



THE COMMONWEALTH OF MASSACHUSETTS  
 OFFICE OF THE ATTORNEY GENERAL  
 CENTRAL MASSACHUSETTS DIVISION  
 10 MECHANIC STREET, SUITE 301  
 WORCESTER, MA 01608

MAURA HEALEY  
 ATTORNEY GENERAL

(508) 792-7600  
 (508) 795-1991 fax  
 www.mass.gov/ago

December 13, 2022

Diane Packer, Town Clerk  
 Town of Natick  
 13 East Central Street  
 Natick, MA 01760

RECEIVED  
 2023 JAN - 3 PM 2: 09  
 TOWN CLERK-NATICK

**Re: Natick Annual Town Meeting of April 26, 2022 --- Case # 10585  
 Warrant Articles # 24 and 25 (Zoning)**

Dear Ms. Packer:

**Article 24** – Under Article 24 the Town voted to amend the Town’s zoning by-laws to allow administrative offices, clerical offices, statistical offices and establishments for research and development as of right in the Town’s Regional Center Overlay District. We disapprove and delete Article 24 because the Town did not comply with G.L. c. 40A, § 5’s planning board hearing notice requirements for zoning-law amendments.<sup>1</sup>

The Attorney General’s review of town by-laws pursuant to G.L. c. 40, § 32 includes a review to determine whether the town has submitted “adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with.” G.L. c. 40, § 32. Zoning by-laws must comply with G.L. c. 40A, § 5, that provides in relevant part as follows (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.

<sup>1</sup> On October 3, 2022, we placed Articles 24 and 25 on a ninety-day extension with our decision due by January 5, 2023. In a decision issued on October 20, 2022 we approved Article 25.

The Planning Board hearing notices for Article 24 did not comply with G.L. c. 40A, § 5 because they did not include the date, time, and location of the Planning Board Hearing and did not state where the proposed by-law text can be inspected.

There is a statutorily authorized process that allows the Attorney General to waive the defect in certain limited circumstances, but those circumstances are not present here. G.L. c. 40, § 32 authorizes the Attorney General to proceed under certain defect waiver provisions if the Attorney General determines there is a defect in: (1) the procedure of adoption or amendment of a zoning by-law relating to the form or content of the notice of the Planning Board hearing required by G.L. c. 40A, § 5, or (2) to the manner or dates on which the Planning Board hearing notice was mailed, posted or published as required by G.L. c. 40A, § 5. This provision allows the Attorney General to direct the Town Clerk to post and publish a notice of the defect and allows for objections or claims to be filed regarding the procedural defect.

On August 18, 2022 the Attorney General elected to proceed under the provisions of G.L. c. 40, § 32. On September 28, 2022 the Town Clerk certified that the notice of defect was posted and published in accordance with the provisions of G.L. c. 40, § 32. See Town Clerk certification. The Town Clerk received many letters in response to the notice and the Town Clerk filed these letters with our Office along with her certification.

We conclude that the letters submitted are valid claims filed pursuant to G.L. c. 40, § 32. The letters received by the Town Clerk include statements explaining why Article 24's notice defect was misleading or otherwise prejudicial. For example, one of the letters states that, had the claimant received adequate notice of the Planning Board hearing, the claimant "would have attended the public hearings on the Article and taken advantage of the opportunity to review the language and be heard concerning the significant harm that we believe the Article could cause . . . ." Another letter states that "[t]he absence of [planning board information] is a defect that had prejudicial impact on potentially interested parties and their ability to participate in the public process."

Under G.L. c. 40, § 32 the filing of a valid claim removes the Attorney General's discretion to waive the defect. See G.L. c. 40, § 32 ("If no claim was made, the attorney general may waive any such defect; but, if *any claim* is made then the attorney general *may not waive* any such defect.") (emphasis supplied). Therefore, the Attorney General is not authorized to waive the procedural defects in the adoption of Article 24. For this reason we must disapprove and delete Article 24.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

*Kelli E. Gunagan*

By: Kelli E. Gunagan  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600

cc: Town Counsel Karis L. North