

**Denise Provost
At Large**

The full questions as presented by AHOC are included below. All candidate responses are in **bold**.

Condominium Conversions:

There have been a large number of condominium conversions in Somerville over the last several years and the trend seems likely to continue. Although State law does not allow a community to prevent or delay condominium conversion, the State's Condominium Conversion Law affords important protections to tenants living in buildings being converted to condominiums.

Unfortunately, Somerville tenants are not fully protected by this law because, in some very important respects, the City's own condominium conversion ordinance provides fewer protections for tenants than allowed under state law.

Would you support changes to the Somerville Ordinance which would increase the period of protections for low and moderate income tenants, the elderly and disabled from two years (as in the current ordinance) to four years as exists under state law?

Would you vote to strengthen the Somerville Condominium Conversion Ordinance to prevent landlords from receiving a conversion permit from the City if they empty buildings for the purpose of conversion, without just cause and without notifying tenants of their rights upon conversion prior to seeking such approval?

ANSWER:

I support giving tenants the maximum protection allowed by state law. I support Somerville's retention of legal counsel who can advise us exactly what those protections are, and what penalties can be leveled against violators of our ordinance. If we may lawfully amend the penalties section of the Ordinance (Sec.7-76) to make denial of a conversion permit a penalty for violation , in addition to the present \$200 a day fine, I would gladly vote so to amend the ordinance.

I have repeatedly sponsored Board Orders asking the City Solicitor to advise us, as a Board, how our condominium ordinance can be strengthened. I was counsel to the Condominium review Board in the 1980s, and at that time made many recommendations to the Board of Aldermen, and to our State Representative, as to changes that would strengthen the city's former condominium ordinance; those changes were adopted in 1985. The law has changed in the intervening years, but I remain convinced that we can improve both our ordinance, and our enforcement.

Supply of Affordable Housing:

The supply of affordable private housing is clearly being eroded in Somerville. What specific steps would you take **to expand on already existing efforts** to create new affordable housing and protect the supply and affordability of existing rental housing?

In your answer, please describe what you would do:

- (1) To address threats to Expiring Use rental housing, like the Mt. Vernon Apartments in East Somerville. Their long-term affordability was jeopardized by the owner's plan to end their commitment to the federal government to maintain the units as project-based Section 8s.

ANSWER: In the short term, I always join the chorus of moral exhortation by city officials to the property owners to extend affordability commitments. The only long-term answer to the recurring problem of expiring use buildings is the approach that Somerville took in the 1980s, when the owners of Clarendon Hill Towers planned to pre-pay their mortgage and make the units market-rate. At that time, the city hired special legal counsel to structure a deal to buy out the private owner, and keep Clarendon Hill Towers affordable in perpetuity.

The city need not be the buyer or financier in such deals, but the power, leadership, and leverage of the city are crucial to making such deals happen. I will continue to urge the city administration to take such a role.

- (2) To strengthen the Inclusionary Zoning Ordinance, which obligates developers of market-rate rental housing to set aside a percentage of those units as affordable housing. Specifically, for each of the following potential changes to the Ordinance, please indicate whether you would or would not support the change, and why:
 - a. Lowering the threshold (currently 8 units) at which the Inclusionary Zoning requirement is activated in housing developments.

ANSWER: Some developers – for instance, Somerville Housing Group, developer of Union Place - have voluntarily increased the percentage of affordable units above the amount required by our zoning ordinance. This fact suggests that it is economically feasible for developers to provide a higher percentage of affordable units than presently required. I would support lowering the threshold.

- b. Requiring a substantial increase in the total number of affordable units built if a developer chooses to place the affordable units off site.

ANSWER: I am not keen on off-site units as an option for satisfying the requirement for provision of affordable units. If we are going to allow off-site units as an option, I support increasing the number of units that must be provided, to the full extent allowed by the law.

- b. Increasing legal oversight of the ordinance by such entities as the Housing Department, Zoning Board, or Affordable Housing Trust Fund to better ensure requirements are followed.

ANSWER: I'm not sure that I understand this question. By "legal oversight," do you mean enforcement? Neither am I certain what it means to "ensure requirements are followed" - unless it means making sure that applicable laws are complied with.? Perhaps you will be able to clarify this question by the night of the Candidates' Forum.

In the meantime, I agree with this question's underlying sense that something is amiss with the structure and functioning of Article 13 of the Somerville Zoning Ordinance (SZO), covering Inclusionary Housing. For instance, SZO Sec. 13.7, gives the "Special Permit Granting Authority" (SPGA) the "sole authority" to permit inclusionary developments; to make "Rules and Regulations to implement the requirements" of Article 13; and to designate an enforcing entity. I must question whether this ordinance purports to give more power to the SPGA than applicable state law allows.

Article 13 is part of Somerville's Zoning Ordinance, which itself must by law be consistent with the requirements of Chapter 40A of the Massachusetts General Laws, the state's Zoning Act. Ch. 40A, sec. 9, specifically allows zoning ordinances to allow for the issuance of Special Permits that allow for increases in population density based on a condition of providing housing for low and moderate income persons. It seems clear that the ZBA, as Somerville's SPGA (SZO secs. 2.2.149; 2.2.152) should have the authority to issue such permits.

I have doubts about the ZBA having the autonomous authority to make Rules and Regulations for the substantive implementation of Art. 13. Certainly, ch. 40A, sec. 12 provides that a ZBA "shall adopt rules not inconsistent with the provisions of the zoning ordinance... for the conduct of its business and for the purposes of this chapter, and shall file a copy of said rules with the City Clerk...." I have reviewed only the relevant statutes, and not the case law, but I would expect that these "rules...for the conduct of its business" must refer to procedural rules only, and not substantive rules.

I would expect the courts to hold that substantive rules under which Special Permits are granted are, and must be treated as, zoning ordinances or zoning amendments. As such, they may be adopted and changed only in the manner laid out in Ch. 40A, sec. 5, which requirements are tracked in SZO Sec. 3.3. Zoning amendments must be submitted to the equivalent of a city council; referred to the Planning Board, then advertised for Public Hearing by those bodies, either separately or jointly.

These being the governing laws, I would say that the ZBA, as SPGA, may make “rules for the conduct of its business,” provided that such rules are procedural. I would expect “regulations” to “implement the requirements” of Art. 13 to be categorized properly as substantive zoning amendments. I question by what authority an SPGA can adopt substantive rules and regulations outside the procedural strictures of MGL ch. 40A, sec. 5.

I see similar problems with the provision in SZO Sec. 13.7.1 that gives the SPGA the authority to designate, by rule or regulation, an “appropriate entity” to enforce its rules and regulations. That section is inconsistent with Sec. 3.1.1 of the SZO, which states that states that “the Superintendent of Inspectional Services... shall have the duty of enforcing this Ordinance.” MGLCh 40A, sec. 7, states that “The Inspector of Buildings..or person or board designated by local ordinance shall be charged with enforcement...” Since there is no provision in law for enforcement of a zoning ordinance by anyone not so designated BY ORDINANCE, how, then, can Article 13 of the SZO give the SPGA the discretion to delegate the duty of enforcement to another entity?

Moreover, Sec. 3.1.9 of the SZO provides that “ANY PERSON.... aggrieved by an order or decision of the Building Official, or other administrative official, in violation of Chapter 40A or any zoning ordinance may appeal to the Board of Appeals....” (emphasis added) This right of appeal is itself statutory; codified under MGL Ch. 40A, Sec. 8. Yet, as applied to persons aggrieved by decisions under Article 13, it is problematic. Persons aggrieved by a decision of the SPGA would then have a right of appeal – to the SPGA; those aggrieved by decisions of its enforcement appointee would then be appealing to the enforcer’s appointing authority.

I am not suggesting that I am offering a dispositive legal analysis here. I am suggesting that there may be structural difficulties with Article 13 as it now stands, since the city may not adopt zoning ordinances inconsistent with the requirements of MGL Ch. 40A. I am suggesting that Article 13 needs a full review by attorneys who have expertise in zoning law, and can authoritatively answer the questions about whether SZO Art. 13 is entirely in compliance with that requirement of law.

If such questions have already been researched by the city's attorneys, I would be happy to review their memoranda of law, and read any case law that they cite. I am open to being persuaded that I am wrong on these issues of law. But , until I am persuaded, I have my doubts.

- c. Requiring a transparent public process, including sufficient advance notice of public hearings, for all changes to the ordinance, and/or to the regulations governing its implementation.

ANSWER: As I stated in response to the previous question, Mass. General Laws, Ch. 40A, Sec. 5, (and the SZO, Sec. 3.3) already require a transparent, public, participatory process for all changes to a zoning ordinance. I question whether it is permissible for a SPGA to “govern the implementation” of a zoning ordinance by regulation. State law and local ordinance already lay out a fairly comprehensive scheme of responsibility for the interpretation and enforcement of zoning ordinances; create public due process rights in the creation of zoning laws, and give all aggrieved persons a right of appeal from adverse decisions or interpretations.

No local law can supercede state statute, except where authorized by special act of the Legislature. Nor could a local law necessarily improve upon rights already conferred under state law. The only barrier to “transparent public process” is if the public does not know that is has such rights, or fails to take action to vindicate them.

- (2) To make affordable housing development a high priority use for property being disposed of by the City.

ANSWER: I believe that it is already a high priority use, as the disposition of the Conwell and Durrell Schools show. There is an inherent tension, however, in a city's prioritization of affordable housing, and a city's ability to sustain affordable housing, and provide adequate services for its inhabitants. Cities, especially ones with a small net land area, like Somerville, need a diversity of uses and a significant commercial tax base, both in order to be a healthy community, and to be one which generates enough tax revenues to contribute decently to local services.

- (3) To expand municipal resources available to support the development and protection of affordable housing stock, for example, by augmenting the Affordable Housing Trust Fund.

ANSWER: I support increasing resources for the development and protection of affordable housing stock to the full extent feasible by the

city. This would include providing professional expertise for creating and implementing a comprehensive affordable housing plan for the city. Such a plan would include anticipation of expiring uses, with a proactive approach to dealing with these buildings before they plunge their tenants into a state of emergency.

I have always fully supported regular review of our Linkage Fee, and the regular adoption of the maximum recommended increase to such fee. I support lowering the square footage of building size threshold for commercial developments, for purposes of triggering linkage payments. I take issue with the determination of the City Treasurer that the Affordable Housing trust Fund may not expend linkage fee monies in its account, and question the authority of the City Treasurer to make such a determination.

Tenant/Landlord relations:

AHOC's mission is to fight for more affordable housing and protect tenants from displacement. Towards that end, we believe that it is important to ensure that Somerville tenants and landlords understand their rights and obligations, that those rights are protected, and that each party fulfills their respective obligations. There are too many situations in which this is not the case.

In your opinion, what can the city do to be more proactive in making sure that landlords and tenants understand, and act in accordance with, their rights and obligations?

ANSWER: I do believe that Somerville could be more proactive in informing all residents of their rights and obligations. I am aware that tenants regularly quit rental accommodations, when asked to do so by property owners who want to “go condo.” These tenants are not aware that they have any legal protection; what local property owners and their attorneys know, I cannot say; but I do not consider the city’s housing laws to be very well publicized.

Would you support the creation of a city-funded liaison who could provide landlords and tenants with information about their rights and obligations, and who could help address and resolve questions or disputes involving rental housing?

ANSWER: I believe that when Somerville still had an office of Human Services, city staff regularly made referrals to private human services and legal services agencies that provide housing advice and advocacy. I would hope that our Housing Division of SPCD still provides such information and referrals. If not, I would hope that the provision of such referral

information could be made part of the job description of one or more city employee who work in housing-related areas.

I would hesitate, however, to put the city in the role of resolving ‘disputes involving rental housing.’ There are already agencies, legal services, mediation programs, and courts which do this work. While it is appropriate for city staff to refer residents to these resources and agencies, the city does not , in my opinion, have the resources or the legal authority to become the arbitrator in such disputes.