

# GUIDEBOOK FOR TOWN CLERKS AND PLANNING BOARDS SUBMITTING BY-LAWS TO THE ATTORNEY GENERAL'S OFFICE

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Revised June 2000

## **Excerpt related to Zoning Amendments**

### **G.L. c. 40A § 5, In Plain English.**

Chapter 40A is known as "The Zoning Act". Section 5 of the Act establishes the procedures for adopting and amending zoning by-laws. Zoning by-laws may not be adopted, amended or repealed unless the procedures contained in Section 5 are followed.

### **How zoning by-laws are initiated.**

The adoption or change of a zoning bylaw is initiated by submitting the proposed by-law to the board of selectmen. Within fourteen (14) days after receiving a proposed zoning by-law, the board of selectmen must submit it to the planning board for review and public hearing.

### **Who may initiate zoning by-laws?**

The following may initiate the adoption or change of zoning by-laws: (1) the board of selectmen, (2) the board of appeals, (3) an individual who owns land which would be affected by the change or adoption, (4) registered voters of the town acting pursuant to G.L. c. 39, § 10, (5) the planning board, (6) a regional planning agency, and (7) by any method as provided in the town charter.

### **Planning Board hearing.**

Notice of the public hearing of the planning board must be published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication must be "not less than fourteen (14) days <sup>1</sup> before the day of the hearing". The newspaper notice must include all of the following: (1) the date and place of the hearing, (2) the subject matter of the hearing described in a form which is "sufficient for identification" and (3) the place where texts and maps of the proposals may be inspected. With regrettable frequency we find that many towns fail to include the second and third of these requirements, and the Attorney General is compelled to disapprove the by-law for procedural deficiencies.<sup>2</sup>

Notice of the public hearing must also be mailed, postage prepaid, to all of the following: (1) the Department of Housing and Community Development, (2) the regional planning agency (if any), and (3) the planning boards of all abutting cities and towns. Notice must also be mailed to nonresident property owners who file an annual request for such notice with the town clerk no later than January 1st and pay a reasonable fee as established by town by-law. Finally, the notice must be posted in a conspicuous place in the town hall for a period of not less than fourteen (14) days before the day of the hearing.

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<sup>1</sup> For example, an advertisement for a hearing scheduled for the 20th day of the month must first appear in the newspaper on or before the 6th day of the month. An advertisement that appears on the 7th day would be only 13 days notice and the by-law would be disapproved. See *Hallenborg v. Town Clerk of Billerica*, 360 Mass. 513 (1971).

<sup>2</sup> We encourage the town to use Form 7-PBN, a form of Planning Board Notice drafted by the Municipal Law Unit designed to satisfy the requirements of the statute.

**When may the town meeting vote?**

The town meeting may not vote on a proposed zoning by-law until either (1) the planning board submits a written or oral report presenting its recommendations on the proposal to the town meeting, or (2) the planning board issues no report and at least twenty-one (21) days have elapsed between the planning board hearing and the town meeting. If a town meeting fails to vote to adopt a proposed zoning by-law within six (6) months after the planning board hearing, no town meeting action may be taken on the proposal until a subsequent planning board hearing is held. Such a subsequent planning board hearing must comply with the notice and report requirements.

**Number of votes required.**

No zoning by-law shall be adopted or changed by town meeting except by a two-thirds vote of those present and voting.

**Previously rejected zoning by-laws.**

A zoning by-law which has been unfavorably acted upon by a town meeting may not be considered again until two (2) years after the date of such unfavorable action unless the planning board makes a final written or oral report recommending the adoption of such proposed by-law.

**Submission to the Attorney General.**

Zoning by-laws must be submitted to the Attorney General as required by G.L. c. 40, § 32, and by G.L. c. 40A, § 5. The clerk must provide the Attorney General with a statement from the planning board explaining the by-laws, along with explanatory maps or plans.<sup>3</sup> After approval by the Attorney General, the clerk must send a copy of the latest effective zoning by-law to the Department of Housing and Community Development.

**Effective date.**

The effective date of a zoning by-law is the date on which it was voted by the town meeting provided that proper posting, publication, or delivery of the by-law as described above is subsequently accomplished. If the Attorney General disapproves a zoning by-law, then the existing by-law is deemed to remain in effect. If the Attorney General partially disapproves a zoning by-law, the portion that has been approved takes effect from the date of the town meeting vote. The existing by-law remains in effect with respect to those portions of the proposed by-law which are disapproved and deleted by the Attorney General.

**Legal action.**

No claim may be made in any legal proceeding arising out of any possible defect in the procedure by which a zoning by-law was adopted or amended unless legal action is commenced within the ninety (90) day period specified in G.L. c. 40, § 32. No state, regional, county, or municipal officer may refuse, deny, or revoke any permit, approval or certificate because of any such claim of procedural invalidity unless legal action is commenced within that time. A notice must be filed in the town clerk's office within seven (7) days after the commencement of the legal action specifying the court, the parties, the invalidity claimed, and the date the action was filed.

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<sup>3</sup> Failure to provide this statement can delay our approval of the by-law and could result in a misunderstanding of its purpose, intent, and meaning. Planning Boards should be asked to provide this statement prior to the submission of the packet.