



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

March 30, 2015

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

RE: Order No. 198707 -- Additional public comment period for zoning

Dear Honorable Board Members:

You have asked whether the Board of Aldermen may receive additional public comments outside the scope of a public hearing conducted under G. L. c. 40A, when adopting a zoning ordinance. In my opinion, the Board of Aldermen may lawfully do so, provided that the specified procedure in G. L. c. 40A is otherwise followed.

Under G. L. c. 40A, s. 5, zoning ordinances may "be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided," that is, by following the technical procedures outlined therein. Rayco Investment Corp. v. Board of Selectmen of Raynham, 368 Mass. 385 (1975).

No zoning proposal may be adopted without a public hearing. The purpose of the public hearing is to give interested persons a chance to express their views and opinions. See Gricus v. Superintendent & Inspector of Buildings of Cambridge, 345 Mass. 687 (1963) Woods v. City of Newton, 351 Mass. 98 (1966).

While I have been unable to locate any case law directly on point, there is nothing in the statute which prohibits the Board of Aldermen from permitting additional public comment outside the scope of a public hearing conducted under G. L. c. 40A.

In my opinion, in the absence of a statutory prohibition, provided that the specified procedure is otherwise followed, allowing additional public comment would withstand judicial scrutiny on the grounds that it constitutes an additional layer of comment that does not contradict G. L. c. 40A.

Please let me know if you have any additional questions.

Very truly yours,

David Shapiro
Assistant City Solicitor

cc: Francis X. Wright, Jr, City Solicitor
George Proakis, Planning Director

