

TOWN OF AMHERST
Planning Board

August 3, 2022

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1 In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of
2 Selectmen Ex-Officio, Tracie Adams, Chris Yates, Tom Quinn, Tom Silvia, Pam Coughlin
3 (alternate), Dan LeClerc (alternate), and Tim Kachmar (alternate).
4

5 Staff present: Nic Strong, Community Development Director; and Kristan Patenaude, Recording
6 Secretary (via Zoom)
7

8 Arnie Rosenblatt opened the meeting at 7:00pm.
9

10 **PUBLIC HEARING:**

- 11 **1. CASE # PZ14920-101321- Clearview Subdivision (Owner & Applicant); Boston Post**
12 **Road, PIN #: 005-159-001 & 38 New Boston Road, PIN #: 007-072-000** – Subdivision
13 Application. To depict the design of a 43-unit Planned Residential Housing Development
14 and WWCD CUP known as Prew Purchase Condominium on Tax Map 7, Lot 72 & Tax
15 Map 5, Lot 159-1. *Zoned Residential/Rural. Continued from July 20, 2022.*
16

17 Ken Clinton, Meridian Land Services; Attorney Jim Callahan, applicant’s counsel; and Erol
18 Duymazler addressed the Board.
19

20 Ken Clinton handed out an outline of the things he was going to discuss at the meeting and
21 explained that a meeting with Nic Strong led him to make agreements to address staff comments,
22 but some of these were not able to be completed by him, due to lack of time. Many of these are
23 contingent upon approval of the legal documents. Thus, there may be areas of the plan which
24 state one thing where something different may be presented this evening or through the legal
25 documents. For example, the plan states that there will be no phasing for the project, but the legal
26 documents express that a construction schedule will occur over multiple years. Once the legal
27 documents are more refined and agreed upon, they will control the revisions to the plan set. Ken
28 Clinton noted that protocol for the Board has been to complete the full presentation without
29 stopping before hearing from Board members. He requested that he be able to pause after each
30 legal document topic to receive feedback from the Board, in order to address items better and
31 more efficiently. He noted that there were no abutters in the room at this time, though he was
32 unsure if abutters were attending via Zoom.
33

34 Arnie Rosenblatt acknowledged Ken Clinton’s request but stated that he would like to hear the
35 entire presentation before going around the Board.
36

37 Ken Clinton stated that he reviewed the entire set of staff comments with Nic Strong and was
38 able to address approximately 70% of them. Fire Chief Matt Conley asked for further revisions
39 to the turnaround proposed in the east village. The previous plan set iteration expanded this
40 turnaround, but it still had a conflict in its arrangement for units 15 and 16. This turnaround was
41 not proposed in the shape of a T but elongated. This new turnaround meets all of the Fire
42 Department requirements and is completely separated from units 15 and 16. Two shared wells
43 for the east village were previously proposed to overlap into the stormwater management basin
44 area. Due to the conflict with DES rules and Town regulations, the wells have since been shifted

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45 outside of this area. Thirdly, Ken Clinton read a letter from his engineer regarding detention
46 basin 1, proposed to the left of the entrance to the site. The existing cross culverts will take in the
47 existing stormwater runoff from Boston Post Road and the basin will be used to slowly drain and
48 infiltrate. Any overflow would run into the existing cross culverts. There were also some
49 housekeeping and editing items completed. Any of the missing items, including those in the new
50 staff memo or those that arise through the completed legal documents, will be addressed.

51
52 Ken Clinton asked if the Board would like him to stop at the plan set. Arnie Rosenblatt stated
53 that he believes he, and the Board, will understand things better if the whole presentation is made
54 before commenting.

55
56 Ken Clinton reviewed the draft legal documents. There were differences between the hard copy
57 and Word draft documents a few months ago. It was noted that the Word document was a
58 working copy and not the final document. Attorney Callahan spoke with Attorney Drescher,
59 Town Counsel, to move the legal documents further.

60
61 Ken Clinton explained that a conservation easement document conveying rights from Clearview
62 to the Amherst Land Trust is included. There is a maintenance clause included that dedicates and
63 conveys the rights of maintenance for trails and trail heads to the Amherst Land Trust.

64
65 Ken Clinton explained that, regarding the condominium documents, water quality and quantity
66 testing requirements are included in the legal documents. Also in these documents, the east
67 village is proposed to contain 18 senior units, which have their own responsibilities, conditions,
68 and separate infrastructure/road. The west village is proposed to have 25 units, with their own
69 responsibilities and conditions associated in the legal documents.

70
71 Ken Clinton reviewed the development agreement. This contains phasing information. He still
72 feels that the note on the cover sheet, that no phasing is required for this development due to
73 economic conditions, is appropriate. However, in the development agreement, a construction
74 schedule is included which notes that 50% will be completed in the coming year and 50% will be
75 completed after that. This is effectively a phasing schedule. Some of the justification for the
76 proposed phasing is driven by the number of new construction building applications the Town
77 has received recently. This would indicate a trend of 30-40 applications in any given year.
78 Taking into account the vacant lot stock in Town and number of approved subdivisions by the
79 Planning Board in the last 5 years, the 30-40 building permit applications may actually be taking
80 up the existing stock in Town and much less housing stock has been approved and completed
81 since then. Pendleton Farms was the first Innovative Integrated Housing Ordinance (IIHO)
82 Planned Residential Development (PRD) to be approved. This has been fully built out and took
83 approximately one year to complete 18 standalone units and an eight-unit building. Ken Clinton
84 stated that, again, while he does not believe phasing is necessary for this project, a two-year
85 construction schedule has been proposed in the legal documents.

86
87 Ken Clinton addressed the performance guarantee. He believes that the Board's position has
88 been that although this is a private road, there are aspects that the Town wants to make sure are

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89 fully constructed, should anything happen to the developer lest the project not be completed. The
90 Town's third-party engineer review recommended that some level of guarantee should be put in
91 place, with the form and amount agreeable to the Planning Board. This is only a
92 recommendation, not a requirement. The applicant has provided for this. The recommendation
93 only states that the form and amount should be agreeable, not that this needs to be in the form of
94 a bond. Ken Clinton stated that, in his opinion, the Attorney General's (AG) requirements
95 generally exceed the Town's requirements, especially as this is a private road. The applicant is
96 willing to consider inspections to make sure that the road is being built to design. The road has to
97 be able to support emergency Town vehicles. Ken Clinton agreed that certain milestones, such as
98 inspections of base materials and cisterns, could warrant some level of an inspection schedule.
99 The applicant would be willing to work through this with Keach Nordstrom, if made a condition
100 of approval, regarding what milestones are reasonable and appropriate to satisfy the Town. This
101 agreed upon schedule could be inserted into the legal documents. The AG's requirements are
102 quite stringent and hold a developer's feet to the fire to protect the public just as the Town's
103 interest would be to protect a public road for the public.

104
105 Attorney Callahan stated that this project is being developed as a condominium under RSA 356-
106 B. Under the AG's Office of Consumer Protection, an applicant for a condominium for more
107 than ten units must file an application for registration with the AG's Office. This applicant has to
108 file this application and has to note the cost to complete promised improvements, percentage of
109 improvements, and date of completion. The applicant must then submit a financial statement and
110 a financing plan to show that the liquid funding or financing is available for the promised
111 improvements. Until the certificate is received, a binding third-party sales contract cannot be
112 signed. The application is signed under oath. The AG can issue a cease and desist or injunction
113 and this provides for criminal penalties if falsities are made on the application. Enforcement and
114 oversight are currently very strict for these projects by the AG's Office. Having submitted
115 hundreds of these applications, he stated that the AG's Office almost always comes back with
116 amendments or items to complete the application to the AG's satisfaction. This is a
117 comprehensive and exhaustive process for developers. There is a large incentive for developers
118 to complete this process and complete it correctly.

119
120 Attorney Callahan addressed the mitigation of development impacts. He explained that the Town
121 has had impact fees on the books for approximately ten years, but the assessment of the fees is
122 relatively new. Mark Fougere created a fiscal analysis report for this project and has since
123 updated that report regarding comments from the Board. Attorney Callahan believes that Mark
124 Fougere is a qualified witness in this field. The report states that there will be no adverse fiscal
125 impacts based on the revenue generated, impact fees, etc. Attorney Callahan stated that he stands
126 by this report. There was concern from the Board on the initial report regarding the per pupil
127 expenditures and capital budgeting. Mr. Fougere addressed these items in his supplemental
128 report. While the Board has noted in the past that everyone pays impact fees, Attorney Callahan
129 stated that he respectfully disagrees. When this project is eventually approved, it will likely have
130 some of the most significant assessments of impact fees and this will be a net positive to the
131 Town. The suggestion that the applicant should pay anything more than the standard impact fees
132 does not make sense and is not appropriate.

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133
134 Ken Clinton noted that architectural does not belong under the legal documents tab, as currently
135 listed on his handout. At some point there will need to be a discussion that the architectural and
136 proposed bedrooms counts are appropriate. This current plan includes two additional sheets of
137 architectural. The applicant is requesting that, at time of building permit application, if there is a
138 slightly different house style that keeps with the approved look and feel, the Community
139 Development Office will have the authority to approve this, unless the Office is unsure and then
140 it will come before the Board for an amended subdivision application. The ordinance seems to
141 speak more to the exterior look and feel of the building than the floorplan. Thus, there is a wide
142 variety of complementary architectural styles proposed. A document entitled “Prew Purchase
143 Subdivision” regarding the building architectural, and bedroom counts was submitted to the
144 Board last February. This has been discussed but has not yet been closed by the Board.

145
146 Ken Clinton stated that there are still some cleanup items to address on the plans, such as items
147 that come out of the finalized legal documents. The revised plans will be back to the Town
148 before the next meeting this item is continued to. He explained that the CUP application, which
149 has been running concurrently but somewhere in the background, also needs to be revisited. A
150 preliminary conversation on this CUP was had with the Amherst Conservation Commission
151 (ACC) months ago, but formal comments on it were not provided to the Planning Board because,
152 at that time, it was not a final application before the Board. He has thus requested to be on the
153 ACC’s August 24, 2022, agenda to discuss this item again. The ACC should then be able to
154 provide the Board with comments on the wetland crossing and associated buffer disturbances.
155 Ken Clinton stated that he hopes the hearing will be continued to the Planning Board’s
156 September 7, 2022, meeting.

157
158 Arnie Rosenblatt stated that his understanding is that the applicant is seeking to continue this
159 hearing at this time and receive comments from the Board on the items raised this evening. Ken
160 Clinton agreed that he is not seeking approval on anything tonight, but he is looking for
161 concurrence or direction if something is lacking regarding the topics addressed, such as the
162 condominium documents and conservation easement, aside from any counsel opinions on the
163 items. Arnie Rosenblatt stated that it is fair to ask for comments from the Board, but he does not
164 believe this should be defined as concurrence. Board members may comment on the topics, but
165 they may not be in the position to say that these topics will be blessed, until framed through a
166 vote. He understands that Ken Clinton does not want to be blindsided in the future.

167
168 Tim Kachmar noted that the Fire Chief is not favorable to the dimensions of the proposed
169 turnaround due to the size of the equipment, and he is also not favorable to the location of the
170 driveways off the turnaround. Ken Clinton stated that he has not seen that correspondence and is
171 unclear of its date. Tim Kachmar stated that the email was dated March 23, 2022, to Nic Strong.
172 Ken Clinton stated that that email is outdated, and, to his understanding, the Fire Chief’s opinion
173 is no longer the same, as the plan has since been updated, as previously described. Tim Kachmar
174 stated that receiving the Fire Chief’s final blessing on the new dimensions is important. Tim
175 Kachmar noted that, being new to the Board, he has not been present for most of the process of
176 this application and has no further comments.

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177

178 *Tim Kachmar left the meeting.*

179

180 Pam Coughlin and Dan LeClerc had no comments at this time.

181

182 Tom Quinn asked if, regarding detention pond 1, this pond will be capturing untreated runoff
183 from the site. Ken Clinton stated that there is no circumstance when the natural terrain slopes
184 from high down to the road that basins are not at the edge of the right of way. Some of the
185 drainage heads to the southern gravel wetlands, but the remaining 275' needs to be captured by
186 this detention pond. It is not suitable for an infiltration basin or gravel wetland, and so the next
187 most appropriate thing is a detention pond, and this would be supported by Alteration of Terrain
188 (AoT). Overflow will spill over into the existing culverts. There is no development where the
189 post development is as ideal as the predevelopment. There are requirements to work within for
190 stormwater management and items are chosen from a basis of reasoning and justification for
191 certain options.

192

193 Tom Quinn stated that his concern is for neighbors across the street where untreated discharge is
194 being sent. Ken Clinton stated that he would not classify this as fully untreated. The flow has
195 been directed to the existing culverts by the Town over the years.

196

197 Tom Quinn asked if well yield testing is addressed in the legal documents. Ken Clinton stated
198 that this is located in the legal documents. Any conditions in the documents will be recorded and
199 a person buying a unit will be subject to both the plan set and the legal documents. Attorney
200 Callahan noted that this language is within the condominium declaration (page 15, Section
201 8.5.1). One item addresses quantity of water and another addresses quality of water. Ken Clinton
202 stated that he would agree to add a note on the cover sheet referencing that section of the
203 document to bolster attention to the issue and cross-reference it. Attorney Callahan stated that,
204 for the AG's application, the developer must supply a public offering statement to prospective
205 buyers. Language can be included in this statement to outline this requirement as well.

206

207 Tom Quinn asked if the development would exist within an LLC. Erol Duymazler stated that it
208 currently does. Tom Quinn asked if there is anything the AG's Office will be able to do for the
209 Town if the lender pulls funding, construction is halted, and the developer leaves the project.
210 Attorney Callahan explained that the last two projects completed by this applicant in Town were
211 done in cash. The AG's Office was provided with a bank statement in an affidavit regarding the
212 funds to be used for the project. Under the condominium statute, there is joint liability that
213 extends to principals for false statements. The applicant will be stating under oath that funding is
214 be committed to complete the improvements. If those items do not occur, fraud has essentially
215 been created under the AG's Office requirements. There is always risk involved, but the
216 applicant is working to mitigate this as much as possible.

217

218 In response to a question from Tom Quinn regarding if this project will be funded in cash,
219 Attorney Callahan stated that there is a good likelihood it will be. If any loan is needed, it would
220 likely be an interest only loan, but that is yet to be seen.

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221
222 Chris Yates stated that there have been staff comments regarding bedroom numbers. The west
223 village is showing ten 2-3-bedroom units, nine 3-bedroom units, six 4-bedroom units, and 1
224 ADU included. Based on the 25 units in the west village, he thought the ADU was not included.
225 Ken Clinton explained that there is a discrepancy between the original application where 6-7
226 ADU's were proposed, and the reduction made at the CUP hearing for suitability. His
227 recollection is that the applicant dropped all the ADU's but one. Subsequent conversation was
228 had regarding adding one ADU into the count of 25 or if there should be none. Some
229 conversations on this issue have continued over the past year or so. Some specifics have gone
230 both ways and he would like there to be a final decision on this to finalize the plans. Chris Yates
231 stated that he believed approval was for up-to 43 structures. Ken Clinton asked if this is for
232 structures or units, because an ADU is embedded within a unit. Chris Yates stated that he
233 believed an ADU was considered a separate unit based on other conversations. Ken Clinton
234 stated that this needs to be made clear by the Board. Chris Yates stated that the bedroom count
235 needs to include what the bedrooms will look like. Ken Clinton stated that he believes the one
236 other project completed under this regulation overidentified which units had which restrictions or
237 bonus allocations. This was very cumbersome to track and make sure that nothing was
238 overallocated from the approval. If the units in the west village can have up-to five bedrooms,
239 but no more than "x" number of total bedrooms, each time another application is received, this
240 will reduce the number of total bedrooms. If the last unit is only allowed to have one bedroom,
241 then it will only have one bedroom, based on the total count being reduced with each new
242 application. The ordinance requires a definitive number, and he suggested a spreadsheet to track
243 total number of bedrooms in each village. This leaves the developer at the risk to not have the
244 necessary number of bedrooms left for the last unit that a buyer may want, but that is the
245 responsibility of the developer to handle.

246
247 Erol Duymazler stated that he was confused by the conversation on this continuing because he
248 had already submitted his proposal and needed feedback from the Board on what would be
249 allowed for bedrooms. He noted that the CUP approval was for up to 44 units and within the
250 breakout units there was still an ADU floating as an extra unit. He noted if the Board said there
251 could not be an ADU the number would be down to 43 units.

252
253 Bill Stoughton stated that he has questions, comments and a number of draft conditions for
254 everyone to review. Regarding the stormwater detention pond, he believes the regulations restrict
255 flows into the Town system. The detention pond, in some conditions, overflows into the existing
256 Town culverts. He needs to further examine this item and whether a waiver is needed. It was
257 previously noted that the cleanup is not as good in a detention basin as an infiltration basin, and
258 this may also require a waiver. He understands the physical constraints of the site and why a
259 detention basin is needed in this area.

260
261 Bill Stoughton stated that he believes the documentation on the elderly housing compliance is
262 very good. He did not see anything in the documents that requires there be third party
263 verification of the elderly status. Attorney Callahan explained that an exhibit was added to the
264 condominium declaration regarding policies and procedures. Bill Stoughton stated that he would

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265 like to see this appear in a higher order document and that it cannot be changed through a
266 subsequent vote. Attorney Callahan stated that the language is in page 40 of the condominium
267 bylaws.

268
269 Bill Stoughton stated that he believes the original approval was for up-to 44 units. The applicant
270 came in requesting 43 units and one additional ADU. The numbers were hashed out during the
271 IIHO stage, and he does not have any interest in revisiting that number, unless waivers to Town
272 requirements are requested that could be avoided if fewer units were proposed. He believes an
273 ADU in a west village unit was approved and can be moved forward with unless the rest of the
274 Board disagrees.

275
276 Bill Stoughton stated that, regarding hammerheads versus cul-de-sacs, the Town's road standards
277 require cul-de-sacs. However, the Fire Chief and DPW Director seem to be okay with
278 considering moving away from this if certain conditions are met. He would be open to
279 considering a waiver request for hammerheads if the Fire Chief and DPW Director agree with
280 the layout. The March email, previously referenced by Tim Kachmar, did note concerns from the
281 Fire Chief regarding driveways attaching to the hammerheads and the applicant may want to
282 examine this item further.

283
284 In response to a question from Bill Stoughton as to whether or not filings for state permits had
285 been made, Ken Clinton stated that the applicant is getting ready to file additional permits, such
286 as AoT and wetlands.

287
288 In response to a question from Bill Stoughton regarding if the Amherst Land Trust (ALT) is on
289 board with the language in the conservation easement document, Attorney Callahan stated that
290 the ALT is the one that drafted the document. A copy of this has been sent to Town Counsel, but
291 comment has not yet been received.

292
293 Bill Stoughton stated that he understands the AG requirements and an all-cash deal, however he
294 concurs with the situation laid out by Tom Quinn earlier. The applicant could receive approval
295 for this project and decide to borrow money for the project instead. If the bank happens to go
296 under, no false statements were made, but the development is still potentially high and dry. He
297 was previously leaning toward requiring an erosion control and restoration bond, so that the land
298 will be restored in case of bankruptcy. He is now more concerned with a scenario in which a
299 half-completed development is left in Town due to a tanking economy. He believes this needs to
300 be addressed.

301
302 Bill Stoughton stated that he believes he heard someone on the applicant's team mention that the
303 Town will want to collect more than the necessary impact fees from the applicant. Attorney
304 Callahan stated that he believes this was being considered at the last meeting, but it was not clear
305 to him. Bill Stoughton stated that he has no interest in doing anything other than assessing
306 impact fees that the ordinance requires. His objections to the development agreement are well
307 known and have been previously stated. The section that speaks to mitigation does not really
308 affect anything. He would rather not see all of the items he objects to restated there. Attorney

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309 Callahan stated that this is uncharted territory. He is happy to remove that language if that is
310 satisfactory to the Board. Bill Stoughton stated that attached housing and elderly housing are
311 legitimate but removing the other items will make this an easier vote for him.

312
313 Bill Stoughton reviewed his draft conditions. First he reviewed draft condition subsequent C:
314 *Potable Water Quality. Drinking water shall be approved as potable by the building code*
315 *enforcement authority prior to issuance of a certificate of occupancy. A report from a laboratory*
316 *accredited under the New Hampshire Environmental Laboratory Accreditation Program or*
317 *another state program under the National Environmental Laboratory Accreditation Program*
318 *shall be submitted to the building code enforcement authority. When water treatment is*
319 *necessary, treated water shall be tested for the contaminants listed within the “potable water”*
320 *definition or as required by the municipal code enforcement authority. “Potable water” shall be*
321 *defined as water free from impurities present in amounts sufficient to cause disease or harmful*
322 *physiological effects and conforming to the Drinking Water Maximum Contaminant Level*
323 *standards established by the more stringent of the New Hampshire Department of Environmental*
324 *Services or the U.S. Environmental Protection Agency for Arsenic, Bacteria, Copper, Fluoride,*
325 *Lead, Nitrate, Nitrite, Uranium, Manganese, and those Per- and Polyfluoroalkyl Substances*
326 *(PFAS) Contaminants for which standards have been set at the time of the application for the*
327 *certificate of occupancy. For information only and not as a limitation on this requirement, PFAS*
328 *contaminants for which such standards have been set as of August 2022 include:*

329 *Perfluorohexane sulfonic acid (PFHxS), total of all isomers*
330 *Perfluorononanoic acid (PFNA), total of all isomers*
331 *Perfluorooctane sulfonic acid (PFOS), total of all isomers*
332 *Perfluorooctanoic Acid (PFOA), total of all isomers*

333
334 Regarding this item, he explained that the EPA has announced it is making rules to regulate
335 additional PFAS substance use. It is unclear how long this will take to come to fruition, but it is
336 reflected in this condition. This would be reflected in the east and west village documentation.

337
338 Bill Stoughton explained that draft conditions subsequent A and B are well capacity
339 requirements. A is for individual wells on the west side and reads as follows:
340 *Well Capacity for Individual Wells. An individual water supply system based on an individual*
341 *well shall provide at least 960 gallons over a four-hour period in accordance with the following*
342 *test protocol and additional requirements:*

- 343 *1. Upon completion of the drilling and development of the well, the well must be pumped*
344 *with a submersible pump located at the likely depth the permanent well pump would be*
345 *set and at least 25 feet above the bottom of the well.*
346 *2. The determination of the usable well yield must be performed by completing a pump*
347 *test a minimum of four hours in duration unless the criteria in No. 4 below is met.*
348 *3. During the pump test, the water level in the well must always be at least 20 feet above*
349 *the pump intake, and if not the pumping rate must be reduced to maintain the minimum*
350 *20 feet of water above the pump intake.*

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- 351 4. *The pump test can be terminated in less than four hours if the water level drawdown*
352 *rate is measured as less than 1— inch per minute over a 30-minute period and the*
353 *pumping rate being maintained is a minimum of 4 gpm.*
354 5. *Upon completion of the pump test, the water level must recover within 24 hours to at*
355 *least 85 percent of the static water level measured prior to commencement of the pump*
356 *test.*
357 6. *The well must have a minimum aquifer yield of no less than 2 gallons per minute.*
358 7. *The pump test must be overseen and documented by a licensed water well contractor,*
359 *licensed pump installer, or a licensed geologist, with appropriate qualifications.*
360 8. *The well construction details, and pump test results must be documented and provided*
361 *to the municipality and the homeowner.*
362 9. *If a well fails to meet the required pumping rate and performance standards,*
363 *additional water volume may be met by adding a water storage tank to the domestic*
364 *water system or another approved alternative method.*
365 10. *If the sanitary exclusion zone of one or more additional wells overlaps the sanitary*
366 *exclusion zone of the subject well, then all such wells with overlapping sanitary exclusion*
367 *zones must be tested and meet the capacity requirements simultaneously. The early*
368 *termination provision of paragraph 4 shall not apply unless each well being tested meets*
369 *the criteria of paragraph 4 simultaneously.*
370 11. *The results of the pump test shall be submitted to the Town of Amherst Building*
371 *Inspector prior to the issuance of a certificate of occupancy.*

372
373 The well capacity for the individual wells is essentially the StoneHill Environmental suggested
374 protocols, with the addition of # 10 & 11 as listed above.:

375
376 This item is being included due to an email received from Andrew Koff at NHDES dated April
377 1, 2022, stating that the wells will likely be hydrologically connected to one another. It is
378 possible that the use of one well could negatively impact another well. This item is being
379 included to address that concern.

380
381 Draft Condition B is for the shared wells on the east side, and reads as follows:
382 *Well Capacity for Shared Wells. Wells serving more than one dwelling unit shall meet the source*
383 *capacity requirements of NH Administrative Rule Env-Ws 372.12 and design flows set forth in*
384 *Env-Ws 372.10. If the well will also be used for irrigation the required design flow shall be*
385 *increased to 150% of the flow that would otherwise be required. See Env-Ws 372.10 (d)*
386 *(advising increased requirements for irrigation). Capacity of the well shall be demonstrated to*
387 *the satisfaction of the Community Development Office by a standard pumping test pursuant to*
388 *Env-Dw 305.14(d)(1) through (4). In the event of any ambiguity, it is the intent of this condition*
389 *that a shared well meet or exceed the minimum flow rates and capacities that would be required*
390 *if it were regulated by the state as a small production well.*

391
392 Bill Stoughton stated that, regarding the well capacity for shared wells, he does not believe it
393 makes sense to use the StoneHill test designed for one structure, when nine units are going to
394 draw from this well. Using the figure given by StoneHill of 960 gallons/4 hours may be

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395 inadequate for supplying nine structures. His condition requires use of the State standards as if
396 there was a community water system supplying those units. He omitted the requirement to
397 simultaneously test the surrounding wells. The applicant should review these conditions and the
398 regulations and see if they make sense.

399
400 Bill Stoughton reviewed draft condition subsequent E:
401 *Bedroom counts. Permissible East Village bedroom counts are 18 two (2) bedroom dwelling*
402 *units. Permissible West Village bedroom counts are as follows: ten (2) two to (3) three bedroom*
403 *Ranch Style dwelling units with average square footage of 1,500 (within this category total*
404 *bedrooms summed across all ten units shall not exceed 25 bedrooms); nine (3) three bedroom*
405 *dwelling units with average square footage of 2000 SF; Six (4) four bedroom dwelling units with*
406 *average square footage of 2410 SF, one of which may include a (1) bedroom ADU as one of the*
407 *bedrooms (i.e., 3 bedrooms in main dwelling unit plus one bedroom in ADU).*

408
409 Bill Stoughton stated that this item uses Erol Duymzaler's numbers but alters it to include the
410 number of total bedroom counts.

411
412 Draft condition subsequent D deals with phasing:
413 *Phasing. The East Village shall not be subject to phasing requirements. The 25 West Village*
414 *dwelling units shall be phased over a minimum of four (4) years, with not more than twenty-five*
415 *percent (25%) of the dwelling units receiving building permits in a one (1) year period.*

416
417 Bill Stoughton stated that this condition deals with phasing if the Board deems that there are
418 certain impacts and noted that the Zoning Ordinance includes mandatory language regarding
419 phasing required based on 20-units. While there could be school-aged children in the east village,
420 it is unlikely, which is why phasing is not suggested for that village. At the last Deliberative
421 Session, the Amherst School District spoke about the severe lack of space in the elementary
422 schools and the negative impacts this has overall. This raises his concern regarding developments
423 introducing more school-aged children into the system and the need for phasing of these projects.
424 The potential for other building developments in Town, in addition to this proposal, leads him to
425 believe that phasing of these projects is appropriate for now. He will not consider phasing at less
426 than the four years required for a 20-unit development, per the ordinance. He does not
427 understand why the language in the ordinance allows for faster building once a development hits
428 25-units. Thus, his suggested condition is that phasing for the west village will occur over four
429 years for the number of proposed units, 25.

430
431 Bill Stoughton reviewed draft condition subsequent F:
432 *Protection of Elderly Community Status. The Condominium Association shall not have the*
433 *authority to alter the age 55+ elderly housing status of the East Village, nor shall it have the*
434 *authority to take any action that is contrary to requirements that such elderly housing be*
435 *structured and maintained to comply with the Housing for Older Persons Act of 1995, 42 USC*
436 *section 3601 et seq.*

437
438 Bill Stoughton explained that this condition contains language that the Town requires.

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439

440 Bill Stoughton reviewed draft condition precedent A:

441 *Stormwater Easements. Easements to the Town satisfactory to Town Counsel shall be granted*
442 *allowing periodic inspection of stormwater management and treatment facilities. A permanent*
443 *easement to the Town satisfactory to Town Counsel shall be granted to allow maintenance,*
444 *reconstruction, or replacement of the stormwater management and treatment facilities. Granting*
445 *of these easements shall not relieve the applicant and/or landowner from its design,*
446 *construction, inspection, and maintenance responsibilities under the applicable regulations, and*
447 *shall not obligate the Town to undertake those responsibilities. All easements granted shall be*
448 *recorded at the Hillsborough County Registry of Deeds by the Applicant at its expense. [See*
449 *Stormwater Regs 9.G]*

450

451 Tom Silvia noted that legal comments are still needed from Town Counsel. Ken Clinton noted
452 that the Board previously authorized Attorney Callahan to work directly with Attorney Drescher
453 to expedite these items. Arnie Rosenblatt agreed.

454

455 Tom Silvia stated that he agrees with the premise put forward for phasing by Bill Stoughton.
456 While the process through the AG's Office seems stringent, he believes a performance guarantee
457 makes sense for the Town, as it is unclear what could happen in the future. He also agrees with
458 impact fees, per the ordinance. He believes there should be context for the number of bedroom
459 counts. Bill Stoughton's numbers appear to list a maximum of 77 bedrooms, which he believes it
460 would make sense for the developer to work within.

461

462 Tracie Adams agreed with receiving letters of support from the Fire Chief and the DPW Director
463 regarding the proposed hammerheads. The conservation easement deed notes approximately 47
464 acres +/- and she wants to make sure this meets with the Town's open space requirement. She
465 was glad to see the extra information added in for the elderly housing compliance. She noted that
466 Nic Strong stated that there are some language differences between the documents in the
467 declaration of covenants and restrictions. She asked that the declarations of condominium and
468 covenants documents match regarding pets, vehicles, and uses of units, etc.

469

470 Tracie Adams asked about Section 3.14.1 of the architectural design patterns, regarding language
471 that 3 of the 5 architectural design patterns will be chosen. Erol Duymazler stated that he
472 originally proposed the language to provide flexibility within the community to create a fabric of
473 homes and architectural styles that match the surrounding area. However, he has previously
474 heard during meetings comments regarding needing specific designs that could not be deviated
475 from. He would prefer the design pattern language to vary styles as they are built to create a
476 community with a similar feel to driving through the Village. If specific plans need to be
477 followed, a number of sets of elevations were included in the package. Tracie Adams stated that
478 she would like to see diversity in architectural styles, instead of the same style units throughout
479 the development. Erol Duymazler stated that his ideas align with that intent. There needs to be
480 flexibility to work this through with the Community Development Office as it arises.

481

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482 Tracie Adams agreed with spreading out the phasing over time due to potential school impacts.
483 She agrees with impact fees and the performance guarantee, as suggested by Keach Nordstrom.
484

485 Arnie Rosenblatt stated that he does not buy the AG argument regarding the bond. He will
486 support requiring a broad bond with a mitigation payment. He wants a bond to protect the Town
487 from a half-completed development. He is confused with the interplay between the recognition
488 that impact fees will be required and are appropriate and the fiscal impact statement provided.
489 The Board is free to consider the fiscal impact statement provided by Mr. Fougere, and any flaws
490 it sees in it. No expert report has to be accepted on its surface alone. The CUP needs to be
491 addressed once the ACC comments are received, prior to making a final decision on this
492 application. Bill Stoughton has suggested a number of conditions which need to be reviewed
493 both by the Board and applicant. The development agreement cannot be addressed only by Town
494 Counsel because there are certain requirements of the Board which have been addressed by Nic
495 Strong in her comments. There are several changes that need to be made, per those comments.
496 By definition, this Board cannot tell the applicant how it feels until a final application is in front
497 of it, and it is making a final determination on it. This application has had many hearings with a
498 lot of information associated. The Board will likely be able to crystalize its thoughts and feelings
499 only when reviewing and determining this in its final form.
500

501 Arnie Rosenblatt asked for public comment. There was none at this time.
502

503 Chris Yates apologized to the applicant for previously misspeaking on the number of units
504 previously approved. It is up-to 44.
505

506 The Board reviewed its upcoming agenda items. The applicant agreed to extend all applicable
507 deadlines to September 21, 2022.
508

509 **Bill Stoughton moved to continue this hearing to September 21, 2022, at 7pm, at**
510 **Town Hall. Seconded by Chris Yates.**
511 **Motion carried unanimously 5-0-0.**
512

513 **OTHER BUSINESS:**

514 **2. Minutes: July 20, 2022**

515 **Tracie Adams moved to approve the meeting minutes of July 20, 2022, as submitted.**
516 **Seconded by Tom Silvia.**
517 **Motion carried 4-0-1 [C. Yates abstaining].**
518

519 **3. Any other business to come before the Board**
520

521 **Tracie Adams moved to adjourn at 8:57pm. Seconded by Chris Yates.**
522 **Motion carried unanimously 5-0-0.**
523
524

TOWN OF AMHERST
Planning Board

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525 Respectfully submitted,
526 Kristan Patenaude
527
528 Minutes approved: August 17, 2022