

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Paul Gionfriddo

DATE: November 27, 1990

RE: Legal Opinion Request

RECEIVED
90 NOV 27 PM 3:56
TOWN CLERK
MIDDLETOWN, CONN.

QUESTION PRESENTED:

If the Pest Management Company has non-resident employees, is it in violation of its Home Occupation Permit issued in 1972?

ANSWER:

If this is correct, it may provide grounds for revoking the permit.

ANALYSIS:

The Pest Management Company is located on Maple Shade Road. This area is zoned for residential uses. Consequently, the business operates at this location only by virtue of its Home Occupation Permit. Therefore, the business must comply with the regulations governing Home Occupation Permits, now known as Residential Unit Business Pursuit approvals.


Section 10.08.01 of the Zoning Code in effect in 1972, when the permit was originally issued, mandates that the business must be operated "only by the person or persons maintaining a dwelling therein." This regulation is also part of the present Code at Section 10.08(A) ("[b]e conducted solely by an occupant of the dwelling unit without any non-resident assistants or employees . . .").

The 1972 Zoning Code provided that "[n]o substantial deviation from the proposed use, so approved, shall be permitted without the approval of the Zoning Administrator. Upon any such deviation without approval, the Commission may revoke the Home Occupation Certificate." Section 10.08.09. The 1972 Code

defines "Zoning Administrator" as "[t]he Zoning Administrator or his authorized representative." Section 16.26.02. The present Code states that "[n]o substantial deviation from an approved Residential Unit Business Pursuit shall be permitted without the approval of the Director of the Planning and Zoning Department. Any deviation without approval is grounds to revoke the Residential Unit Business Pursuit." Section 10.08.02.

Accordingly, if the Pest Management Company has non-resident employees, the permit may be revoked if: (1) such employment is a substantial deviation from the approved business use, and (2) the director of the Planning and Zoning Department does not approve of such deviation.

If employment of non-resident individuals is determined to be a substantial deviation from the approved use, the owners of the Pest Management Company should be afforded notice and an opportunity to be heard before any decision concerning revocation of the permit is made.


Timothy P. Lynch
Deputy City Attorney

TPL/dw

cc: George Reif, Planning & Zoning Director

REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE

(Submit to Mayor in Duplicate)

RECEIVED
CITY OF MIDDLETOWN
MAYOR'S OFFICE
90 NOV -6 PH12:38

TO: MAYOR'S OFFICE
FROM: Planning and Zoning
SUBJECT: Home Occupation Permit

RECEIVED
1990 NOV -1 PM 4:02
CITY OF MIDDLETOWN
MAYOR'S OFFICE

FACTS: (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY & HOW.)

Neighbors have complained about a Pest Management Company which has been in operation since 1965. In 1972 the Pest Management Company applied for and received a Home Occupancy permit under Section 10.08 of the Zoning Code in effect in 1972. At this time the applicant's neighbors have indicated that the Pest Management Company now has non resident employees. The owners of the Pest Mngement Company have indicated in an August 21, 1990 letter that they are in compliance with the regulations.

LAW: (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that you think applies to this Question.)

State Statues 8-6 and 8-7.
Section 10.10 of the Zoning Code in 1972. (See attached.)

QUESTION: (What, in your own words is the precise question you wish to have answered?)

If the Pest Management Compnay has non residential employees, is this a violation of the 1972 Home Occupancy permit?

ESTIMATE OF PRIORITY:

Check one.

EMERGENCY

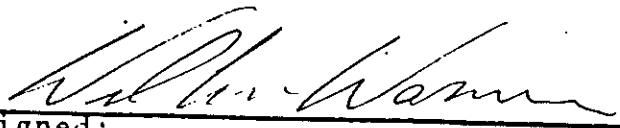
STANDBY FOR FUTURE ACTION

URGENT

APPLICANT SHOULD KNOW FOR FUTURE ACTIC

Request by Mayor by 11/6/90

Date: 11/1/90


Signed: _____