

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Maria Madsen Holzberg

DATE: June 25, 1997

RE: Legal Opinion Request

QUESTION PRESENTED:

In the absence of any documented public health concerns, can the Planning & Zoning Commission legally prohibit the extension of this sewer line any further into south Middletown even if a future developer is willing to bear all costs?

ANSWER:

Yes.

ANALYSIS:

Connecticut General Statutes §8-23 requires municipal planning commissions to enact and maintain a plan of development. The statute provides that "[s]uch plan may also show the commission's recommendation . . . for the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewerage, light, power, transit and other purposes". C.G.S. §8-23, as amended.

The Connecticut Supreme Court has held that the adoption of a plan of development is not a mandatory condition precedent to the adoption of subdivision regulations, however, where a plan exists the planning commission must follow it when enacting subdivision regulations or evaluating subdivision applications. Lebanon v. Woods, 153 Conn. 182, 193 (1965); see also Fuller, Land Use Law and Practice, Conn. Practice Vol. 9, at §10.15 and §21.15 (1993/1997 supp.).

The Middletown Planning and Zoning Commission has a Plan of Development. Chapter 6 of the Plan addresses the City's water supply, sanitary sewerage and future extensions of sewer and water lines. This chapter provides general guidance to the Water Pollution Control Authority and the Planning & Zoning Commission when evaluating extensions of water and sewer lines. Guiding the Future: A Plan of Development for the Year 2000, Planning & Zoning Commission, Middletown, CT, at Ch. 6.

The subdivision regulations enacted by the Planning & Zoning Commission pursuant to

§8-25 of the Connecticut General Statutes contain the following provisions:

5.03 PLAN OF DEVELOPMENT

Subdivisions shall be planned and designed in general conformity with the Plan of Development for the city adopted by the Commission pursuant to the authority of Chapter 126 of the Connecticut General Statutes, as amended, particularly with regard to:

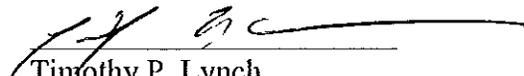
- a. Location and Classification of Streets
- b. Sanitary Sewer and Water Supply
- c. Reservation of land for Parks, Recreation, Sidewalks, Open Space and natural resource protection.

5.22.01 Extensions

Where a public sanitary sewer system is accessible, as determined by the Water Pollution Control Authority and the Plan of Development, all necessary mains and laterals for connection from the individual lots to the public system shall be installed and connected, by the developer, with the public system in accordance with the City Regulations, as amended, and approved by the Water Pollution Control Authority.

Subdivision Regulations of the City of Middletown, at §5.03 and §5.22.01.

These provisions specifically require that subdivisions conform to the Plan of Development. Consequently, the Commission must follow the plan when passing upon subdivision applications. The Connecticut Supreme Court has upheld the rejection of subdivision because its proposed streets did not conform with the plan of development. Crescent Development Corporation v. Planning Commission of New Canaan, 148 Conn. 145 (1961).


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, AICP, Director, Planning & Zoning

SUBJECT: Sewer Extension\avoidance

FACTS: (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY & HOW.)

The Water and Sewer Department has developed an arrangement with a local developer to loop a sewer system in order to solve several septic and pump station problems and provide a gravity sewer system for the approved development. (See attached). The proposed loop extends beyond the southern limit of the city sewer system. In order to preserve south Middletown's rural character the Commission has adopted a policy in the Plan of Development which discourages sewer extensions any further south. The developer is required to modify his subdivision approval to provide for a gravity sewer system and the Water and Sewer Department is required to seek a CGS8-24 review.

I do not believe there is a problem with modifying the approved development or extending and looping the sewer to serve existing development with clear and documented septic problems. However there are several hundred acres of undeveloped land to the south and I am concerned about opening up these areas to public sewers.

LAW: CGS8-23, CGS8-24, CGS8-25
153 Conn 193
Chapter 6 of the Plan of Development
Subdivision Regulations 5.03, 5.22.01

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

In the absence of any documented public health concerns, can the Planning and Zoning Commission legally prohibit the extension of this sewer line any further south even if a future developer is willing to bear all costs.

ESTIMATE OF PRIORITY:

Check one.

 EMERGENCY

 STANDBY FOR FUTURE ACTION

 URGENT

 APPLICANT SHOULD KNOW FOR
FUTURE ACTION

Date: _____

Signed