plan approval which *did* include environmental considerations. The court referred to the tradition of "eschew[ing] the practice of elevating form over substance." Id., 84.

E. Remand to agency proceeding

- General Statutes § 22a-18 (b): "If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court in its discretion may remand the parties to such proceedings . . . the court shall retain jurisdiction of the action pending completion of administrative action for the purpose of determining whether adequate consideration by the agency has been given to the protection of the public trust in the air, water or other natural resources of the state from unreasonable pollution, impairment or destruction and whether the agency's decision is supported by competent material and substantial evidence on the whole record."

- The court's authority to remand to (i.e., to send the appeal back to) the land use agency is not available to the court in determining land use