

ARTICLE 33:

ARTICLE 33: To see if the Town will vote to amend section 3-12-1 of the Town Charter to read as follows: The Board of Selectmen shall appoint a Zoning Board of Appeals of five members and two associate members for three year overlapping terms. Persons not registered to vote in the town of Plymouth and Representative Town Meeting Members shall not eligible for appointment to or service on the Zoning Board of appeals, or to take any other action relative thereto.

BY PETITION: Steven Striar et al.

RECOMMENDATION: Not Approve (5-8-0).

The Advisory & Finance Committee recommends Town Meeting not approve Article 33. This article seeks to amend the Charter to specifically exclude Town Meeting members from being eligible to serve on the Zoning Board of Appeals. As evidenced by the split vote, members of the Advisory & Finance Committee have substantially differing points of view on this question. On the one hand, several members raised concern about the same individual being able to participate in the process of making laws and the process of interpreting and enforcing those laws and the potential for conflict such dual roles create. Alternatively, the majority of members seemed to believe that no evidence exists (or, at least, was presented) to substantiate the concerns over theoretical role conflicts and expressed concerns about compelling long-standing, knowledgeable ZBA members to choose between being a Town Meeting or ZBA member and the problems that could be created by an incomplete and / or less knowledgeable Zoning Board of Appeals.

Article 33

'Persons not registered to vote in the Town of Plymouth, Town of Plymouth employees, and representative town meeting members shall not be eligible for appointment to, or service on, the Advisory and Finance Committee.'

Every member of the Advisory and Finance Committee should be familiar with this prohibition. It is the final paragraph of chapter 2 section 12-1 of the Town Charter. It is made part of our Charter for good reason. Among other things, it is meant to place a barrier between those we have elected to make decisions on our behalf and those who serve as their advisors. By this simple act we are able to reduce the likelihood of both real conflicts of interest and the mere appearance of one.

Without this prohibition, the actions and intentions of the Advisory and Finance Committee and representative town meeting could be called into question to the detriment of all.

As correct as it was to include this language in the Charter. I believe there was a failure to recognize the potential conflict that could arise by not including a similar provision in the Charter affecting service on the Zoning Board of Appeals.

As an adjudicatory board, Zoning Board of Appeal members are called on to pass judgement on those aggrieved by the enforcement or dictates of town regulations. Town meeting members on the other hand have the legislative authority to enact the rules and regulations that govern certain activities in the town.

It is at this point that the potential for conflict arises. To have ZBA members, who are in essence and fact our local judges actively participating as our legislators runs counter to the separation of powers doctrine that has served us so well for so long.

Executive, Legislative and Judicial. Each branch of government, whether federal, state or local has it's own certain and separate responsibilities. They should not be co-mingled. We would not accept it at the highest levels of government. We should not accept it in Plymouth.

Therefore it is proposed by this article that 3-12-1 of the Town Charter be amended to read as follows:

'The Board of Selectmen shall appoint a Zoning Board of Appeals of five members and two associate members for three year overlapping terms. Persons not registered to vote in the town of Plymouth and Representative Town Meeting Members shall not be eligible for appointment to or service on, the Zoning Board of Appeals.'

This committee should be aware, it is my intention to ask for a revision of this article prior to town meeting or an amendment to the article on town meeting floor. The change would be limited to a provision delaying implementation of this prohibition, if enacted, for up to one year to allow for a more orderly transition period.