

TOWN OF AMHERST  
Planning Board

December 2, 2020

**APPROVED**

In attendance: Arnie Rosenblatt - Chair, Dwight Brew-Selectman Ex-Officio, Bill Stoughton, Brian Coogan, Cynthia Dokmo, Mike Dell Orfano, Tracie Adams (Alternate), Chris Yates (Alternate), Marilyn Peterman [7:07 pm], and Christy Houpis (Alternate) [7:04 pm].

Staff present: Nic Strong, Community Development Director; Natasha Kypfer, Town Planner; and Kristan Patenaude, Minute Taker.

Arnie Rosenblatt called the meeting to order at 7:01 p.m., with the following statement. As Chair of the Amherst Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, as extended by various Executive Orders, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order.

However, in accordance with the Emergency Order, I am confirming that we are:

Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom for this electronic meeting.

All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #312-626-6799 and password 864 4339 8082, or by clicking on the following website address: <https://zoom.us/j/86443398082> that was included in the public notice of this meeting.

Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Planning Board at: [www.amherstnh.gov](http://www.amherstnh.gov).

Providing a mechanism for the public to alert the public body during the meeting if there are problems with access: If anybody has a problem, please call 603-341-5290.

Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to- Know law.

December 2, 2020

APPROVED

**Roll call attendance: Dwight Brew; Bill Stoughton; Brian Coogan; Tracie Adams; Cynthia Dokmo; Chris Yates; Mike Dell Orfano; and Arnie Rosenblatt; all alone and present.**

*Tracie Adams sat for Marilyn Peterman, until her arrival.*

**PUBLIC HEARING**

- 1. CASE #: PZ12803-062920 –6 Pine Road LLC (Owners & Applicants) – 6 Pine Road, PIN #: 008-042-000–Public Hearing/Non-Residential Site Plan. To illustrate the layout of a climate controlled self-storage building on Tax Map 8, Lot 42. Zoned Limited/Commercial. Continued from November 4, 2020**

*Christy Houpis entered the meeting.*

In response to a question from Bill Stoughton, Arnie Rosenblatt stated that there is no time limit for applicants to postpone their hearings to.

Dwight Brew explained that he doesn't like it when applicants cancel at the last minute. Last minute cancellations mean that the Board cannot move up other items that are waiting to be heard. He would prefer the Board to stick to its schedule and not push out items at the last minute. He also requested that all information for cases be supplied to Board members a few days before the meeting and not sent in piecemeal.

**Mike Dell Orfano moved to table CASE #: PZ12803-062920 to February 17, 2021, at 7pm, via Zoom. Dwight Brew seconded.**

**Roll call: Bill Stoughton - aye; Dwight Brew - aye; Mike Dell Orfano – aye; Tracie Adams – aye; Cynthia Dokmo – aye; and Brian Coogan - aye. Motion carried unanimously.**

**COMPLIANCE HEARING:**

- 2. CASE #: PZ5694-120814 – The Stabile Companies (Applicant), Stacy J. Clark (Owner), 131 Hollis Road, PIN #s 001-013-000, 001-013-004 & 001-013-005– Request for Planning Board compliance of a site plan and condominium subdivision for a 16-unit workforce housing development. Zoned Residential/Rural.**

Nic Strong explained that this is a compliance hearing for the Amherst Fields subdivision. A condition of the site plan approval was for the Board to have a compliance hearing to make sure that everything has been built as was shown in the plan. Included in the hearing are the landscaping, road location, and Keach-Nordstrom improvements noted and seen. The Board must then vote whether or not to release the bond.

Nic Strong noted that there was an issue with the abutters to the project not being notified within the 10-day time frame. The owner went to each abutter to discuss the issue and returned to the

TOWN OF AMHERST  
Planning Board

December 2, 2020

**APPROVED**

Town signed letters noting that abutters acquiesce with this issue. The Board should discuss this and determine if the letters are acceptable.

Mike Ploof, a licensed land surveyor of Fieldstone Land Consultants, presented the case. He explained that this hearing is for a 16-unit condominium development, located at 131 Hollis Road. The as-built compliance plan includes the as-built units and Adams Way roadway, and a blown-up view of the landscaping, site drainage, utilities, and as-built road profile. There are a few altered tree placements on site, as the proposed locations were deemed to be too difficult per the contractor. The location of these trees is exhibited on the plans as shown. There were 107 proposed trees, per the original plan, but the as-built plan shows 123 trees (16 extra trees). The original plan also called for 149 proposed shrubs, but the as-built plan shows 159 mapped shrubs (10 extra shrubs). He explained that the placements of these trees/shrubs will bode well for the development as they will provide wonderful screening. The additional trees located along Route 122 will also grow in and provide additional screening.

Mike Ploof explained that the as-built drainage is very close to the design. The basins, etc. are all in compliance and Keach-Nordstrom has signed off on this.

In response to a question from Cynthia Dokmo, Nic Strong explained that when the notice for the hearing was created, the Department pulled the original application package in order to not create a new case number, which is why the owner's name is different on the agenda than the Staff Report.

Cynthia Dokmo stated that the abutter notification issue doesn't bother her, as the applicant sought approval from each of them and obtained signed letters.

In response to a question from Chris Yates, Mike Ploof stated that the affordable covenants are recorded in the declaration of restrictive covenants in the document that outlines the sale of each property. All buyers must sign this document. The Town is afforded the right of enforcement of these covenants.

In response to a question from Chris Yates, Nic Strong stated that there is no formal process in place to allow the Town to monitor these sales to be completed as outlined in the covenants. It appears that the covenants are written in such a way that this affordability needs to be monitored even in the leasing or subletting of these units.

Mike Dell Orfano noted that, in the past, the Planning Board wanted no part in trying to manage the sales or rentals of units and monitoring others' incomes in regard to affordability. It was suggested at the time that an intermediary, such as the New Hampshire Housing Authority, be hired to complete this monitoring. As the Town is not equipped to monitor for these covenants, it will eventually fall by the wayside and these units will cease to be considered as affordable housing.

TOWN OF AMHERST  
Planning Board

December 2, 2020

**APPROVED**

Chris Yates stated that he would like this issue addressed before moving forward with this application.

Bill Stoughton noted that he shares Chris Yates' concerns.

In response to a question from Dwight Brew, Mike Ploof explained that he believes the income restrictions on these units is also noted in the deeds. Mike Ploof read a sample from the deed. He noted that the form references all the requirements for the covenants and that new owners must sign that they will honor the declaration of covenants for the unit at the time of sale.

Mike Ploof read into the record an excerpt from the deed.

In response to a question from Dwight Brew, Nic Strong noted that a copy of the deed was not included with the applicant's file. A copy of the covenants was included.

Christy Houpis stated that he shares the concerns of some of his fellow Board members. He is concerned with how these units will be monitored for affordability and how subsequent sales will be monitored after the initial purchase.

In response to a question from Mike Dell Orfano, Mike Ploof stated that he hasn't spoken with the NH Housing Authority in regard to acting as an intermediary for this monitoring.

Mike Dell Orfano explained that the NH Housing Authority uses HUD's data and annually publishes the workforce housing definitions for the State. He requested that the declaration of covenants be brought back to the Housing Authority to make sure it complies with State law. He noted that the Town has no mechanism to monitor who buys these units and what their income might be. There is also no way to monitor the resale value of these units. He believes requesting this of the Town places a terrible burden on the Town. He is not sure if the application is in compliance due to this issue.

Tracie Adams stated that she shared the concerns of some of her fellow Board members. She does appreciate that Keach-Nordstrom has no objections to the visual aspects of the property.

Mike Dell Orfano questioned if Town Council has reviewed the documents submitted for compliance. Nic Strong noted that Town Council did review the documents during the original subdivision hearing.

Marilyn Peterman explained that this issue has been raised a number of times. The Town has never put into place a way for these types of units to be checked, other than through the deeds/condo documents. The Town has heavily relied on realtors in the past in regard to this issue. She believes that placing the onus on the applicant simply because the Town never put the correct mechanisms into place, is difficult to swallow. The Town has approved a number of workforce housing applications throughout the years under this same understanding. She doesn't believe the Board can hold up an application because the Town/Board has not been forthcoming

TOWN OF AMHERST  
Planning Board

December 2, 2020

**APPROVED**

in creating a proper mechanism to follow the sale of these units. This is a hardship to the applicant.

Arnie Rosenblatt noted that no one wished to be recognized for public comment at this time.

Nic Strong noted that there is a Notice of Decision letter, dated February 23, 2015, that the Board can find in the Dropbox. She also noted that the bond was necessary because the Certificate of Occupancy was requested prior to the compliance hearing.

In response to a question from Chris Yates regarding if the condo association for Amherst Fields would require approval for potential leases/renters, Nic Strong explained that any requirements are noted in the condo documents.

Bill Stoughton stated that there is a reference in the deed to a maximum price limit for these units, and in the restrictive covenants. This gives the Town some level of assurance through the closing and lender's review. The covenants, during this process, would be examined and the price would be compared to the current limits.

Arnie Rosenblatt stated that he agrees with Marilyn Peterman. He believes it is okay to approve this compliance hearing, as the Board has approved similar plans in the past without any formal monitoring mechanism. He believes the market will take care of this issue. He also understands and appreciates the concerns of others.

Mike Dell Orfano explained that, at the original subdivision hearing for this case, he mentioned that the Housing Authority was willing to do income qualifications and verify the sales of these units. This would allow for third-party verification of compliance. The Town's ordinance requires compliance for 25 years. A lot may happen within the Town and the market during that time.

Marilyn Peterman stated that banks and other entities review the sales of these units, which is an initial check/balance process for the Town. There is some indication that banks and mortgage companies will sell units at a correlated price.

Bill Stoughton stated that workforce housing has a maximum price at which it can be sold. He questioned if there is an examination of income level for buyers of this type of property.

Mike Dell Orfano stated that, since its inception, the level has been 100% of the median income set by HUD. There was a bill to raise this to 125% but he does not believe it passed. Buyers should be at or below the median income amount set by HUD based on market conditions for regional pricing.

In response to a question from Bill Stoughton, Nic Strong noted that some of the units in this development have gone through an initial sale.

TOWN OF AMHERST  
Planning Board

December 2, 2020

**APPROVED**

In response to a question from Bill Stoughton, Mike Ploof stated that he is unsure whether the original sale buyers of these units were qualified by their income prior to sale.

In response to a question from Bill Stoughton, Mike Ploof mentioned that, from a compliance standpoint, this development meets all of the qualifications for compliance. Mike Ploof stated that he is unsure if any of the other workforce developments in Town have a system in place for monitoring, as is being discussed. Mike Ploof requested that the bond be released tonight, even if there are conditions to it.

Brian Coogan agreed that the applicant has satisfied the criteria for compliance. He is unclear how the Board can obligate a developer to regulate and maintain these sales for workforce qualifications.

**Mike Dell Orfano moved for conditional approval of compliance, subject to a satisfactory retention policy for workforce housing, and to include release of the bond. Dwight Brew seconded.**

**Discussion:**

**Dwight Brew questioned whose satisfaction this motion would be predicated upon.**

**Brian Coogan stated that a policy is a document to provide governance. In this case, there is no governing body in place to hold the developer accountable to the monitoring process.**

**Mike Dell Orfano noted that the NH Housing Authority could be the governing body in question, as the Town is not equipped to do so.**

**Mike Dell Orfano amended his motion to read: moved for conditional approval of compliance, with the NH Housing Authority as the third-party arbitrator for sale qualifications for retention of workforce housing, and to include release of the bond. Dwight Brew seconded.**

**Discussion:**

**Marilyn Peterman stated that there is nothing in the regulations to say that a third-party is necessary to look over the qualifications. There is nothing in the regulations to make a developer proceed with a third-party intermediary.**

**Roll call: Marilyn Peterman – nay; Mike Dell Orfano – aye; Brian Coogan – nay; Dwight Brew – aye; Bill Stoughton – aye; Cynthia Dokmo – nay; and Arnie Rosenblatt – nay. 3-4-0; motion failed.**

Arnie Rosenblatt explained that, while he respects his fellow Board members concerns, he does not believe this to be a good remedy.

December 2, 2020

**APPROVED**

Mike Dell Orfano explained that the language within the Master Plan states that the Town will monitor these sales. Mike Ploof stated that his client's attorney mentioned that he believes the language only states that the Town has the right to monitor these sales, if it so chooses.

Dwight Brew stated that the Board approved of workforce housing in the past, with the expectation that these units would remain workforce housing for a number of years. In reality, there is no enforcement mechanism to ensure this remains the case after the first sale of the unit. Bonuses have been awarded to developers in the past with the expectation that workforce housing would remain as such, but this expectation has not been carried out. He believes this is a concern for the Board. He believes that, even if the Town had the money to carry out this process, it might not be practical for it to do so. He stated that there are third-party agencies with experience in this process in the area. He suggested that if bonuses are to be given for expectations, that these expectations be carried through into the future.

Marilyn Peterman stated that the Board should go by the deed and condo documents. If the Board wants to require third-party oversight, it will need to be written into the ordinance.

**Bill Stoughton moved to confirm compliance with the conditions to the approval of the non-residential site plan for GMEC Properties, LLC, 131 NH Route 122 (aka Hollis Road), Map 1, Lot 13, and to release the security being held in the amount of \$52,429.30 subject to the subsequent conditions identified in the Staff Report dated December 2, 2020. Dwight Brew seconded.**

**Discussion:**

**Bill Stoughton stated that he believes third-party review would be better, but without regulations that give the Board clear authority to require that, he doesn't want to hold up the application further. He believes that the subsequent conditions will allow the Board, if this process is being abused and if a monitoring procedure can be set-up, to do something about it. The subsequent conditions include these two statements: 1) The applicant shall comply with all Town of Amherst Non-Residential Site Plan review regulations and Zoning Ordinance; 2) The approval is based upon the plans, specifications, and testimony submitted to the Planning Board; any alterations, additions, or changes to the plans are not authorized and require additional Planning Board approval.**

**Bill Stoughton explained that the express representation in this testimony is that the housing will be workforce housing for 25 years, as assured by covenants and deed restrictions. He believes, if this proves not to be the case, the subsequent conditions allow the Board to figure out how to do something about it.**

**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

December 2, 2020

APPROVED

**COMPLETENESS REVIEW OF APPLICATION AND PUBLIC HEARING  
IF APPLICATION IS ACCEPTED AS COMPLETE:**

- 3. CASE #: PZ13385-111720 – Ballinger Properties/Nash Family Investment Property (Owner) & Ashoke Rampuria (Applicant) – 2 Howe Drive, PIN #: 002-034-001–Submission of Application/Public Hearing/Non-Residential Site Plan – Amended Site Plan to show five potential multi-tenant spaces in the approved warehouse building, additional 21 parking spaces to the Northwest and trailer parking markings to the East. The building footprint will reduce 2.294 square feet. Zoned Industrial.**

Arnie Rosenblatt explained that the threshold question is if this application is complete. If the application is complete, the Board can then vote to open a public hearing.

Natasha Kypfer stated that all of the required items for this application have been submitted. The Board also needs to discuss regional impact of this application. She explained that on March 6, 2019, the Board voted that there was regional impact in this case to Hollis and NRPC. Now that this amendment to the application has been submitted, the Board must discuss this issue again.

**Cynthia Dokmo moved to accept the application as complete. Bill Stoughton seconded.**

**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

Mike Dell Orfano stated that the Board decided previously that there was regional impact regarding this application to Hollis and NRPC. As this amendment looks to expand the use of the site, he believes the two entities need to be notified of regional impact again. He explained that the route between Route 101 and Hollis is a highly traveled road and is quite narrow. As the proposed project is close in proximity to this route, he has concern that an expanded use will only amplify this issue.

Bill Stoughton stated that he believes the project does pose regional impact.

In response to a question from Cynthia Dokmo, Nic Strong stated that, when originally hearing this application, the Board voted no regional impact. On hearing the application for a second time, the Board voted there was regional impact. Nic Strong stated that she assumes notice was sent to the two entities at that time.

Natasha Kypfer confirmed that in February 2019, the Board originally heard from this applicant and voted no regional impact. At the next hearing, the Board voted there was regional impact and notice was then, presumably, sent.

Robert Duval, of TFMoran, Inc., stated that the proposed amendment is not an intensification of use of the site. In fact, this proposal will make the building footprint slightly smaller. The owner



TOWN OF AMHERST  
Planning Board

December 2, 2020

**APPROVED**

may rent out part of the space before occupying it himself. There will be no intensification of traffic, or any of the other criteria for regional impact, such as increased light, noise, fumes, etc.

In response to a question from Arnie Rosenblatt, Robert Duval stated that the site is current under construction; it is not currently in use.

In response to a question from Mike Dell Orfano, Robert Duval explained that the plan notes that tenants are to be of a specific type, that of Land Use Code 154, which will allow for similar traffic contribution per the ITE Trip Generation Manual. Robert Duval stated that the owner has spoken to possible tenants but hasn't yet selected one.

In response to a question from Chris Yates, Nic Strong noted that the Board's previous change in vote regarding regional impact did not have to do with the additional parking spots being proposed, as this is a new amendment that includes that proposal.

In response to a question from Marilyn Peterman, Nic Strong explained that the minutes from the Board's March 6, 2019, meeting state that Sally Wilkins (prior Board member) did not agree that there was no regional impact of this project and suggested that the Board notify Hollis and NRPC. The Board voted to agree with that proposal.

In response to a question from Mike Dell Orfano, Nic Strong stated that she does not know if Hollis responded to the notification.

Mike Dell Orfano noted that he believes Sally Wilkins made the proposal for regional impact due to the roadway in question and the increased traffic to the area. Her proposal was able to convince the rest of the Board to vote in favor of regional impact.

**Bill Stoughton moved that there is regional impact with respect to Hollis and NRPC from this proposal. Mike Dell Orfano seconded.**

**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

**Mike Dell Orfano moved to reschedule CASE #: PZ13385-111720 – Ballinger Properties/Nash Family Investment Property (Owner) & Ashoke Rampuria (Applicant) – 2 Howe Drive, PIN #: 002-034-001 to January 6, 2021, at 7pm, via Zoom. Dwight Brew seconded.**

**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

**OTHER BUSINESS:**

**4. Minutes: 11/18/20**

December 2, 2020

**APPROVED**

**Bill Stoughton moved to approve the meeting minutes of November 18, 2020, as submitted. Dwight Brew seconded.**

**Roll call: Marilyn Peterman – abstain; Mike Dell Orfano – nay; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 4-1-1; motion approved.**

## **5. Discussion of potential Zoning Ordinance amendments**

In response to a question from Arnie Rosenblatt, Nic Strong noted that this discussion is only to move the potential amendments forward to a public hearing on December 18, 2020, and not to bless/not bless them.

Marilyn Peterman expressed concern regarding the elimination of the IIHO and the effect that has on allowing certain types of housing, such as elderly, within certain zoning areas. She is unsure if this is a change from before the IIHO existed.

Mike Dell Orfano explained that there are criteria missing within the ordinance, now that the IIHO has been eliminated, that allow the Board to make decisions regarding workforce and other types of housing within different zoning areas in Town.

Arnie Rosenblatt stated that he wants to be clear on the definitions of the criteria, and if these changes existed prior to the IIHO.

Bill Stoughton noted that, for example, in Section 4.43, even with the deletion of the IIHO, elderly and workforce housing is noted as being allowed and so remain as possible uses. However, in Section 4.4, Northern Transitional Zone, deleting the IIHO may have an effect on permitted uses because elderly/workforce housing is not specifically mentioned.

Dwight Brew suggested that, coming out of the public hearing, the Board might want to consider two Warrant Articles for this issue. One Warrant Article for housekeeping items and another one for any substantive changes proposed.

Nic Strong explained that the notice has to state what the proposals are. If the Board decides on different proposals after the public hearing, there will need be a new notice posted at that time. The Board would have to chance for one re-do after the public hearing on December 16, 2020, but there will not be enough time for notice after that one.

**Dwight Brew moved to post the items for a public hearing on December 16, 2020.**

**Marilyn Peterman seconded.**

**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

December 2, 2020

**APPROVED**

**6. Discussion of revised Stormwater Regulations**

Bill Stoughton explained that the draft Stormwater Regulations were sent to Town Council and the Town Engineer for review. The new draft incorporates all of the subsequent comments. He requested that the Board schedule a public hearing on the proposed regulations for December 16, 2020. After this hearing, request for Planning Board approval and separate approval from the Board of Health will be sought.

**Marilyn Peterman moved to schedule a public hearing to discuss the revised Stormwater Regulations for December 16, 2020. Brian Coogan seconded.**  
**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

Bill Stoughton mentioned the substantive changes made to this draft of the Stormwater Regulations, including: the percentage of clean-up for stormwater sediment and nitrogen removal, and the authority for the Planning Board/Board of Health to relax some of the information necessary for the application for smaller, less complex projects. In the future, it is hoped to have two applications, one for larger projects, and one for smaller ones.

In response to a question from Mike Dell Orfano, Bill Stoughton noted that the regulations do not lay out a process for the Board to follow for these applications; the Board will have to determine as it goes.

**7. Any Other Business that may come before the Board**

Brian Coogan suggested that, as there is no monitoring program in place and it is costly to the Town and the developer, that the Board look into utilizing an impact fee to developers for monitoring oversight of unit types, such as for workforce housing.

Chris Yates stated that the State Workforce Housing Guidebook has very specific language that developers should include in the deeds and covenants regarding this item. He is unclear if this language exists for the applicant heard earlier tonight.

**Marilyn Peterman moved to adjourn the meeting at 8:46pm. Cynthia Dokmo seconded.**  
**Roll call: Marilyn Peterman – aye; Mike Dell Orfano – aye; Brian Coogan – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. 6-0-0; motion approved unanimously.**

Respectfully submitted,  
Kristan Patenaude

Minutes approved: December 16, 2020