

TOWN OF AMHERST
Planning Board

May 20, 2020

APPROVED

During the first public part of the agenda for this meeting held via Zoom, the Board entered into non-public session (see separate minutes).

The Board ended the first part of the public Planning Board meeting and entered a new separate Zoom meeting for the non-public session at 6:40 p.m. +/-

In attendance: Arnie Rosenblatt - Chair, Cynthia Dokmo, Dwight Brew-Selectman Ex-Officio, Mike Dell Orfano, Bill Stoughton, Christy Houpis (Alternate), Tracie Adams (Alternate) and Chris Yates (Alternate).

Staff present: Nic Strong, Community Development Director.

Arnie Rosenblatt stated that since Brian Coogan and Marilyn Peterman were not present, Chris Yates and Christy Houpis would vote in their place.

Arnie Rosenblatt stated that the Board was in non-public session to discuss written opinions from William Drescher, Esq., Town Counsel, and whether to waive the Town's privilege and provide the letters to the public. The letters in question were on Jacobson/Transformations' second application and the issue of the standard to use to determine how the application should move forward in terms of the differences between the first application and the second; the 24 Brook Road application and the Carlson Manor application. Arnie Rosenblatt noted that the letters from Counsel were privileged and the Board had to determine whether to waive the privilege and release the opinions.

Dwight Brew MOVED to make public the following three legal opinions from Town Attorney Bill Drescher: the opinions on 24 Brook Road/Walsh, Transformations, Inc./Jacobson Subdivision; and Carlson Manor Subdivision/Hollis Road. Christy Houpis seconded the motion.

Discussion:

Cynthia Dokmo agreed with releasing Brook Road and Carlson Manor since they were cut and dried decisions and the same as the two other letters recently released by the Planning Board. The Jacobson letter dealt with a different matter that was not based on a statutory interpretation and, as such, she was reticent to release it.

Bill Stoughton agreed with releasing the opinion on Carlson Manor. For Brook Road, he had no objections to releasing the opinion but thought it premature to release the opinion now because there were no applications in the works for that subdivision. He thought the release of the opinion should wait until something was submitted by the applicant. Bill Stoughton had no objection to releasing the Transformations opinion but pointed out a court case not noted in the opinion - CBDA Development v. Town of Thornton - that more clearly indicated that a Planning Board could use the Fisher v. Dover doctrine, not just Zoning Boards of Adjustment.

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Mike Dell Orfano stated that he agreed with Cynthia Dokmo and was not comfortable with releasing the Transformations opinion.

Dwight Brew stated that the Board could wait for the next application from Brook Road but his preference was to have all this information available to the public.

[Marilyn Peterman arrived in the Zoom meeting.]

Marilyn Peterman apologized for having trouble accessing the session.

Arnie Rosenblatt stated that he was in favor of disclosure of the opinion on Carlson Manor. On Brook Road, he understood that there was nothing pending but noted that the Board knew that something would be coming one way or another so he did not see a risk in releasing that opinion. On Jacobson, Arnie Rosenblatt noted that the Fisher v. Dover case provides the basis for the Board's discussion on determining whether the applications are sufficiently different to avoid preclusion. Arnie Rosenblatt stated that he was concerned with transparency and thought this opinion should be released as well.

Arnie Rosenblatt suggested that since there was this much discussion, it might be better to split the motion into three separate motions. Dwight Brew indicated he was happy to do so and withdrew his original motion. Christy Houpis withdrew his second.

Dwight Brew **MOVED** to make public the following legal opinion from Town Attorney Drescher: the opinion on Brook Road, LLC/Walsh. Christy Houpis seconded the motion.

The Chair called for a roll call vote:

Bill Stoughton - AYE

Dwight Brew - AYE

Mike Dell Orfano - NAY

Cynthia Dokmo - AYE

Marilyn Peterman - AYE

Christy Houpis - AYE

Motion PASSED 5-1-0.

Dwight Brew **MOVED** to make public the following opinion from Town Attorney Drescher: Transformations, Inc./Jacobson Subdivision. Christy Houpis seconded the motion.

The Chair called for a roll call vote.

Bill Stoughton - AYE

Dwight Brew - AYE

Mike Dell Orfano - NAY

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Cynthia Dokmo - NAY
Marilyn Peterman - NAY
Christy Houpis - AYE
Arnie Rosenblatt - AYE
Motion PASSED 4-3-0.

**Dwight Brew MOVED to make public the following opinion from Town Attorney
Drescher: Carlson Manor Subdivision. Marilyn Peterman seconded the motion.
The Chair called for a roll call vote.**

Bill Stoughton - AYE
Dwight Brew - AYE
Mike Dell Orfano - NAY
Cynthia Dokmo - AYE
Marilyn Peterman - AYE
Christy Houpis - AYE
Motion PASSED 5-1-0.

Arnie Rosenblatt noted that the release of these opinions was not an indication of the Board's position on any of the applications.

Dwight Brew MOVED to exit non-public session. Cynthia Dokmo seconded the motion.

The Chair called for a roll call vote.

Bill Stoughton - AYE
Dwight Brew - AYE
Mike Dell Orfano - AYE
Cynthia Dokmo - AYE
Marilyn Peterman - AYE
Christy Houpis - AYE
Motion PASSED 6-0-0.

The Board ended the Zoom session to enter into a separate Zoom session for Part 2 of the public meeting agenda at 7:10 p.m. +/-.

See separate Planning Board minutes of the public sessions.

Respectfully submitted,

Nic Strong
Community Development Director

Minutes approved: June 3, 2020