

## MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Sebastian J. Garafalo

DATE: March 22, 1989

RE: Request for Legal Opinion - Savard Subdivision

### FACTS:

Mr. Savard has applied to the Middletown Planning and Zoning Commission for subdivision approval. The Commission is presently holding a continued public hearing on the application. Therefore, in accordance with Middletown's subdivision regulations, preliminary subdivision approval has not yet been granted.

The attorney for Mr. Savard represents that he, by the authority of his client, has prepared an "Expression of Interest" document which he claims does not legally constitute a contract to purchase or sell, or an offer or an option or a right of first refusal. It is represented to be merely an expression of interest by a potential buyer in a potential piece of property, which, if and when it is subdivided, will be offered to those person or persons who have expressed an interest in purchasing it. It has been represented by Mr. Savard's attorney that these are the documents which were supplied to the real estate agencies involved in locating potential buyers for the potential lots. Mr. Savard's attorney represents that the agencies were not authorized to offer these lots for sale nor to sell same.

An ad appeared in the February 8, 1989 issue of the Home Buyer's Guide, Hallmark Homes, for Sterling Realtors, which read "MIDDLETOWN "TO BE BUILT" Connecticut River Building Sites - 11 extraordinary home sites available in Middletown's most beautiful new building area offering river views and access plus many amenities. 1 1/2 to 3 acres \$180,000 to \$230,000."

In the January 19, 1989 issue of the Home & Business Buying Guide, an ad for Sterling Realtors appeared which read as follows: "LAND FOR SALE RIVERFRONT SITES . . . be one of the 12 fortunate few to own a spectacular site in Middletown's newest neighborhood. Community features tennis, playing field, nature paths, pond, stream, awesome Ct. Riverviews, quick access to Rt. 9, 1-1/2-3 acres \$180,000 to \$230,000."

In the Friday evening, February 24, 1989 edition of The Middletown Press, the following ad appeared: "MIDDLETOWN \$180,000 RIVERFRONT PROPERTY 12 gorgeous home sites on banks of Connecticut River near Haddam border. Live in a neighborhood with priority given to a natural setting and opportunities for outdoor fun. Quick access to Hartford and shoreline. Prices starting at \$180,000."

In the February 24, 1989 edition of The Middletown Press, an ad appeared which read as follows: "TO BE BUILT Middletown \$590,000 Introducing the newest Donna Thomasson quality residence located in a fine executive neighborhood ten minutes from downtown. Nature preserved along the Ct. River. Customize your exquisite interior. Sterling Realtors."

In the Friday evening, March 3, 1989 edition of The Middletown Press, the following ad

appeared: "Water Views 12 building sites along the Connecticut River on glorious 35 acres. Easy access to Rt. 9, private and beautiful. Mary Ebmeyer, 347-9244."

In the February 2, 1989 edition of the Home & Business Buying Guide, the following ad appeared: "LAND FOR SALE MIDDLETOWN CONNECTICUT RIVER BUILDING SITES 11 extraordinary home sites available in Middletown's most beautiful new building area offering river views and access plus many amenities. 1-1/2 - 3 acres . . . 180,000-280,000."

LAW:

Section 8-25, subsection (a), of the Connecticut General Statutes, as amended, provides, in pertinent part, that: "Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than five hundred dollars for each lot sold or offered for sale or so subdivided . . . Any person, firm or corporation who, prior to such final approval, sells or offers for sale any lot subdivided pursuant to a conditional approval shall be fined not more than five hundred dollars for each lot sold or offered for sale."

Section 05.07, subsection 3), of the Subdivision Regulations of the Middletown Planning and Zoning Commission provides that:

3) Application Denial: In the event a subdivision application is denied, no work on said proposed subdivision may be undertaken, nor improvements made or constructed, nor contract for sale of or an offer to sell any lots in such subdivision negotiated, nor any permit for the erection of any structure issued or granted, until such time as a new subdivision application concerning said proposed subdivision has been submitted to the Commission and reviewed and approved in accordance with these Regulations and the enabling statutes. Applications may be denied by the Commission for the following reasons:

a) The application failed to conform to the purposes and requirements of these Regulations;

b) The application materials or fees received by the Commission were incomplete, insufficient, inaccurate, or altogether absent;

c) The application failed to conform to the requirements of the Zoning Regulations;

d) The reports from other agencies such as the Sewer Authority, Health Department, Public Works Department, the Fire Marshal or Police Department indicate serious problems relative to the suitability of the proposed subdivision for building development; or

e) The application failed to conform to the purposes and requirements of the enabling statutes.

ISSUES:

1.) Are the actions of Mr. Savard in violation of Section 8-25 of the

Connecticut General Statutes, as amended?

2.) If there is a violation, can the Commission use this violation as a basis to disapprove the proposed subdivision?

DISCUSSION:

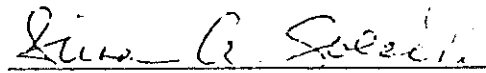
Section 8-25, C.G.S., as amended, addresses two situations in which "Any person, firm or corporation" can be fined not more than five hundred dollars for each lot sold or offered for sale. The first situation involves the subdivision of land without the approval of the Commission. Although, it could be argued that the realtors by offering the land for sale and referring to 12 building sites would clearly indicate a subdivision of land without the approval of the Commission, Mr. Savard's attorney has indicated that the realtors were only authorized to have Expressions of Interest executed and not to offer said proposed lots for sale or sell same. Furthermore, Mr. Savard has filed an application for the approval of his proposed subdivision with the Middletown Planning and Zoning Commission, which application is currently pending. The second situation involves the sale or offer to sell lots subdivided pursuant to a conditional approval, prior to final approval. Section 8-25, C.G.S., as amended, defines conditional approval as approval conditioned on "(1) the actual construction, maintenance and installation of any improvements or utilities prescribed by the Commission or (2) the provision of a bond as provided in this section." Since "conditional approval" has not been granted to the Savard Subdivision, since the application for subdivision approval is presently in the public hearing process, the terms of this violation would not be applicable to this stage of the application.

It does not appear from the language of the statute that either one of the violations is applicable to the present situation. It is evident that Sterling Realtors has offered these "lots" for sale. Whether that offer was with or without the permission of Mr. Savard is a question which is not the subject of this legal opinion. Since the statute was enacted by the legislature in 1947 and the language concerning the fine for offering for sale, selling or subdividing, was part of the statute since, at least 1957, the legislative history does not indicate any more than the language of the statute itself. It can only be speculated that the legislature envisioned problems which would arise from the failure of the "person, firm or corporation" to receive the approval of the Commission prior to offering for sale or selling or subdividing lands and enacted this language for the protection of the innocent consumer who buys, depending on the seller, that the property has all the necessary prior approvals. Therefore, the violation provisions of Section 8-25, C.G.S., as amended, would be protections for the buyer of subdivided real property. It is clear that it was not the intention of Mr. Savard to subdivide his property without the approval of the Middletown Planning and Zoning Commission since his application to subdivide this property is currently pending before this Commission. It is also clear that Sterling Realtors should cease from advertising these lots for sale prior to the approval, if any, of this subdivision by the Planning and Zoning Commission.

Section 05.07, subsection 3), of the Subdivision Regulations for the City of Middletown delineates the conditions under which a subdivision application may be denied. Since the violations in Section 8-25, C.G.S., as amended, do not address any of the conditions under which an application for a subdivision may be denied, the Commission would be hard pressed to base their denial on either violation.

CONCLUSION;

Based on the present situation, it could be argued that the realtor's offer of 12 building sites is a subdivision of land without the approval of the Commission. Practically, it must be determined whether the realtor acted with authority from Mr. Savard to advertise these proposed lots for sale. Furthermore, Mr. Savard's filing of an application for subdivision approval with the Planning and Zoning Commission must also be considered. Therefore, based on the present facts, there is no clear violation of Section 8-25, C.G.S., as amended by Mr. Savard. However, it is evident that the advertisements of these proposed lots for sale must cease if and until the Middletown Planning and Zoning Commission approves the Savard Subdivision application.

  
Trina A. Solecki  
City Attorney

TAS/es

cc: Stephen T. Gionfriddo, Chairman, Planning & Zoning Commission  
Richard Tomc, Corporation Counsel