

## **Minority Report**

### **Opposing Accessory Livestock or Poultry – Amherst Town Meeting, May 2011 · Articles 33 through 35.**

These proposed Zoning and General Bylaw amendments promote a concept which is not in the best interests of the Town of Amherst. Although our town has a rich agricultural history and presence, with a high percentage of preserved open space and farmland, much of the core of our town is residential. These amendments propose a significant, and not positive, change in the nature and character of three of our core residential districts — R-N (“Neighbor Residence”), R-VC (“Village Center Residence”) and R-G (“General Residence”).

When other challenges to the nature of our residential districts have been presented we have carefully reviewed them — last year’s Development Modification proposal, for example (fondly remembered as “Article 8”) and current activity regarding the Gateway area. This is another such issue. We should reject this effort to expand agricultural activity, with live animals, into our most densely-populated residential districts.

Particular areas of concern:

#### **Inconsistent with Town Master Plan**

Allowing animals in our most dense residential districts under the rubric of “accessory use” contravenes the goals and objectives of the Town Master Plan, adopted so recently. Agricultural activities, which is what these are, do not belong in residential neighborhoods which have evolved through years, even decades, and in some neighborhoods, centuries.

Our Town Master Plan notes, “The Amherst community takes pride in the historic character of its developed areas. Even as higher density development occurs, design standards can help to ensure that such new development is in accordance with the character and needs of the community.... to support the development of well-connected, pedestrian-friendly, mixed-use neighborhoods.” (Chap. 3)

The Master Plan sets out some goals for some key areas of the town (Chap. 2):

- **Maintain Amherst’s existing community character.** ... protecting and promoting adaptive reuse of historic buildings and landscapes, focusing development in already-developed areas, ... with existing neighborhood character, ... The residents of Amherst have a strong interest in maintaining the character of their community for years to come....
- **Encourage vitality in the downtown and village centers.** ... should be a focus for the community’s economic life, cultural vigor, and social activity. ... pursued through a variety of initiatives, including encouraging additional housing development, economic investment, expansion of cultural facilities, promotion of a mix of uses, and improvements to the public realm (parks, streetscapes, and public squares). ... will lead to a more walkable community, allow for more day-to-day interactions among residents.
- **Balance land preservation objectives with more intensive development in appropriate areas.** ... higher density development must be allowed and incentives must be developed to direct more growth and increased economic activity to the appropriate areas [with a] mix of uses ... to encourage a more walkable community and bring residents closer to jobs, shops, and services.
- **Provide housing that meets the needs of all residents while minimizing impacts on the environment.** ... addressing the needs of large segments of the population....
- **Provide community services to meet the needs of all residents.** ... maintaining its historically strong schools, planning for needed fire department, public works, school, library, and recreation facilities, and providing critical social support services.
- **Diversify and expand the economic base.** ... encourage the diversification and expansion of its economic base in a manner consistent with the community’s character and desires. ....

Nowhere in the Master Plan is expansion of agricultural uses into residential neighborhoods recognized as a positive. Language throughout the Master Plan recognizes the strong efforts made to preserve existing farmland and open space, recognizing that major portions of the town are already dedicated to agriculture

(18%) and preserved as conservation land (18%). But principally, preservation of residential neighborhoods is a key component throughout the Master Plan.

### Claims of Sustainability

“Sustainability” is claimed as a major benefit of these amendments by the petitioners, and indeed our Master Plan states, “Sustainability is a primary integrating goal of the Amherst community and this Master Plan.” But this is a reference to sustainability not in the sense that word is co-opted by the petitioners for this article. A broadly-accepted definition of sustainability is included in the Master Plan:

*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*

These bylaw amendments would have just such an adverse impact on our residential neighborhoods. By allowing agriculture — not merely the planting of gardens and vegetables, but the maintenance of animals for food — in our residential neighborhoods we would forever compromise the nature of those neighborhoods.

In the section in the Master Plan on maintaining a “sustainable environment,” the emphasis is on the protection of natural resources, the conservation of energy, and other efforts which “enhance Amherst’s ability to provide jobs, housing, security, education and the other elements of a good life”:

- **Promote an ethic of sustainable environmental and energy practices in all Town activities.** Amherst citizens have a high degree of awareness regarding environmental and energy issues. This Plan details ways to protect natural resources, conserve energy, reduce reliance on the private automobile, promote healthier lifestyles, and encourage green building techniques. Public outreach and education will be a key component in supporting this ethic of sustainability throughout the community. Requiring greater sustainability in Town policies, regulations and practices can enhance Amherst’s ability to provide jobs, housing, security, education, and the other elements of a good life. This can set the tone for the community, help ensure environmental justice, and serve as an example for local businesses and developers. (Chap. 2)

“Sustainability” does not mean raising and maintaining live animals in residential neighborhoods.

Meanwhile, the petitioners claim these proposed amendments would be a means to “achieve food self-sufficiency.” Will keeping hens, rabbits or ducks result in food self-sufficiency? Chicken eggs are amongst the most ubiquitous produce in the Valley, and considerably less expensive than the cost of maintaining chickens. Are the keepers of these animals going to subsist entirely on the animals? If so, would we be creating animal slaughterhouse zoning, rather than merely an “accessory use”?

### Inconsistent with the purposes of Town zoning

Amherst’s neighborhoods have evolved over years of finely-tuned planning with zoning amendments carefully reviewed before being adopted by Town Meeting. It is not by chance that we have so many different residential zoning districts, each of which has its own character and function.

But now the petitioners seek to permanently alter the developed character of our most dense residential neighborhoods. Observe the descriptions, from the Zoning Bylaw, of the districts where these animals are proposed, **as of right**, i.e., not by Special Permit:

- R-N (“Neighbor Residence”): “The purpose ... is to provide for residential areas of medium densities. In general, the R-N District is appropriate for lands adjacent to higher density residential districts, near arterial or primary residential streets...”
- R-VC (“Village Center Residence”): “The purpose ... is to provide for residential neighborhoods, within and adjacent to village centers, that are of medium densities and that allow a limited mix of residential and office uses.... In general, intended to provide for a transition between the Business Village Center District and surrounding residential districts.”

- R-G ("General Residence"): "The purpose ... is to provide for residential neighborhoods of medium to higher density in areas both near the Town Center and between the University and the Town Center. Such areas are convenient to the services, facilities, institutions and/or employment opportunities provided in the Town Center or by the University."

The purposes of these residential zones are expressly identified; those purposes would be undermined by the adoption of these proposed amendments. This would be detrimental immediately where applications under these amendments would be allowed as of right, and would discourage efforts toward inclusion of mixed uses near our commercial centers.

The amendments would also set a dangerous precedent for future modification of these residential zones: If these amendments are adopted the application of standards set out in the Zoning Bylaw for use of the Zoning Board of Appeals and Planning Board would be subject to subtle shifting — imagine a Special Permit Public Hearing: "Gee, if we can have agricultural animals in such a dense residential district, perhaps it would be OK if we approve ...."

### **Keeping of these animals is already allowed.**

These amendments have been promulgated as if the keeping of these animals is entirely barred in the Town of Amherst. This is not so.

Currently livestock and poultry are permitted, without limitation, in more rural areas of town — R-O and R-LD zones, and on "farm property." And in R-VC and R-N districts a resident can seek approval from the Zoning Board of Appeals through the Special Permit process. Only in the R-G district is such activity barred — the district described in the Planning Board report in favor of these amendments as "*the densest ... District which surrounds the Town center and exists between the Town Center and East Village,*"

**Petitioners seek an easier way.** The petitioners for these proposed amendments, to their credit, have been clear in their efforts: They seek to make the keeping of (primarily) chickens a more easily attainable activity under the Zoning Bylaw. Also to his credit, the prime petitioner did apply for and receive a Special Permit to keep his chickens. It was that experience that inspired him to propose changing the Bylaws. Proponents of these amendments see the Special Permit process as difficult and onerous. They seek to avoid the requirement to justify their efforts to a town board — the ZBA, in this case — and to avoid the expense.

But is it an "inconvenience" to be required to apply for a Special Permit for an activity such as an agricultural activity involving live animals in a densely-populated residential zone? This is exactly how the process is designed to work to preserve the integrity of our residential districts.

Even the notification portions of the General Bylaw amendment have been made more user-friendly for proponents: A late amendment, heartily endorsed by Planning Department and Planning Board at the close of Public Hearing, places the responsibility for providing notice to abutting neighbors on the Town. (In prior versions the applicant had to do the work.) This relieves a person hoping to introduce animals into her neighborhood from being required to fill out the paperwork herself, or informing neighbors directly, face-to-face. A citizen seeking to so change the nature of a neighborhood should be required to communicate directly with neighbors and not place the burden for receiving permission upon the Town.

### **Current procedure allows control**

In the existing scheme, a person seeking a Special Permit to keep (primarily) chickens applies to ZBA, which, after official notice to abutters and others, reviews the application, holds a Public Hearing, then, if appropriate, grants the permit, usually including a significant number of conditions. If the conditions are not met, or, after time, are not being adhered to, the permit can be revoked.

In the proposed amendments, applicants would have only an "administrative hearing," with "best practice regulations" the standard for compliance. Although everyone in town has great regard for our

current Animal Control Officer and Health Director, this mechanism has weaknesses. In fact, if not enough information has been received, or if no administrative hearing takes place within the specified time period, a “constructive grant of approval of the application” will be deemed to have taken place — approval without any hearing at all.

### **Enforcement**

Under the current system enforcement of violation of a Special Permit is clear: The Permit can be revoked.

Under the proposed system, violations are determined in a discretionary manner by, presumably, the Animal Control Officer, with monetary penalties imposed. In the proposed General Bylaw amendment, any one of three parties — Animal Welfare Officer, Health Director, or Health Inspector/Sanitarian — *can* be responsible for enforcement, but **revocation of permission is not a part of enforcement of these provisions.**

In this town, when we have had so many difficulties enforcing existing zoning issues and other matters, Town Meeting is now being asked to approve yet another burden on our town services, without essential enforcement tools to ensure the system works. This proposed change to the existing system is fraught with problems and should be rejected.

### **Keeping of these animals is not humane**

Proponents of these amendments ensure us they have only the best interests of the animals in mind, and that it is a clean, safe, humane endeavour. In fact, consider:

- The birds will be kept in coops 10 ft. square — about 3.2 feet on each side, or 5 feet by 2 feet (imagine the width of an adult’s shoulders); proponents promise us they will not be running free; keeping an accessory animal perpetually in such confined quarters is not humane.
- Under these amendments, the number of chickens is excessive — 12 chickens is a lot of chickens in one back yard; though proponents claim most operations will have 6 to 8 chickens, the number allowed as of right is much greater.
- Chickens come from “chick farms,” and only hens are allowed; this means all male chicks are destroyed at birth, not humane for them.
- Chickens lay eggs for only a couple of years, following which egg production falls off; consider the plight of the chicken afterward, or, alternatively, the continuing presence of the chicken in your neighbor’s back yard when it is no longer producing eggs.
- Consider the ferocity of New England winters, and imagine your neighbor’s chickens in their outdoor coops in January. “Best practice regulations” will be required for setting up the coops and keeping the chickens; the Animal Control Officer has said there would be “heating lights” to keep the coops warm. Does this mean electrical power will be a part of the system, with lights in residential back yards?

In summary, this proposal has a negative effect, not a positive contribution to the Town of Amherst. It would especially bring deterioration to some of our key residential zoning districts. Leaving the Zoning Bylaw as it is provides the best means to allow those who wish to keep (primarily) chickens use the existing system to do so.

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