



City of Middletown

TELEPHONE 344-3400

DEKOVEN DRIVE, MIDDLETOWN, CONNECTICUT 06457

HAND-DELIVERED

April 4, 1989

Councilman Stephen T. Gionfriddo
Municipal Building
DeKoven Drive
Middletown, Connecticut 06457

Dear Councilman:

You wanted to know whether Council members who also sit on the Planning and Zoning Commission may act as Planning and Zoning Commissioners on matters regarding real estate to be developed by Equity in Housing of Middletown, Inc. ("EHM").

On August 3, 1987, the Common Council approved the following resolution:

NOW THEREFORE, BE IT RESOLVED THAT the Common Council of the City of Middletown hereby designates Equity and Housing of Middletown, Inc. as a Community Development Corporation for the purpose of seeking financial assistance from, and entering into contracts with, the State Department of Housing as provided in Section 8-217 and 8-218 of the Connecticut General Statutes and Connecticut Public Act 87-417.

There was no public comment or debate concerning the resolution which was adopted unanimously as part of the Common Council's consent calendar.

The minutes of that meeting indicate that you and Councilmen Pillarella and Loffredo voted on the resolution via the consent calendar. Both you and Councilman Pillarella now serve as regular members of the Planning and Zoning Commission and Councilman Loffredo serves as an alternate.

The issue of the propriety of Council members who also sit on Planning and Zoning Commission voting on matters that come before the Commission has arisen before. Reference is made to my opinion to Councilman Loffredo dated September 9, 1987 concerning the construction of a municipal golf course and to the legal authorities

cited therein. That matter involved an extensive presentation by the developer to the Common Council in connection with the approval of a lease to the developer of certain real estate owned by the City of Middletown. The question was whether this presentation and other activities by Council members would compromise Council members who would later deal with related land use issues while serving on the Planning and Zoning Commission. I stated at that time:

...I conclude the lease issue now before the Common Council could well involve a conflict of interest between the duties of the Councilmen who also serve on the Planning and Zoning Commission under Section 8-11 and 8-21 of the Connecticut General Statutes, and furthermore that the deliberations and decisions of the Common Council could be construed as a predetermination and a predisposition to the extent that the aspects of the same matter are later considered by the Planning and Zoning Commission wherein Council members continue to participate as Commissioners...

In coming to that conclusion, I cited the following key points:

1. The lease before the Council is inextricably related to several zoning issues; this is apparent on the face of the lease that the Council is now being asked to decide upon.
2. The Council has already heard an extensive presentation by the developer and public comments concerning the developer's overall plan of development which entails in part various zoning considerations.
3. Several Council people have actively participated in negotiating a lease with developer; it can only be presumed that the special information to which participating Council members have become privy as a result of their discussion has or may have been shared with the Council people who serve on the Planning and Zoning Commission.

I find none of these factors present in this case. The issue presented to the Common Council in this matter was limited solely to

the designation of EHM as a "community development corporation" as that term is used in the Connecticut General Statutes. There was no action, public comment, presentation, discussion or debate concerning the merits or demerits of any EHM site which might be ultimately developed. No information was presented to or elicited by the Common Council which could have had the effect of creating a predisposition or conflict of interest among those Council people who also sit on the Planning and Zoning Commission.

Accordingly, I conclude that the Council members who participated in adopting the foregoing resolution are not by that act alone disqualified from considering land use issues presented by EHM to the Planning and Zoning Commission.

As I have indicated in my earlier opinion, the law governing predetermination and conflicts of interest in the planning and zoning context require that each case be determined on its own facts and circumstances. This opinion is confined to the facts presented in this case.

Respectfully submitted,

Richard W. Tomc
Corporation Counsel

RWT/rp

cc: Mayor Sebastian J. Garafalo
Trina Solecki, City Attorney ✓

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Sebastian J. Garafalo

DATE: April 12, 1989

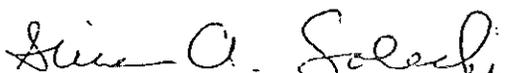
RE: Request for Legal Opinion - Proposed Subdivision with streets not intended to comply with the standards in the subdivision regulations

ISSUE:

Would the P & Z Commission potentially be placing the City in a position of liability if approval was given that is contrary to the advice of the City agencies?

ANSWER:

Yes, if the approval of the streets does not conform to the City's Plan of Development pursuant to Section 8-23, C.G.S., as amended, and is inconsistent with the Middletown Subdivision Regulations adopted pursuant to Section 8-25 C.G.S., as amended, and does not adequately protect the health, safety and welfare of the inhabitants of the City of Middletown. (See Raybestos - Manhattan, Inc. v. Planning & Zoning Commission of the Town of Trumbull, 186 Conn 466, 470-471 (1982) In this case, the Court upheld the finding of the Commission which required that the extension of the street, which was in conformity with the Plan of Development and the Trumbull Subdivision Regulations, would provide more adequate access for fire fighting equipment, police protection and other essential services thereby adequately protecting the health, safety, morals and general welfare of the community.)


Trina A. Solecki
City Attorney

TAS/es

cc: George Reif, Director of Planning & Zoning
Stephen T. Gionfriddo Stephen P. Shapiro
William A. Pillarella Ann Loffredo
John Robinson Sebastian Passanesi
Stephen Gadomski Francis T. Patnaude
Vincent J. Loffredo Christine Lindquist
Richard L. Thompson

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Sebastian J. Garafalo

DATE: April 26, 1989

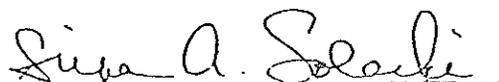
RE: Request for Legal Opinion - Savard Subdivision Identification of Procedural Steps to be taken as a result of the evidence so Commission can take appropriate action

Section 8-25, subsection (a), of the Connecticut General Statutes, as amended, provides that a fine of not more than five hundred dollars for each lot sold or offered for sale or so subdivided may be imposed if any person, firm, or corporation makes any subdivision of land without the approval of the Commission.

As indicated to the Commission, the Commission must determine, based on all the evidence before them, whether or not the "person, firm or corporation" made a subdivision of land without the approval of the Commission. Prior to making that determination, it is essential that the Commission notify the party or parties involved of their inquiry into a potential violation of the statute by registered mail, return receipt requested, which notice shall include the date, time and place when the issue will be discussed and voted on. Furthermore, it is essential that an opportunity be given to the party or parties involved to present any evidence on its/his/her/their behalf. The Commission would then make its determination. If a violation is found, the Commission must then determine how many lots have been subdivided, offered for sale, or sold. It is within the discretion of the Commission to impose a fine of not more than five hundred dollars for each lot which the Commission has determined has been subdivided, offered for sale or sold.

As a caveat, the Commission should keep in mind that the fine imposed for each lot is not a continuing violation for each day that the violation exists, it is a one time imposition of a fine not to exceed five hundred dollars for each lot.

After the Commission has determined that a violation does exist and the number of lots involved, written notification of the finding of the Commission, detailing the facts upon which the Commission has determined that a violation exists, should be sent, on behalf of the Commission, to the party or parties against whom the fine has been imposed, giving them a time frame within which to pay the fine. It should also contain language to the effect that if the fine is not paid on or before that date, further legal action will be commenced to collect the fine including the request for attorney's fees and the costs of commencing such an action. This notification should be sent by registered mail, return receipt requested, to the party or parties involved with a carbon copy to its/his/her/their counsel and the City Attorney's Office.


Trina A. Solecki
City Attorney

TAS/es

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