

## MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Sebastian J. Garafalo, Members of the Planning and Zoning Commission: Councilman Stephen T. Gionfriddo, Chairman; Ann M. Loffredo, Vice Chairman; Councilman Stephen T. Shapiro; Councilman William A. Pillarella; John Robinson; Sebastian Passanesi and Stephen Gadomski; Alternate Members of the Planning and Zoning Commission: Councilman Francis T. Patnaude; Councilman Vincent J. Loffredo; Christine Lindquist; and Richard L. Thompson

DATE:

RE:

May 10, 1988

Request for Legal Opinion - Moratoriums

### ISSUE:

Is there a legal basis for declaring a moratorium on building in Connecticut? If so, under what circumstances, can the City of Middletown declare a moratorium?

### DISCUSSION:

The most recent Connecticut Supreme Court decision which addressed the legality of a moratorium held that the moratorium regulation declared by the Town of Westport as to business uses "... was within the proper power delegated to the local zoning authority by Section 8-2." Arnold Bernhard and Company, Inc. v. Planning and Zoning Commission of the Town of Westport, 194 Conn. 152, 164 (1984). In that case, the Supreme Court stated that it had not previously had the occasion to consider whether a zoning moratorium is substantively authorized by Section 8-2 of the Connecticut General Statutes, as amended. Citing the case of Lebanon v. Woods, 153 Conn. 182, 186-188 (1965), as support for the holding in the Bernhard case, the Supreme Court stated that in the Lebanon case "we upheld the validity under Section 8-2 of "interim" zoning regulations" and rejected the defendant's argument that the regulations were invalid because there was no explicit statutory authority to adopt "interim" zoning regulations. The Bernhard Court found that the moratorium was valid under Section 8-2 C.G.S., as amended, based on the fact that the passage of the moratorium regulation was not procedurally flawed or substantively unreasonable and conformed to the procedural requirements of Section 8-3 C.G.S., as amended; that the moratorium was reasonably limited in scope since it did not prevent all development in the Town of Westport; and that the moratorium was limited in time.

Dr. Tondro has addressed the use of moratoriums in Connecticut in his treatise, "Connecticut Land Use Regulation", at pages 165-172, as amended. Professor Tondro states that moratoria on development permits have usually been upheld while adequate services and facilities to accommodate the new residents is completed. Golden v. Planning Board of Ramapo, 30 N.Y. 2d 359, appeal dismissed 409 U.S. 1003 (1972). The California Supreme Court has recently upheld growth control moratoria on building permits in California also on the grounds that the community needed time to construct facilities, especially new schools. Construction Industrial Association of Sonoma County v.

City of Petaluma, 522 F.2d 897 (9th Cir., 1975); cert. denied 424 U.S. 934 (1976); Associated Home Builders of Greater East Bay, Inc. v. City of Livermore, 135 Cal. Rptr. 41, 557 P.2d 473 (1976).

Generally, Tondro concludes that when the ordinance adopting the moratorium includes a specified termination date for the moratorium, and is enacted in order to enable the commission to prepare and adopt a new plan without having it compromised by non-conformities established during its preparation, it seems the Connecticut courts would have no difficulty upholding the ordinance. Tondro, "Connecticut Land Use Regulation" p. 168. In Connecticut, a moratorium on development while the Planning Commission or joint Planning and Zoning Commission prepares a plan is less defensible than a declaration of a moratorium on building while the municipality constructs the necessary facilities to serve an unexpected population boom. Tondro, "Connecticut Land Use Regulation" p. 169.


Nearly all moratoria that have been declared invalid by the Courts have been declared so because of improper adoption procedures as in the case of State ex rel. Brodie v. Powers, 168 Conn. 512 (1975).

#### CONCLUSION:

Connecticut case law has upheld the legality of declaring a moratorium under the broad statutory grant of power under Section 8-2, C.G.S., as amended. However, declaring a moratorium in Connecticut must be handled with extreme caution. The Bernhard case clearly points out that the moratorium regulation must conform to the procedural requirements of Section 8-3, C.G.S., as amended; that the moratorium must be reasonably limited in scope so as not to prevent all development; that the reasons for the ban on development must be clearly delineated; and that the moratorium must be limited to a specific time.

It is highly recommended that if the Middletown Planning and Zoning Commission decides to adopt a moratorium regulation, the Commission should make sure that:

- 1.) All procedural requirements such as notice and hearing and other mandatory requirements of applicable statutory or constitutional provisions are strictly complied with;
- 2.) A reasonable time limit on the life of the moratorium regulation has been imposed;
- 3.) The moratorium regulation avoids discrimination and vagueness;
- 4.) The pendency of the zoning ordinance should be published as early as possible so as to prevent the property owners from claiming that they incurred expenses in good faith; and
- 5.) The reasons for the declaration of the moratorium should be clearly set out.

  
Trina A. Solecki  
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