A Little Notice Goes a Long Way

Any municipality must give notice of hearings on requests for zoning relief. Defective notice, however, does not necessarily send a municipality back to the drawing board. In a recent case, *Markham v. Pittsfield Cellular Telephone Company*, the Appeals Court concluded that regardless of whether Pittsfield had sent abutters notice of an upcoming special permit hearing, the statute of limitations barred the abutters from appealing the grant of the special permit two years later.

Under G.L. c. 40A, § 11, a municipality must give notice of zoning hearings in three ways: by publication in a newspaper, by a posting in the city or town hall, and by a mailing to certain "parties in interest," including abutters. *Markham* concerned a dispute over the adequacy of a town's mailing, and what that meant for the deadline for challengers to appeal to the court. Over two years after a special permit to construct a cell tower was issued, construction began. The construction surprised some abutters and other neighbors. They were all entitled to notice by mail of the hearing and swore they had not received it. The City's permit coordinator maintained that he had sent notice. There was no dispute that the City had published notice in a newspaper and posted it at City Hall.

The deadline to sue over the grant of a special permit is much shorter than two years. Nonetheless, the plaintiffs filed suit. Plaintiffs argued that the deadline should have been tolled because they had not received notice of the public hearing. A Superior Court judge decided that even if the plaintiffs had not received notice, their suit was untimely. Plaintiffs appealed.

The Appeals Court affirmed. Its decision rested on G.L. c. 40, § 17, which provides a plaintiff ninety days to appeal a zoning decision (as opposed to the usual twenty) when the plaintiff "seeks to invalidate a board's decision because of a 'defect[] in … notice' by 'publication, mailing[,] or posting.'" The Appeals Court also noted that G.L. c. 40A, § 11 did not guarantee actual notice to abutters and other parties in interest, unlike "[m]any other statutes affecting persons' interests in property," which "require notice by certified or registered mail." Given that plaintiffs' complaint was based on a defect in the town's mailing, the ninety-day deadline applied and the lawsuit was barred. The Appeals Court left open, however, the questions of what might happen if there was "a complete absence of notice," or if municipal employees deliberately flouted notice requirements. In other cases, the Appeals Court has held that a complete lack of notice tolls the ninety-day deadline.

Ultimately, *Markham* protects the finality of zoning decisions. So long as the town carries out its duties in good faith and provides some notice, the statute of limitations will begin running.

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