



**PLANNING BOARD**

**Report to Town Meeting**

**Article 24. Zoning Bylaw – Inclusionary Zoning – Referral  
(Planning Board)**

Recommendation

On Wednesday, May 21, 2014, the Planning Board voted 5-0, with 3 members absent, to recommend that Town Meeting **REFER** Article 24 back to the Planning Board for further study. **This reverses the Board’s March 19<sup>th</sup> vote to recommend adoption of Article 24.**

Timeline

**July, 2013**

The Planning Board and its Zoning Subcommittee began working to amend Inclusionary Zoning, currently Article 15 of the Zoning Bylaw. The Board worked with staff and a housing consultant from the Pioneer Valley Planning Commission who examined inclusionary regulations across Massachusetts and assessed their relative financial impacts and effectiveness. The reason the Planning Board has been working on this amendment intensely for a year is because it believes that all significant new residential development in Amherst should help meet the community’s need for affordable housing.

**March 19, 2014**

The Board held a Public Hearing on the amendment that had been developed to date and recommended its adoption. That amendment was included in the 2014 Annual Town Meeting warrant as Article 24.

After March 19, the Planning Board continued to work on inclusionary zoning and encountered several new issues with respect to mixed-use centers including downtown, which led it to conclude that Article 24 needs more work.

**May 7, 2014**

The Planning Board held a public hearing to review several possible alternatives to Article 24, to be heard at Special Town Meeting. The Board determined that none of the proposed alternatives could be adequately reviewed and completed in the time available.

**May 21, 2014**

The Planning Board reversed its earlier vote, and now requests that Town Meeting refer Article 24 back for further study on the following issues:

- **Inclusionary requirements impact residential projects in Amherst’s mixed-use center zoning districts very differently than they impact residential projects in outlying residential zoning districts.** Development projects in Amherst’s Town center and village centers involves much higher costs and complexity than development projects in outlying residential districts. For affordability requirements to work, these differences must be taken into account. If the costs imposed by affordability requirements are too high, then the projects which could provide affordable housing for the community will either be financially infeasible or the costs will be passed on in other ways, possibly increasing the cost of market rate housing.
- **Amherst’s inclusionary zoning needs a “nexus” provision demonstrating a clear relationship between the impacts of new residential development and Amherst’s requirement to provide affordable housing.** Neither the current inclusionary regulations nor Article 24 nor Special Town Meeting Article 7 include such a provision. Adding a nexus provision at this point would be outside the scope of the articles. Recent court decisions have been increasingly protective of private property rights and have overturned local regulations that over-reached in requiring developers to provide for community needs. Amherst’s regulations must contain requirements that are necessary and fair, and impose costs that are roughly proportionate to development impacts, especially where affordability requirements are imposed on residential projects that are allowed by right.
- **The Zoning Reform Act may be adopted this summer, and it requires a “nexus” provision.** The Zoning Reform Act is a legislative bill proposing to overhaul Massachusetts’ laws governing how communities can regulate growth through zoning and subdivision regulation. After years of revision and effort, the Act appears to be gaining support and may be adopted during the current legislative session (ending in August). If the Act is adopted this summer, it will significantly change many aspects of the way in which Massachusetts communities can use zoning. For instance, the Act authorizes and encourages communities to adopt inclusionary zoning, but it requires the communities that do so to include a “nexus” provision.
- **The current Zoning Bylaw Article 15 is sound. Incomplete or partial “stop-gap” zoning measures are not a good idea.** In asking that Article 24 be referred, the Planning Board is well aware of concern about new development projects being filed prior to adoption of new inclusionary regulations. However, adopting temporary, incomplete, or flawed zoning regulations for which there has been not been a full public review process, just as a ‘stop-gap’ measure to impact new development can create worse problems than it avoids. It is neither fair to citizens nor to prospective developers, and is not a responsible way to use local zoning. Summer is short, and with vacations and time off, it will be shorter still. The Fall 2014 Special Town Meeting is right around the corner. Last year, citizen zoning petitions were due September 9 and final warrant language was due September 23.