

MEMORANDUM

FROM : OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO : Mayor Stephen T. Gionfriddo

DATE : June 18, 1993

RE : Legal Opinion Request

QUESTIONS PRESENTED:

1. Does the Redevelopment Agency have the authority to regulate height and use in a Redevelopment Area and override zoning?
2. Does the usage of the term "zone" create undue confusion?

ANSWERS: 1. No.

2. The applicable general statutes permit the Commission to so conclude.

ANALYSIS

Connecticut General Statutes §8-2(a), as amended, provides that "[t]he zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures...the location and use of buildings, structures and land for trade, industry, residence or other purposes... Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land." C.G.S. §8-2(a), as amended.

Section 8-3(a) of the Connecticut General Statutes, as amended, provides that "[s]uch zoning commission shall provide for the manner in which regulations under section 8-2 and the boundaries of zoning districts shall be respectively established or changed." C.G.S. §8-2, as amended.

Section 8-142 of the Connecticut General Statutes concerns urban renewal plans. This section, provides, in pertinent part,

that "[a]ny urban renewal project...shall be undertaken in accordance with an urban renewal plan...which plan (1) shall conform to the general plan for the municipality as a whole; and (2) shall be sufficiently complete to indicate...zoning and planning changes, if any, ...and the plan's relationship to definite local objectives respecting appropriate land uses... An urban renewal plan shall be prepared and approved pursuant to the same procedure as provided in this chapter with respect to a redevelopment plan." C.G.S. §8-142, as amended.

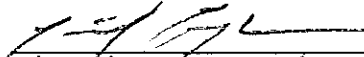
Section 8-127 of the Connecticut General Statutes concerns the initiation and approval of redevelopment plans. This section provides, in pertinent part, that "[t]he redevelopment agency may prepare, or cause to be prepared, a redevelopment plan... and such agency shall immediately transmit such plan to the planning agency of the municipality for its study. The planning agency may make a comprehensive or general plan of the entire municipality as a guide in the more detailed and precise planning of redevelopment areas. Such plan and any modifications and extension thereof shall show the location of proposed redevelopment areas and the general location and extent of use of land for housing, business, industry, communications and transportation, recreation, public buildings and such other public and private uses as are deemed by the planning agency essential to the purpose of redevelopment. ...The redevelopment agency shall request the written opinion of the planning agency on all redevelopment plans prior to approving such redevelopment plans. ...The redevelopment agency may approve any such redevelopment plan if ...it finds that ... (d) the redevelopment plan is satisfactory as to site planning, relation to the comprehensive or general plan of the municipality..." C.G.S. §8-127, as amended (emphasis added).

Section 8-143 of the Connecticut General Statutes sets out the powers of redevelopment agencies. Among these powers is the authority to make "plans for the enforcement of laws, codes and regulations relating to the use of land and the use and occupancy of buildings..." C.G.S. §8-143, as amended. This section does not authorize the agency to make such regulations but merely plans for their enforcement.

A review of the foregoing statutory authority clearly indicates that the Planning & Zoning Commission plays an essential role in the development of urban renewal and redevelopment plans. C.G.S. §8-127, as amended, mandates that the plan be sent to the Commission for its "study" and that the Commission is responsible for the "detailed and precise planning of redevelopment areas". In this capacity, the Commission might well conclude that the use of the term "zone" is misleading absent a formal redesignation of the area in the Zoning Code as the word is a term of art with a specific legal meaning.

Further, the Planning & Zoning Commission is the only agency vested with the statutory authority to regulate building height

and property use. See C.G.S. §§ 8-2, 8-3, as amended.



Timothy P. Lynch
Deputy City Attorney

TPL/dw

cc: William M. Kuehn, Jr.
Municipal Development Director
William Warner, AICP
Planning & Zoning Director

REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE

(Submit to Mayor in Duplicate)

TO: MAYOR'S OFFICE
FROM: William Warner, Planning Director
SUBJECT: Authority of the Redevelopment Agency

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

The Planning and Zoning Commission is concerned about the Redevelopment Agency's proposed design guidelines. Planning and Zoning feels the proposal in some ways overrides zoning and questions if Redevelopment has the statutory authority to regulate height and use. Planning and Zoning requests a review of the statutory authorization. Further Planning and Zoning feels language regarding "zones" creates undue confusion.

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

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CITY ATTORNEY'S OFFICE
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CGS8-18-2
CGS 8-127 and 8-142
Pertinent Ordinances

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

Does the Redevelopment Agency have the authority to regulate height and use in a Redevelopment Area and override zoning and does the usage of the term zone create undue confusion?

ESTIMATE OF PRIORITY:

XX EMERGENCY
BY JUNE 23, 1993
URGENT

Check one.

STANDBY FOR FUTURE ACTION

APPLICANT SHOULD KNOW FOR FUTURE ACT.

Date:

6/11/93

Signed:

William Warner