

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Paul Gionfriddo

DATE: December 14, 1990

RE: Legal Opinion Request
K & F Subdivision Bonds

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FACTS

K & F Associates, Inc. is the developer of the Westfield Hills Subdivision. As a condition of granting final approval for each section of the subdivision, the Planning & Zoning Commission required the developer to execute separate contracts and post separate cash bonds to assure completion of the streets and curbs in each section of the subdivision.

On October 24, 1990 the City notified the developer that it was in default of the agreement concerning the Footit Drive Section of the subdivision and that the City was calling that bond.

On October 31, 1990 the City and the developer executed an amendment to the agreement concerning Section Four of the subdivision. This amendment permits the City to use a portion of the cash bond to hire a contractor to winterize a street in this section known as Snow Ridge North.

QUESTION PRESENTED

In order for the City to utilize these bond monies is Common Council approval necessary?

ANSWER: No.

ANALYSIS:

This money is not part of any City fund but is held in separate escrow accounts at a local bank. Subdivision bond money is held by the City pursuant to contract and may only be utilized for the purpose set forth in that contract. In this situation, two contracts are present: the Westfield Hills Subdivision

Footit Drive Section Agreement and the Westfield Hills
Subdivision Section Four Agreement.

The City has held the developer in default under the Footit Drive Section Agreement. This means that the City has unrestricted access to the funds in this account to complete the work required by the contract. Pursuant to this agreement, the City must provide the developer with an accounting of how the money was spent. This is the same situation that was present last year when the City had to complete work in the Wadsworth Hectares Subdivision off of Long Lane.

Regarding the Section Four Agreement, the City and the developer have amended this contract to permit the City to access the funds to hire a specific contractor to perform certain work. The City has not called this bond and does not have an unrestricted right to this money and must comply with the terms of the contract as amended.


Timothy P. Lynch
Deputy City Attorney

TPL/dw

cc: Tayna Oliver-Perry, Assistant Finance Director
Thomas Nigosanti, Chief Engineer
George Reif, Director, Planning & Zoning Department