

## MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Sebastian J. Garafalo

DATE: April 26, 1989

RE: Legal Opinion Request - Planning & Zoning Commission - Obtaining Copies of Documents Related to Listings in Real Estate Listing Service

Attached, for the Planning and Zoning Commission's information, are copies of letters which were sent to counsel for the Savards as well as to counsel for Sterling Realtors requesting copies of any and all Agreements signed by the Savards with any and all real estate agencies concerning their property which is the subject of the subdivision application currently pending before the Planning and Zoning Commission. I have been advised that counsel for the Savards will be responding to my request but, as of this date, I have not received any response.

An issue was raised at the Planning and Zoning Commission hearing on April 12, 1989 concerning what subpoena powers, if any, the Commission could exercise to get these documents. Section 51-85 of the Connecticut General Statutes, as amended, provides, in pertinent part, that "(e)ach attorney-at-law admitted to practice within the state, while in good standing, . . . may . . . issue subpoenas to compel the attendance of witnesses and subpoenas duces tecum in administrative proceedings. If, in any administrative proceeding, any person disobeys such subpoena or, having appeared in obedience thereto, refuses to answer any proper and pertinent question or refuses to produce any books, papers or documents pursuant thereto, application may be made to the Superior Court or any judge thereof for an order compelling obedience."

A subpoena duces tecum is the proper vehicle to request the production of documents which the Planning and Zoning Commission is interested in viewing.

Black's Law Dictionary defines an administrative agency as a "governmental body charged with administering and implementing particular legislation." The Planning and Zoning Commission of a municipality is an administrative agency. Section 51-85 C.G.S., as amended, provides that the subpoena powers of a Commissioner of the Superior Court extends to administrative proceedings. Hearings before administrative agencies, such as a municipal Planning and Zoning Commission constitute an administrative proceeding. It should be noted that there must be an administrative hearing on a particular subject pending, wherein documents which have not been produced are necessary, in order to invoke the subpoena powers.

Therefore, if the Commission intends to hold a hearing on a specific matter before the Commission wherein information requested by the Commission has not been furnished, the Commission can request that the City Attorney's Office issue a subpoena duces

tecum for that information. If the information is not furnished, the statute provides that the Commission, through the City Attorney's Office, can request an order from the Court compelling the production of that information.

  
Trina A. Solecki  
City Attorney

TAS/es

cc: George Reif, Planning Director  
Members and Alternates of the Planning & Zoning Commission  
Richard Tomc, Corporation Counsel

April 10, 1989

Joseph Milardo, Esq.  
Jozus, Tomo & Milardo  
43 Main Street  
Middletown, Ct. 06457

Re: Savard Subdivision

Dear Joe:

The Middletown Planning and Zoning Commission has requested, in the form of a legal opinion, that this office provide them with a copy of any and all Agreements signed by the Savards with your clients, Sterling Realtors, concerning the Savards' property located off Freeman Road, Middletown.

By separate letter, a copy of which I have attached for your information, I have requested this information from the law offices of Michael Dowley.

Very truly yours,

Trina A. Sojecki  
City Attorney

TAS/es

cc: Mayor Sebastian J. Garafalo  
George Reif, Director of Planning & Zoning

April 13, 1989

Attorney Jule' Crawford  
Law Offices of Michael Dowley  
116 Washington Street  
P.O. Box 1235  
Middletown, Ct. 06457

Re: Savard Subdivision

Dear Jule':

As you are aware, the Middletown Planning and Zoning Commission has requested, in the form of a legal opinion, that this office provide them with a copy of any and all Agreements signed by the Savards with any and all real estate agencies concerning their property located off Freeman Road, Middletown.

I would appreciate it if you could forward these documents, if any, to my attention prior to the next Planning and Zoning Commission meeting scheduled for April 26, 1989. I intend to also advise Attorney Milardo, who represents Sterling Realtors, about my request for these documents.

Thank you for your kind attention to this matter.

Very truly yours,

Trina A. Solecki  
City Attorney

TAS/es

cc: Mayor Sebastian J. Garafalo  
Joseph Milardo, Esq.  
George Reif, Director of Planning and Zoning