

Town Clerk

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457
TO: Ann Loffredo, Chairwoman, Planning & Zoning Commission
George Reif, Director of Planning & Zoning Department

DATE: April 23, 1990

RE: Legal Opinion - Safeway

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QUESTIONS PRESENTED

1. Is there another entity (other than the Planning & Zoning Commission or the Planning & Zoning Department) that can legally sort through a mass of documents and possible Opinions to evaluate the credibility of citizen views, particularly now that the Commission has permitted the topic (Safeway) to continue for five (5) meetings?
2. If the Planning & Zoning Commission so wished, may it reopen and possibly overturn 1986 and 1988 actions particularly since the (Safeway) incinerator developer has relied on those actions to carry out his investment objectives?

ANSWERS

1. The Planning & Zoning Department and the Planning & Zoning Commission are the only entities currently available to perform this task.
2. Based upon state statute and decisions of the Connecticut Supreme Court, under these circumstances, the Commission may not reopen or overturn either its 1986 "decision" nor its 1988 "action".

LEGAL ANALYSIS

Question #1

There is no other entity currently available to "sort through a mass of documents" in an effort to assist the Planning & Zoning Commission and the

Planning & Zoning Department. The Planning & Zoning Department and the Planning & Zoning Commission are the two entities responsible for such a task. The fact that the Commission has permitted the topic to continue for five meetings is irrelevant. This is completely within the purview of the Commission. The Planning & Zoning Commission, and for that matter, the Director of Planning & Zoning, derive their power and authority from the Middletown Charter and Connecticut General Statutes Sections 8-2, et seq, as amended.

The Planning & Zoning Commission, and indirectly, the Planning & Zoning Department staff, are charged with promoting, with the greatest efficiency and economy, the coordinated development of the municipality and the general welfare and the prosperity of its people; its aim is to secure uniform and harmonious growth of villages, towns and cities. Kiska v. Skrensky, 145 Conn 28 (1957). The purpose of zoning ordinances is to confine certain classes of buildings and uses to certain localities. Fiano v. Monahan, 25 Conn Supp 363 (1965). Pursuant to these well stated goals and objectives, it is the Planning & Zoning Commission and the Planning & Zoning Department which are ultimately responsible to evaluate the credibility of citizen views while conducting its own investigation into matters of a planning & zoning nature.

QUESTION #2

The Planning & Zoning Commission has broad power to regulate uses of property within the City. It is axiomatic that all private property is held subject to the police power of the state Jennings v. Connecticut Light & Power Company, 140 Conn. 650 (1954). When and how that power will be exerted is for the legislative body to decide and the courts can interfere only where the action taken fails to serve a legitimate public purpose or interferes with private rights in an unreasonable, discriminatory or arbitrary fashion. At the same time, zoning power is not unlimited and is subject to its own restrictions, in that it can never be exercised in an arbitrary manner. DelBuono v. Board of Zoning Appeals, 143 Conn. 673 (1956). Zoning legislation, be it statute or ordinance, to be constitutionally valid, must serve some phase of the public health, safety, convenience or welfare in a reasonable, impartial and considerate way. See generally, T. Byrne,

Planning & Zoning in Connecticut, (3rd Ed., 1987)

The Planning & Zoning Commission acts, as it did here in 1986 by interpreting for the owner a definition of permitted accessory use and in 1988 when the Planning & Zoning Director assured the owner that it could proceed in submitting a site plan to the Planning staff for site plan review in an administrative rather than a legislative capacity. Because it was acting in its ministerial capacity, it may not merely modify its enactments whenever time and experience reasonably indicate the need for revision. Compare C.F. Metropolitan Homes, Inc. v. Town Plan & Zoning Commission, 152 Conn 7 (1964).

A prior administrative decision may not be reversed by the administrative agency unless there has been a change of circumstances. Rocchi v. Zoning Board of Appeals of Glastonbury, 157 Conn 106 (1968). A commission acting in its legislative capacity, is not bound by the change of circumstances requirement. The discretionary power of the agency, acting in its legislative capacity, differs from that of an administrative board. The Court has said that "the discretion of a legislative body, because of its constituted role as a formulator of public policy, is much broader than that of an administrative board, which serves as a quasi-judicial function." Malafrente v. Planning & Zoning Board of Milford, 155 Conn. 205 (1967). See also T. Tondro, Connecticut Land Use Regulation, at Ch. VIII (1st Ed. (1967)).


Although the lines between legislative and administrative action often become blurred, the Court will use the distinction to explain its decision in land use regulatory cases. To the extent that the Court has explained the basis for these characterizations, it has suggested that the test is whether a decision concerns a particular proposal or parcel. "We have consistently held that, in exercising its function of approving or disapproving a particular subdivision plan, as distinguished from its function of adopting regulations, a municipal planning commission is acting in an administrative rather than a legislative capacity (emphasis added). See Tondro, supra citing J & M Realty Company v. City of Norwalk, 156 Conn 185 (1968).

In this case, because the actions by the Planning & Zoning Commission and the Planning & Zoning Department were specific to the Industrial Park Roadside, the actions would be most likely considered administrative. Because the actions would be considered administrative, and assuming no finding could be made that fraud or misrepresentations were made in order to acquire favorable municipal decisions, any action to overturn or reopen would most likely be found invalid.

Another issue which has been raised is whether the developer's reliance upon the above-mentioned actions of the City, which resulted in efforts to "carry out his investment objectives", has any effect upon this matter. This area of the law is unsettled and imprecise with respect to the effect that a change of position on the part of the City would have on a property owner/developer where he/she/it has incurred material expenses and substantial liabilities.

Generally, Connecticut courts will weigh, as a factor, the extent to which a property owner has incurred expenses as a result of a reliance upon a decision from the City which was based on proper legal procedures. Fitzgerald v. Merard Holding Co., 110 Conn. 130; Graham Corp. v. Board of Zoning Appeals, 140 Conn. 1. The many factors a Court will examine to determine the weight to accord expenses incurred by the property owner include the reasonableness of the reliance, the correctness of the procedural process leading to the permit or decision and the extent of the expenses incurred. Generally, the mere suggestion that a property owner has relied upon the City's actions to "carry out his investment objectives" is not, in and of itself, a determining factor in a situation such as this.

In conclusion, the Planning & Zoning Commission may not properly reopen or overturn its 1986 "decision", nor may it do so with respect to the 1988 letter of interpretation from the Planning Director.


Russell Lehman
Assistant City Attorney

RL/dmw

cc: Mayor Paul Gionfriddo
Attorney Patricia Farrell, Corporation Counsel