



# CITY OF CAMBRIDGE

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## LAW DEPARTMENT

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JOHN A. SERINO  
LEGISLATIVE AGENT

January 21, 1970

Mr. Paul A. Healy  
Temporary City Clerk  
City Hall  
Cambridge, Massachusetts

Dear Mr. Healy:

You have asked for my opinion concerning five questions relating to the procedures for adopting amendments to the Cambridge Zoning Ordinance.

1. You asked whether or not General Laws, Chapter 40A, section 7 or Article I, section 7 of the Zoning Ordinance controls in determining the number of votes required to amend the Zoning Ordinance.

Chapter 40A, section 7 provides for a two-thirds vote by the city council for an amendment to the Zoning Ordinance unless there is opposition by the owners of nearby land, in which event a three-fourths vote is necessary.

The Zoning Ordinance provides that if the planning board disapproves of the proposed amendment, it may be passed only by a three-fourths vote of the city council.

The Supreme Court in Kubik v. City of Chicopee, 353 Mass. 514 held that a local zoning ordinance cannot vary the provisions of Chapter 40A of the General Laws.

Therefore it is my opinion that the requirement of Article 1, Section 7 of the Zoning Ordinance for a three-fourths vote is illegal and that the number of votes required is established by General Laws, Chapter 40A, section 7.

2. You ask whether, if the planning board does not submit a final report with recommendations to the city council but outlines arguments for and against the petition for rezoning, the city council may take action on the proposed amendment.

The Court has held in Whittemore v. Town Clerk of Falmouth 299 Mass. 64 that the city council cannot act without either a report of the planning board with recommendations or no report. In the Whittemore case the planning board advised the town meeting that it could not agree upon a report. The Court, however, ruled that such a report did not comply with the statute and that any action taken by the town meeting was invalid.

On the other hand, the Court in Rousseau v. Building Inspector of Framingham, 349 Mass. 31 held that a request by the planning board that a rezoning petition be referred back to the planning board was in essence a negative report.

In Caputo v. Board of Appeals of Somerville, 330 Mass. 107 a planning board report that a proposed change constituted spot zoning, was considered a report with a negative recommendation. It therefore is not possible to give a categorical answer to your question because a report that does not contain specific recommendations may still be considered a report with a negative recommendation.

Nevertheless a report that only recites arguments would not appear to be in compliance with the statute and if the planning board finds itself unable to make recommendations of any sort, the appropriate procedure would be for the planning board not to submit any document and for the city council to proceed at the end of the twenty day period from submission of the proposed rezoning amendment to the planning board.

3. You ask what the effect would be of a vote of the planning board without recommendations. As I indicated in paragraph 2, such a vote is not in compliance with the General Laws and should not occur.

4. You ask whether or not there is any provision which provides that the planning board may require more votes for the passage of an amendment than those required by Chapter 40A, section 7.

As I indicated in paragraph 1, the Zoning Ordinance may not require more votes than required by 40A, section 7.

5. You ask whether or not Chapter 268A of the General Laws permits members of the planning board who were classified as specific employees from voting on certain matters before the board.

General Laws, Chapter 268A, section 17(a) would prohibit a special municipal employee, as well as a regular municipal employee,

Mr. Paul A. Healy

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from receiving compensation from anyone other than the city in relation to any particular matter in which the city has a direct and substantial interest. If that is the case then obviously a member of the planning board should refrain from voting on a particular matter before the planning board.

Very truly yours,



Philip M. Cronin  
City Solicitor

PMC:N

CC: Mr. Robert Bowyer  
City Hall Annex  
57 Inman Street  
Cambridge, Massachusetts

Communication from the City Solicitor  
Rendering an opinion concerning five  
questions relating to the procedures for  
adopting amendments to the Cambridge  
Zoning Ordinance

January 26, 1970.

*Copies*