

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Stephen Gionfriddo

DATE: August 25, 1993

RE: Legal Opinion Request

FACTUAL BACKGROUND PROVIDED WITH REQUEST:

On June 17, 1993 the applicant filed an application for a twenty-six lot subdivision. The applicant indicated that he already possessed an Inland Wetlands permit. Upon review, Planning and Zoning Department staff discovered that the permit had expired on February 6, 1993. The applicant was so informed and applied for another Inland Wetlands permit on June 30, 1993. The permit was granted on July 7, 1993. The public hearing on the Planning & Zoning application opened on July 14, 1993.

QUESTION PRESENTED:

Is this a fatal flaw in the application?

ANSWER:

No.

ANALYSIS:

Connecticut General Statutes §8-26, as amended, provides, in pertinent part, as follows:

If an application involves land regulated as an inland wetland or watercourse under the provisions of chapter 440 [C.G.S. §§ 22a-28 et seq.], the applicant shall submit an application to the agency responsible for administration of the inland wetlands regulations no later than the day the application is filed for the subdivision or resubdivision. The commission shall not render a decision until the inland wetlands agency has submitted a report with its final decision to such

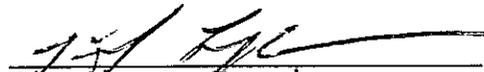
commission. In making its decision the commission shall give due consideration to the report of the inland wetlands agency.

C.G.S. § 8-26, as amended (footnote included) (emphasis added).

The statute clearly contemplates that an application shall be submitted to the IWWA no later than the day that the applicant files with the Planning and Zoning Commission. The purpose for this filing requirement is also clearly expressed in the statute: "The commission shall not render a decision until the inland wetlands agency has submitted a report with its final decision to such commission. In making its decision the commission shall give due consideration to the report of the inland wetlands agency."

In the present situation the applicant had already applied for and been granted a wetlands permit prior to making application to the Planning & Zoning Commission. Prior to the opening of the public hearing and the Commission's consideration of the application, the applicant received another approval from the Inland Wetlands Agency. Therefore, the Agency's final report has been submitted to the Commission and the Commission is able to consider it as required by C.G.S. § 8-26, as amended.

Consequently, given the uniqueness of the situation, that the applicant had prior wetlands approval and a reapproval was issued by the Agency within a week of the notification that the permit expired, the Commission has the benefit of the IWW Agency's input and therefore this would not appear to be a fatal flaw in the application.

  
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Timothy P. Lynch  
Deputy City Attorney

TPL/es

cc: William Warner, AICP  
Planning & Zoning Director

REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE  
(Submit to Mayor in Duplicate)

TO: MAYOR'S OFFICE

FROM: William Warner, Planning Director

SUBJECT: Subdivision Application

FACTS: (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY, & HOW.) 26 lot subdivision not submitted in accordance with CGS8-26 with regard to "Applications involving wetland and watercourses". Applicant submitted P & Z application and indicated he already had a wetlands permit. Staff discovered IW permit had expired. Applicant was notified of problem, applied for wetland permit, and choose to proceed with P & Z application. Prior to P & Z hearing applicant secured a new IW permit.

LAW: (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that you think applies to this question.)  
CGS 8-26, Page 31-32 from "What's Legally Required", Atty. Michael Zizka

QUESTION: What, in your own words is the precise question you wish to have answered?)

How should the P & Z Commission handle this problem?  
Is this a fatal flaw in the application?

ESTIMATE OF PRIORITY:

Check One.

           EMERGENCY            STANDBY FOR FUTURE ACTION

  X   URGENT            APPLICANT SHOULD KNOW FOR FUTURE ACTION  
by 7/28/93

Date: 7-15-93

[Signature]  
Signed:

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CITY ATTORNEY'S OFFICE  
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