

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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

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

Arnie Rosenblatt opened the meeting at 7:00pm.

**PUBLIC HEARING:**

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

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

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

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

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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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

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

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

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

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

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

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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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.

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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

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

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

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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

*Tim Kachmar left the meeting.*

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

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

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

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

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

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

August 3, 2022

**APPROVED**

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

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

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

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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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

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

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

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

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

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

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

August 3, 2022

**APPROVED**

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

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

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

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

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

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



August 3, 2022

**APPROVED**

- 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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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

Bill Stoughton reviewed draft condition subsequent E:

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

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

Draft condition subsequent D deals with phasing:

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

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

Bill Stoughton reviewed draft condition subsequent F:

*Protection of Elderly Community Status. The Condominium Association shall not have the authority to alter the age 55+ elderly housing status of the East Village, nor shall it have the authority to take any action that is contrary to requirements that such elderly housing be structured and maintained to comply with the Housing for Older Persons Act of 1995, 42 USC section 3601 et seq.*

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

August 3, 2022

**APPROVED**

Bill Stoughton reviewed draft condition precedent A:

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

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

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

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

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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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

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

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

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

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

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

**OTHER BUSINESS:**

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

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

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

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

TOWN OF AMHERST  
Planning Board

August 3, 2022

**APPROVED**

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