



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION

10 MECHANIC STREET SUITE 201 A 8:43  
WORCESTER, MA 01608

MAURA HEALEY  
ATTORNEY GENERAL

TOWN CLERK (508) 792-7600  
TOWN OF WESTWOOD (508) 55-1991 fax  
www.mass.gov/ago

July 19, 2018

Dorothy A. Powers, Town Clerk  
Town of Westwood  
580 High Street  
Westwood, MA 02090

**Re: Westwood Fall Annual Town Meeting of November 13, 2017 -- Case # 8691  
Warrant Articles # 10, 11, and 12 (Zoning)  
Warrant Article # 14 (General)**

Dear Ms. Powers:

We write to notify you that we are required by state law to disapprove Articles 10, 11, and 12 from the Westwood Fall Annual Town Meeting of November 13, 2017 because of procedural defects in the Planning Board hearing process. We emphasize that our disapproval of the Articles in no way implies any position on the policy views that led to the passage of the by-law amendments. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).<sup>1</sup>

The Planning Board hearing notice for the November 7, 2017 hearing on these Articles was not posted fourteen days prior to the hearing, and the town did not give the required notice of the November 7, 2017 hearing to the DHCD, the regional planning agency, and the planning boards of each abutting city or town, all as required by G.L. c 40A, § 5. General Laws Chapter 40A, Section 5, provides in 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

<sup>1</sup> In a decision issued February 22, 2018 we approved Article 14. In a decision issued May 23, 2018 we placed Articles 10, 11, and 12 on “hold” pursuant to the process detailed in Chapter 299 of the Acts of 2000.

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.

Because of these procedural defects in the Planning Board hearing process, on May 23, 2018, the Attorney General elected to proceed under the provisions of Chapter 299 of the Acts of 2000 (which amended G.L. c. 40, § 32). This provision allows the Attorney General to direct the Town Clerk to post and publish a notice of the defects and allows for objection or claims to be filed regarding the procedural defects. On July 13, 2018, the Town Clerk certified that the notice of defects was posted and published in accordance with the provisions of Chapter 299, and that a letter had been received from Nada Milosavljevic-Fabrizio. The Town Clerk filed this letter with our Office with her Chapter 299 certification.

The letter from Ms. Milosavljevic-Fabrizio includes statements explaining why the notice defects regarding Article 10, 11, and 12 were misleading or otherwise prejudicial. For example, the claimant states that “the procedural defect did not allow for comprehensive question and answer sessions with residents” and “the publication defect presented an obstacle to the residents in fully understanding the applicability of Article 11.”

In light of the statements in the letter regarding the prejudicial impact of the notice defect, we have determined that the letter qualifies as a valid Chapter 299 objection or claim regarding Articles 10, 11, and 12. Under the provisions of Chapter 299, the filing of a valid claim removes the Attorney General’s discretion to waive the defect. 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.”)

For this reason, we must disapprove and delete Articles 10, 11, and 12. We recommend that the Town consult with Town Counsel regarding the steps the Town should take to resolve this issue at a future Town Meeting.

Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

*Margaret J. Hurley*

by: Margaret J. Hurley, Assistant Attorney General  
Chief, Central Massachusetts Division  
Director, Municipal Law Unit  
Ten Mechanic Street, Suite 301

Worcester, MA 01608  
(508) 792-7600 x 4402

cc: Town Counsel Thomas P. McCusker

