



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 876-6800

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

RUSSELL B. HIGLEY

EDWARD A. CUNNINGHAM
ANDREW T. TRODDEN
LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

May 1, 1978

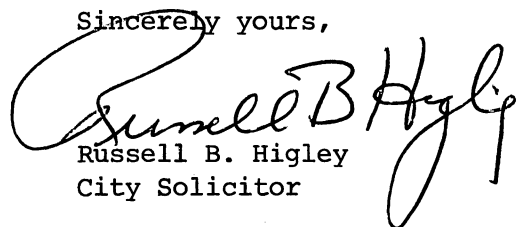
James L. Sullivan
City Manager
City Hall
Cambridge, Massachusetts 02139

Dear Mr. Sullivan:

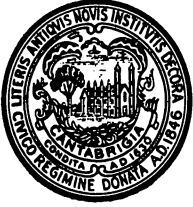
Pursuant to request of Councilor Duehay relative to an opinion as to whether or not the City Council and the Planning Board may hold a joint hearing relative to a petition, it is my opinion that such a joint hearing is permissible under Chapter 40A of the General Laws of the Commonwealth of Massachusetts.

I am enclosing the correspondence which clarifies the investigation done by the Law Department and the Department of Community Development relative to this problem.

Sincerely yours,


Russell B. Higley
City Solicitor

RBH/b



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT
City Hall Annex Inman & Broadway EXTENSION 344

To Russell Higley, City Solicitor

From Donald R. Balcom, Zoning Consultant

Date April 27, 1978

Subject Public Hearings on Zoning Petitions

I understand that the question of whether or not the Planning Board and the City Council may hold joint public hearings on zoning amendment petitions has been raised again. Enclosed you will find correspondence between your department and our department and between the City Clerk and the Department of Community Affairs on this issue. These documents indicate that joint hearings are a possibility. To my knowledge, nothing has happened since they were written that would change that assertion. Not only do joint hearings seem possible under Chapter 40A, some people have argued that they are mandatory, though I do not share that view. I hope that this information will answer any questions that may remain on the zoning law's procedural requirements.

encl.

CC. David Vickery
Paul Healy

Vickery-Calam



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

LAW DEPARTMENT

RUSSELL B. HIGLEY

(617) 876-6800
COMMUNITY DEVELOPMENT
RECEIVED

JAN 10 1978

FISCAL OFFICE

RUSSELL B. HIGLEY
CITY SOLICITOR

EDWARD A. CUNNINGHAM
ANDREW T. TRODDEN
LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

January 9, 1978

Mr. David Vickery
Assistant City Manager for
Community Development
City Hall Annex
57 Inman Street
Cambridge, Massachusetts

Dear Mr. Vickery:

I am in receipt of your request for an opinion regarding the Mandatory Zoning Amendment Procedures set forth in your correspondence of December 6, 1977.

I concur with you that certain provisions of section 5 of Chapter 40A (The New Zoning Enabling Act) are ambiguous. The procedures included in your December 6 correspondence, however, appear to apply the most logical interpretation of these statutory provisions. I therefore approve of these procedures as you have set them forth in your December 6 correspondence.

You have also requested an opinion concerning the legal consequence of a failure to hold public hearings within the time limits set forth in section 5 of Chapter 40A.

It is my opinion that failure to follow these time limitations would subject any ordinance subsequently adopted to a claim of invalidity; said claim could be raised within 120 days after adoption of said ordinance, pursuant to the provisions of section 5.

Very truly yours,

Russell B. Higley (R.S.)
Russell B. Higley
City Solicitor

RBH:jl



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT
City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

(617) 876-6800
EXTENSION 344

MANDATORY ZONING AMENDMENT PROCEDURES

Cambridge City Council
December 6, 1977

One of the purposes of the comprehensive revision of the State's zoning laws (Chapter 808 of the Acts of 1975) was to speed up the various legislative and administrative procedures involved with zoning. Now that the City Council has formally adopted Chapter 808 and the revised Zoning Ordinance, it is important that all parties involved with zoning be aware of what the new State law requires. This memorandum summarizes the procedural requirements for acting on petitions to amend the Zoning Ordinance. It emphasizes Chapter 808 time limitations on City Council action. The requirements discussed below are set forth in Section 5 of Chapter 40A of the General Laws of the Commonwealth.

1. PETITION FILED WITH CITY COUNCIL

As before, a zoning amendment is initiated by filing the proposed change with the City Council. Petitions may be filed by the City Council itself, by the Planning Board, by the Board of Zoning Appeals, by the Metropolitan Area Planning Council, by ten registered voters, and by any individual who owns land which would be affected by the petition.

2. PETITION SUBMITTED TO PLANNING BOARD WITHIN 14 DAYS OF RECEIPT

Within fourteen days of its receipt, the petition must be submitted by the City Council to the Planning Board for review. In Cambridge, petitions to the Council are submitted at the City Clerk's office. Therefore, the date of receipt by the Council is considered to be the date the petition is reviewed and time-stamped at the Clerk's office.

3. PUBLIC HEARING(S) HELD WITHIN 65 DAYS OF SUBMITTAL TO PLANNING BOARD

The State law requires a public hearing on a zoning petition by the Planning Board and by the City Council or a committee of the Council. The statutory language regarding public hearings on petitions is somewhat ambiguous, however the following interpretations have been widely agreed upon:

- a) Separate hearings by each body or joint hearings may be held.
- b) If separate hearings are held, the statutory notice requirements of the second paragraph of Section 5, Chapter 40A, G. L., must be complied with for each hearing.
- c) Both hearings must be held within sixty-five days after the petition is submitted to the Planning Board by the City Council. Note, this means that in some instances it may be necessary for the City Council Committee on Ordinances to advertise for its public hearing on a zoning petition before the Planning Board's report is received or even before the Planning Board hearing is held.

4. 21 DAY WAITING PERIOD FOR PLANNING BOARD REPORT

A City Council vote on the adoption of a proposed zoning amendment cannot be held until a report on the petition has been submitted by the Planning Board or until twenty-one days have elapsed from the date of the Planning Board public hearing.

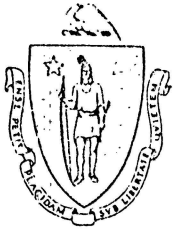
5. CITY COUNCIL ADOPTION WITHIN 90 DAYS OF PLANNING BOARD PUBLIC HEARING

Section 5 of Chapter 40A requires that the City Council vote on the adoption of a proposed ordinance amendment within ninety days of the public hearing. If the Council fails to vote on a petition within ninety days, no further action on the petition may be taken until a new public hearing is held, subject to the usual notice and report requirements.

Again, the statutory language is ambiguous. It is not clear which public hearing the ninety days is counted from or how a time lapse of more than ninety days without Council action affects Building Department issuance of building permits which could have been withheld pending outcome of the petition. The following interpretations have been made:

- a) The 90 day time limit on Council action is counted from the date of the Planning Board's public hearing.
- b) A 90 day lapse without action renders the petition inactive and requires that the amendment process begin again. Therefore, after such a lapse the Building Department should grant permits as usual until and unless the petition is readvertised.

These interpretations have been codified in Section 1.52 of the new Ordinance.



MICHAEL S. DUKAKIS
GOVERNOR

WILLIAM G. FLYNN
SECRETARY

The Commonwealth of Massachusetts
Department of Community Affairs

One Ashburton Place
Boston, Mass. 02108

March 6, 1978

Mr. Paul E. Healy, City Clerk
Office of the City Clerk
City Hall
Cambridge, Massachusetts 02139

Dear Mr. Healy:

I am writing in regard to your letter, dated February 15, 1978, concerning a series of questions relative to certain procedural requirements of the new Zoning Act. Chapter 808 of the Acts of 1975 represents a classic example of the General Court's uncanny ability to unknowingly crucify procedural aspects of General Law. However, I will do my best to decipher Section 5 of the new Zoning Act and present the Department's views relative to the hearing and procedural requirements for proposed zoning changes.

Before specifically addressing each question on your list, I would like to make the following observation and comment concerning the public hearing requirement for proposed zoning changes. The old Chapter 40A, Section 6 required a public hearing by the planning board and the city council (or designated committee of the council). Section 6 was so constructed as to leave no question relative to the authority of the planning board and city council to conduct separate public hearings. Section 6 did not contain language which expressly authorized a joint hearing however, in *Woods v. Newton*, 351 Mass. 98, the court upheld a hearing held jointly by the planning board and city council. It is my feeling that the intent of the General Court was to reiterate the fact that a city may conduct a joint hearing as decided in the *Wood* case. However, in their eagerness to express such a procedural option, the General Court managed to cloud the issue as to the authority of a planning board and city council to hold separate public hearings. The new Zoning Act, Section 5 does not expressly mandate a joint public hearing. Further, nothing in the statutory scheme is disserved by separate hearings, nothing in the statute bans such procedure and public convenience and advantage may be served. Let us now consider your questions.

1. How many hearings are mandated by Chapter 808?

A. If a city or town has a Planning Board are two hearings required?

In a town, only one hearing is required. In a city, the planning board and city council (or designated committee) are required to hold a public hearing which may be held jointly. There exists no language within Section 5 which mandates two separate hearings.

An Equal Opportunity Employer

B. If a city or town has no Planning Board?

In a town, one hearing is required to be held by the selectmen.
In a city, one hearing is required to be held by the city council.

C. If the Planning Board holds a hearing is a second hearing required by the Council or a Council Committee?

Yes.

D. Is there any provision for a joint hearing of the Planning Board and the Council or Council Committee?

Section 5 does not expressly authorize or mandate or joint public hearing. However, considering the Wood's case and the statutory language of Section 5, we think that a joint hearing would be consistent with the provisions of the Zoning Act.

2. Time schedule - The Planning Board receives a petition under Chapter 808 within 14 days after it is filed and holds their hearing with 65 days after the Council receives it and must report to the City Council within 21 days a total of 86 days has elapsed before the Council can act on the petition.

A. If the timetable outlined above is met by the Planning Board is it necessary for the Council to advertise and hold a second hearing with 14 days notice?

Yes. It is also necessary that such public hearing by the Council be held within 65 days following the date the proposal is submitted to the planning board.

B. It is the function of the Council to only receive the Planning Board report and then vote to accept, reject or amend same?

The purpose of the planning board hearing is to enable the planning board to be informed of the proposal and of citizen's views thereon and to report recommendations to the Council if it wishes to do so. The Council can act in the absence of any report after the 21 day time period. The Zoning Act contemplates that the Council will act in light of a report from the planning board, if any such report is submitted, as well as its knowledge of citizens' views and other pertinent information obtained at the public hearing held by the Council or its committee.

C. Are there in reality two time scheules under Chapter 808?

and 1) the 65 day requirement and 21 day report of the Planning Board;

2) the required action by the City Council within 90 days of the Planning Board hearing.

Yes.

D. Relative to action by the City Council, does their 90 day period begin with the date of the Planning Board hearing?

Yes.

No matter how many differing interpretations you may receive regarding this matter, we would strongly suggest that you follow the advice of your City Solicitor. If you have any questions please do not hesitate to contact me at any time.

Very truly yours,



Donald J. Schmidt
Office of Local Assistance

DJS/kd



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Tel. 876-6800

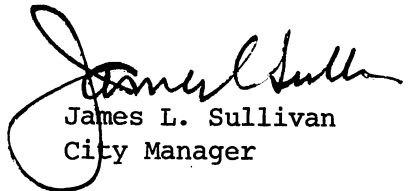
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

May 1, 1978

To the Honorable, the City Council:

I transmit herewith communication from Russell B. Higley, City Solicitor, with appropriate correspondence, pertaining to Councilor Duehay's request of an opinion from the City Solicitor as to whether the City Council and the Planning Board may hold a joint hearing relative to a petition.

Very truly yours,


James L. Sullivan
City Manager

JLS/b

Agenda #10

0-17

Re: opinion of the City Solicitor re: joint
hearing between the Planning Board and City
Council on a petition.

In City Council,

May 1, 1978

5/1/78
-Placed on File-