

MEMORANDUM

FROM : OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO : Mayor Maria Madsen Holzberg

DATE : April 3, 1996

RE : Legal Opinion Request

ISSUE: Whether copies of an audience member's audio tapes recording the Inland Wetlands & Watercourses Agency meeting may be used due to a malfunction of the Agency's tape recorder to fulfill the Agency's requirement that it's meetings be recorded on audio tape.

ANSWER: If verified for accuracy by the Agency's staff the tapes may be accepted.

ANALYSIS:

The Wetlands and Watercourses chapter of the Connecticut General Statutes does not require that Inland Wetlands Agencies tape record their meetings. C.G.S. Secs. 22a-42, 22a-42a, 22a-43, as amended, Fuller, Land Use Law and Practice Sec. 16.6 (1993/1996 Rev.).

Further, the ordinance which created the City's Inland Wetlands and Watercourses Agency does not require that the meetings be tape recorded. Middletown Code of Ordinances Sec. 26-6.

Also, the Freedom of Information Act does not require that public agencies tape record their meeting but only that votes be reduced to writing and minutes kept. C. G. S. Sec. 1-21, as amended.

Conversely, the Connecticut General Statutes do require that evidence at planning and zoning commission and zoning board of appeals hearings be taken by court stenographer or recorded on audio tape. C. G. S. Sec. 8-7a, as amended.

This requirement has been picked up in the Inland Wetlands and Watercourses Agency's Bylaws. The bylaws provide, in pertinent part, as follows:

A competent stenographer shall take the evidence or the evidence shall be recorded by a sound recording device at each hearing for the Agency in which the right to appeal lies in the Superior Court of the Judicial District of Middlesex at Middletown. Proceedings of the hearings shall be incorporated into the Minutes Book of the Agency to be a permanent part of that record.

Inland Wetlands and Watercourses Agency Bylaws, Article IX, Sec. 3, at page 6.

Accordingly, the evidence presented at a hearing before the City's Inland Wetlands and Watercourses Agency must be recorded on audio tape.

However, despite the fact that a transcript of the public hearing is statutorily required in planning and zoning commission appeals, the Connecticut Supreme Court has held that the failure to provide a complete transcript is not a jurisdictional defect. Ghent v. Planning Commission, 219 Conn. 511, 515-16 (1991).

In cases in which the record does not contain a complete transcript, the court will simply allow the record to be reconstructed with testimony. Fuller, supra, at Sec. 27.20.

In the present situation there are tapes available. These tapes should be reviewed by the Agency's staff to determine whether they have recorded the public hearing as accurately as the Agency's machine would have if it had not malfunctioned. If so, the tapes may be accepted as the Agency's official recordings.


Timothy P. Lynch
Deputy City Attorney

TPL/dw

cc: Linda Bowers
Environmental Planner

RECEIVED
CITY ATTORNEY'S OFFICE

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

06 MAR 21 1996

TO: MAYOR'S OFFICE

FROM: Linda Bowers *LB* Environmental Planner

SUBJECT: Recording Tapes of IWWA public hearing
Request for Legal Opinion

FACTS: (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY & HOW.)
On March 6, 1996, the Inland Wetland & Watercourses Agency held its regular meeting. At that meeting, the Public Hearing was opened for the application of Quattro Development Corp. (95-43) for a proposed golfcourse on Mile Lane. The public hearing was continued after 3 1/2 hours, to the April 3, 1996 regular meeting.

It was discovered on March 19th that due to mechanical problems the meeting was not taped properly. Minutes of that meeting have been prepared.

A member of the audience made tapes of the meeting that are audible and could be transcribed.

LAW: Article 1X, Section 3 of the Inland Wetland & Watercourses Agency By Laws referring to conduct of public hearings:

"... evidence shall be recorded by a sound recording device at each hearing for the Agency in which the right to appeal lies in the Superior Court of the Judicial District of Middlesex at Middletown.

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

- 1.) Can copies of the audience member's tapes be accepted as the "official" tapes?
- 2.) Does the public hearing need to "start over" or can it just be continued?

ESTIMATE OF PRIORITY:

EMERGENCY *by April 2nd*
 URGENT

Check one.

STANDBY FOR FUTURE ACTION

APPLICANT SHOULD STAND BY FOR FUTURE ACTION

Date: March 20, 1996

SEARCHED
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FILED
[Signature]

Approved: *[Signature]*
[Signature]