

## Planning Board: elected or appointed?

*A report for the Government Study Committee by Diane Young, January 2019*

### 1. REQUEST FOR STUDY

Article 18 of the Annual Town Meeting of May 8, 2018, a citizen's petition, sought to amend the Charter so that the Planning Board would be elected by the registered voters rather than appointed by the Town Manager. The motion failed. A number of opponents said they preferred to wait for the Government Study Committee's "recommendations."

### 2. THE PLANNING BOARD

The Planning Board consists of 5 regular members and one associate member. The Town Manager appoints regular members to 5-year terms and the associate member to a 2-year term.

Past changes: in 1938, it was voted that the Planning Board be elected at the Annual Town Meeting. In 1963, it was voted that the Planning Board be appointed by the Board of Selectmen.

The Planning Board's purpose, as stated on the Town website:

The Ipswich Planning Board is authorized under the Massachusetts General Laws to regulate the laying out and construction of ways in subdivisions, conducting site plan review, and certain special permits, with the goal of ensuring the safety, convenience and wellbeing of the present and future residents of Ipswich. To accomplish this goal, the Board also collaborates with residents, business owners, other boards and departments, institutions and others to write and implement transportation, land use, economic development and other plans, regulations and policies. The Board is responsible for reviewing special projects, such as scenic road alterations.<sup>1</sup>

For other towns' statements of purpose, see Appendix A.

For relevant MA General Laws, see Appendix B.

### 3. SURVEY

Short surveys about the strengths and weaknesses of election or appointment were sent to 43 Massachusetts towns. All 43 have population of 10,000 to 15,000 and Open Town Meeting. Town Clerks or Planners responded from 22 towns. Follow-up conversations, or further emailed questions, ensured with a dozen of those.

The 22 survey responses are available separately.

### 4. AREAS OF CONCERN FOR ELECTION/APPOINTMENT

#### What problem(s) was the warrant article trying to solve?

Three issues were mentioned by the author of the warrant article: accountability, longevity, and the pool of candidates. At Town Meeting, she said the intent was to "move control over what happens in this town back in people's hands." At the Select Board's hearing on the warrant, she made these comments:

*"There are some boards and committees who have people on for a really long time," Kloub said. "They kind of get stale. I want to see more people stepping forward," she argued, adding the old members*

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<sup>1</sup> <https://www.ipswichma.gov/418/Planning-Board>

*“kind of get in a rut and have a narrow focus.” Appointees staying in those positions also discourage potential new members from putting their names forward, Kloub said.<sup>2</sup>*

### **Accountability: whose concerns does the Board represent?**

There is a perception that an appointed Planning Board represents the views of the appointing authority. In Ipswich, “Selectperson Linda Alexson said she voted in favor of the proposal because the board’s current setup reflects the vision of the town manager and town planner.”<sup>3</sup>

Grafton recently voted to keep their Planning Board elected. One resident said, *“When a board is appointed by selectmen, they lose their independence.”<sup>4</sup>*

### **Longevity/turnover: what is desirable? Which method promotes “good” longevity?**

The learning curve for Planning Boards is tough, especially for new members who have never attended a Planning Board meeting. Board members need to learn the rules and regulations, be able to effectively converse, and know the right questions to ask. One planner says he is “fortunate to have longtime members.” His town’s terms are five years—a short term is dangerous, giving the impression that something is going on. With a long term, there’s no “get me on the Board, get this thing done, and then I’m gone.”

From anecdotal evidence, there are some very long tenures on both elected and appointed boards. I heard from 6 towns (4 elected, 2 appointed) who had some members serving since the 1990s.

While Ipswich had three members turn over between 2015 and 2019, Topsfield (elected) had only one new member in that time. Topsfield said, “It’s not advantageous to have turnover.” Ipswich’s Planning Board chair spoke at the Select Board’s warrant hearing: *Members typically serve a two-year associate term followed by a five-year commitment, she said. “Ideally they start as an associate,” Paek noted. “It’s not typical that anybody goes beyond into a second stint,” she said.<sup>5</sup>*

### **Pool of candidates: which method encourages participation?**

Many survey respondents spoke of the difficulty of getting volunteers, whether elected or appointed. Wayland (pop 13,000) has difficulty attracting people to run. The Planner recruits people, perhaps starting them off on a related committee. Belchertown (pop 15,000) has to cajole, but has never gone an election without a candidate.

In terms of contested races, in Topsfield (pop 6,000), candidates are “typically unopposed.” The 2018 ballot, for instance, had one candidate. In Hanover (pop 14,000), generally, the race is contested if there is no incumbent, especially for shorter terms to fill vacancies. However, the town has had at least two ballots with no candidates. One successful write-in had 22 votes; another had 41. Write-ins have also been elected in Rowley (pop 6,000): in 2018, with no candidate on the ballot, the successful write-in received 10 votes.

Re competition for appointments, data on the number of applications was not readily available.

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<sup>2</sup> <http://thelocalne.ws/2018/03/26/citizens-petition-seeks-to-have-ipswich-planning-board-elected-rather-than-appointed/>

<sup>3</sup> <http://thelocalne.ws/2018/05/10/ipswich-planning-board-to-remain-appointed-for-now/>

<sup>4</sup> <https://www.telegram.com/news/20171016/grafton-voters-keep-town-clerk-planning-board-elected>

<sup>5</sup> <http://thelocalne.ws/2018/03/27/paek-against-electing-planning-board/>

### **Balance of skill sets, residential areas, genders**

In her opposition to the warrant article, the Planning Board chair cited the variety of professions represented on the Board, the distribution of in-town and rural residents, and the mix of genders as a positive outcome of appointment.

A planner who worked with both kinds of boards said that both have “absolutely” had a good variety of skills. Belchertown (elected) has always had a good variety on the Board: lawyers, builders, engineers, people with planning degrees.

Grafton’s charter review commission proposed changing the Planning Board to elected because it requires more technical skills now.

### **Politicization: competing views**

Is the Planning Board simply an adjudicatory entity? The current chair of Ipswich’s Board thinks so. On Town Meeting floor she said, “The Board’s duty is to the zoning bylaw, not to a constituency or to an agenda.”

In a similar vein, another town’s planner wrote: “Elected Boards are more likely to feel beholden to a particular group of voters, and more likely to not care about careful attention to rules or laws. They tend to abstain (which is equivalent to voting NO) to avoid approving a controversial project, often placing the community in a legally tenuous position.”

However, Belchertown’s planner says that the master plan is always a policy issue. “Regulatory work like zoning and permits is not really the major emphasis of the Board, although we spend a lot of time on them.” He added, “A policy-oriented board should be elected as it can be more representative.”

Another planner supports elected boards because they have “independence from political influence from an appointing body.”

According to a planner who has worked for both elected and appointed Boards, “during times of big or controversial projects new members will come on without any real interest in planning and for one issue only. They may run to be on the Planning Board with their own agendas, which makes looking long term at the big picture difficult because they are not always engaged. Although not very common, appointed members can be removed for various reasons for an appointing authority but elected members can only be removed by the voters.”

A second planner who worked for both elected and appointed Boards wrote: “Elections for regulatory bodies gives impression of regulation as a choice rather than requirement; for instance, unpopular, yet consistent and by-right subdivision is denied under political reelection pressure, Town is still liable for denial that is arbitrary and capricious.”

Andover recently rejected an effort to make their Planning Board elected. The resident who submitted the Town Meeting article contested the idea that adjudication can be unbiased: *“I have heard that whether it is an appointed or an elected planning board, the interpretation of bylaws is exactly the same and the outcome of Elm Street [subdivision] would have been the same,” Ciampa said. “That’s entirely untrue. We have been very public in the interpretation of bylaws. There were a lot of subjective developments.”*

Andover’s Planning Board chair was reported to say that “in elections, candidates are often asked to take a stance on issues by voters. If a Planning Board candidate were asked to give an opinion on a development before going through the Planning Board process, the developer or neighbors to the

project could claim in litigation that they did not receive a fair hearing because that board member had already publicly made their stance known beforehand.”<sup>6</sup>

### **Relationship with Select Board**

A number of survey respondents reported conflict between the Planning Board and the Select Board, e.g., friction on the time it takes to issue a decision. One planner who has worked for three elected Planning Boards said that support from both boards on a particular topic is rare, and that having both elected causes too much confusion.

John Petrin, Town Administrator, Burlington, MA and MMA Past President, wrote that appointed Planning Boards “would be prone to work with Selectmen on the big policy picture. Too often, there seems to be friction between Selectmen and PB’s. Larger towns may have a PB that is elected but the staff reports to the town manager. That certainly helps with the coordination.” (email, 11/18/18)

### **Impact on planning staff**

It may be worthwhile to explore whether electing the Planning Board would have an impact on the work of Planning Department staff. Harwich’s planner wrote: “Generally when it is an elected Board, the Town Planner is ‘employed’ by that Board and does not have the ability to work on other town projects. With an appointed Board the Town Planner works for the Town Administrator/Manager and works with the Planning Board. The Town Planner is ‘free’ to work with other Boards and Committees and on other projects.”

## **5. GENERAL GUIDELINES FOR ELECTION OR APPOINTMENT**

From Bernard Lynch, Paradigm Associates (consultant for Ipswich town manager search):

The principles for appointed rather than elected include the following:

- Limited policy-making responsibilities.
- Primarily performing administrative responsibilities largely guided by laws and regulations.
- Requiring specialized qualifications to perform the functions of the position.
- The required qualifications are such that an absence would expose the Town to substantial risk.
- The functions of the position require regular and consistent cooperation and coordination with other functions of local government.
- Voters cannot easily determine the proper functioning of the position.
- Little to no electoral competition for positions.<sup>7</sup>

## **6. ULTIMATELY, WHAT DECISION IS THE RIGHT ONE?**

Of the 22 towns that responded to the survey, 78 percent have elected Planning Boards. According to a 2018 survey by MA planners, of the 146 cities and towns that have Town Planners, 70 percent have elected Planning Boards; 30 percent have appointed Planning Boards.

One respondent was very clear that an elected Board has more “perceived” power. It is more confident in its obligation to the people, feels the authority to do the job. But basically, it’s all perception. Whether the Board is elected or appointed, there will be zoning bylaw changes.

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<sup>6</sup> [https://www.andovertownsmen.com/news/selectmen-take-no-stance-on-elected-planning-board-article/article\\_ebd12cd7-ed2c-5f40-ad0a-1820802dfb5c.htm](https://www.andovertownsmen.com/news/selectmen-take-no-stance-on-elected-planning-board-article/article_ebd12cd7-ed2c-5f40-ad0a-1820802dfb5c.htm)

<sup>7</sup> “An Evaluation of Structure and Operations of Southampton Government,” October 2016

John Petrin again: “Many people believe that planning and zoning are important and they want to believe in the elected official system to protect them. To me, the final say ends up being Town Meeting in the end.” (email, 11/18/18)

One planner whose town has a strong feeling for resident control of government wrote, “If the method chosen does not have high public support then it will likely fail. We have seen that happen when it has been discussed on whether to change methods of selecting certain officials in the past.” And another had advice: “Every community has its own culture and way of governing. To thine own culture be true.”

## 7. OPTIONS WITHIN ELECTION OR APPOINTMENT

**Terms and size of board:** Mass General Laws: A planning board established hereunder shall consist of *not less than five nor more than nine members*.... the members of the planning board under this section shall be elected or appointed for terms of such length and so arranged that *the term of at least one member will expire each year*, and their successors shall be *elected or appointed for terms of three or five years* each as determined by the city council in the case of a city and by the town meeting in the case of a town. Any member of a board so established in a city may be removed for cause, after a public hearing, by the mayor, with the approval of the city council. <sup>8</sup>

**Nominations:** Wilbraham’s process calls for the Town Democratic and Republican Committees to nominate candidates for Planning Board (and other elected positions) at their annual caucuses. Those names automatically appear on the ballot.

**Qualifications:** Would it be advantageous to include qualifications in the charter or bylaw? Is that legally possible?

**Term limits:** Of 8 towns asked, none had term limits. Topsfield got rid of term limits for the Planning Board in 2018.

**Associates/alternates:** Towns have one and two-year terms, and the positions may be elected and appointed.

**Vacancy appointments:** The Mass General Laws dictate how vacancies shall be filled: *A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term, in a city, in the same manner as an original appointment, and, in a town, if the members of the board are appointed, in the same manner as the original appointment. If the members of a planning board are elected, any unexpired term shall be filled by appointment by the board of selectmen and the remainder of the members of the planning board until the next annual election, at which time, such office shall be filled, by election, for the remainder of the unexpired term.* <sup>9</sup>

### **Charter language: sample language from Hopkinton:**

Section 4-3: Planning Board

(a) Composition, Term of Office - There shall be a Planning Board consisting of nine (9) members elected for a term of five (5) years each, so arranged that the term of office of as nearly an equal number of members as possible shall expire each year.

(b) Powers and Duties - The Planning Board shall have those powers and duties that have been given to Planning Boards by the Massachusetts General Laws, by this Charter, by Town Bylaw or by Town Meeting vote.

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<sup>8</sup> <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section81a>

<sup>9</sup> <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section81a>

(c) Appointments – The Planning Board may appoint a Town Planner, in accordance with the Personnel Policies of the Town. The Planning Board shall annually set goals for the Town Planner with input from the Town Manager.

**Transitioning to an elected board:** The chair of Ipswich’s Planning Board commented that the warrant article was not clear on what would happen to the current Board. Here is Andover’s proposal: “Town officials, however, said that turning the entire Planning Board over next spring could throw off quorum votes on special permit processes that take months. Ciampa submitted an amendment to his article that added a three- year transition process during which two of the six Planning Board members would be elected every year, until the town had a fully elected Planning Board by 2021. The amendment was approved.”<sup>10</sup>

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<sup>10</sup> [https://www.eagletribune.com/news/merrimack\\_valley/town-meeting-voters-reject-elected-planning-board/article\\_43b3e74e-334d-5118-b335-3d622809000e.html](https://www.eagletribune.com/news/merrimack_valley/town-meeting-voters-reject-elected-planning-board/article_43b3e74e-334d-5118-b335-3d622809000e.html)

## **Appendix A: Purpose/mission of Planning Board from other towns**

### **Phillipston:**

To provide for conscientious and orderly land use development through Comprehensive Planning, Subdivision Control and Zoning Bylaw and Zoning Map review.

To develop and implement land use development and growth management regulations consistent with the goals and policies of the Town.

To protect the natural resources, safety and aesthetic character of the Town through environmental impact and design review/site plan review and the issuance of special permits pursuant to the Zoning Bylaw.

### **Wilbraham:**

The Planning Board is responsible for overseeing land use planning in the Town of Wilbraham. Working in close cooperation with the Planning Director and the Building Inspector / Zoning Enforcement Officer, the Planning Board studies the resources and needs of the Town, particularly conditions affecting public welfare and safety related to land use and development.

The Board is authorized to develop the Town's Master Plan to guide growth and make recommendations to ensure that development is consistent with the Master Plan. As the main author and "custodian" of the Town's Zoning By-Law, the Board is responsible for conducting public hearings and making recommendations on proposed amendments to the Zoning By-Law, which must be approved by Town Meeting.

The Board also regulates the subdivision of land and the construction of new roadways, grants site plan approval and special permits for various land-use proposals required by the Town's Zoning By-Law, and reviews all petitions for variances and other zoning matters filed with the Zoning Board of Appeals.

### **Woburn:**

By virtue of both State Law and City Ordinances, the Woburn Planning Board is charged with a variety of responsibilities including the following:

#### **Approval of Subdivisions**

The Planning Board is charged with adopting and administering rules and regulations to control and guide the construction of new subdivisions, in accordance with the provisions of Massachusetts General Laws Chapter 41 Sections 81A-81J inclusive. This includes construction of new roads and residential subdivisions, the division of parcels on existing streets and commercial and industrial developments in which new streets or lot lines are created.

#### **Authority to Grant Certain Special Permits**

The Planning Board is also charged with approving special permits for Light Manufacturing uses over 15,000 gross square feet in area in the IP, IP-2, IG, S-2, O-P and OP-93 zoning districts; the Board is also charged with granting special permits for Light Manufacturing uses of less than 15,000 gross square feet in area in the S-2, O-P and OP-93 zoning districts. The review and granting of these special permits are governed by the provisions of Massachusetts General Laws Chapter 40A, Section 9.

#### **Recommendations and Sponsorship of Zoning Map and Text Changes**

The Planning Board is required to conduct public hearings and provide recommendations to the City Council on all proposed amendments to the Zoning Ordinance and to the City's official Zoning Map. It is also authorized to sponsor proposed zoning amendments.

**Approval of Certain Work on Scenic Roads**

Massachusetts law vests the Planning Board with responsibility for overseeing certain work on any road that has been formally designated as a Scenic Road under the provisions of Massachusetts General Laws Chapter 40 Section 15C. On designated Scenic Roads, the Planning Board must specifically authorize the cutting or removal of any trees or the destruction or tearing down of stone walls within the limits of the right of way.

**Development of the Community's Master Plan**

Under the provisions of Massachusetts General Laws Chapter 41 Section 81-D, the Planning Board is responsible for updating the City's Master Plan approximately once every decade. The Master Plan analyzes recent demographic and development trends and community needs and identifies goals and priorities on a wide range of topics including housing, open space, transportation and economic development. The Master Plan also includes an implementation plan to guide public policy and directives in that regard.

## Appendix B: Mass General Laws regarding responsibilities of Planning Boards

Excerpted from MGL Part 1, Title VII, Chapter 41, Sections 70 and 81A-GG:

The planning board shall:

- make careful studies of the resources, possibilities and needs of the town, particularly with respect to conditions injurious to the public health or otherwise in and about rented dwellings, and make plans for the development of the municipality, with special reference to proper housing of its inhabitants.
- from time to time make careful studies and when necessary prepare plans of the resources, possibilities and needs of the city or town
- report annually to the city council or to the annual town meeting, giving information regarding the condition of the city or town and any plans or proposals for its development and estimates of the cost thereof
- make a master plan of such city or town or such part or parts thereof as said board may deem advisable and from time to time may extend or perfect such plan. Such plan shall be a statement, through text, maps, illustrations or other forms of communication, that is designed to provide a basis for decision making regarding the long-term physical development of the municipality. The comprehensive plan shall be internally consistent in its policies, forecasts and standards, and shall include the following elements: [...]
- adopt, and...may, from time to time, amend, reasonable rules and regulations relative to subdivision control.
- [approve any subdivision plan] if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

Town meeting... may adopt an official map, prepared under the direction of such planning board and showing the public ways and parks therein as theretofore laid out and established by law and the private ways then existing and used in common by more than two owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare.