

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Councilman Stephen T. Gionfriddo, Chairman, Planning and Zoning Commission; George A. Reif, Director, Planning and Zoning Department

DATE: August 12, 1987

RE: Effect of Court's Decision in the Morrow Appeals on Zoning Amendments Subsequent to the Zoning Code Text Amendments and Map Changes which were the Subject of the Appeals

Invalid portions of amended regulations are separable from the valid portions if the invalid portions do not affect the amended regulations as a whole. Langer v. Planning and Zoning Commission of Town of Westport, 163 Conn. 453 (1972). In the Langer case, the Planning and Zoning Commission of the town of Westport created a restricted professional office district, hereinafter referred to as RPOD. The Court held that a section of the regulations governing the newly created RPOD zone was invalid. The appellants argued that the entire RPOD zone must fail because the invalid section was so connected and essential to the remaining provisions as to indicate a legislative intent to establish no regulations without the invalid one. The Westport Zoning ordinance contained a separability section which provided that the invalidity or inoperability of any section would not affect the validity of the ordinance as a whole or any other section of it. The Court found that even though a section of the newly created RPOD zone was invalid, the remaining sections of the RPOD amendment were not so mutually related to and intrinsically connected with the remaining RPOD regulations and therefore were valid and effective as enacted.

Case law has held that conditions imposed which are found to be invalid by the Court but which are not essential or an integral part of the permissible, required action of the Commission and are separate and distinct and can be severed from the Commission's action do not invalidate the entire action of the Commission. Beckish v. Planning and Zoning Commission, 162 Conn. 11, 19 (1971); Parish of Saint Andrew's v. Zoning Board of Appeals of Stamford, 155 Conn. 350, 354 (1967). Further, in the case of Amsel v. Brooks, 141 Conn. 288, 301 (1954), the Court held that "(I)f two parts of a statute are not so mutually connected and dependent as to indicate a legislative intent that they should stand or fall together, it is proper to hold the statute valid as to one of the parts and invalid as to the other." (citations omitted).

Therefore, in reviewing the actions of the Commission in amending the zoning regulations subsequent to the zoning code text amendments and map changes which were the subject of the Morrow appeals, a determination must be made as to whether each amendment enacted thereafter is so mutually connected and dependent on those text amendments and map changes as to indicate an intent by the Planning and Zoning Commission in enacting each amendment that the validity of same stands or falls on the validity of the zoning code text amendments and map changes which were the subject of the Morrow appeals.

Based on the foregoing, the following amendments to the zoning code text and map subsequent to the Zoning Code text and map changes which were the subject of the Morrow appeals would be null and void; on June 13, 1984 an

Councilman Stephen T. Gionfriddo, Chairman, Planning and Zoning Commission;
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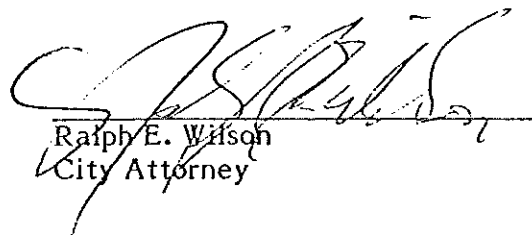
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application was filed to change an R-1 Zone to R-R Zone on Country Club Road, the Commission approved same on July 1, 1984, this zone change would be null and void since there is no longer a R-R Zone after the Court's decision in the Morrow appeals; on September 10, 1986, an application was filed to change an I-2 Zone to R-3/4 Zones in the Laurel Brook section of the City which application was approved on September 24, 1986, this zone change would not be valid since there is no R-3 or R-4 Zone in the City of Middletown after the decision of the Court in the Morrow appeals; on January 14, 1987, an application was filed to change an R-2 Zone to MX Zone on Newfield Street which application was approved on January 30, 1987, this zone change would be null and void because there is no longer an MX Zone under the present zoning code and the R-2 Zone is not valid under the present code; on June 10, 1987, an application was filed to change an R-4 Zone to an I-2 Zone on South Main Street which application was approved on July 1, 1987, this zone change would be null and void since there is no R-4 Zone under the present zoning code.

With respect to two zone changes, one which was approved on May 1, 1986 changing an I-1 Zone to a R-1 Zone on Johnson Street and on June 10, 1987, changing a T.D. to an R-1 Zone on Wall Street and Walnut Street, said zone changes are still under review.

The following amendments to the zoning code text and map, which amendments were brought to the attention of the City Attorney's Office by the Planning and Zoning Department, were reviewed and found to be valid as enacted pursuant to the case law on this subject. Those that are valid are: change of zone from an R-1 Zone to an I-2 Zone on Newfield Street which was approved August 1, 1984; change of zone from an R-1 Zone to an IT Zone on Miner Street which was approved August 1, 1984; change of zone from an R-1 Zone to an ID Zone on Connecticut Valley Hospital property which was approved September 1, 1984; change of zone from an R-1 Zone to an I.O.P. Zone on Preston Avenue/I-91 approved on April 18, 1985; change of zone from an I-1 Zone to a T.D. Zone on Hillside Avenue which was approved July 15, 1986; and change of zone from an I-1 Zone to an IRA Zone on North Main Street which was approved August 1, 1986. The foregoing zones are valid as enacted because these zones are and were present under the zoning code prior to and subsequent to the action of the Commission in the creation of the Rural-Residential and the creation of the hierarchy of zones which zone and map changes were found to be null and void by the Court in the Morrow appeals.



Ralph E. Wilson
City Attorney

REW/sjr

cc: Mayor Sebastian J. Garafalo
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Councilman Steven J. Leinwand, Vice Chairman, Planning and Zoning
Commission
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cc: Councilman William A. Pillarella, Planning and Zoning Commission
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