



Planning Board

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INTERDEPARTMENTAL COMMUNICATION

To: **Town Meeting** **Date:** March 22, 2005
Don P. Johnson, Town Manager
Board of Selectmen
Don MacKenzie, Moderator
Eva Bowen, Town Clerk

From: Planning Board

Subject: **Planning Board Report**
Zoning Articles at April 4, 2005 Annual Town Meeting

The following reports the Planning Board recommendations on the five zoning articles as they appear in the April 7, 2003 Annual Town Meeting Warrant:

- Article 25 Amend Zoning Bylaw – Amateur Radio Installations – **Recommended.**
Planning Board member Chris Schaffner will move and present this article.
- The Acton zoning bylaw in its present form fails to accommodate amateur radio operators, mostly because of the general height limitations of 36-40 feet. Federal Communications Commission (FCC) Rules elevate effective amateur radio operations to a vital national interest and largely preempt local control. This article remedies the deficiency in Acton's zoning bylaw by allowing amateur radio installations. In accordance with FCC rules and policies, this article "reasonably accommodates amateur operators" and sets forth "minimum practical regulations" to protect the welfare of Acton's residents. Following a public hearing; review of FCC rules; review of bylaws and ordinances of cities, towns, and counties in Massachusetts and around the country; and review of court rulings; the Planning Board recommends this article as most consistent with FCC rules. Town Counsel reviewed the article and found it adequate.
- Article 26 Amend Zoning Bylaw – Amateur Radio Towers – **Recommendation Deferred.**
The Planning Board assumes that the Board of Selectmen will move and present this article.
- Like article 25, this article seeks to remedy the deficiency of Acton's zoning bylaw relative to amateur radio operators. The Planning Board has not voted to recommend this article. Rather, it recommends previous Article 25. The Planning Board's opinion on Article 26 is as follows:
In light of the FCC rules and corresponding exemptions in the State Zoning Act, article 26 would unduly regulate what amateur operators can do by right. The proposed special permit clause seems intended as a relief valve for the otherwise "hard-to-defend" restrictions while providing a venue for abutters to be heard. However, the article presumes that the special permit granting authority (Board of

Appeals) has independent technical knowledge and understanding of amateur radio communications enabling it to determine what would constitute a reasonable special permit regulation that would not run afoul on FCC rules and case law. This is not likely the case without expensive expert technical and legal consulting advice. In fact, the FCC clarified its rules stating that it does not consider it a legitimate local government action to seek a balance between local interests and the needs of an amateur radio operator to achieve effective communications. In other words, the amateur operator's need to engage in amateur radio communications outweighs the concerns or objections that abutters might have to the installation of an antenna structure.

It would appear that in the best case, the outcome of a special permit procedure would achieve nothing more than delaying the amateur operator's efforts to address her communication needs. In the worst case, undue special permit restrictions would be challenged in court resulting in legal costs to the Town and the amateur operator, unless the operator, in frustration or for lack of funds, relents and settles for less than what he is entitled under Federal rules.

In the event that Town Meeting should reject Article 25, the Planning Board believes that adopting Article 26, while riddled with potential problems, is still better than no change at all to address amateur radio communications.

- Article 27 Amend Zoning Bylaw – Housekeeping – **Recommended.**
This article is on the consent calendar. Planning Board member Gary Sullivan will be available to move and present this article if necessary.
- The Planning Board refers to the article summary, which explains the purpose and expected benefit of this article.
- Article 28 Amend Zoning Bylaw – Reduce Split-Zoning of Parcels – **Recommended.**
This article is on the consent calendar. Planning Board member Gary Sullivan will be available to move and present this article if necessary.
- The Planning Board refers to the article summary, which explains the purpose and expected benefit of this article.
- Article 29 Amend Zoning Bylaw –
Consolidate Affordable Housing Overlay District – **Recommended.**
This article is on the consent calendar. Planning Board member Gary Sullivan will be available to move and present this article if necessary.
- The Planning Board refers to the article summary, which explains the purpose and expected benefit of this article.
- Article 30 Amend Zoning Bylaw –
Reduce Split-Zoning of Parcels in the Affordable Housing Overlay District –
Recommended.
This article is on the consent calendar. Planning Board member Gary Sullivan will be available to move and present this article if necessary.
- The Planning Board refers to the article summary, which explains the purpose and expected benefit of this article.

This memorandum shall serve as the final report containing the Planning Board's recommendation on the proposed zoning articles pursuant to M.G.L., Ch. 40A, S. 5.