

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Planning and Zoning Commission

DATE: September 10, 1986

RE: Bulky Waste Site - Regional Transfer Systems, Inc. - Newfield Street

Facts:

The disposal site in question was formerly a clay pit used by Michael Kane Brick Company.

In 1975, S.G. Marino Crane made application to the Planning and Zoning Commission to dispose of fly ash on the present site of the Bulky Waste Disposal area on Newfield Street. On July 9, 1975, the Planning and Zoning Commission changed the zone of the site, where the fly ash was to be deposited, from residential to industrial and granted the application of S.G. Marino Crane.

On October 10, 1979, the Planning and Zoning Commission approved Phil Armetta's application to use the Newfield Street, which had previously been approved as a fly ash fill site, as a bulky waste site. In October 1979, Regional Transfer Systems, Inc. applied to the State Department of Environmental Protection for a permit for the disposal of bulky waste on this site. In January of 1980, the State Department of Environmental Protection granted its permit for bulky waste disposal on Newfield Street. The permit, in effect, allowed for the waste to accumulate to a height of approximately nine feet above the present street level on Newfield Street. The Planning and Zoning Department has advised that the disposal facility was a permitted use, under the zoning code in effect in 1979, in an industrial zone, without the need to apply for a special exception. In April 1980, the Planning and Zoning code was amended. From April, 1980, to the present, the Middletown Zoning Code requires that a bulky waste facility site can only be approved by special exception in an I-2 Zone.

Regional Transfers Systems, Inc.. has required that the Planning and Zoning Commission review its plans for a vertical expansion of the existing bulky waste site on Newfield Street.

Issue:

What parameters must the Planning and Zoning Commission utilize in reviewing the request of Regional Transfers Systems, Inc.?

Discussion:

Sec. 36-02 of the Zoning Code of the City of Middletown provides that the maximum height for an industrial (I-2) zone "...shall not exceed thirty-five feet, unless it sets back from each street and lot line, in addition to yard requirements, two (2) feet for each one (1) foot of excess height, ...". Height is defined in the Zoning Code with reference to a building. Specifically, Section 16.02.12 entitled "BUILDING HEIGHT OF" as "The vertical distance from the average contact ground level at the front wall of the building to the

highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, or gambrel roofs." Furthermore, the Zoning Code defines buildings in Section 16.02.08 as "Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate building, except as regards minimum side yard requirements, as hereinafter provided."

By no stretch of the imagination can one analogize a bulky waste site, although a permitted land use, as a building or some type of facility which has a roof. Under the code as it presently exists, there is no height restriction on a bulky waste site.

Under the present zoning code, a solid waste disposal facility is a special exception in an industrial (I-2) zone. At the time, Regional Transfers Systems, Inc. applied for its permit, a solid waste facility was a permitted use in an industrial zone without the need to apply for a special exception. Therefore, since the bulky waste disposal site existed prior to the special exception requirement of the amended codes since 1980, the special exception standards are inapplicable to this present request.

Furthermore, nowhere in the Middletown Planning Code is the height or elevation of a waste disposal facility explicitly limited in any zone wherein such a site is a permitted use.

Conclusion:

Since the present zoning code does not put any limitations on the height and/or elevation of any solid waste disposal facility, there are none. Furthermore, the special exception standards of the code are inapplicable to this bulky waste disposal request since it is an existing facility and the use of the land is not changing only the vertical expansion of the disposal site* Therefore, since there are no height restrictions, the function of the Commission is purely ministerial. The Planning and Zoning Commission can certify to the State Department of Environmental Protection that Regional Transfers Systems, Inc. is in compliance with City zoning.

*is being altered.


Ralph E. Wilson
City Attorney