

Attorney General's Notice

*Pursuant to G.L. c. 40, § 32, as amended by
Chapter 299 of the Acts of 2000*

**Town of Wales -- Case No. 8583
Annual Town Meeting of May 17, 2017
Article # 21**

Attorney General's Limited Authority to Waive Procedural Defects in the Notice of the Planning Board Hearing

Pursuant to the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, if the Attorney General finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to the form or content of the notice of the Planning Board hearing prescribed by G.L. c. 40A, § 5, or to the manner or dates on which said notice is mailed, posted or published as required by that section, then instead of disapproving the by-law or amendment by reason of any such defect, the Attorney General may elect to proceed under the defect waiver provisions of G.L. c. 40, § 32. Under those provisions, the Attorney General is conditionally authorized to waive any such defect.

Defect Determined in Notice of Planning Board Hearing

The Attorney General has determined that the planning board hearing notice relating to the above Article failed to comply with the notice requirements for such hearing established by G.L. c. 40A, § 5. Section 5 provides in part (with emphasis added):

No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard.... Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town...In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought.

Based on the materials submitted to this Office, we have identified the following defects: (1) the published planning board hearing notice was only published once (not twice), was not published at least 14 days prior to the hearing, and did not include information where the text of the by-law could be inspected; (2) the posted planning board hearing notice was not posted at least 14 days prior to the hearing and did not include the location of the hearing and information where the text of the by-law could be inspected; and (3) the planning board hearing notice was not sent to the Department of Housing and Community Development, the Regional Planning Agency, and the planning boards of the abutting cities and towns, all as required by G.L. c. 40A, § 5.

Attorney General's Election to Proceed Under the Waiver Provisions of G.L. c. 40, § 32

G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Suspension of Review of Zoning By-Law Amendments

The 90-day period prescribed by law for the Attorney General's review of local by-laws is therefore suspended in accordance with the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Posting and Publication of This Notice

The Town Clerk shall post a true copy of this Notice in a conspicuous place in the Wales Town Hall for a period of not less than 14 days and shall publish a copy once in a newspaper of general circulation in the Town of Wales.

Filing of Claim That Defect in Notice Was Misleading or Otherwise Prejudicial

Within 21 days of the date on which this Notice is published in a newspaper of general circulation in the Town of Wales, any resident of the Town of Wales, or the owner of any real property in the Town of Wales, or any other party entitled to notice of the planning board hearing may file with the Town Clerk a written statement that the notice defect was misleading or otherwise prejudicial. The statement must include the reasons supporting the claim that the defect in the Planning Board Notice was misleading or otherwise prejudicial. This statement must be actually on file with the Town Clerk not later than 21 days from the date on which this Notice is published in the newspaper.

Town Clerk's Certification of Compliance with This Notice

After the expiration of the 21-day period, the Town Clerk shall submit to the Attorney General a true copy of this Notice with a certification of compliance with the publishing and posting requirements of the preceding paragraph, and a certification that either (a) no claim was filed within the 21-day period, or (b) one or more claims were filed within the 21-day period. The Town Clerk shall submit to the Attorney General true copies of any such claim(s).

Resumption of Attorney General's Review

Upon receipt of one original copy of this Notice with the Clerk's certification, the 90-day period provided for the Attorney General's review under G.L. c. 40, § 32, shall resume. If no claim is made, the Attorney General has the discretion to waive any such defect; if any claim is made, however, the Attorney General may not waive any such defect.

Note: By not filing a claim under this provision, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment, as provided in G.L. c. 40, § 32, and in G.L. c. 40A, § 5.

Date: November 7, 2017

Very truly yours,
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