

**AMHERST PLANNING BOARD**  
**Wednesday, July 9, 2014 – 7:00 PM**  
**INCLUSIONARY ZONING FORUM**  
**Pole Room, Bangs Community Center**  
**MINUTES**

**PRESENT:** David Webber (Chair), Stephen Schreiber, Rob Crouner, Bruce Carson, Kathleen Ford, and Richard Roznoy

**ABSENT:** Sandra Anderson, Greg Stutsman

**STAFF:** Jonathan Tucker, Planning Director  
Christine Brestrup, Senior Planner  
Nate Malloy, Senior Planner

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Mr. Webber opened the meeting at 7:08 PM.

**I. Introduction/Welcome**

Mr. Webber opened the forum, welcoming those in attendance. He said that the Planning Board was seeking additional public input, trying to identify stakeholders, and improve the community dialogue. The Board was aiming at having an amendment ready for the Fall 2014 Special Town Meeting. He read a series of questions for which the Board is seeking public input.

Mr. Webber described the provisions of the current inclusionary regulations in general terms. He reviewed the elements that had been proposed in Article 24 on the 2014 Annual Town Meeting warrant.

He asked if there were any comments from members of the Board.

Mr. Crouner said that the Planning Board was trying through zoning amendments to help diversify Amherst's housing stock. The Board had an interest in directing new housing development to our mixed-use centers, and was seeking to find ways to extend inclusionary requirements to all residential uses and development methods. He said one challenge was that developing housing in centers is more expensive than elsewhere, and the Board does not want inclusionary requirements to have the effect of discouraging the development which could provide affordable housing. The trick was to find the right balance.

Mr. Webber asked for public comment.

Aaron Hayden (Select Board Chair) indicated that the forum was also a publicly noticed Select Board meeting. The Select Board has discussed and was very interested in non-zoning options for encouraging affordable housing through inclusion. He noted that while finding ways to add affordable housing through private development was the focus of this forum, the community needed other kinds of market rate housing, as well. Participants should keep that in mind. He was hopeful that there would be an amendment before Town Meeting this coming fall.

Mr. Webber said he appreciated the Select Board's willingness to look at non-zoning options.

Helen Berg asked how long affordability would last. Mr. Crouner replied in perpetuity or as long as the law requires. The Board's intent was to make it permanent.

Elissa Rubinstein said she had attended Planning Board meetings concerning Article 24, and was interested in the discussion regarding the payment of fees-in-lieu of providing affordable housing units. An earlier consultant Jayne Armington had discussed them a couple of times. The standard fee-in-lieu

per affordable unit discussed had been three times the 80 percent of the average median income for a family of four. Subsequent discussion concerning downtown costs had resulted in that being dropped down to one time the average. Mrs. Armington had been concerned that, at that low a level, town center development would only generate fees, but no affordable units. Ms. Rubinstein's concern was how long it would take for those funds to generate enough income to develop an affordable unit. She favored making developers provide the housing directly. She asked the Board not to bow to pressure to lower the standard but to keep it realistic.

Mr. Webber replied that the discussed lower standard would only apply in the General Business (B-G) District. If the cost of paying fees was made too high, then it would depress development. If it was too low, then fees would be all the community got. This was an issue the Board needed to get at.

Mr. Crowner indicated that under the most recent draft language, using fees-in-lieu was an option only available at the discretion of the permit granting body. He noted that might not be the right approach.

Vince O'Connor reminded the audience of the warrant article he had proposed for the June Special Town Meeting. The existing Bylaw does not allow payment of fees-in-lieu and he believed that was the right approach. Direct provision of affordable units should be required. He asserted that the expansion of Presidential Apartments, which included 6 affordable units, was now on hold because the Planning Board had approved permits for the Kendrick Place project without requiring affordable units. That action had driven Presidential Apartments out of the market, and had had the opposite effect of what the Board says are its goals.

He said that the Board should not consider extending inclusionary requirements to by-right uses or development methods—that was not a direction that recent Supreme Court cases supported. Instead, the Board should focus on requiring inclusion for any projects involving a Special Permit, even for ancillary purposes. It should re-examine uses which have been changed in recent years from Special Permit to Site Plan Review approval, and change them back, in consideration of the enormity of the impacts of certain projects.

He criticized other Planning Board actions in recent years, and then said that the Planning Board should support the proposal to increase the Community Preservation Act (CPA) surcharge.

Mr. Webber said that the fact was that Amherst needed more housing, period. That had been repeatedly shown in recent studies. The community should not take actions that suppressed the construction of new housing.

Mr. Tucker noted that CPA and Affordable Housing Trust funds were a form of potential non-zoning cost offset—those funds could be used to supplement inclusionary efforts.

Mr. Webber described the purpose and function of fees-in-lieu.

Mr. Crowner noted that under the most current draft amendment, cost offsets (additional market rate units) were only available to a development when it was actually providing affordable housing units. It was necessary to balance the cost of imposing affordable housing units on developers. He described an example.

Mr. Tucker said that it was ultimately a practical question. Unless a development made financial sense, the development would not occur, and no new affordable units would be built.

Jerry Guidera asked what would be the measure of success of inclusionary zoning. Mr. Crowner replied if the community's housing stock became adequate to meet the community's needs

Mr. Guidera said he thought a more concrete example was needed. The community needed a set goal for affordable housing.

Nancy Dugan of Amherst Fair Housing Now said she was concerned that having fees-in-lieu available as an option would encourage segregation rather than integration. If that money was put aside, how would it be used?

Mr. Webber said that was a long-term question. The Planning Board was trying to craft amendments that would allow inclusionary zoning to work. All of the options are designed to create the incentive to build affordable housing. The real issue was that, if the community made the restrictions too strict, it could become a taking of property rights and run the risk of a lawsuit.

John Coull said that it was worthwhile to remember to encourage anything that contributed to affordability, including just encouraging additional housing generally.

Connie Kruger (Select Board) said that the Olympia Oaks project, as an example of a subsidized housing project, had taken a long time to come to fruition for reasons other than zoning. It was a heavily subsidized project, and more expensive to build than what occurs through inclusionary requirements, which is not directly subsidized. Inclusionary zoning only works in a strong real estate market, and only if the community established the right balance.

Jim Oldham said that he had heard a lot about getting the balance right and making sure that developers get back what they invest. It seemed to all be assertions without numbers.

Mr. Webber replied that the Planning Board was not flying in the dark. It had the data from the Housing Production Plan and the Housing Market Study. The Board was here to obtain facts.

Mr. Oldham said that before taking what developers said at face value, the community should see some real numbers. There had been reference to the need to keep this simple. That argued for staying away from alternative ways of fulfilling the inclusionary requirements. Introducing fees-in-lieu produced a whole set of issues. The Board should keep it simple. Allow cost offsets only for by-right uses or development methods, but not for Special Permit uses or developments methods. If the Board had interpreted the Bylaw differently the community would have had more affordable units. It shouldn't don't do any "giveaways."

Mr. Schreiber acknowledged that the Board and the community has little experience with these issues. He noted Presidential Apartments had been required to provide 6 units with no cost offsets. He agreed about simplicity. The regulations could, for instance, provide 2 cost offset units for each affordable unit across the board, regardless of the circumstances. The problem was that such an approach did not work in the B-G District.

Ken Rosenthal said that another reason for not allowing fees-in-lieu was that a static fee wouldn't achieve the goal of producing affordable units, while the cost of construction would just keep rising. He read from a 2009 Town Counsel opinion regarding the applicability of inclusionary requirements to by-right projects involving ancillary Special Permits. Town Counsel had said that the language was subject to interpretation, and Mr. Rosenthal believed that the Board should interpret it to apply the same burden to any project involving a Special Permit. He said that zoning always imposes costs and that affordable units were no different from any other cost.

Mr. Tucker said that he agreed with Mr. Oldham's earlier comments to the extent that he was advising the Planning Board to seek further consultant assistance in obtaining the numbers that would answer these questions.

Mr. Webber read the Town Counsel letter aloud. He acknowledged that a simpler fix would apply the inclusionary requirements to all housing. But that could depress housing production generally, which the community needs more of.

Mr. Webber said that one of the issues the Board was struggling with was how to allow dimensional modifications as part of cost offsets, when properties can already be built out by-right. Did those present think that allowing a sixth floor to provide room for additional dwelling units was a workable option in the downtown?

Maurianne Adams said she would support that option, that trade-offs had to be made. Having affordable housing in the downtown was a primary community value. Start allowing those changes in the downtown, but she preferred that they not be extended to village centers. The issue of regulating student housing needed to be addressed. This was the moment to make public-private partnerships possible for on-campus student housing a priority. The community needed to face the student housing issue and put housing in the right places.

Janet Keller said she had been getting into this issue, and had taken lessons from the Presidential Apartments expansion. She didn't know why or if it had stalled. The developer was going to provide those units and it was worth wondering why. She noted that the project was a non-conforming use, so it could only occur under a Special Permit. The developer had obtained other modifications from the regulations as part of their permit. She thought it demonstrated that the developer had decided the project made sense without cost offsets. Three of the affordable units were handicapped accessible.

Helen Berg said that all developers should provide affordable housing, including for projects with 1-9 dwelling units. She had seen the map of student housing concentrations developed by the U3 consultants for the Town-Gown study. The Town was at the mercy of the University.

Ms. Brestrup noted that Presidential Apartments was an existing apartment complex on a property the developer had owned for 30 years. For that reason, the overall project cost for expanding the complex by 54 units had included no land purchase costs. The cost of land had increased markedly since the property had first been purchased. This needed to be considered when trying to determine whether cost offsets were necessary.

Mr. Webber said that the Board had heard comments on fees-in-lieu. He wondered how people felt about allowing off-site affordable units. He noted that the inclusionary zoning for Groton, MA allowed off-site units, but abutters of the proposed site had successfully challenged a Special Permit issued for the site.

Ms. Adams said that in New York City, some apartment buildings with affordable units had separate entrances for those units, did not allow those residents to use the on-site gym, etc. She said it was a creative form of segregation.

Julie Marcus of the Amherst Area Chamber of Commerce asked if off-site units could include units created through construction and through renovation. She was told that either option could be available. Ms. Brestrup qualified that to indicate that renovated units would only count if they represented the provision of new (previously non-existent) units as part of the larger project.

Ms. Marcus asked if off-site units could be blocked by neighbors. Mr. Webber replied it would depend on how the zoning was constructed.

Mr. Schreiber pointed out that the Planning Board had gotten out ahead of this option by creating an affordable duplex use category.

Mr. Tucker asked how people felt about allowing for affordable housing credits for developers who provided more affordable units than required under the Bylaw, or where none were required.

Mr. Oldham, said he had spoken to someone in Cambridge who indicated that that city was adamant that affordable units be on-site and be identical to market rate units. He said the Board should not do fee-in-lieu, but should require flexible provision.

Naomi Elliot asked where affordable units would go downtown, and how parking would be provided.

There was general discussion of those issues.

Mr. Tucker indicated that the current draft amendments would allow off-site affordable units within 500 feet of the project or anywhere in the downtown B-G District, regardless of the location of the project. If the public purpose was to provide affordable housing in the downtown close to employment, goods, services and public transit, then it didn't matter exactly where those units were located.

Ms. Elliot said that most housing development was driven by market demand. Mr. Webber said that was why government needed to intervene—without that intervention, the market would not create affordable housing on its own.

Ms. Marcus asked about non-zoning options. She noted that state law allowed tax abatements for the provision of solar power. She said the community should pursue legislation to allow tax abatements for providing affordable units. Mr. Tucker said that there are a number of tax-related actions that might be possible, and that they were being examined. He said tax abatements were more complicated and not often used.

Sharanda LeDuc noted that earlier drafts had included incentives for providing accessible units. Mr. Crowner said that option had been removed because it added a layer of complexity.

Ms. Keller said that Cambridge had produced many affordable housing units. The time frame for provision was important.

Mr. Tucker pointed out that Cambridge was a profoundly different community from Amherst, with a different real estate market.

Ms. Berg said that Amherst was a rural place. UMass should house more students on campus.

Mr. Webber said the community needed to pursue the public-private partnership option. The results of the Town-Gown study would be forthcoming. He noted that the current Chancellor has reached out to the community, had spoken at Town Meeting. He recognizes our shared issues.

Ms. Adams said that several of the issues discussed were outside the Planning Board’s jurisdiction. How does the community pursue those—through the Town Manager or the Select Board?

Mr. Webber said that some changes would require legislative action. The Massachusetts legislature very closely controls taxation.

Mr. Oldham said that citizens often come to the Planning Board because it meets so regularly. It would be useful if the Select Board picked this up and convened a wider dialogue, pulling the relevant committees together.

Ms. Kruger said that the Select Board was interested in looking at the non-zoning options. Tonight was more of a listening session. More research was needed into what would be involved in these options.

Mr. Guidera said that the bigger crisis was in the lack of middle class housing to support the missing demographic of families with children. The community needed to support that across the board.

Mr. Webber said that by virtue of their greater collective spending power, students put pressure on all other housing sectors.

Mr. Guidera said that not a single one of the friends with whom he had attended Amherst schools can afford to live in the community any longer.

Mr. Crouner said he had hoped to get a sense of what other non-zoning issues should be pursued, and the timeline. That will impact when the Board could bring inclusionary amendments forward.

Mr. Tucker said that making those determinations would depend on a better understanding of the financial numbers for development in different parts of Amherst. He repeated his recommendation that the Board seek consultant assistance.

Mr. Webber thanked those who had attended.

The meeting was adjourned at 8:58 PM.

Respectfully submitted:

Approved:

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Christine M. Brestrup  
Senior Planner

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David Webber, Chair

DATE: \_\_\_\_\_