

TOWN OF AMHERST
Planning Board

November 2, 2022

APPROVED

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

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

Arnie Rosenblatt called the meeting to order at 7:00pm. He noted that the Conceptual Consultation for Brook Road will be deferred to a future date.

PUBLIC HEARINGS:

1. CASE #: PZ16131-080422 – EIP One Bon Terrain, LLC (Owner) & New England Facilities Solutions Corporation (Applicant); 1 Bon Terrain Drive, PIN #: 002-026-004. Non-Residential Site Plan – Compliance Hearing. To show the as-built conditions of the site in support of the project receiving a Certificate of Occupancy as required by the Amherst Non-Residential Plan Regulations, Section 7.1.C. Zoned Industrial. Continued from October 5, 2022

Arnie Rosenblatt read and opened the case.

Sam Foisie, PE, Meridian Land Services, stated that he submitted a response letter last week regarding the main concerns brought up by the Board, specifically related to the as-built plan, underground information, such as where the water line and drainage structures are located, and critical elevations around the site. The plan has been amended to show the underground features, critical elevations, and an updated drainage structure table. These elevations confirm that the drainage will work appropriately and was built in accordance with the design intent. The applicant has addressed previous concerns and questions on the plan and in the response letter, with one exception being the light poles. There has been a supply issue for the light poles. The bases are in, and the light poles are on site but have not yet been installed.

In response to a question from Arnie Rosenblatt, Nic Strong stated that she has no concerns with this proposal.

In response to a question from Tracie Adams, Sam Foisie stated that the light poles are on site and should be installed at any time.

Tom Quinn, Cynthia Dokmo, Tom Silvia, Pam Coughlin, Chris Yates, and Dan LeClerc had no questions.

Bill Stoughton asked if the applicant would be okay with an additional subsequent condition, that lighting shall be installed per the plan once materials are available. Sam Foisie agreed to this item.

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Bill Stoughton moved to confirm compliance with the conditions to the approval of the Non-Residential Site Plan Review for EIP One Bon Terrain, LLC (Owner) and New England Facilities Solutions Corporation (Applicant) – 1 Bon Terrain Drive, Map 2 Lot 26-4 to construct a 30,000 s.f. building addition to the existing facility, for the purposes and use of warehousing product, with associated truck parking yard and other ancillary improvements, subject to the conditions listed in the Staff Report and the additional condition subsequent that lighting shall be installed per plan when materials are available. Seconded by Tom Silvia. Motion carried unanimously 6-0-0

2. CASE #: PZ16160-081022 – Vonderosa Properties LLC (Owner & Applicant), County & Cricket Corner Roads, PIN #: 004-122-000 - Subdivision Application. Proposed five (5) lot existing road frontage residential subdivision. Zoned Residential/Rural. Continued from October 5, 2022

Arnie Rosenblatt read and opened the case. He noted that, subsequent to the last meeting at which this item was discussed, a site walk was held. Also, certain reviews of studies requested by the Board were completed and circulated to the Board.

Cynthia Dokmo recused herself from this item.

Chad Branon, PE, Fieldstone Land Consultants, stated that, during the site walk, the group walked the frontage of the property and looked at the sight distances for each driveway. There was discussion regarding revisions to the second lot in on Cricket Corner Rd, Lot 4-122. Hence, that driveway location was modified, and revised plans were submitted to show the driveway grading and sight line modifications, showing that an easement from the parcel across the street was not needed. Third-party reviews were received from Keach Nordstrom Associates and a hydrogeological review was received relative to the well reports. Two previously submitted reports, one prepared by HydroSource and the other prepared by Terracon, were reviewed by the Town's third-party consultant, Edgewater Strategies. Chad Branon stated that, in reviewing the summary of those reports, they supported the results of the studies as originally provided. Regarding Keach Nordstrom's review, the applicant has no issue with any of the 11 comments. He asked that the Board consider those comments as part of a conditional approval this evening. Regarding the staff memo, the applicant has no objections to any of the recommended conditions.

Pam Coughlin, Dan LeClerc, Chris Yates, and Tom Silvia had no questions.

Bill Stoughton noted that the latest plan the Board has in front of it is Rev C, dated September 7, 2022. He asked if that revision contains the most recent information on the revised driveways. Chad Branon stated that there was a more recent revised plan submitted. The most recently revised plan uses the existing log landing and the existing curb cut there. The location of the driveway was modified so that the sight lines lie entirely within the roadway. Chad Branon noted

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that the most recently revised plan was not the one reviewed by Keach Nordstrom. He stated that he would be happy to accept that review as a condition of approval.

Bill Stoughton stated that he previously expressed concern as to whether this lot was suitable for subdivision. Based on the site walk, he no longer has that concern. He does not believe the issues discussed in the ordinances and regulations regarding suitability for subdivision are an issue for this subdivision, as it is currently proposed. His greatest concern during the site walk, and with this application overall, was safety along Cricket Corner Road. The traffic during the site walk, which occurred at 4:00 PM on a weekday, was surprisingly heavy. He appreciates the proposed changes to improve sight distances but is still concerned with that road given the traffic and the specific conditions.

Bill Stoughton stated that the revised driveway for proposed Lot 4-122-1 is located lower than the crest of a hill to the right while exiting the driveway, and a portion of the road to the right of the driveway is hidden by that crest and a corner along Cricket Corner Road. While there may be the required 300' sight line visibility to a portion of Cricket Corner Road, closer portions of Cricket Corner Road are partially hidden to the driveway, and therefore the driveway will be hidden from certain portions of Cricket Corner Road. The driveway for Lot 4-122-2 and -3 may have a similar visibility issue looking to the left because of the current terrain. He suggested that Keach Nordstrom review the revised plans and do a construction inspection to ensure sight line adequacy from those areas.

Bill Stoughton suggested the following conditions:

1. Compliance with all of the comments and recommendations of the town engineer are required.
2. Receipt of an estimate for construction inspections (including driveway construction details and sight line adequacy and stormwater controls) from the Town's engineering firm(s) and submission of the amount of the inspections to be placed in escrow. A pre-construction meeting shall be held prior to the start of construction. Satisfactory construction inspections, including but not limited to satisfactory sight distance verification at driveways, are a condition subsequent of approval.

Bill Stoughton noted that the applicant has publicly discussed a much larger series of developments; this is just one lot of six, seven, or eight adjacent properties with different lot numbers, all under common ownership and control. He suggested an additional condition:

3. The applicant has publicly discussed a much larger development plan including adjacent properties under several different lot numbers under common ownership and control. It is important that the combined impacts of the potential developments not be masked by applications that address subdivision of only one or some of the lots at one time. Accordingly, future applications for subdivision or site development on Lots 4-116, -117, -118, -119, -121, -145 and 6-102 must address the cumulative impacts on traffic, natural resources (including wildlife habitat and water resources), rural character, stormwater, and town and school resources, and must include the effects of this subdivision of Lot 4-122. Applicant must use a baseline for assessing impacts that omits the effects of development of any of these lots.

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In response to a question from Bill Stoughton, Chad Branon explained that, typically, active and substantial development for a conventional subdivision is satisfied by the recording of the subdivision plan. This project is required to be phased because it is more than four lots. Each of these lots stands alone, with each having its own driveway, and its own stormwater features, so there is not a common feature, such as a roadway or other improvement to use for a measure of completeness. The applicant is requesting that the recording of the plan be the vesting component. Bill Stoughton suggested that active and substantial development be defined as the completion of construction of a driveway on the first of the lots to be developed. Chad Branon agreed.

Regarding substantial completion of improvements, Chad Branon suggested the construction of the first home. Chad Branon stated that the applicant has had some interest in the lots, but has not been able to take any offers, as there is not yet an approved plan. Bill Stoughton agreed that this could be defined as construction of the foundation of a lot.

Tom Quinn asked if the definition for substantial completion would also include stormwater features for the lot. Chad Branon stated that he would have no problem with this, as this item will be needed to secure a building permit.

Tracie Adams asked if other Board members had anything to share about the site walk, as she was absent. Arnie Rosenblatt stated that he was taken aback by the volume and speed of the traffic along the road in this location. He stated that sight distance does matter for this project.

In response to a question from Tracie Adams, Chad Branon stated that the DPW Director previously had one comment pertaining to the sight distance easement.

Howard Muscott, 48 County Road, thanked the Planning Board for its informed decision-making process and efforts. He echoed Mr. Stoughton's previous comments regarding this project. He stated that his concern is not about this project as a single entity, but as the first of as many as seven subdivisions which the developer calls the Whitetail Meadows development. He stated that he believes this subdivision proposal should be treated as part of the larger conceptual development. However, if the Board chooses to grant this application, he respectfully requested that any future subdivisions involving these parcels be treated as part of a whole and the cumulative impacts on safety, traffic, wildlife, schools, water, and road improvements be assessed and addressed in that particular way. An important question is, at what point does the next subdivision trigger the larger cumulative impacts and who should bear that burden? This should not be borne solely on the citizens and taxpayers of Amherst.

Tom Silvia asked about the zoning phasing requirements for this project. He asked if the five units should be phased over three years and, if so, a certain number should be allowed in each year. Nic Strong stated that this is a good question, as the proposal includes an odd number of units. The Board should likely specify the number of units for each year instead of a percentage. Tom Silvia suggested that phasing include three units in one year and two in another, or vice versa.

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In response to a question from Tom Quinn, it was noted that the driveway easement has already been reviewed by Town Counsel.

Bill Stoughton moved to approve Case#: PZ16160-081022 for Vonderosa Properties, LLC, for the above cited Final Subdivision of Map 4 Lot 122 into five lots, with frontage on Cricket Corner and County Roads, with the conditions in the staff report, with condition #6 on phasing modified to say ‘the subdivision shall be phased over two years with not more than three of the dwelling units receiving building permits in a one year period’; and with impact fees assessed at the Residential rate; with the following additional conditions:

1. Compliance with all of the comments and recommendations of the Town Engineer are required.

2. Receipt of an estimate for construction inspections (including driveway construction details and sight line adequacy and stormwater controls) from the Town’s engineering firm(s) and submission of the amount of the inspections to be placed in escrow. A pre-construction meeting shall be held prior to the start of construction. Satisfactory construction inspections, including, but not limited to, satisfactory sight distance verification at driveways, are a condition subsequent of approval.

3. Remaining developments – The applicant has publicly discussed a much larger development plan including adjacent properties under several different lot numbers under common ownership and control. It is important that the combined impacts of the potential developments not be masked by applications that address subdivision of only one or some of the lots at one time. Accordingly, future applications for subdivision or site development on Lots 4-116, -117, -118, -119, -121, -145 and 6-102 must address the cumulative impacts on traffic, natural resources (including wildlife habitat and water resources), rural character, stormwater, and town and school resources, and must include the effects of this subdivision of Lot 4-122. Applicant must use a baseline for assessing impacts that omits the effects of development of any of these lots.

Further, defining active and substantial development as commencement of construction of the driveway on the first of the lots to be developed, and defining substantial completion of improvements as construction of the foundation and stormwater management best practices on the first of the lots to be developed.

Seconded by Tom Silvia.

Motion carried unanimously 5-0-0.

Tracie Adams reviewed the Findings of Fact. It begins with a chronology of this proposal. Relative to being part of a larger development, there was conversation regarding addressing the larger scale of this project with multiple lots. Relative to regulation 203.1, this does not constitute a scattered or premature subdivision. Relative to regulation 207, that the character of the land does not pose a danger to the public health, safety, or to the environment by being developed. Relative to regulation 209, the proposal is giving proper regard to preservation of

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existing features relative to stormwater management. A stormwater management review has been completed by the Town Engineer and the Board is comfortable moving forward with the bioretention features. There was a suggestion by the Town Engineer to monitor those features, and this is included. Relative to hydrogeological concerns, well water quantity testing was discussed and there were evaluations by two different companies, Terracon and HydroSource. The board concluded it wanted a third-party review, which came in in support of those two studies and concluded there was a sufficient quantity of water. Relative to water quality testing, we have a statement that we would like to have these resources monitored and there is a statement regarding quality testing for new wells. Relative to environmental impact concerns, a study was completed, and the report listed some conservation measures to incorporate into the design. The Board would like to see those incorporated to best preserve the natural habitat and animals. Relative to the driveway and road safety, the Board finds that the elevation changes, curves, and roadside topography of Cricket Corner Road in the area of the proposed development pose greater than typical safety concerns. Relative to the driveway and road traffic, this warrants a detailed examination of proposed and as built sight distance conditions by the Town Engineer. Phasing, as addressed by the Board is also included.

In response to a question from Arnie Rosenblatt regarding the bonding item in the Findings of Fact, Tracie Adams suggested it be stricken.

**Tracie Adams moved to accept the proposed Findings of Fact for Vonderosa Properties, as presented. Seconded by Tom Silvia.
Motion carried unanimously 5-0-0**

CONCEPTUAL DISCUSSION:

3. CASE #: PZ16279-090722 – 24 BR Partners, LLC c/o Ron Decola (Owner & Applicant); 24 Brook Road, PIN #: 010-026-000 – Subdivision Application. Proposed 38-unit elderly housing development with a community water supply and private septic systems. Zoned Northern Rural.

The Board discussed timing and agenda for upcoming meetings. They agreed to hold a public hearing on the proposed ordinance changes on December 7, 2022.

**Bill Stoughton moved to continue this application to December 21, 2022, at 7pm at Town Hall, at the request of the applicant. Seconded by Chris Yates.
Motion carried unanimously 6-0-0.**

4. CASE #: PZ16440-101222 – P & P Commercial Properties LLC (Owners) & Apex Fireworks LLC (Applicants) – 68 Route 101A, PIN #: 002-080-001 – Non-Residential Site Plan Application – Change of Use site plan approval for the operation of a retail fireworks location. Zoned Commercial.

This item was withdrawn by the applicant.

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DESIGN REVIEW

5. CASE #PZ16438-101222 – Kevin Curran & Claudine Curran (Owners) & Meridian Land Services, Inc. (Applicants); Williamsburg Drive, PIN #: 008-094-000 – Subdivision Application – To depict a subdivision of lot 008-094-000 to create one new 2.17-acre lot with a 203+/-acre remainder lot. Zoned Residential/Rural.

Arnie Rosenblatt read and opened the case.

Cynthia Dokmo recused herself from this item.

**Bill Stoughton moved that there is no regional impact from this application.
Seconded by Tracie Adams.
Motion carried unanimously 5-0-0.**

Ken Clinton, LLS, Meridian Land Services, stated that Lot 8-94 is approximately 205 acres, with Baboosic Lake wrapping along the east side of the property. To the north, via Red Gate Lane, is Route 101, to the west are various subdivisions and residences, and in the southwesterly corner is Walnut Hill Road. The proposal is for a small, single lot subdivision, for a single-family residential lot, based on the reduced frontage lot requirements. As a design review, this not a final application at this time. There are three points of discussion the applicant would like to hear from the Board on. These include delineating the full boundary of the entire 205-acre lot, studies that might be required, and the interpretation of reduced frontage lots.

Ken Clinton stated that, as suggested in the Staff Report, the applicant anticipates requesting a waiver of the requirements to show each boundary line with bearings and distances. The reference plan relied upon for this information was far more detailed and did annotate quite a bit of the boundary for this parcel. This is a unique parcel as it has one Tax Map Lot number yet spans both sides of numerous roads. The reference plan did not fully define the right of ways for each one of those roads. The current proposal concentrates on one small corner on the northwesterly side of the property, as opposed to having detail or any proposals along any of the roads that are not fully defined in the reference plan. In the vicinity of proposed Lot 8-94-1, bearings and distances are fully defined on the boundary adjacent to the proposed lot, as well as the proposed lot itself. A waiver request for providing bearings and distances for the remainder, which is approximately 203 acres, will be proposed.

Ken Clinton stated that, secondly, the applicant would like an indication if the Board felt this single lot would require any of the studies that are listed in the checklist, such as traffic, fiscal impact, environmental, water supply, etc.

Ken Clinton stated that the final point of discussion is the reduced frontage lot area and the Board's interpretation. An acreage of 2.17 acres is proposed for this lot, which complies with the consistent and long-accepted interpretation of the ordinance and regulations for this matter.

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However, it seems that the Board has a new interpretation of this, as of January/February of this year. Ken Clinton stated that he has been presenting plans and doing this work in Amherst for over 25 years. In that time, it has been consistent that a back lot is required to have the minimum acreage of its zone, not 10 acres minimum. A lot is proposed that complies with the regulations. He noted that Attorney Brad Westgate, Winer & Bennett, LLP, will provide some written and verbal testimony to this point, which can then hopefully be considered by Town Counsel. The full content of Attorney Westgate's opinion should be reviewed and responded to further. The applicant is proposing to provide \$2,500 to be put in an escrow to allow for the back-and-forth detailed review and Town Counsel's opinion.

Attorney Brad Westgate explained that the Currans previously submitted a design review application for a property on Baboosic Lake Rd/ Pond Parish Road, which contemplated 44 lots on 156 acres, ten of which were reduced frontage lots. During the hearing for this item, on September 7, 2022, Attorney Westgate stated that he addressed the Board with respect to the reduced frontage lot regulations and zoning ordinance provisions. He has submitted a letter to the Board in anticipation of this evening's meeting and reviewed the Staff Report, relative to the one lot application as previously described. The gist of the presentation regarding reduced frontage lots, was to the effect that the long-standing analysis and interpretation this Board has made with respect to lot acreage should still carry. There is a good rationale for that when analyzing the zoning ordinance and subdivision provisions. The minimum acreage requirement is two acres, not 10. The Staff Report references the same comment regarding reduced frontage lots that was set forth in the Staff Report for the September 7th hearing. The Staff Report makes reference to the subdivision regulation component of the reduced frontage lot analysis, but not the zoning ordinance provisions. Attorney Westgate stated that he would like to focus on the zoning ordinance provisions and how they dovetail and interact with the subdivision regulations. Since the September 7th meeting, the Board has formed working groups to deal with a variety of proposed zoning amendment changes and subdivision regulation changes, including those that deal with reduced frontage lot provisions. The rationale behind the Board's apparent new interpretation of a 10 acres minimum lot requirement has not been given, although a number of Board members have expressed their opinion. Attorney Westgate stated that Mr. Curran is willing to place \$2,500 in escrow with the Town to cover Town Counsel expenses to discuss his analysis of the provisions and why there is a rational basis for the interpretation to stand as it has since at least 1986. He asked that the Board give him the opportunity to address this with Town Counsel.

Attorney Westgate stated that, Section 4.3.C. of the zoning ordinance, states that each new lot shall have a minimum frontage of 200' on a publicly maintained road, unless frontage has been approved and recorded as a reduced frontage lot, in which event 35' shall be sufficient. The minimum lot area section in the Residential Zoning District sets forth a two-acre minimum lot requirement. Nowhere in the zoning ordinance is there any mention of reduced frontage lots having to be greater than two acres. Section 4.3.C. of the zoning ordinance and its subsections mention a two-acre requirement in one subsection and the frontage requirements in another. These two items are locked together. The reduced frontage lot section is not found elsewhere in the zoning ordinance.

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Per the Staff Report, Section 213.2.E. of the Subdivision Regulations, states that no subdivision plan providing for reduced frontage lots shall be approved unless the total acreage of such plan is a minimum of ten acres for each reduced frontage lot. Thus, 20 acres could produce two frontage lots. If the intent of the Subdivision Regulations was that each lot be ten acres minimum, it would have simply said, no reduced frontage lot should be less than ten acres, but its focus is the acreage of the plan. This provision in the Subdivision Regulations has not changed since 1986. It has been interpreted sensibly and in accordance with the zoning requirements. The acreage requirement of two acres and the frontage requirement of 35' are in the zoning ordinance, right next to each other, as subsections of the same section. This board has recognized the consistency between the zoning ordinance and the regulations by allowing reduced frontage lots to be to at least two acres and not requiring them to be ten acres. This traditional interpretation does not violate the core objectives of the zoning ordinance or the rational way in which the interplay of these regulations is to be read. On the other hand, to interpret it as to require a ten-acre minimum for each lot, would contradict the zoning ordinance, effectively allowing the subdivision regulations to override the zoning ordinance.

Ken Clinton stated that the requested items for discussion are the potential waiver for full bearings and distances, and boundary annotations on the 203 acre remainder lot; an indication of what studies the Board might feel reasonable for this particular application; and a response to the request to have further communication with Town Counsel and to have him write a formal opinion after conversations with Attorney Westgate, with a deposit of \$2,500 proposed in an escrow account for that matter.

Pam Coughlin stated that she had no questions at this time.

In response to a question from Dan LeClerc regarding what will be done with the remainder of the lot, Ken Clinton stated that there are no plans for it at this time.

In response to a question from Chris Yates regarding if other properties in Williamsburg Drive are two-acre lots, Ken Clinton stated that lot size varies in this neighborhood.

Tom Silvia asked for more of an explanation regarding the proposed waiver for total boundaries of the site. Ken Clinton explained that the current plan does define the boundaries of the entire property with bearings and distances, and sight distances along Baboosic Lake Road, however it does not fully define all of the right of ways within. There are town roads and likely private roads within the overall boundary of the property, not defined by the reference plan. If another application was submitted for this lot in the future, it would likely have to fully define these, but in the context of a single 2.17-acre lot, it should be reasonable to waive that requirement for the remainder of the 203 acre.

In response to a question from Bill Stoughton, regarding that the cul-de-sac the proposed lot is located off on the plan is shown as a temporary cul-de-sac, Ken Clinton stated that this means the subdivision plan which created the lots in the right of way for Williamsburg Drive noted it was a

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temporary cul-de-sac. The right of way itself is 50' wide and continues to the common boundary line as a right of way. Thus, the temporary cul-de-sac could be considered an easement.

Bill Stoughton stated that he has a concern, given the Town's driveway standards, and the fact that this temporary cul-de-sac does not meet those requirements. If the owner was to subdivide this lot, he would like to see an extension of Williamsburg Drive, and the construction of a compliant cul-de-sac.

In response to a question from Bill Stoughton regarding compliant frontage for the 203-acre remainder lot, Ken Clinton stated that this could likely be considered Embankment Road, which is publicly maintained. There are other roads and ways to select from, but not all are publicly maintained.

Bill Stoughton stated that he would be in favor of a waiver of the full delineation of boundaries for the entire parcel. He would also be in favor of not requiring a full set of studies, as he does not believe this small site has circumstances that require it. Bill Stoughton noted that Section 213.2.G., stated that the use of reduced frontage lots shall be restricted when in the opinion of the Planning Board, such use is in conflict with the long-range plan for the Town or creates unusual traffic problems or conditions. He stated that, if the applicant disagrees with the Board's interpretation of that item, it will need to be addressed in the context of an application.

Bill Stoughton stated that the Board is contemplating certain zoning changes and noted that, if those changes were to be finalized and accepted by the voters, this could solve some of the issues at hand. Ken Clinton stated that he is not in agreement with most of the proposed changes. He does not believe they are based in science, but instead driven by a desire to reduce development. Ken Clinton stated that he does not see how these would be of any benefit to his client.

Arnie Rosenblatt asked if it is Attorney Westgate's view that this Board has the authority to interpret the ordinance. Attorney Westgate stated that the Board does, but that does not mean the interpretation is correct. The Board interprets the ordinances all the time with all applications.

Arnie Rosenblatt asked if it is Attorney Westgate's view that this Board has the authority to promulgate regulations pursuant to the ordinances. Attorney Westgate stated that the Board has the authority to promulgate subdivision regulations, pursuant to the statutes. In regard to the Town's ordinances, he has not had time to thoroughly study them.

Arnie Rosenblatt asked if it is Attorney Westgate's view that this Board has the authority to interpret and to make decisions based on the regulations. Attorney Westgate stated that, based on duly adopted subdivision regulations, yes it can, and it does all the time.

Arnie Rosenblatt asked why, recognizing this Board routinely and properly interprets the ordinances, interprets, and makes determinations based on the promulgated regulations and based on the statutory authority, in this instance Attorney Westgate believes the Board should ask Town Counsel to opine and provide his interpretation. Attorney Westgate stated that he does

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not believe Town Counsel's opinion replaces the Board's determination. In this particular case, the Board's seeming interpretation of this ordinance is simply incorrect, fundamentally wrong, and contrary to the way it has been dealt with for over 30 years. Attorney Westgate stated that he believes if he has an open discussion with Town Counsel regarding his analysis of the interplay of the regulations, including the zoning ordinances, a reasonable judgment could be made. Then the Board has the benefit of a thoughtful and detailed analysis of this regulation. Attorney Westgate stated that he has not heard anything from the Board regarding any indication as to why two acres has suddenly become ten. He believes the Board could make a fatal error if it makes that judgment and without receiving Town Counsel's advice.

In response to a question from Arnie Rosenblatt, Attorney Westgate agreed that his interest is in trying to persuade Town Counsel, if he cannot persuade the Board.

In response to a question from Tom Quinn regarding the fact that this proposal looks to build a driveway in the public way to access the lot, Ken Clinton stated that this is correct and is exactly what happens everywhere else. Attorney Westgate noted that this is the typical way in which every lot accesses the public right of way from the lot.

Tom Quinn asked on the proposed plan, which lot was considered the backlot, the 200+ acre lot or the proposed lot. Ken Clinton stated that the reduced frontage lot, Map 8 Lot 94-1, was the backlot. Tom Quinn stated that he envisioned this being behind another lot on the property. Ken Clinton stated that this is not consistent with what he has seen for the past 25 years practicing with the Board. Tom Quinn noted that the regulations state that the driveway portion of the reduced frontage lot or lots shall be integral and attached to the back lot. Ken Clinton stated that the remainder lot is a standard vacant lot and the reduced frontage lot, as proposed, has 35' of frontage on a public right of way and has full access to the public pavement this is maintained.

Tracie Adams agreed that she would support both of the proposed waivers.

Arnie Rosenblatt noted that, as this is a design review, the Board normally does not make any decisions, and nothing stated is binding. He stated that he does not favor allowing Attorney Westgate to speak with Town Counsel as proposed, as he believes it is the Board's job to interpret the regulations and ordinances. He stated that all Board members need to review the submitted memorandum very carefully and consider the arguments within. He stated that Board members are very capable of interpreting the ordinances and regulations. He stated that he is uncomfortable with asking Town Counsel to advise the Board as to how to do its job, and possibly reaching conclusions with Attorney Westgate outside a public meeting.

Bill Stoughton stated that his biggest concern with the suggestion is that it takes a very important discussion about this property out of the eyes of the public. The Board is not supposed to do that. It is supposed to have deliberations in public. The public would not have any access to these discussions, except second hand. He does not want this to raise privilege issues.

The other Board members supported Arnie Rosenblatt and Bill Stoughton's views of this item.

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Ken Clinton asked if the Board would allow the applicant to ask for a continuation of the design review hearing to give the Board members time to read and digest Attorney Westgate's letter. A follow up design review hearing could then be held on that matter.

Tracie Adams asked if the Board has ever done a secondary design review before for a single lot subdivision. Arnie Rosenblatt stated that he is unclear on this.

Tom Silvia stated that he was okay with this proposal.

Bill Stoughton asked if the follow up hearing could also review the information he requested regarding the cul-de-sac and if there is an appropriate termination. Ken Clinton stated that he would respond to those items as well.

Bill Stoughton and Tom Quinn stated that they were also okay with the proposal.

Arnie Rosenblatt stated that he believes, in this instance, the proposal is a good one.

The Board discussed timing and agenda for future meetings, in order to accommodate this request. The Board agreed to move the Master Plan review to its first meeting in January.

**Bill Stoughton moved to continue this design review to December 21, 2022, at 7pm at Town Hall. Seconded by Tom Silvia.
Motion carried unanimously 5-0-0**

**Tracie Adams moved to move the Master Plan hearing to January 4, 2023.
Seconded by Chris Yates.
Motion carried unanimously 6-0-0**

COMPLIANCE HEARING

6. CASE #: PZ16439-101222 – Howe Warehouse Q1, LLC (Owner) & Ashoke Rampuria (Applicant) 2 Howe Drive; PIN #: 002-034-001 – Non-Residential Site Plan Application – Compliance Hearing -To show as-built information for Phase 2 of the 253,914 square foot warehouse building with associated parking and site improvements. Zoned Industrial.

Arnie Rosenblatt read and opened the hearing.

Matt Routhier, PLA, TF Moran, addressed the Board, noting that an as-built plan had been submitted and asking for any comments.

In response to a question from Arnie Rosenblatt, Nic Strong stated that there were no issues with this application.

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The Board had no questions or comments at this time.

**Chris Yates moved to confirm compliance with the conditions to the approval of the Amended Non-Residential Site Plan Review for Howe Warehouse QI, LLC, at 2 Howe Drive, Map 2 Lot 34 Sublot 1 for the operation of Phase 2 of the existing warehouse, subject to the conditions subsequent as noted in the staff report. Seconded by Tom Silvia.
Motion carried unanimously 6-0-0**

7. CASE #: PZ16449-101422 – Napior Rentals LLC (Owners) & NH Custom Builder (Applicants); 104 Route 101A, PIN #: 002-047-002 – Non-Residential Site Plan Application – Compliance Hearing -To confirm compliance with the Planning Board’s approval of April 21, 2021,for a proposed commercial change of use from retail to office on Tax Map Lot 2-47-2. Zoned Commercial.

Arnie Rosenblatt read and opened the case.

Cynthia Dokmo recused herself.

Chad Branon, PE, Fieldstone Land Consultants, stated that, the application for this project presented a couple of concepts for the building. The site has since been built out, paved, striped, and graded. He believes the site is in full compliance and there are no issues with staff’s recommendations.

In response to a question from Arnie Rosenblatt, Nic Strong stated that there were no issues with this application.

Chris Yates stated that the improvements to the property look great.

Tom Quinn asked if landscaping needed to be compliant at this step. Arnie Rosenblatt stated that the Board can make this a condition subsequent. Chad Branon stated that one tree was supposed to be planted in the front, but this has not yet been done. This will be addressed.

**Tom Silvia moved to confirm compliance with the conditions to the approval of the Non-Residential Site Plan Review for NH Custom Builder (Applicant) and Napior Rentals, LLC (Owner) at 104 Route 101A, Map 2 Lot 47 Sublot 2 for the operation of an office building, subject to the conditions subsequent outlined in the Staff Report. Seconded by Chris Yates.
Motion carried unanimously 6-0-0**

Cynthia Dokmo apologized for recusing herself on the first two items on the agenda. She noted that she sits on the Amherst Land Trust that has interest in land that those two items. She will be off the land trust at the end of December and will no longer need to recuse herself. Arnie

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Rosenblatt thanked Cynthia Dokmo but noted that Board members do not generally have to mention why they are recusing themselves.

OTHER BUSINESS:

8. Minutes: September 21, 2022; September 27, 2022; and October 5, 2022

**Tracie Adams moved to approve the meeting minutes of September 21, 2022, as presented. Seconded by Chris Yates
Motion carried unanimously 6-0-0.**

**Tracie Adams moved to approve the meeting minutes of September 27, 2022, as amended [Line 144: change the comma to a period]. Seconded by Tom Quinn.
Motion carried unanimously 6-0-0.**

**Tracie Adams moved to approve the meeting minutes of October 5, 2022, as presented. Seconded by Tom Quinn.
Motion carried unanimously 5-0-1 [C. Dokmo – abstaining].**

9. Any other business that may come before the Board

Tom Silvia asked about the Findings of Fact, in terms of the Board being able to vote on four pages of verbiage without reviewing it first. Arnie Rosenblatt stated that an alternative could be for a Board member to write up the document ahead of time and read it out loud. State statute requires this new step. He stated that he does not believe the Findings of Fact can be circulated ahead of time because it may give the perception that Board members have prejudged the application.

Bill Stoughton suggested that one Board member could be assigned in advance to draft the document, for it to be reviewed at the meeting after being circulated by staff. Arnie Rosenblatt stated that he believes it would be a mistake to do that, as there's still the possibility for prejudgment or influence.

Cynthia Dokmo agreed that this document should not be circulated ahead of time, but the Chair could take a consensus of Board members after each finding, instead of giving a blanket approval. Arnie Rosenblatt stated that he believes this would take a long time and be a huge effort. He will better articulate that Board members should speak up during the reading of the Findings of Fact if there are questions or concerns.

Bill Stoughton suggested a nonpublic session before the next design review hearing, for the Board to review and discuss the advice already given by Town Counsel.

**Bill Stoughton moved to adjourn at 8:50pm. Seconded by Tom Silvia.
Motion carried unanimously 6-0-0.**

TOWN OF AMHERST
Planning Board

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616 Respectfully submitted,

617 Kristan Patenaude

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620 Minutes approved: November 16, 2022