



PLANNING BOARD

Report to Town Meeting

**ARTICLE 10 PHASED GROWTH SUNSET
(Planning Board)**

To see if the Town will amend Section 14.20, as follows:

14.20 This Article shall take effect beginning on the date of adoption by Town Meeting and shall continue in effect for ~~five~~ **one** calendar years from November 15, ~~2004~~ **2009**, in order to provide the Town time to prepare and implement a master plan in accordance with MGL Ch. 41, Section 81D. Beginning on the date of adoption, the permit granting authority (Planning Board, Zoning Board or Building Commissioner) shall not approve any development schedule under Section 14.5 which would result in authorizations for more than 250 dwelling units over a 730 consecutive day (two year) period. All authorizations shall count toward this planned growth rate unless otherwise noted.

Recommendation

The Planning Board voted 8-0 to recommend that Town Meeting adopt Article 10.

Background

The current Article 14, Phased Growth, was adopted in 1987. It was crafted to regulate the rate of residential growth in Amherst by assigning points based upon how well or how poorly a proposed residential development met the community's standards. Developments that did positive things could be enabled to speed construction (obtain more building permits/year). Developments that ignored community standards or did poorly could be slowed down (issued a smaller number of permits/year).

Five years ago, the Massachusetts Supreme Judicial Court issued a ruling in a court case involving the Town of Hadley's phased growth bylaw, declaring that any zoning which relied on "growth restraint" of this kind was unconstitutional. The only exception allowed under the ruling was that phase growth could be used to protect a community from uncontrolled growth while a community completed and implemented a master plan, under which new regulations would take the place of phased growth.

Accordingly, five years ago, Amherst Town Meeting added a ‘sunset’ clause to Section 14.20 of the Zoning Bylaw, extending the life of Amherst’s phased growth regulations to provide time for the development, completion, and the beginning of implementation of Amherst’s Master Plan. Under the current language, Article 14, Phased Growth, of the Zoning Bylaw will ‘sunset’ and cease to have any legal meaning on November 15, 2009.

As noted, the previous five year ‘sunset’ period was intended to provide the Town with time to complete and implement a Master Plan. That Plan is very close to completion and adoption, but is not yet finished. Just as important, the Planning Board has been working on an amendment to replace the existing phased growth bylaw. The new regulations would reflect the principles identified in the Master Plan, and use them to modify the potential density (total number of dwelling units) or dimensions (the size of buildings and how much area they occupy on a lot) of new development based on how well it meets the community’s standards. That work, too, is close to being completed, but is not yet ready.

For these reasons, upon recommendation by Town Counsel, the Planning Board is proposing to extend the ‘sunset’ period for the current phased growth regulations for one more year, to November 15, 2010, and plans to bring a replacement amendment to Town Meeting as soon as possible, probably for the 2010 Annual Town Meeting next spring.

Public Hearing

The Planning Board held a public hearing on Article 10 on October 21. There was no public comment. After deliberation, the Planning Board voted 8-0 to recommend that Town Meeting adopt Article 10.