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DATE: April 1, 2004

TO: Planning and Zoning Commission Chairmen, Town Planners/Land Use
and Zoning Administrators, HVCEO Chief Elected Officials

FROM: David Hannon, Deputy Director

RE: Update on Regional Referrals for
Planning and Zoning Activities

In 2003 several changes were made to the Connecticut General Statutes concerning the statutory requirements for regional referrals for planning and zoning activities. These changes are described below.

1A) OVERVIEW OF ZONING REFERRALS TO HVCEO. A referral to HVCEO is required: A) When a parcel is proposed for a zone or map change and the property falls within 500 feet of another municipality; and or B) When a text change could theoretically affect parcels within 500 feet of a municipal boundary. Matters such as side yard or other zoning dimensions, parking requirements, height requirements, changes in use, etc. within the text of the zoning ordinance must be referred to HVCEO.

As per the amended Chapter 124 Section 8-3b of the Connecticut General Statutes (see below), the Planning and Zoning Commission must submit the referral on the proposed change by certified mail, return receipt requested not later than 30 days before the public hearing on the proposed zoning change. If the regional planning agency does not respond to the referral at or before the hearing on the subject referral "it shall be presumed that such agency does not disapprove of the proposal."

When the proposed zoning map or text change could affect property within 500 feet of a municipality located in an adjacent planning region, a referral must also be submitted to that regional planning agency by certified mail, return receipt

requested not later than 30 days before the hearing on the proposed change.

1B) REGIONAL ZONING REFERRAL STATUTE TO 10/1/2003

(Bracketed sections indicate deletions and underlines sections additions). Notice to regional planning agency of proposed zone or zone use change. Section 8-3b of the general statutes has been repealed and the following is substituted in lieu thereof (Effective October 1, 2003, and applicable to applications filed on or after said date):

When the zoning commission of any municipality proposes to establish or change a zone or any regulation affecting the use of a zone any portion of which is within five hundred feet of the boundary of another municipality located within the area of operation of a regional planning agency, the zoning commission shall give written notice of its proposal to the regional planning agency or agencies of the region in which it and the other municipality are located. [not later than thirty-five days before the public hearing to be held in relation thereto.] Such notice shall be made by certified mail, return receipt requested not later than thirty days before the public hearing to be held in relation thereto. The regional planning agency shall study such proposal and shall report its findings and recommendations thereon to the zoning commission at or before the hearing, and such report shall be [read aloud at the hearing] made a part of the record of such hearing.

The report of any regional planning agency of any region that is contiguous to Long Island Sound shall include findings and recommendations on the environmental impact of the proposal on the ecosystem and habitat of Long Island Sound. If such report of the regional planning agency is not submitted at or before the hearing, it shall be presumed that such agency does not disapprove of the proposal. A regional planning agency receiving such a notice may transmit such notice to the Secretary of the Office of Policy and Management or his designee for comment. The planning agency may designate its executive committee to act for it under this section or may establish a subcommittee for the purpose. The report of said planning agency shall be purely advisory.

2A) OVERVIEW OF TOWN TO TOWN ZONING REFERRALS. While not related to the regional referral laws and unchanged in recent years, Chapter 126 Section 8-26f, Notice to adjoining municipalities, identifies the Commission's requirements to provide notification to adjoining towns (see below).

2B) TOWN TO TOWN REFERRAL STATUTE TO 10/1/2003. *The zoning commission of any municipality shall notify the clerk of any adjoining municipality of the pendency of any application, petition, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such zoning commission is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.*

Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. No hearing may be conducted on any application, petition, request or plan unless the adjoining municipality has received the notice

required under this section. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, request or plan.

3A) OVERVIEW OF SUBDIVISION REFERRALS TO HVCEO. A regional referral to HVCEO is required whenever a proposed subdivision abuts or includes land in two or more municipalities. If the proposed subdivision abuts or includes land in an adjacent planning region, the referral must go to both HVCEO and the adjacent planning region.

As per amended Chapter 126 Section 8-26b of the Connecticut General Statutes (see below), the planning commission must provide written notification to HVCEO and any other affected regional planning agency(s) before approving the subdivision plan. "Such notice shall be made by certified mail, return receipt requested not later than 30 days before the public hearing to be held in relation thereto." Should the regional planning agency(s) not respond to the town with a report on the proposal at or before the hearing, "it shall be presumed that such agency does not disapprove of the proposed subdivision."

Note also that proposed changes to subdivision regulations are exempt from the regional referral process.

3B) REGIONAL SUBDIVISION REFERRAL STATUTE TO 10/1/2003

(Bracketed sections indicate deletions and underlines sections additions). Section 8-26b. Submission to regional planning agency of proposed subdivision; report of agency findings. Section 8-26b of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2003, and applicable to applications filed on or after said date):

Whenever a subdivision of land is planned, the area of which will abut or include land in two or more municipalities one or both of which are within a region or regions having a regional planning agency or agencies, the planning commission, where one exists, of each such municipality shall, before approving the plan, [submit it] give written notice of such subdivision plan to the regional planning agency or agencies of the region in which it or the other municipality is located. Such notice shall be made by certified mail, return receipt requested not later than thirty days before the public hearing to be held in relation thereto.

A regional planning agency receiving such [report] notice shall, [within thirty days,] at or before the hearing report to each such planning commission and to the proponent of such subdivision on its findings on the intermunicipal aspects of the proposed subdivision, including street layout, storm drainage, sewer and water service and such other matters as it considers appropriate. If such report of a regional planning agency is not submitted, [within thirty days after transmittal] at or before the hearing, it shall be presumed that such agency does not disapprove of the proposed subdivision. A regional planning agency may designate its executive committee to act for it under this section or it may establish a subcommittee for the purpose. The report of such regional planning agency shall be purely advisory.

SUPPLEMENT: AN EXCERPT FROM HVCEO MINUTES OF 6/17/2005

“REVIEW OF ZONING REFERRAL PROCESS

As requested by the Chairman, Jon Chew reviewed the on going operation of the zoning referral process and how it had evolved over the years. A copy of the HVCEO referral procedures attached to the agenda was reviewed.

He noted that the statute started in the sixties with zone changes within five hundred feet of municipal boundaries and subdivisions that abut them. State funding started for the work but dwindled as there was really no mandate on HVCEO to do this work.

Then in the eighties courts interpreted the referral statute loosely, he said, such that the volume of referrals received increased by a factor of ten. Now all changes, such as off street parking, lighting regulations, home occupations, etc. were referred to HVCEO as courts found they could potentially be within 500 feet of a town boundary.

In 1983 HVCEO responded to this and the lack of funding by placing the referral proceed on “automatic pilot”, such that almost all referrals would thereafter receive an “of local and not regional concern’ notice, providing the forwarding agency with the needed response. Then in the nineties an unrelated statute duplicated the system such that referrals of these and many more border issues are forwarded to municipal clerks.

He noted a mistake had recently occurred when a referral to HVCEO from Ridgefield concerning a mixed income dwelling district was not referred by him to Redding. This was reissued and the notification form revised.”