



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

September 26, 2017

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

Re: That the City Solicitor Provide an Opinion on Board Item #204159 re: Petition to Amend Zoning Map

Board Order No. 204159

Dear Honorable Board Members:

You have asked this office to provide a legal opinion on a question concerning Board Item #204159, specifically, whether an owner of one parcel of land may initiate a zoning amendment by submitting a proposed zoning ordinance affecting both the owner's parcel and other parcels not owned by the petitioner¹. In my opinion, procedurally speaking, an individual's request for a zoning change affecting such land is likely permissible.

Zoning ordinances may be changed by amendment in the manner provided in MGL c. 40A, § 5. Also See Somerville Zoning Ord. 3.3. Under MGL c. 40A, § 5, a change of zoning ordinances "may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, ... a board of appeals, by an individual owning land to be affected by change or adoption, ... by ten registered voters in a city ... or by other methods provided by municipal charter." (emphasis added).

There are limited Massachusetts court decisions on this specific procedural question. In one case, the Land Court analyzed a challenge to several zoning amendments initiated by an individual entity under this clause in section 5, including two amendments applicable to an entire zoning district affecting multiple parcels. There, the court held that the individual would be "affected" or "apparently" affected by the respective amendments based upon the factual record, and based upon the facts in that case "strict compliance with Section 5 in this particular is not mandatory." *Davolio v. Town of Shrewsbury*, Misc. Case No. 171842 at 2-6, 8 (Land Ct. 1992) Here, the submittal referenced in the Board Item seeks an ordinance amending the Somerville Zoning Map relative to several parcels of land to cause a change of the applicable zoning district.

¹ This letter does not express an opinion as to the legality of the proposed petition in any other aspect.

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The submittal appears to be made on behalf of an individual entity owning one of the parcels affected by the proposed change. Presumably, for purposes of section 5, the submittal is made “by an individual owning land to be affected by” the change. Reading the plain language of section 5 along with the Land Court decision, in my opinion, the relevant clause does not require that in the case of a request by an affected individual, the zoning change must only affect that one landowner’s property. Therefore, in my opinion, such a petition is likely to be procedurally valid for seeking to initiate a zoning change.

Please contact me if you have any additional questions.

Very truly yours,

Jason D. Grossfield
Assistant City Solicitor

cc: Mayor Joseph A. Curtatone
John Long, City Clerk