

September 22, 2023

**Jeffrey T. Blake**  
jblake@k-plaw.comMr. Steven F. Ellis  
Town Administrator  
Montague Town Hall  
One Avenue A  
Turners Falls, MA 01376Re: Rezoning of Turnpike Road

Dear Mr. Ellis:

You have requested an opinion regarding a recent vote by the Planning Board (3-2) in favor of recommending a rezoning of land off Turnpike Road. Specifically, you have asked if the Planning Board can re-open the hearing it held pursuant to G.L. c. 40A, s5 to reconsider the vote and if it can, what is the process for reopening the hearing. In my opinion, if the Planning Board wanted to reconsider its vote after it had closed the hearing required by c.40A, s5 and voted, it would need to provide additional notice of the re-opened hearing as required by c.40A, s5. Said section requires, among other requirements found in section 5, "notice of time and place of such public hearing, of the subject matter, sufficient for identification and of the place where the texts and maps thereof may be inspected and publish same in a newspaper of general circulation in the Town once in each of the two successive weeks, and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the date of said hearing." I reach this conclusion because, in my opinion, all abutters and other interested persons are entitled to have notice of the re-opening of the hearing because it is essentially a new hearing being held on the same subject but after the closing of original hearing. See Tenneco Oil Co. v. City Council of Springfield, 406 Mass. 658 (1990) ("when a board wishes to change or amend a previous decision, a . . . board has "inherent power . . . to correct an inadvertent or clerical error in its decision so that the record reflects its true intention' . . . [but that] the board may not make a substantive amendment which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without compliance with the relevant notice and hearing requirements") citing Huntington v. Zoning Bd. of Appeals of Hadley, 12 Mass. App. Ct. 710, 714 n.4 (1981), quoting Selectmen of Stockbridge v. Monument Inn, Inc., 8 Mass. App. Ct. 158, 164 (1979).

You have indicated that the Board may wish to reopen the hearing because of a recent opinion of counsel that the proposed rezoning is not spot or contract zoning. If, the Board had the information during its hearing, it may have voted differently. While the process outlined above is available in these circumstances, nothing in the statute (c.40A) requires that the hearing be re-opened. Indeed, it would be as efficient to just have the matter of counsel's opinion addressed during the Special Town Meeting at which the amendment is consider. The Board member(s) can address the meeting and address their opinion(s) based on the new information provided to



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them. This would be done on an individual basis and not as a whole but the meeting would be able to hear those opinions.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Jeffrey T. Blake".

Jeffrey T. Blake

JTB/caa

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