

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Paul Gionfriddo

DATE: June 3, 1991

RE: Legal Opinion Request - P & Z Commission Visit to
Newfield Street Transfer Station Site

Town
Clerk

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TOWN CLERK
MIDDLETOWN, CONN.

ISSUE:

Can a member of the Planning and Zoning Commission who does not go to a specially called meeting on the site of an application vote on that application?

FACTS:

1. On May 22, 1991, the Middletown Planning and Zoning Commission began the public hearing required for an application to locate a garbage transfer station at 654 Newfield Street.
2. The public hearing on said application was continued to June 12, 1991. The Commission decided, in the interim to make an on-site visit of the property, subject to the application, on June 8, 1991 at 10:00 A.M..
3. Acting upon the advice of the Freedom of Information Commission, staff to the Middletown Planning and Zoning Commission called a special meeting for the purpose of the on-site visit on June 8, 1991.
4. At least one of the regular Commission members who is eligible to vote on this application will not be able to attend the specially called meeting on June 8, 1991.

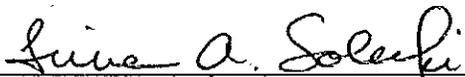
DISCUSSION:

A special meeting of the Middletown Planning and Zoning Commission has been duly called and noticed in accordance with the Connecticut General Statutes, as amended. Therefore, the commission by virtue of the call and notice of the special meeting on June 8, 1991 has continued the public hearing on the application for locating a transfer station at 654 Newfield Street to June 8, 1991. The Loh v. Town Plan and Zoning Commission of the Town of Fairfield, 161 Conn. 32 (1971) case allows a member of a zoning commission, although not present at a public hearing, to lawfully vote on a proposed application if

such member fully acquaints himself or herself with the issues raised and the evidence and arguments presented at the public hearing in order to exercise an informed judgment.

Because of the nature of a special meeting called for the purpose of an on-site visit by the entire P & Z Commission eligible to vote on an application, the absent member(s) cannot fully acquaint himself/herself/themselves with the issues raised and the evidence and arguments presented unless present physically at the site. Therefore, that member or those members cannot legally vote on the application since he/she/they is/are without all of the information necessary to exercise an informed judgment.

Unless and until the Planning and Zoning Commission and/or its staff develop a procedure whereby Planning and Zoning Commission members eligible to vote on an application, absent from an on-site visit, are fully informed of that on-site visit, it is my recommendation that the Planning and Zoning Commission not call and notice special meetings of the P & Z Commission for the purpose of on-site visits unless all eligible voting members of the Commission are able to be present.


Trina A. Solecki
City Attorney

TAS/es

cc: George Reif, Director, Planning and Zoning