

**AMHERST PLANNING BOARD**  
**Wednesday, November 20, 2019, 7:00 PM**  
**Town Room, Town Hall**  
**MINUTES**

**PRESENT:** Michael Birtwistle, Maria Chao, Christine Gray-Mullen, Chair, Jack Jemsek,  
David Levenstein, Janet McGowan

**ABSENT:** None

**STAFF:** Christine Brestrup, Planning Director  
Pamela Field-Sadler, Administrative Assistant

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**7:05 pm:** Chair Christine Gray-Mullen opened the meeting.

**I. MINUTES**

1. **October 2, 2019** – Ms. McGowan requested Mark Cavanaugh’s comment that Florence Savings Bank (FSB) is concerned that the FSB parking lot could be used for overflow parking by tenants/visitors of the proposed mixed-use building be included as an amendment to the Public Comment section on pg. 10.

Mr. Levenstein made the motion to approve the minutes of October 2, 2019 as amended. Mr. Jemsek seconded the motion.

**VOTE:** 6-0-0 to approve as amended

2. **October 30, 2019**

Mr. Birtwistle made the motion to approve the minutes of October 30, 2019 as written. Ms. McGowan seconded the motion.

**VOTE:** 6-0-0 to approve

**II. PUBLIC COMMENT PERIOD**

Maura Keene, 25 Dennis Drive, shared that at a recent Town Council meeting, the Energy & Climate Action Committee presented their goals with regard to carbon neutrality:

- to reach a 50% reduction below FY2016 levels in town-wide greenhouse gas emissions by 2030
- to achieve an interim goal to meet 25% reductions by 2025
- to achieve an ultimate goal to be carbon neutral no later than 2050
- to be prepared to embrace carbon neutrality as early as 2030 by planning and advocating for state and federal action and taking advantage of technological advances.

Ms. Keene encouraged the Planning Board (Board) to keep these goals in mind when evaluating projects for approval. She reported that the Town Council had affirmed the goals of the ECAC.

Ms. Keene also reported that Laura Draucker, Chair of the ECAC, had expressed concern about renters who pay their own utility bills. She said that the landlords (property owners) need to be encouraged to order energy audits.

**III. PUBLIC HEARING – SITE PLAN REVIEWS AND SPECIAL PERMITS**  
**SPR2020-02 Jonathan Gurfein – Riverside Organics – 555 Belchertown Road**  
*continued from November 6, 2019*

Request Site Plan Review approval to construct and operate a Marijuana Product Manufacturer & Marijuana Micro-business under Section 3.363.5 of the Zoning Bylaw (Map 18D, Parcel 2, PRP zoning district)

**7:13 p.m.:** Ms. Gray-Mullen explained this public hearing is continued from November 6, 2019.

Ms. Gray-Mullen welcomed Jonathan Gurfein back and invited him to provide any updates regarding his project since the last meeting. Mr. Gurfein explained he has submitted electronic documents including a Management Plan, Standard Operating Procedures and updated drawings to the Planning Department. Ms. Brestrup confirmed she would send the documents to the Board and have paper copies available at the next meeting.

Mr. Gurfein reported that Fire Prevention Officer Mike Roy and Assistant Chief Jeff Olmstead completed a site visit and will submit their report to Ms. Brestrup. Overall, from a fire perspective, the site visit was satisfactory with the exception of one door; there was a question about whether it should be a fire door equipped with a push bar. Mr. Gurfein was directed to work with the building inspectors who will make the decision regarding the door. Mr. Gurfein also said he would add an emergency “exit only” door from the greenhouse.

Mr. Gurfein reported, per the Conservation Commission, the compost pile proposed for the northwest side near the parking spaces needs to be eliminated. The remaining compost on the south side of the existing structure will be moved eastward to be outside of the 100’ buffer zone. Mr. Gurfein assured the Board there is enough room in the new location for the compost pile. Mr. Gurfein further explained he now plans to compost the soil from his operation; materials, such as hydrated lime, will be added to the compost so the soil could be reused.

Mr. Gurfein shared he has communicated with Town Engineer Jason Skeels regarding the roof runoff. Mr. Gurfein reported that Mr. Skeels is satisfied that the proposed cistern is sufficient to recover and hold the roof runoff. Additionally, Mr. Gurfein has invited Mr. Skeels to perform a site visit at the property. Ms. Brestrup stated she is

waiting for Mr. Skeels to submit a final response regarding the layout and Stormwater Management Plan.

Mr. Gurfein explained he is proposing signage that meets the local and Cannabis Control Commission (CCC) requirements. The signs will serve to notify people that the property is private and should not be entered, as well as to notify them that cameras are in use.

Mr. Gurfein gave the Board a catalogue cut for the exterior lighting. The proposed exterior lights are pole mounted LED shoebox style with 150W bulbs and 4000K light color.

Mr. Gurfein reported that the Conservation Commission has issued an Order of Conditions. Mr. Gurfein will file the order with the Hampshire County Registry of Deeds.

The following was noted while addressing questions and comments from the Board:

- The compost pile is not essential, but Mr. Gurfein would like to rejuvenate the composted soil for reuse in order to save costs.
- The Board could request to see any signage that is not required by local or CCC regulations. Mr. Gurfein is agreeable to such a request.
- Mr. Skeels has requested that Mr. Gurfein provide him with stormwater runoff calculations.
- The Board reviewed property deeds that demonstrate an easement exists; however, the location language is vague. Ms. Brestrup believes a map showing the easement is non-existent. Mr. Gurfein confirmed there are no obstacles in his proposed plan that should impede upon the easement.
- Ms. Brestrup reported that the trees that were cut without a permit or approval from the town couldn't be touched without additional approvals from the Conservation Commission. The Conservation Commission has determined that leaving the site as is will provide the least disturbance to the wetland. Mr. Gurfein added that after the completion of the site work and site stabilization, boulders will be placed at the outer limit of the cut tree debris to demarcate the wetland area.
- The Zoning Bylaw requires documentation that demonstrates that an application for the facility to obtain the appropriate state license has been submitted. Mr. Gurfein will submit proof to the Board that he is in the process of obtaining a license from the state.

### **Public Comment**

No one from the public came forward to offer comments.

Mr. Levenstein made the motion to continue the public hearing for SPR2020-02 Jonathan Gurfein – Riverside Organics – 555 Belchertown Road to December 4, 2019 at 7:15 pm. Mr. Jemsek seconded.

**VOTE:** 6-0-0 to continue

**SPR 2019-08 – Javier Campos of Adams & Ruxton for Bank of America**

**360 College Street** (*continued from July 24, 2019, September 18, 2019 and November 6, 2019*)

Request Site Plan Review approval to install new light posts and fixtures to provide better illumination, safety & security for Bank of America ATM (COM Zoning District, Map 15A, Parcel 28)

**7:38 p.m.** Ms. Gray-Mullen explained this Public Hearing is continued from July 24, 2019, September 18, 2019 and November 6, 2019. Ms. Gray-Mullen reported the applicant has requested this public hearing be continued to December 4, 2019.

Mr. Birtwistle made the motion to continue the public hearing for SPR 2019-08 – Javier Campos of Adams & Ruxton for Bank of America - 360 College Street to the Planning Board meeting scheduled for December 4, 2019 at 7:30 p.m. Ms. McGowan seconded.

**VOTE:** 6-0-0 to continue

**IV. PUBLIC MEETING – SUBDIVISION**

**Amherst Hills Subdivision – SUB 1989-13**

Request by residents of Amherst Hills Subdivision that the Planning Board rescind the release of lots that were released by the Planning Board on May 1, 2019, from the Approval with Covenant Contract, dated July 2, 2003, recorded in Hampshire County Registry of Deeds, Book 7555, Page 61.

Attorney Tom Reidy, Bacon and Wilson, introduced himself as the representative for the Amherst Hills Subdivision petitioners. Mr. Reidy reminded everyone that during their meeting on October 30, 2019 the Board approved a motion to request the Building Commissioner to refrain from the issuance of any Building Permits and the Department of Public Works to refrain from issuing any water and sewer connection permits for Amherst Hills Subdivision Lots 1, 2, 5, 6, 7, 8, 29, 39 and 41 until the Board had the opportunity to make a more thorough determination regarding the rescinding of lot releases, as well as to update the Performance Bond based on a new cost estimate provided by the Town Engineer. The Board had further agreed to file a notice of the vote with the Hampshire County Registry of Deeds.

Mr. Reidy continued by saying that in terms of updating the Performance Bond, if the cost for the top coat is \$288,000 and the balance of work necessary to bring the subdivision up to town standard is \$641,000, then the security bond should be increased to total \$930,000. Additionally, Mr. Reidy suggested the Board should determine if they will continue the moratorium for the issuance of permits, or if they will rescind the release of the lots as requested.

Town Engineer Jason Skeels reported that he had determined the work necessary to bring the Amherst Hills Subdivision to standard and he had revised the Completion Estimate for that work based on the MA DOT itemized cost statewide average. The

estimate shows to mill and repave the areas that have deteriorated would cost about \$200,000. Other items and deferred maintenance on the completion list are necessary to bring the area to the standard by which the town could accept the roads.

When asked about the significant increase in the cost estimate, Mr. Skeels explained the original cost estimate from 2013 was \$600,000; Tofino completed some tasks, but others were not. Tofino also removed some items such as the Linden Ridge cul-de-sac from the list. At this point, the base coat and the asphalt layer have extensively deteriorated and need to be replaced which is a large portion of the cost. The security agreement was for the top coat only. Ms. Brestrup pointed out that if Tofino took care of the work himself, the cost would be less because the town must meet the required wage rates and a private entity does not.

Mr. Skeels reported that to date the potholes have been patched and mastic has been installed around the protruding manholes. Pre-cast concrete tops are on order to replace ones that have failed. Mr. Skeels confirmed once this work is complete the town will be able to safely plow the roads.

Ms. Brestrup reported she has emailed the developer to see if they intended to get a third-party cost estimate and to ask if they would be willing to enter into a new third-party security agreement. Ms. Brestrup, through Town Attorney Joel Bard, has heard from Michael Pill, the developer's attorney; however, Mr. Pill did not provide answers regarding her questions. Mr. Bard has explained it is the developer's responsibility to determine and offer the form of security for completion of work in accordance with state law.

Ms. Brestrup continued saying the developer had a covenant which became void for those lots when the Board released the lots. However, the request to withhold building permits and water/sewer connections remains active and on file with the Hampshire County Registry of Deeds. It would be a mistake if the developer sold these lots as buildable.

The developer has filed a lawsuit against the residents seeking arbitration or mediation. Ms. Brestrup reported that Mr. Bard recommends, in light of the lawsuit and the action to restrict permits, the Board refrain from rescinding the release of the lots at this time. The Board can revisit the request in the future if it chooses. Ms. Brestrup also explained that the town could not force the developer to sign another agreement.

Ms. Gray-Mullen asked Mr. Skeels to provide an update regarding the repairs to the road and the town's ability to plow for the next meeting.

#### **PUBLIC COMMENT**

Jim Masteralexis – 35 Linden Ridge Rd.; Alexandra Meliou – 73 Linden Ridge Rd.; Blake Spirko – 53 Concord Way; John Kennedy – 36 Linden Ridge Rd.; Joan

Huntley – 16 Hawthorn Rd.; John Kennedy – 36 Linden Ridge Rd.; Brian Scully – 22 Hawthorn Rd. shared the following during the Public Comment period:

- In addition to the permitting restrictions, please consider increasing the security bond. Currently it is estimated to cost approximately \$930,000 to repair and finish the subdivision roads, however, the security in place only guarantees the top base of the roads.
- The residents are not angry; they are worried and wish to be treated fairly. The residents paid for their homes with the understanding the roads would be completed. The developer's lack of communication is provoking fear in the residents.
- A resident had to take her house off the market due to the situation.
- This is a small town and it makes sense to operate in good faith; however, there is evidence the developer is not operating in good faith. The Planning Board is mandated to supervise the construction of subdivisions. Raising the security bond will provide a layer of protection for the residents. Ms. Brestrup responded to this comment explaining she did not believe the Board could unilaterally increase the security bond; the bond is a 3-party agreement signed by the developer, the bank and the Board.
- What is happening at Amherst Hills subdivision is not isolated; the same thing is happening at Kestrel and Hop Brook, and another area in Amherst developed by the same developer is having this experience too.
- Residents bought their homes expecting the roads would be completed and taken over by the town. In the event the town did not take ownership of the roads, the expectation was the residents would be required to contribute to the maintenance.
- The roads have deteriorated because they only consist of a base coat; they do not have the sealing topcoat. The cost to finish and repair the roads will continue to increase the longer we wait.

Mr. Reidy stated the authority of the Board comes from MGL ch.41 sec.81U, but it also comes from the approval itself. In this case, the application approval is based on plans that include finished roads. Mr. Reidy is of the opinion the Board does have a strong argument to require an increase of the security bond based on language included in the 3-party agreement. Mr. Reidy also agrees with Mr. Bard that the Board could seek a separate agreement based on sec.81U despite the lots having been released. Mr. Reidy suggested the Board rescind the release of the lots to gain advantage and put some additional security in place. In doing so, if the developer walks away without fulfilling his obligation, the financial responsibility to repair and finish the roads will not fall on the residents or the town. Mr. Reidy also suggested the Board continue this discussion at a future meeting allowing for further discussion with Mr. Bard.

Ms. Brestrup agreed to consult with Mr. Bard regarding the Millbury vs. Fox Gate LLC case, as well as any significance of the finish date of June 30, 2019. Ms. McGowan called attention to language in section 6 paragraph 3 of the Performance Secured By Lender's Agreement and requested Mr. Bard comment on this too. Ms.

McGowan is of the opinion that this language provides the authority for the Board to require the developer to provide additional security.

Mr. Birtwistle referred to sec. VI .A. Basic Requirements of the town’s subdivision regulations. Mr. Birtwistle asked why the security bond not “...be released until all streets shall have been in place over at least one winter (December 1 to April 15)...” and what exactly does the word “streets” reflect in this section. Mr. Birtwistle also asked if the “Town of Amherst Construction Standard” of roadways is a written document. In answering Mr. Birtwistle, Mr. Skeels said there are Town of Amherst Construction Standards dated 1975 and are currently in the process of being updated. Mr. Skeels explained winter is tough on roads and waiting through 1 winter prior to the release of the security bond is a loose guarantee the construction will uphold.

Mr. Birtwistle also called attention to sec. VIII .C.4. Mr. Birtwistle is of the opinion this section ascertains the developer is responsible to insure the approved road plans are implemented.

In answering a question from Ms. Gray-Mullen, Mr. Skeels explained that when developing a cost estimate for road construction, he follows the requirements of the town’s subdivision regulations and the approved definitive subdivision plan. He shared that he believes the last road accepted by the town was a small development off Snell St. in 2013 or 2015.

The Board agreed to continue this discussion on December 18, 2019 at 7:05 p.m.

## **V. PLANNING & ZONING**

### **A. ZSC Report**

Ms. Chao reported the ZSC continues to discuss and explore ways to increase the affordable housing stock in Amherst. The discussion included Inclusionary Zoning and the Missing Middle Housing.

### **B. Public Comment about ZSC Report – None**

### **C. Other - None**

## **VI. OLD BUSINESS**

### **A. Topics not reasonably anticipated 48 hours prior to the meeting**

#### **1. Signing of Decisions**

#### **SPR 2019-07 & SPP 2019-04 – Amir Mikhchi – South East Street Court Housing, 133 & 143 South East Street**

The Board signed the decisions for SPR 2019-07 and SPP 2019-04 as presented.

## **VII. NEW BUSINESS**

### **A. FEMA Flood Mapping Project – Notice of Appeal Period from November 22, 2019 to January 20, 2020**

Ms. Brestrup reported FEMA has sent a letter stating the 90-day appeal period begins November 22, 2019 and ends February 20, 2020. Making an appeal is a

serious matter requiring professional support. Appeals will be received in the Planning Department and can be forwarded to our consultant at AECOM to determine the merit of the appeal and to forward to FEMA if necessary. The maps are available on the town website.

**B. Topics not reasonably anticipated 48 hours prior to the meeting - None**

**VIII. FORM A (ANR) SUBDIVISION APPLICATIONS**

**A. ANR 2020-09 – Map 15C Parcels 3 and 4, 133 and 134 Southeast Street**

Upon the Board’s authorization, Ms. Gray-Mullen signed ANR 2020-09 relating to property located at 133 and 134 Southeast Street.

**IX. UPCOMING ZBA APPLICATIONS - None**

**X. UPCOMING SPP/SPR/SUB APPLICATIONS**

Ms. Brestrup reported that Enterprise Rent-a-Car would come before the Board on December 4, 2019 to request a Site Plan Review to construct a small carport style structure behind the building in order to be protected by the weather while preparing cars for rental.

**XI. PLANNING BOARD COMMITTEE & LIAISON REPORTS**

**Pioneer Valley Planning Commission - Jack Jemsek and Christine Gray-Mullen**

Mr. Jemsek shared there has not been a meeting since the last report and he hasn’t been notified of the December meeting date yet.

**Community Preservation Act Committee - Michael Birtwistle**

Mr. Birtwistle reported that CPAC has met twice during the fall. CPAC has approved approximately \$260,000 of next year’s grant funds needed to match the \$400,000 state grant received to build a playground at Kendrick Park.

**Agricultural Commission – David Levenstein: None**

**Design Review Board - Michael Birtwistle: None**

**Zoning Subcommittee – Provided earlier in the meeting.**

**XII. REPORT OF THE CHAIR – No Report**

**XIII. REPORT OF THE STAFF – No Report**

Prior to adjournment, Ms. McGowan asked about a meeting regarding 40R. Ms. Brestrup shared she believes that meeting is scheduled for December 19, 2019. The recommendation is to consider developing a 40R District in areas of the downtown. This would be in the form of an overlay district that provides opportunity to developers to choose a small location for consideration. The consultants are eager to wrap up their work and submit their recommendations and plans. The ZSC and the Board will have the opportunity to consider the recommendation and consider if this is an idea to pursue. Ms. McGowan emphasized the importance of notifying downtown residents of this meeting.

Mr. Levenstein suggested the Board refer proposed Bill 3507 to Town Council for their knowledge and consideration. Ms. Brestrup agreed to draft a memo to the Town



Council regarding the proposed bill. Ms. Gray-Mullen is meeting with Mindy Domb and would like to discuss the proposed bill on December 18, 2019. Mr. Jemsek shared that the PVPC has also discussed the proposed bill.

Ms. Gray-Mullen reported she and Ms. Brestrup met with the Town Manager and others to discuss the updating of the Master Plan and the implications to staff workloads. Ms. Brestrup shared the idea for the Master Plan is to just bring it up to date at this time, and complete a rewrite around 2030. CRC Chair Mandi Jo Hanneke and Asst. Town Manager Dave Ziomek hope to attend the Board meeting on December 18, 2019 to discuss this item.

Ms. Brestrup also reported there is a plan to redo the Zoning Bylaw (Bylaw); this project is expected to need at least a year to complete. The effort is to clean the Bylaw up by removing areas that are conflicting and making amendments supported by the Board.

Ms. McGowan reported she has spoken with two District Councilors and attended a CRC meeting and her opinion is they are looking to the Board for direction regarding zoning and the Master Plan update. Many discussions are taking place and Ms. McGowan suggests the Board determine what their role will look like. Mr. Levenstein agreed that the Board should establish its own priorities.

Ms. Brestrup stated the Charter calls for the Town Council to adopt the Master Plan; Town Council is looking to the Board to update and approve the Master Plan so they can adopt it. Town Council wants to ensure the Master Plan includes relevant ideas and information such as climate change, sustainability and energy conservation. Town Council will send their ideas and opinions to the Board.

The Board had a brief discussion regarding the need to establish a Board subcommittee to do the work, or if funding is available to hire a consultant if needed. Ms. Gray-Mullen suggested Board members read the Master Plan and make note of areas that need to be updated.

Ms. McGowan reiterated her opinion that updating the Master Plan and rewriting the Bylaw is a substantial amount of work requiring a lot of Board and staff time, and the Board should consider defining their role specifically. Ms. Gray-Mullen stated the Board will guide staff in the Master Plan work, and the Building Commissioner, who has experience in this area, will lead the recodification of the Bylaw. Staff will be responsible for the bulk of the work and will determine if a consultant is needed.

Ms. McGowan noted the Master Plan includes 14 pages of strategies and suggested a matrix depicting the progress of each strategy would be a great resource. Ms. Brestrup agreed that understanding a strategy's status is difficult, but her opinion is that creating a matrix could be a challenge. Ms. Brestrup will send Board members a Master Plan presentation she created.

**XIV. ADJOURNMENT**

The meeting adjourned at 9:15 p.m.

Respectfully submitted:

Approved:

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Pamela Field-Sadler  
Administrative Asst.

\_\_\_\_\_  
Christine Gray-Mullen, Chair

DATE: \_\_\_\_\_