

# Why is Art 5 really about Affordable Housing?

- In 2005, TM approved Art 15 as an “inclusionary zoning” (affordable housing) mandate for new developments that required Special Permits (SP).
- It focused on SPs because “if a developer or property owner *chooses* to pursue a residential development method that requires a SP, then the Town is on sound legal ground to require that a reasonable amount of affordable housing be included as part of that development” (Planning Board Report to TM, April 2005).

# **Article 15 in 2005 addressed affordable housing:**

**"All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units at the following minimum rates."**

[Art 15.10 table for affordable units per 10 or more new market rate units. Note: "Inclusionary zoning" refers to the requirement that new residential developments provide affordable units tied to market rate residential units.]

- Between 1990-2010, residents between ages of 25-44 dropped from 7,323 to 4,009
- Missing link for this age group: low and middle income affordability.
- 248 families on the public housing waiting list, 509 families on the state-aided housing lists, 249 elderly on waiting lists
- wait-lists take as long as 6-12+ years. For elderly and children in families, such long waits are clearly too long.

# Relation of tonight's Art 5 to Amherst Zoning Bylaw

## Article 15

- Oct 2009 decision re Boltwood Place: Art 15 “was intended to refer to *uses* that require a Special Permit, as opposed to *dimensional requirements*”
- July 2009: Town Counsel agreed with planners, that although the language of Art 15 is "*subject to interpretation*," his "*initial reading*" was that Art 15 "*seems to be intended* to apply to residential projects which require a special permit for the project itself [*changes in use*], rather than a situation in which an ancillary SP is needed for building coverage [*dimensional changes*]."
- That “reading” of Art 15 still remains in place & has been applied to all subsequent large residential developments

# Affordable Unit Scorecard

- Required Boltwood Pl. 1 of 12. Built 0
- Required Kendrick Pl. 4 of 36. Built 0
- Required 1 East Pleasant 10 of 84. ?
  
- Art 15 has not been applied because of planning decision to limit (or split) what is or is not a SP that mandates affordable units

# **What will Article 5 do for Amherst Bylaw Article 15?**

- **Article 5 will accomplish what TM agreed to 9 years ago when they approved Art 15.**
- **Art 5 closes the 2009 loophole by saying that “a Special Permit” means any and all Special Permits, by adding the language “a Special Permit for any aspect of a proposed use or development, including, but not limited to, dimensional modifications.” [This is the language on the Warrant Art 5]**

# WHY Art 15 CLARIFICATION NEEDED NOW?

- Planning Board has promised a new Bylaw in last few TMs. We cannot be confident it will be ready for Spring 2015. **Art 5 is interim.**
- At this moment, One East Pleasant, projecting 84 residential units could provide 10 affordable at low or moderate income levels.
- How many more residential developments slide through before TM considers a new bylaw?
- Affordability is urgent NOW and Art 5 will serve as an interim measure that addresses the clear mining of Art 15 & also addresses the expectation that developers requesting SPs were no longer building “by right” and should shoulder their fair share
- **Art 5 says we should no longer postpone applicability of Art 15**

# Will requiring affordability stifle development?

- There are profits to be made in Amherst. But developers who request SPs should be expected to factor affordability into their calculus of costs and profits. Otherwise, the costs of doing anything about low or moderate income affordability gets shifted to taxpayers.
- Consultant report: “... requiring the full 10% [of affordable units] with rents for households at or below 80% AMI could discourage investment in some downtown properties. This may not be the case universally in the B-G district, [but] there is clearly reason for concern” [emphases are mine]. So, what about affordability up to 120% AMI? For example, if 10 affordable units, 5 might be at or below 80% AMI (low income) and 5 might be up to 120% AMI (moderate income).



# Will requiring affordability reduce tax revenues?

- Amherst section 8 subsidies is higher than many monthly mortgages: 0 bedroom \$748, 1 bedroom \$897, 2 bedroom \$1122, 3 bedroom \$1400, 4 bedroom \$1596.
- In these cases, we're talking about very few affordable units relative to the large number of market rate units in these new developments
- Turn the "tax revenue" issue on its head, and consider that it is the taxpayer who support the services for families without homes, needing shelters, or paying a disproportionate part of income for rent rather than other needed goods and services.
- ***If we are considering tax revenues, we must also consider the costs to the taxpayers of providing affordable housing out of municipal revenues.***

## Will requiring affordable units lead to lawsuits (“a taking”)?

- Art 15 was written so that it would not constitute “a taking.”
- If a developer chooses to ask for a Special Permit, whether for use or dimensions, the developer has chosen to give up “by right.”
- The request for a SP means that the permitting board can make requirements in return. In the case of Art 15, these requirements are for affordable units
- Point worth repeating: Article 15 was carefully crafted in 2005 to avoid claims that it was “a taking.”

The Planning Board report to TM in 2005 was clear on many issues of even greater concern in 2014:

1. It documents that affordable housing is a pressing town priority (called “the nexus argument”)
2. It tied the mandate for affordable units only to developers asking for an SP
3. “If a developer or property owner *chooses* [2005 emphasis] to pursue a residential development method that requires a Special Permit, *then the Town is on sound legal ground to require that a reasonable amount of affordable housing be included as part of that development* [my emphasis].” Clear meaning: This is not “a taking”

# To summarize and conclude:

- Art 5 restores the clear meaning in the Planning Board's explanation to TM in 2005.
- Art 5 is not an “expansion” of Art 15. It is the opposite. It eliminates incorrect restrictions on Art 15 that have resulted, from 2009 on, in production of no new affordable housing by developers
- Art 5 uses the “plain meaning rule” whereby legal “interpretation” is justified only in cases of ambiguity. There is no ambiguity in Art 15.

- No concrete evidence that Art 15 will either stifle development or not work. It remains an interim measure.
- All we know is that Art 15 has never been applied in the form it was voted in
- We also know is that parties interested in *not* being bound by Art 15 have escaped its applicability and that as a result, Amherst has gotten no affordable units from current developments

# Why do we need Art 5 for affordable housing now?

- Art 5 clarifies Art 15 so that a developer has two choices: Build whatever is allowed within the “by right” uses or dimensions, or request a SP and accept the requirement for affordable housing.
- It is not fair that Amherst taxpayers and low/moderate income families who pay high rentals, continue in effect support the high profits for developers.
- We do not believe that the ***correct balance*** between the ***obvious need for development*** on the one hand, and the ***equally obvious need for low and moderate affordable housing*** for Amherst’s workforce and for the children in its schools, should be a matter of interpretation by planners who focus primarily on zoning and development.
- ***This policy decision belongs to Town Meeting and it should be made by us, tonight.***