MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Councilman Stephen T. Gionfriddo, Chairman, Planning and Zoning Commission

DATE: October 23, 1987

RE: Legal opinion request regarding whether new members to the Planning and Zoning Commission who first became members after the election in November of 1987, can vote on any items carried over from Planning and Zoning Meetings prior to the election in the same manner in which an absent member of the Commission would vote.

Section 8-3 (a) of the Connecticut General Statutes, as amended, provides, in pertinent part, that "No such regulation or boundary shall become effective or be established or changed until after a public hearing in relation thereto, held by a majority of the members of the Zoning Commission ..." (underlining added). It is implicit from the reading of this statute that those persons voting on a specific agenda item before the Planning and Zoning Commission must be members of the Commission at the time that the first public hearing is held. However, "(i)t is clear that this statute does not require the presence at the public hearing of a zoning commission member as a condition precedent for that member to vote on a change in regulations or zone boundaries." Loh v. Town Planning and Zoning Commission, 161 Conn. 32, 41 (1971).

May a new member of the Commission who first becomes a member after the November election vote on items on which public hearings were begun prior to the election when the individual was not a member of the Commission? The answer is no. The whole key to the interpretation of Section 8-3(a) is the word "member". The section clearly requires that a member of the Planning and Zoning Commission be a member at the time of the public hearing. If it is not possible for that member to attend the public hearing because of sickness or other inability, such member may still vote if he or she sufficiently acquaints himself or herself with the issues raised and the evidence and arguments presented at the missed public hearing. The legislature did not envision, as is clear from the legislative intent of Section 8-3(a) C.G.S., as amended, a member voting on an issue heard at a public hearing at which time the member was not yet a member of the Planning and Zoning Commission.

Therefore, in conclusion, both statutory law and case law support the conclusion that new members of the Planning and Zoning Commission, who are not members of the Commission at the time of the public hearing on a specific issue, cannot vote on that issue by merely reading the transcript of the public hearing(s) in the same manner in which absent members of the Planning and Zoning Commission would in order to apprise themselves of the evidence on said issue.

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REW/sjr

cc: Sebastian J. Garafalo, Mayor
George A. Reif, Director of Planning

fronte v. *Planning & Zoning Board,* supra, 209. This rule will be applied only if it appears that the commission is acting arbitrarily. Ibid. As already indicated, the change is in harmony with the town's comprehensive plan. Under these circumstances, the plaintiffs have failed to show any facts demonstrating that the action of the commission in denying the previous application for a zone change covering a different area, though that area included the parcel embraced in the present application, would preclude the granting of the present application. See *Allin* v. *Zoning Commission,* 150 Conn. 129, 135, 186 A.2d 802.

VI

The plaintiffs claim that the failure of John E. Wrabel, one of the members of the commission who voted in the executive session of January 23, 1968, to attend the public hearing on November 28, 1967, renders the change of zone illegal. The burden of proving that the action of the commission in the zone change was illegal was on the plaintiffs. *Chucta* v. *Planning & Zoning Commission,* 154 Conn. 393, 394-95, 225 A.2d 822. As already recited, the trial court heard evidence only on the issue of its jurisdiction. It nowhere appears that the plaintiffs requested the Court of Common Pleas to allow the introduction of evidence on the issue of the disqualification of a commission member. See General Statutes § 8-8. No reason appears why this could not have been done. The court decided this issue solely on the record returned to it by the commission. This is the record returned to us pursuant to Practice Book § 647 and on which we review the conclusion of the trial court that the participation of Wrabel in the decision to change the zone did not render that decision void.

We turn to General Statutes § 8-3 which provides the procedure which a zoning commission is to follow in order validly to effect changes in regulations and in zone boundaries.[1] It is clear that this statute does not require the presence at the public hearing of a zoning commission member as a condition precedent for that member to vote on a change in regulations or zone boundaries. In *Strain* v. *Mims*, 123 Conn. 275, 282, 193 A. 754, we considered a predecessor to § 8-3 (Rev. 1930 § 425), and stated: "The purpose of the public hearing is . . . to inform the members of the commission as to the reasons why the change should or should not be made." We there noted that it is "advisable" that members of the commission attend the hearing. Id., 283. Yet, occasions may arise where, because of illness or other inability, a member may be unable to attend the hearing. Such a member should not be prohibited from voting on a change provided he "seek[s] to make and . . .

[1] The pertinent portion of the statute reads as follows:

"§ 8-3. ENFORCEMENT OF REGULATIONS; PUBLIC HEARINGS; CHANGES. Such zoning commission shall provide for the manner in which regulations . . . and the boundaries of zoning districts shall be respectively enforced and established and amended or changed. No such regulation or boundary shall become effective or be established until after a public hearing in relation thereto, held by a majority of the members of the zoning commission or a committee thereof appointed for that purpose consisting of at least five members, at which parties in interest and citizens shall have an opportunity to be heard . . . . Such regulations and boundaries may, from time to time, be amended, changed or repealed by such zoning commission by a majority vote of the commission, except as otherwise provided in this chapter. If a protest is filed at such hearing with the zoning commission against such change, signed by the owners of twenty per cent or more of the area of the lots included in such proposed change or of the lots within five hundred feet in all directions of the property included in the proposed change, such change shall not be adopted except by a vote of two-thirds of all the members of the zoning commission. The provisions of this section relative to public hearings . . . shall apply to all changes or amendments".

[has] the means to make an informed decision, one that is based on knowledge sufficient for 'wise and proper judgment.'" *Matter of Taub* v. *Pirnie,* 3 N.Y.2d 188, 194, 144 N.E.2d 3. While, as we have indicated, § 8-3 does not by its terms require the presence at a public hearing of a commission member, it is equally clear, in view of the purpose of the public hearing, that the legislature could not have intended that a member who had not been present at the public hearing could lawfully vote on a change without first acquainting himself sufficiently with the issues raised and the evidence and the arguments presented at the public hearing. We, therefore, construe § 8-3 to mean that a member of a zoning commission, although not present at the public hearing, may lawfully vote on a proposed change in regulations or zone boundaries if that member acquaints himself sufficiently with the issues raised and the evidence and arguments presented at the public hearing in order to exercise an informed judgment.

In the case at bar, we need not decide whether Wrabel's participation in the commission's decision to change the zone of the land in question vitiated the entire vote of the commission, since the record indicates that the plaintiffs had not sustained the burden of proving his vote was unlawful. The following facts are not in dispute: Wrabel participated in the commission's executive session of August 1, 1967, in which the previous Garofalo application was denied. He was not present at the public hearing held on November 28, 1967. He voted in the executive session of January 23, 1968. The defendant commission alleges in its brief that Wrabel was present at the hearing held on June 13, 1967, and that he listened to a tape of the transcript of the hearing of November 28, 1967, although there is

nothing in the record before us which shows these alleged facts. The plaintiffs, nevertheless, who had the burden of proof, chose not to introduce any evidence to show that Wrabel did not sufficiently acquaint himself with the issues raised and the evidence and the arguments presented at the public hearing of November 28, 1967. We cannot, therefore, disturb the trial court's conclusion that the member absent from the public hearing was not disqualified from voting on the change of zone.

There is no error.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* GEORGE FARRAH

HOUSE, COTTER, THIM, RYAN and SHAPIRO, Js.

There was evidence that the defendant, convicted of the crime of obtaining money by false pretenses, induced P to give him money for two second mortgages in return for which he gave P what purported to be two mortgage notes from F Co. No mortgage deeds, however, were delivered to P. The defendant, himself on the verge of bankruptcy, knew that F Co., controlled by him and members of his family, was in financial difficulty and that, because of prior encumbrances, was in no position to execute valid second mortgages on its property. Under the circumstances, then, the trial court could reasonably have found as a fact that the defendant led P to believe that she had received notes then secured by mortgages and not, as he claimed, that she would receive security at some time in the future.

Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one. Intention may be inferred from conduct. Here, there was sufficient evidence in the record, the defendant's denial notwithstanding, to warrant the trial court's conclusion that the defendant intended to defraud P.

The trial court could reasonably have concluded that the notes, being made to appear to be mortgage notes, together with the other