

## **Planning Board Report Regarding Proposed Associate Member Bylaw June 2, 2021**

Following a public hearing on the proposed amendment that was held on June 2, 2021, the Planning Board voted unanimously to recommend the amendment to the Shutesbury Zoning Bylaw regarding Associate Members. The article would delete Section 9.3B of the Zoning Bylaws and insert a new section 10.4 A, establishing Associate Members at the end of ARTICLE X - ADMINISTRATION AND ENFORCEMENT

The reasoning behind the Planning Board's recommendation is as follows:

The current section 9.3B of the Shutesbury Zoning Bylaw specifies that there will be two elected *Alternates* to the Planning Board who may act on special permits when the Planning Board fulfills its role as a Special Permit Granting Authority (SPGA). The reference to alternates, is not the legally correct term for these positions, as specified by state law. Additionally, the existing language provides for elected positions; something the Planning Board does not feel meets the needs that Associate Members are intended to address (more on this below). The new section, 10.4, will be legally accurate by referencing the positions as *Associate Members*. In addition, Section 10.4 will be considerably more comprehensive in describing the process, roles and responsibilities of the two Associate Members.

The Associate Members will fulfill the same role for special permit processes as currently referenced in the Zoning Bylaw (Section 9.3B) but they will also have broader role in addressing the other needs of the Planning Board, including site visits, site plan review and public hearings. By establishing a broader role for the Associate Members, the Planning Board felt that it is more appropriate to locate this new language into another part of the Zoning Bylaw - Article X which addresses administration of the Zoning bylaws.

Among its duties as a regulatory body, the Planning Board develops new zoning bylaws and conducts public hearings to review proposed projects; special permit decisions require a two-thirds vote of the board's membership. In some situations, public hearings can span many months, requiring consistent participation by members. There has been longstanding concern among the Planning Board that for a variety of reasons – recusal, travel, ill health, vacancy – the Planning Board could have insufficient participation given the length of some public hearings. By law, Planning Board members are only allowed to miss one public hearing; any more and they are barred from participating in decision-making. The concern about having enough members available for public hearings became more urgent given the possibility of five simultaneous special permits being submitted for solar developments since each project would require its own set of hearings. The Wheelock Tract (the current solar installation) public hearings, for example, spanned almost two years with 4-5 public hearings.

Notably, if the Planning Board is unable to have adequate representation during a public hearing, approval of a project can be automatic, a so-called “constructive approval”. Constructive approval would mean that a project would be approved as the applicant proposes it without any conditions added by the Planning Board and regardless of the merits of the project or public input. The Planning Board believes being in a situation where the board cannot fulfill its decision-making role and constructive approval occurs, is not in the best interests of the town.

To rectify the situation, the Planning Board is proposing this zoning bylaw amendment that would allow two Associate Members to supplement the seven elected members. The proposed bylaw would make the Associate Members appointed positions, serving one-year, renewable terms. At the public hearing there were questions about why Associate Members would be appointed rather than elected. There were also questions about whether a hybrid process could exist allowing for Associate Members to be elected and/or appointed depending on

various scenarios. Town counsel clarified that state law dictates that associate members can be either elected or appointed; a hybrid select process is not allowable.

The Planning Board determined that appointed members provide the needed flexibility it is seeking. Since elections usually occur only once a year, yet there could easily be a lack of members anytime during a given year. In that instance, the Planning Board could find itself in the same situation it is trying to avoid, with insufficient membership for public hearings. Additionally, elected positions are more difficult to fill; filling nine elected slots is a challenge in small towns like Shutesbury. Appointed members with a one year term, make volunteering more appealing and appointments can occur anytime during the year. This will hopefully allow the Planning Board to maintain a full complement of members and backups.

In regards to the process for appointments, the proposed process builds on existing precedent: the town appointment process and state law. Mass. law requires that when there is a vacancy on an elected committee, in this case the Planning Board, the Planning Board and the Select Board must come together and vote for a replacement. At that meeting the majority of individuals from both boards establishes who gets the seat; votes are by individual rather than each committee getting a vote. The current Shutesbury appointment process calls for all non-elected committees (ConComm, Recreation, Energy, etc), to vote on who to recommend; these people are then forwarded to the Select Board, which makes the formal appointment. This proposed bylaw builds on both of these precedents - an associate member will be recommended by a vote of the Planning Board and then the final formal appointment will be made by a joint meeting of the Planning Board and Select Board with each member getting a vote; a majority is needed.

In terms of their role and responsibilities, Associate Members will actively participate in Planning Board decisions only after the designation by the Chair and only in the case of absence, inability to act, or conflict of interest, on the part of any Planning Board member; or in the event of a vacancy on the Planning Board. Participation by an associate member will always be time or purpose limited. When designated, an associate member may participate fully in procedures for a special permit, site plan review, or any other application before the Planning Board; as well as other procedural matters designated by the chairperson, including but not limited to conducting hearings of the Planning Board. When not acting as full members of the Board, Associate Members will have limited role and involvement although they are expected to regularly attend Planning Board meetings and may be allowed to participate in deliberations.

Respectfully submitted

Michael DeChiara  
On behalf of the Planning Board  
June 2, 2021