

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Stephen T. Gionfriddo, Chairman, Middletown Planning and Zoning Commission

DATE: December 16, 1987

RE: Notice of the Continuation of a Public Hearing

Section 8-3(a) of the Connecticut General Statutes, as amended, provides, in pertinent part, that "Notice of the time and place of such public hearing shall be published in the form of a legal advertisement appearing in a newspaper having a substantial circulation in such municipality at least twice at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days, before such hearing,".

At the public hearing of December 9, 1987, the Planning and Zoning Commission continued two matters for public hearing on December 16, 1987, without holding a public hearing on these matters. The first notice of the December 9, 1987 public hearing was published in the Middletown Press on November 27, 1987, a date which is significant in light of the case of First Church of Christ, Scientist v. Friendly Ice Cream, 161 Conn. 223 (1971). The facts in the First Church of Christ, Scientist case are very similar to the present set of facts. A public hearing on the application in the First Church of Christ, Scientist case was noticed for September 3, 1968 which public hearing was not held until September 9, 1968. The first notice of the public hearing was published on August 20, 1968. The Court found that there was no compliance with the requirement that the first advertisement of the public hearing be published not more than fifteen days before such hearing. "Procedural steps ... are mandatory and their omission renders the amendment invalid." (cites omitted) First Church of Christ, Scientist v. Friendly Ice Cream, 161 Conn. 223, 228 (1971).

With regard to the two public hearings which were noticed for December 9, 1987, but were never held, there is no question that notice must once again be given in accordance with Section 8-3(a) C.G.S., as amended. The first notice of the December 9, 1987 public hearing was given on November 27, 1987, and the actual hearing is scheduled to be heard on December 16, 1987. Therefore, the notice, as given on November 27, 1987 based on Section 8-3(a) C.G.S., as amended, and the holding in the First Church of Christ, Scientist case, is defective rendering any action taken with regard to these public hearings invalid since the first notice was published more than fifteen days from the date of the public hearing.

As far as the remainder of the public hearings commenced on December 9, 1987, and continued to December 16, 1987, no Connecticut cases have addressed the issue of whether notice in accordance with Section 8-3(a) C.G.S. must be given when a public hearing has been commenced on the date noticed for the public hearing but continued to another date to complete the public hearing. Since the statutes are silent as to the notice requirements for continuations of public hearings, it is recommended that the notice requirements of Section 8-3(a) be followed.


Regarding hearings, the prior Planning and Zoning Code of the Zoning Commission provided that before making its decision, the "Commission shall hold a public hearing thereon and called in the manner provided in the general statutes of Connecticut." The present code provides similar language that: "Prior to a decision, the Commission shall conduct a public hearing as specified in the general statutes, as amended." However, the old code also provided that as to any adjourned hearings, the : "The hearing may be adjourned from time to time and resumption date, place, and time publicly announced, in the manner provided by the general statutes of Connecticut." Through the amendment procedure, the latter language has now been deleted from the code; however, this does not viciate the requirements of the general statutes of Connecticut. Whoever put the old code together, recognized the importance of properly following the general statutes, as amended, whether it was an initial public hearing or a continued public hearing. The purpose obviously was to inform the public so that anyone who desired to speak at either the initial public hearing or the continued public hearing would have notice of the hearing and be prepared to submit oral or written testimony.

The Connecticut General Statutes, as amended, when addressing the requirements of publication of the notice of the time and place of a public hearing does not specifically use the terms "adjourned or continued" hearing. Furthermore, as noticed, although the previous code of the Middletown Planning and Zoning Commission showed a specific concern that any adjourned hearing be publicly announced in the manner provided by the general statutes of Connecticut, no specific section addresses "adjourned or continued hearings" in the state statute and obviously reliance for the old language in the code requiring publication of the time and place of the hearings for an adjourned hearing must have been at that time placed upon the requirements of Section 8-3(a) of the Connecticut General Statutes, as amended.

Accordingly, in view of the fact that failure to properly publish the notice of the time and place of an "adjourned or continued hearing" could subject the City of Middletown to an unnecessary appeal based on improper notice, and that research has disclosed a split of authority between those states which have decided this issue, it is recommended that the notice requirements of Sec. 8-3(a) of the Connecticut General Statutes, as amended, be complied with even when the initial public hearing has been "adjourned or continued" to another time.

CONCLUSION:

The publication of the notice of time and place of a public hearing which is not then held at that time and place and when rescheduled falls outside the time parameters as required for publication pursuant to Section 8-3(a) of the Connecticut General Statutes, as amended, must be published again in order to avoid any jurisdictional defect. Furthermore, as to any public hearing that has been started on a particular issue, it is strongly recommended that the "adjourned or continued hearing" be published in accordance with the dictates of Section 8-3(a) of the Connecticut General Statutes, as amended.


Ralph E. Wilson
City Attorney

REW/sjr

cc: Sebastian J. Garafalo, Mayor

cc: (continued)

Stephen Gadowski, Member, Planning and Zoning Commission
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