

TOWN OF AMHERST
Planning Board

February 17, 2021

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

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

Arnie Rosenblatt called the meeting to order at 7:00 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 812 7398 9216, or by clicking on the following website address: <https://zoom.us/j/81273989216> 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.

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.

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Roll call attendance: Dwight Brew; Bill Stoughton; Marilyn Peterman; Cynthia Dokmo; Christy Houpis; Tracie Adams; Chris Yates; Mike Dell Orfano; and Arnie Rosenblatt; all alone and present.

Christy Houpis sat for Brian Coogan, in his absence.

PUBLIC HEARINGS

- 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 December 2, 2020**

Natasha Kypfer stated that the Board had continued this case in December. The Community Development Office received a letter on January 15, 2021, signed by the owner/applicant, asking to withdraw this application. This letter is attached as an Exhibit to the Staff Report.

Bill Stoughton moved to accept the applicant's request to withdraw this application, without prejudice. Mike Dell Orfano seconded.

In response to a question from Mike Dell Orfano, Natasha Kypfer stated that she believes the request to withdraw may have been made because the property sold.

Roll Call: Mike Dell Orfano – aye; Marilyn Peterman - aye; Christy Houpis – aye; Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. Motion carried unanimously.

- 2. CASE #: PZ13107-090920 – JEP Realty Trust & Robert H. Prew Revocable Trust (Owners) & Clearview Development Group (Applicant) – 38 New Boston Road, PIN #: 007-072-000 & 005-159-001 – Public Hearing/Conditional Use Permit – To depict a 49-unit Planned Residential Development on the two lots per the Integrated Innovative Housing Ordinance of 2019. Zoned Residential Rural. Continued from January 6, 2021.**

Arnie Rosenblatt read and opened the public hearing. He explained that, after the last hearing on this application, proposals were made by third parties regarding the hydrogeological and traffic studies. These proposals were reviewed and agreed upon by the applicant's engineer.

Ken Clinton, Meridian Land Services; Erol Duymazlar, applicant and owner of Clearview Development Group, and Jim Callahan, of Atkins Callahan, joined the Board.

Ken Clinton explained that the traffic and groundwater resource assessment reviews carried out by the two separate third-party reviewers were shared with Sanborn, Head & Associates, LLC and Steven G. Pernaw & Co. The third-party reviews required a fair amount of follow-up and

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additional information. It became clear that these comments would not be ready for review by the Board this evening. He believes it would be best to use the time tonight to follow-up on a few concerns raised by the Board at its last meeting.

Ken Clinton reviewed the definition of the IIHO. He explained that his clients are developers and builders. The Town needs more senior housing, smaller houses, workforce, etc., which this development is trying to facilitate. The IIHO strives to achieve housing diversity, which is spot on with this application. The IIHO identifies creating a wider range of housing, and awards bonuses for achieving this. The two main types of bonus categories, restrictions and amenities, are determined to be desirable in accordance with the Town's Master Plan. The Board can award discretionary bonuses if there is a benefit to the Town for each one. Ken Clinton noted that to his understanding this idea was added after the initial application of the IIHO in order to offset the purely mathematical calculation.

Ken Clinton provided definitions of restrictions and amenities, noting that restrictions were limitations on the use or enjoyment of the property calculated mathematically, while amenities are desirable or useful features seen as positives and a benefit to the town and which may be more subjective.

Ken Clinton explained that "double dipping" is not a phrase used in the ordinance. There is no provision or language against having two amenities in one unit. When the Board addressed that concern regarding the amenities category by only allowing one bonus type in each category, it chose not to impose that same condition on the restrictions categories. It is logical and not contrary to the ordinance to have multiple restrictions on the same unit.

Ken Clinton ran through the proposed incentive bonus categories as proposed by this development:

- 1) Demographics, Senior 55+: A 15% bonus, with 18 proposed units, for a bonus of 2.7 units. In regard to the enforcement for this category, Ken Clinton stated that his client agrees to using a third-party management company to oversee the initial purchase and subsequent conveyances of the units to those ages 55+.
- 2) Attached Housing: A 10% bonus, with 14 proposed units, for a bonus of 1.4 units. There are 14 duplex style buildings being proposed in the East village, along with six ADU units attached to their primary units in the West village. The ADU units are not included in this incentive bonus category calculation (could be 2.6 bonus units).
- 3) Single Floor Units: A 10% bonus, with 18 proposed units, for a bonus of 1.8 units. All 18 units in the East village have single floor plans.
- 4) Handicap Accessible (ADA Compliant): A 15% bonus, with one proposed unit, for a bonus of 0.15 units. Ken Clinton explained that the developer cannot presell or spec ADA units because the market just is not there for that kind of risk. The client's minimum

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- 126 commitment for this type of unit is one, but any of the units can be adapted to be ADA
127 compliant as market demand requires.
- 128 5) One-bedroom units: A 15% bonus, with six proposed units, for a bonus of 0.9 units. Each
129 of the six ADU units will be constructed with one bedroom, to comply with the Town's
130 ordinance.
- 131 6) Two-bedroom units: A 10% bonus, with 18 proposed units, for a bonus of 1.8 units. Each
132 of the units in the East village will be constructed with two bedrooms.
- 133 7) Walkability: A 10% bonus, with 31.25 proposed units, for a bonus of 3.12 units. The
134 walkability provided within the development does fulfill the requirements of the
135 unambiguous and plain language of the definition, which states "Infrastructure designed
136 to enable and encourage residents to walk from place to place within the development."
137 Walkability refers to the ability for residents to have places to walk, not the public. The
138 proposed walkability for this project though, allows for residents to walk within the
139 villages, between the villages, and also provides connections to nearby existing trails for
140 the public.
- 141 8) Community Space Open to Public: A 25% bonus, with 31.25 units, for a bonus of 7.81
142 units. The Community Space provided within the development does fulfill the
143 requirements of the unambiguous and plain language of the definition, which states,
144 "Indoor (clubhouse, meeting room) or outdoor (garden, park, trail-network) space which
145 is available to the public, subject to acceptance by the Planning Board and Board of
146 Selectmen". The trail network which runs north-south through the property as served by
147 the trailhead parking area also satisfies the 'Improved Access to Public Places (off site)
148 bonus category, for which no bonus is sought.
- 149 9) Open Space under Restrictive Covenant: A 20% bonus, with 31.25 units proposed, for a
150 bonus of 6.25 units. The Open Space provided within the development does fulfill the
151 requirements of the unambiguous and plain language of the definition, which states
152 "Conservation/agricultural Land, 'unimproved' open space, may be under easement/deed
153 restriction to third party or Town". All resulting open space, approximately 40 acres, will
154 be under a conservation easement as overseen by the Amherst Land Trust.
- 155 Ken Clinton stated that the language of the three incentive bonuses is unambiguous and clear. He
156 noted that Planning Board members could not determine what the definitions meant to them, the
157 language was plain and unambiguous. He believes that this application has met the criteria for all
158 of the incentives and bonuses should be allocated accordingly. He noted that the applicant
159 originally requested 66 units as part of this project, but it was determined that this land is not
160 conducive to that kind of density. The applicant is now seeking 49 units in 36 buildings. That is
161 only five more units than the calculated baseline density. The calculations have shown that 25.94
162 bonus units resulting from the Restrictions and Amenities Incentives are not only appropriate per
163 the formulae established in the ordinance, but their basis is also beneficial to the Town. When

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combined with the 31.25 baseline units, the total number of available units is 57. This application is only seeking 49 units, which effectively is a voluntary reduction of eight units or 14%. This self-imposed reduction is based on what the developer wants to build and the style of units along with the market forces to provide the town the diversity it seeks. Ken Clinton stated that if the Board doubted the value of the incentive bonuses it was already taken into account by the eight units the developer is not asking for. He said that even if the Board did not think the development worthy of the bonuses proposed by the math from the ordinance, the fractional reductions would be accounted for by only asking for 49 units instead of the full available number.

Ken Clinton explained that he needs to obtain an IIHO unit number in order to properly evaluate CUP condition C.1.E – “That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Amherst”. It’s critical to understand that the ordinance allows for impacts. It also allows for adverse impacts but not significant adverse impacts. Any impacts should be considered by comparison to a more conventional subdivision which does not include IIHO bonuses. Ken Clinton noted that he had an early 31-unit concept for this property that included a through road that would be accepted by the Town and every unit was spread out over the entire property. The applicant could construct 31 septic systems and 31 wells on this property – a fairly impacting approach. Ken Clinton went on to say that this was not necessarily "by right" but the construction of the infrastructure was high, and the homes would have to be four to five bedrooms to recoup the cost. Every square foot of this property could be developed for residences, without the trails or other incentives that the current application is trying to achieve as part of the ordinance.

Ken Clinton stated that, if the applicant is required to provide both peer review consultants with the additional information each has requested, the correct IIHO unit number is needed, and the project also needs to be in the ‘Final Design’ stage in order to ensure the accuracy of the data itself.

In terms of the traffic study, Ken Clinton explained that a comprehensive Traffic Study by Stephen G. Pernaw & Company, Inc., was issued May 2020, in conjunction with TransFarmations’ Jacobson Farm development. Clearview’s Prew Purchase proposed 66 units at that time. The key finding was “While it is obvious that all new development projects create traffic impacts, this study has determined that the combined impact of TransFarmations and Clearview will not significantly alter the prevailing traffic conditions in Amherst on an overall basis.” In an effort to focus on just Clearview’s development, Stephen G. Pernaw & Company, Inc., issued a memorandum on December 21, 2020, (still using the 66-unit value). The key finding was once again, “While it is obvious that all new development projects create traffic impacts, the Clearview development will not significantly alter the prevailing traffic conditions in Amherst on an overall basis.”

The selected Peer Review Consultant, VHB had two limited scope items:

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1. Technical Review of the methodologies employed to determine the validity and accuracy of the study.

2. To the extent the Boston Post Rd / Main St intersection is deficient, what are the suggested options to ameliorate the effect of the proposed development.

Ken Clinton explained that on February 9, 2021, Nic Strong hosted a Zoom meeting with Jason Plourde of VHB, Steve Pernaw and himself. Ken Clinton noted that while Jason Plourde did cite one technical item relative to analysis computations that he and Steve differed on, his comments were otherwise out of scope; for example, he asked for sight distance confirmation and police accident data. He essentially requested that Steve re-calculate his analysis based on 49 units so that he would then be able to mathematically confirm what he said was intuitively apparent, that “the development will not have a noticeable impact.” Ken Clinton stated that the process was paused with Jason Plourde waiting to see if the developer would furnish additional information.

In regard to the water supply study, Ken Clinton explained that a Preliminary Groundwater Resources Assessment by Sanborn, Head & Associates, Inc., was issued October 2020. The key finding was, “Based on the summary of information presented herein, we believe that local groundwater resources have the capacity to serve the proposed private bedrock domestic water supply wells for the new development.” Additional drought-related data was introduced during the November 8, 2020, presentation and further data relative to Planning Board questions was provided at the January 6, 2021, hearing.

The selected Peer Review Consultant, Stone Hill Environmental, had three limited scope items:

1. Technical Review of the methodologies employed to determine the validity and accuracy of the study.

2. Provide opinion as to whether

a. Wells for this development will adversely impact existing wells

b. Concerns about the ability to support the new wells

3. Should the Board be worried about drought conditions as a matter of planning for the adequacy of groundwater in drought periods.

Ken Clinton stated that on February 11, 2021, Tim Stone called Lilly Corenthel, Senior Project Hydrogeologist, of Sanborn Head to discuss his preliminary review. Although Tim Stone stated that, overall, he thought the approach and calculations in the groundwater assessment were reasonable, he also stated that he would like additional information. Ken Clinton stated that the list Tim Stone is requesting clearly indicates he is broadening his review and is headed out of scope - not just relative to this application, but for future projects & regulations. Ken Clinton pointed out that many of Tim Stone’s additional requests will not be available until the application is in the ‘Final Design’ stage. Ken Clinton noted that Lilly Corenthel's notes of her conversation with Tim Stone indicate eight additional items he was interested in, including test pit data, septic system and well information, the percentage of the property that would be undeveloped, recharge structures, and all these things are currently unknown. Ken Clinton explained that peer reviewers should limit their comments to the scope of the project and should

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not expect back and forth conversation with the applicant's consultants, due to the additional time and cost.

Ken Clinton also noted that a local well driller informed Meridian Land Services that many builders instruct him to stop drilling when the minimum yield of 2gpm is achieved, even if a deeper well could not only increase the yield but also provide more storage. This artificial restriction plus overuse combine to create water supply issues during drought conditions. Also, to suggest that this 80-acre property cannot support the proposed 27 wells, at a well per acre, a density equal to or less than the surrounding developments, would be to also suggest that an abutter's right to access water under this property is greater than the rights of this property owner. Ken Clinton noted that the peer reviewers were operating as if the project was in final design in which case their requests would be appropriate for final.

Ken Clinton noted that the Town has implemented impact fees which could be used to address health, safety, and welfare needs of the public if there were impacts. He noted, for example, that if sidewalks were warranted due to the impact of the development on the road in some fashion, there would be a lot of money collected for Police, Fire, Recreation and Roads.

Ken Clinton stated that the applicant is quite confident, that if the Board follows the intent and plain language of the ordinance and applies the vast amount of application materials supplied and presented, the Board will find that the proposed 49 units are worthy of CUP approval. The applicant asks that the Board consider each of the incentive bonus categories individually to arrive at a decision. Ken Clinton also asked the Board to please consider deferring the peer reviews to the 'Final Design' stage, where the applicant can properly reply and address the peer review consultants' requests for additional information, which can be discussed and applied as determined by subsequent hearings. He noted that the applicant was committed to providing the answers the Planning Board needs with regard to water and traffic at the final design, even though they did not think it necessary. He stated that this should not be a CUP item.

Arnie Rosenblatt stated that the applicant has had a lot of time at each meeting to present his position. He appreciates the detail involved with these presentations. The Board will now comment/question, then the public will have the opportunity to do the same, and finally the Board will decide if any actions will be taken.

Mike Dell Orfano thanked Ken Clinton for the presentation. He noted that the original IHO promoted that a CUP determination be made before a traffic study was requested. The detail being requested of the applicant at this time cannot be determined until the Board makes a decision about the CUP. He believes this applicant has gone overboard to accommodate the intent of the ordinance. The applicant is requesting marginally more units than allowed by a grid subdivision, with significantly less impact to the land. He believes that the Board should move forward with the CUP determination and allow for the peer review studies to be completed in the Final Design phase so that this applicant can move forward.

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Cynthia Dokmo thanked Ken Clinton. She stated that she agrees with Mike Dell Orfano. She believes that the peer reviews should be examined further once the final subdivision has been submitted.

Marilyn Peterman explained that there are two current members of the Board that helped write the IIHO and passed that legislation to Town Meeting. The IIHO was predicated on the fact that density bonuses and an “up-to” number are determined by the Board without the applicant having to put in this much work, because it comes at a great expense to the applicant and some of the requested details are not known until the Final Design phase. She believes that the IIHO and density bonus review has been stood on its head because the developer has presented information to try to satisfy some Board members. She also noted that the number of 3–4-bedroom homes that would be allowed on this property by right would have a much more significant impact on traffic and water quality than this proposal. She stated that elderly and affordable housing are needed in Town. The prices of homes in Town are increasing because there is not enough stock to reduce prices. One way to help this issue is through new construction, which there is not a lot of in Town currently, except along Route 122. She believes that Ken Clinton has presented enough information to satisfy the requests made by the Board.

Dwight Brew stated that he believes an opportunity was missed by stating that any walkability, common space and open space is entitled to 17+ bonus units, rather than focusing on what is actually being proposed. For example, 1 square foot of common space would not merit 7+ bonus units, but what is proposed is significantly greater. Likewise, a one-foot path from the front steps to the driveway would not merit 3+ bonus units for walkability. The Planning Board must evaluate the specifics of what is being proposed. If the Board delays additional water and traffic data review to the final design phase, he would like to make sure that is an appropriate time to adjust the number of units, if the Board determines that the data merits an adjustment.

Ken Clinton stated that reviewing the comments and requests of the peer review studies should be a Final Design phase issue. The applicant cannot satisfy those requests now. He is requesting that the Board defer consideration of these items until the Final Design phase. The Board can, after that time, decide on a reduction of units, if necessary.

In response to a question from Bill Stoughton regarding the Board deferring completion of the peer review studies to the Final Design phase and the applicant not objecting to a possible reduction in the number of units at that time, Ken Clinton stated that the applicant would contemplate a reduction at that time. Ken Clinton stated that he doesn’t agree that a reduction is needed and believes that the peer reviews will agree with the number of proposed units, or possibly even a higher number of units.

Bill Stoughton asked why, if a number was needed to work with, the applicant did not use the 49 units. Ken Clinton stated that the project is justified at 57 units, but that the applicant has voluntarily sought a reduction to the proposed 49 units. The peer review traffic study asked for a proposed number of units in order to redo the intersection analysis. It was essentially requesting that the traffic study be redone with 49 units in mind, but that 50 units would also work, in order

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to say that these numbers would not have a significant impact. Ken Clinton noted that redoing the traffic study will cost approximately \$2,500 and probably take weeks. He is concerned that the traffic study could need to be redone a number of times without an “up-to” number given.

Bill Stoughton stated that he believes the applicant submitted the traffic and hydrogeological studies in support of the application, unrequested by the Board. The Board reviewed these and had questions. He believes it would be odd for the Board to review these and wait until a Final Design phase to ask questions.

Ken Clinton clarified that both of these studies were previously requested by the Board. He doesn’t believe that either of these studies are appropriate to do at the CUP level. The applicant did as requested by the Board, in completing these studies, one in conjunction with the TransFormations project, and is now being impaired by doing as asked. The applicant did not complain about doing these studies, but the peer reviews received are out of scope and the questions should be included in the Final Design phase. If the peer reviews had stuck to the scope as outlined, the applicant would not have had an issue. He believes that, in that case, the peer reviews would have supported the project and the completed studies. The applicant is happy to respond to the peer review questions as part of the Final Design phase.

Bill Stoughton apologized for incorrectly stating that these studies were not requested by the Board. He did not realize that these had been requested by prior Board members. His personal preference is that the Board resolve the peer review study issues. In order to address the conditions of Section 3.18, the public health, safety, and welfare of the Town, he believes that the Board needs the peer review comments, even if they are limited in fashion, within the scope outlined.

Tracie Adams stated that she agrees with Bill Stoughton. She believes that the Board needs the peer review information within the scope outlined in order to give an “up-to” number.

Chris Yates had no comments at this time.

Christy Houpis stated that he appreciates the incorporation of the management of the 55+ units. He noted that, per Section 3.18, the Board needs to make sure there is a benefit to the Town for each proposed amenity. He understands the math equations involved in each amenity, but these are not guaranteed to the applicant. He believes there is value in reviewing the two peer review studies in order to assess the benefit of each bonus requested.

Arnie Rosenblatt stated that he was on the Board at that time that the IIHO was presented and expressed significant concerns with it. He noted that the burden is on the applicant to explain the benefit to each bonus sought. He believes that the Board is very capable of determining how to interpret the IIHO at this time. He stated that he could not remember another time when an applicant has challenged a peer review study. This puts the Board in a difficult position, as it voted on having peer review studies, drafted scopes for said studies, and presented those scopes to the applicant to be agreed upon. The Board is now being told by the applicant that the peer

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reviews were done incorrectly and to stop them. He suggested that the Board tell the applicant to work these issues out with the peer reviewers. If there are gaps in the peer reviews based on any issues the applicant has, the Board can discuss those.

Public Comment:

Kelly Mullin, 48 Christian Hill Road, stated that she has some concerns about the applicant not accepting a possible decrease in the “up-to” number of proposed units in the future. She asked that the Board be very clear in its “up-to” number, in order to make sure the applicant understands.

As there were no other comments from the public at this time, Arnie Rosenblatt went back to the Board.

Mike Dell Orfano reaffirmed Ken Clinton’s statement that the Board requested the traffic study in combination with the Jacobson project, at the time. The applicant may now be asked by the Board to reduce the scope of the study previously requested, at an additional expense to him. He suggested that the Board follow through with the CUP and give the applicant an “up-to” number so that he can go back to the traffic study with a definite number to get definitive data. It is an unreasonable burden for the applicant to continue to go back and forth between the Board and the peer review studies.

In response to a question from Christy Houpis, Nic Strong stated that the CUP 45-day timing deadline for action was up on January 22, 2021. The applicant agreed to extend that timeline to this evening. If the Board needs to continue this hearing, the applicant will need to agree to another extension.

Dwight Brew stated that the Board seems to have three options: 1) vote on a CUP “up-to” number; 2) ask the peer reviewers to come in and speak to the Board directly about their studies; 3) tell the applicant to work out any issues with the peer reviewers himself and to send the reports, as they are completed, to the Board.

In response to a question from Marilyn Peterman, Ken Clinton stated that Nic Strong sat in on the traffic peer review meeting, along with himself, Steve Pernaw, and a rep from VHB. Nic Strong agreed that she sat in on a Zoom meeting with Jason Plourde, of VHB, in order to run through what had been done in the traffic study review to that point. She noted that Jason Plourde was informed that the original traffic study was done in conjunction with another project, and that the Clearview project has since been reduced from 66 to 49 proposed units. The peer reviewer ran through the methodology for the project and had some questions about the year of a traffic manual used for the intersection data. There was a conversation about looking at the numbers in the study’s tables using the 49 proposed units instead, then finalizing the study and sending any comments to the Planning Board.

Mike Dell Orfano reminded the Board that the applicant could come back under a standard grid subdivision and construct 31 units on the property by right. The applicant would also be allowed

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by right to have ADU's in each of those units, for a total of 62 units instead. As proposed, the applicant is requesting a project that would have much less impact than that allowed by the ordinance. This proposal also accommodates acres of open space and the possibility of intra-trail connections in Town. He explained that most traffic engineers want definitive numbers in order to do these studies. It is an additional expense for the applicant if the peer review study companies are called in to discuss these studies with the Board; he believes this is grossly unfair to the applicant. He also stated that he believes this application warrants at least one 2-bedroom ADU as part of the project.

Mike Dell Orfano moved to approve a CUP of up-to 50 units, with one being a 2-bedroom ADU unit, and not less than 48 units. The difference between these minimum/maximum numbers is subject to the Board review of the traffic and hydrogeological studies. Marilyn Peterman seconded.

Discussion:

Cynthia Dokmo stated that she believes the motion should be left to an "up-to" number because including the 48 unit minimum gives the Board no discretion to lower the density number further based on the results of the studies.

Bill Stoughton stated that his view of the ordinance is that each Board member must determine if each proposed bonus is of a benefit to the Town. The Board may not award density bonuses without hearing a commensurate benefit to the Town, in an exercise of judgment and discretion. A determination of some (perhaps minimal) benefit does not entitle the applicant to the maximum benefit in the category. Rather, the magnitude of the bonus must correspond to the degree of benefit conferred to the town. This is necessarily an exercise of discretion. Thus, if a density bonus of 5 units is requested, but the Board finds that it only merits a bonus of 2 units, only 2 bonus units will be granted.

Bill Stoughton stated that he has not in his analysis worried about "double-dipping" rules between categories. Rather, he has exercised discretion in evaluating the degree of benefit conferred to the Town and made reductions commensurate with those benefits. If the benefit nominally conferred to the Town in a bonus category is already recognized in a different bonus category and no new additional benefit is conveyed, then he has awarded bonus units only in one category.

Bill Stoughton stated that there are a number of beneficial aspects to this development:

- 1. Clustering, reducing the amount of impervious cover, including open space**
- 2. Two separate but connected communities**
- 3. Preservation of open space and trails/trail connectivity with a conservation easement**

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4. 55+ housing, and monitoring of compliance with the requirements for maintaining 55+ housing, is done well.

However, Bill Stoughton noted that still has concerns that lead him to conclude not all the bonus units sought should be awarded. He would award bonus units as follows:

1. *Over 55* – 2.7 bonus units.

2. *Attached housing* – 1.4 bonus units. There is benefit to the Town in having housing stock that is attached, as in the condominium village, such as reduced impervious cover and increased energy efficiency.

3. *Single floor units, Handicap, 2-bedroom units in 55+ condo units* – 0 bonus units total. There is insufficient additional benefit to the Town from these features beyond the benefit already represented in the 55+ and attached housing bonuses. These units are not available to a buyer under age 55, in which case there might have been some additional benefit to the Town.

4. *Single Bedrooms in ADUs* – 0 bonus units total. He does not see the benefit to the Town in awarding bonus units for an ADU. The ADU is not available separately from what the owner of the associated single family dwelling unit decides to do. In other words, as a prospective buyer interested in single bedroom housing, one cannot buy just the ADU. Hence, the ADU does not provide sufficient benefit to the Town to justify a bonus for single bedroom housing.

5. *Walkability, Community Space Open to Public, and Open Space Under Restrictive Covenant* – 6 bonus units total. He has considered these together because the trail network is the justification for the walkability bonus, and for the community space open to the public. There are no sidewalks proposed within the two villages, and no community space other than the conserved open space. The majority of the benefits are realized only because of the presence of the open space under restrictive covenant and, in his judgment, a bonus of 6 units fairly matches the bonus to the total benefit to the Town.

Bill Stoughton noted that he still has other concerns, regarding traffic, and groundwater. Even if ultimately acceptable, and he has not concluded they will be, the bonus units will contribute to increased traffic through the village and will place demands on groundwater, which several residents have identified as a concern. This reduces the overall benefit to the Town and, in his view, must be accounted for by a reduction of bonus units. Thus, he would reduce the amount by 2 bonus units. This all equates to 8 total bonus units, for an approval of up-to 39 units.

Arnie Rosenblatt stated that he would not support the motion on the table without studies to support these up-to numbers.

Bill Stoughton stated that he would also not support the motion on the table because he believes the up-to number, as previously stated, should be 39 units. He would also

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insist on some conditions to a motion and would like included that the peer review studies be concluded.

Marilyn Peterman stated that she cannot understand Bill Stoughton's opinion on voting against bonuses for ADA-compliant and single-floor units. She can attest to the fact that single-story units are in high demand in Town. She also wished he would look into the data that shows the need for ADA compliant units.

Mike Dell Orfano revised his previous motion.

Mike Dell Orfano moved to grant a CUP of up-to 50 units, and that the applicant move forward with traffic and hydrogeological studies based on the 50-unit number. Marilyn Peterman seconded.

Discussion:

Arnie Rosenblatt stated that he respects all of the comments made. He believes it is irresponsible to make a decision on the CUP prior to getting the peer reviews. If there is a disagreement between the applicant and the peer reviewers, he would suggest that they work this out amongst themselves. If this cannot be resolved, he would request that the Board receive the reports as is, with any gaps that there might be. The Board can factor these items into its discussion and hear from both the applicant and peer reviewers, as needed. While he respects the Board members' comments, he believes it is premature to make this determination until the Board can review the peer reviews. He noted that the Board voted to move forward with these peer reviews at its last meeting, and that moving away from this and towards awarding a CUP would be a shift. He also believes that it may be difficult to change the up-to number once it's decided on.

Mike Dell Orfano discussed withdrawing his motion, as long as the applicant is not continually asked to go back and forth between the Board and the peer reviewers in order to determine the correct number of units to use. Arnie Rosenblatt agreed that he does not contemplate that the applicant will need to do so. Bill Stoughton suggested that the applicant and peer reviewers use the up-to 49-unit number, as it is what is currently being proposed.

Ken Clinton stated that, on behalf of his applicant, he is willing to table this application to March 17, 2021, in order to work out any discrepancies with the peer reviewers, to complete the studies per the authorized scopes.

Mike Dell Orfano moved to continue this application to March 17, 2021, at 7:00pm, via Zoom. Marilyn Peterman seconded.

TOWN OF AMHERST
Planning Board

February 17, 2021

APPROVED

555 **Roll Call: Mike Dell Orfano – aye; Marilyn Peterman - aye; Christy Houpis – aye;**
556 **Dwight Brew – aye; Bill Stoughton – aye; and Cynthia Dokmo – aye. Motion carried**
557 **unanimously.**

558

559 **OTHER BUSINESS:**

560 **1. Minutes February 9, 2021**

561

562 *Marilyn Peterman exited the meeting.*

563

564 **Christy Houpis moved to approve both sets of meeting minutes of February 9, 2021,**
565 **as submitted. Cynthia Dokmo seconded.**

566 **Roll Call: Mike Dell Orfano – aye; Christy Houpis – aye; Dwight Brew – aye; Bill**
567 **Stoughton – aye; and Cynthia Dokmo – aye. Motion carried unanimously.**

568

569 **Mike Dell Orfano moved to adjourn the meeting at 8:58pm. Christy Houpis**
570 **seconded.**

571 **Roll Call: Mike Dell Orfano – aye; Christy Houpis – aye; Dwight Brew – aye; Bill**
572 **Stoughton – aye; and Cynthia Dokmo – aye. Motion carried unanimously.**

573

574

575

576 Respectfully submitted,

577 Kristan Patenaude

578

579 Minutes approved: March 17, 2021