

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Trans-Berlin Corporation

FINAL DECISION

Complainant

Docket #FIC 84-85

against

December 3, 1984

Town of Newington Planning and
Zoning Commission

Respondent

The above captioned matter was heard as a contested case on October 11, 1984 at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.

2. The respondent claimed that the commission lacked the power to consider this matter because Stoddard Investment is a necessary party and was not notified or made a party to this complaint.

3. It is found that Stoddard Investment is not a necessary party and therefore the commission has the power to consider and determine this matter.

4. By letter filed with the Commission on April 16, 1984, the complainant alleged that the respondent held an illegal executive session on March 28, 1984.

5. On March 28, 1984 the respondent met in executive session for the stated purpose of consulting with its attorney concerning a petition for approval of a site development plan by Stoddard Investment, Inc.

6. The respondent claims that the executive session was proper because it included discussion of records exempt from disclosure, pursuant to §§1-18a(e)(5) and 1-19(b)(10), G.S.

7. Under §1-18a(e)(5), G.S., an executive session may be held to discuss a matter that would result in the disclosure of records which are exempt from disclosure under §1-19(b), G.S. Under §1-19(b)(10), G.S., records of privileged attorney-client communications are exempt from disclosure.

8. The executive session held by the respondent involved discussion of a memorandum to the respondent's attorney from the attorney for the Trans-Berlin Corporation. There were no memoranda from the respondent's attorney discussed at the executive session.

9. It is therefore concluded that the executive session was not proper under §1-18a(e)(5), G.S.

10. It is further found that the Stoddard Investment development plan is involved in litigation but that the respondent is not a party to the litigation.

11. It is therefore concluded that the executive session was not proper under §1-18a(e)(2), G.S.

12. It is concluded that the respondent violated §1-21(a), G.S., by holding an executive session that did not come within the purposes for executive sessions defined in §1-18a(e), G.S.

13. The complainant requests that the approval of the site development plan for Stoddard Investment be declared null and void. The Commission declines to declare the approval null and void because there was no action taken on the site development plan during the executive session.

The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint.

1. Henceforth the respondent shall act in strict compliance with §1-21(a), G.S., by holding executive sessions only for the purposes defined in §1-18a(e), G.S.

2. As the first item of business at the next regular meeting of the respondent, this decision shall be read into the record.

3. This decision shall be posted at the respondent's office and shall be published by the respondent as a legal notice in a local daily newspaper of general circulation.

Approved by order of the Freedom of Information Commission at its regular meeting of November 28, 1984.



Mary Jo Jolicoeur
Clerk of the Commission