



CITY OF CAMBRIDGE

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April 6, 1989

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Reconsideration of Zoning Amendment Petition
after Referral to Planning Board

Dear Mr. Healy:

The Deputy City Clerk, John Flynn, has requested a legal opinion regarding the following question:

When a zoning amendment petition transmitted to the City Council by the City Manager on March 27, 1989 was voted by the City Council to be referred to the Planning Board on April 4, 1989, and a City Councillor moved for reconsideration, and the next regular meeting of the City Council is scheduled for April 10, 1989, does G.L. c. 40A require that the petition be submitted to the Planning Board prior to the April 10, 1989 meeting?

General Laws, c. 40A, s. 5 provides in pertinent part that:

The ... city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review. [emphasis added]

This statute makes submission to the Planning Board mandatory within fourteen (14) days of "receipt" of the proposed zoning amendment.

The petition under consideration appeared on the City Manager's Agenda for March 27, 1989. The petition was therefore received by the City Council on that date.

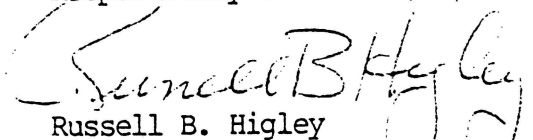
Mr. Robert W. Healy
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As a general rule of interpretation, when a statute provides for an act to be done within a certain number of days, the day of the event after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. See, Massachusetts Rules of Civil Procedure, Rule 6(a). Applying these rules the fourteenth day for submission to the Planning Board of the subject petition will be April 10, 1989.

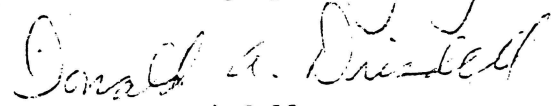
Since G.L. c. 40A requires that the City Council "submit" the petition to the Planning Board, it is a fair conclusion that the Planning Board should receive the petition by the fourteenth day. Moreover, it is a fair conclusion that the Planning Board should receive the petition by the close of business on the fourteenth day. While we have found no court decisions specifically addressing these issues, it is our opinion that a risk of a procedural defect may be created by failing to "submit" the petition to the Planning Board before the City Council meeting scheduled for Monday night, April 10, 1989.

As a general rule a clear, mandatory state statute, such as G.L. c. 40A, s. 5, supercedes any conflicting local rule. Since it does not appear that the City Council, upon reconsideration, can legally fail to refer the petition to the Planning Board, the petition should be referred prior to the meeting to prevent the risk of a procedural defect.

Respectfully submitted,



Russell B. Higley



Donald A. Drisdell

RBH/DAD/jml

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Comm. from John E. Flynn, Deputy City Clerk,
transmitting the legal opinion of the City
Solicitor with regard to Reconsideration of
a zoning amendment petition after referral
to the Planning Board.

In City Council,

April 10, 1989

4-10-89

Referred to the
Petition.