



TOWN OF WARE

Planning & Community Development

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Planning Board

Meeting Minutes from

Thursday, August 6, 2020

Select Board Room, Town Hall

Planning Board Members Present:

Rick Starodoj (Chairman), Josh Kusnierz, Edward Murphy III, Joseph Knight, and Kenneth Crosby

Staff Present:

Rebekah DeCoursey (Director), Jack Carolan (Assistant)

Public in Attendance:

Elizabeth Hancock, Karen Hubacz Kiley, Dale Kiley, Tony Swiercz

PLEDGE OF ALLEGIANCE

Chairman R. Starodoj called the meeting to order at 7:00 pm and the Board led the Pledge of Allegiance.

Administrative

Approval of minutes from July 16, 2020

Motion by J. Kusnierz to approve the minutes. Seconded by E. Murphy. All in favor.

Approved 4-0

Old Business: Kulas Farm-Babcock Tavern Road

J. Knight recused himself.

This is a continuation of the discussion regarding the request from the Kulas farm to consider if Phase III of earth removal is incidental to the agriculture of the farm and whether it may be considered an exemption, under M.G.L Chapter 40A Section 3. If the Board feels it cannot be considered an agricultural exemption, the property owner will be asked to pursue a Special Permit for earth removal.

Chairman R. Starodoj shared some of his findings regarding some information from the state Agriculture website. One acres yields about 2 and ¼ tons of hay worth about \$166 per ton, which would roughly calculate to \$350 per acre per cutting. Mr. Knight stated that the farm gets 3-4 cuts a year, and that the price of each cut is difference. Mr. Starodoj calculated rough

numbers for the income of the hay that would be produced around \$10,000. About 20,000 cubic yard of earth material is being removed a year on average, which Karen Hubacz-Kiley agreed with. She stated they calculate the loads by ton of earth removal. One ton is roughly 1.5 yards. The price can vary per ton depending on the material, how far it needs to travel, and if it needs to be processed. Roughly 30,000 tons are removed each year is removed based on these numbers. At .50-.75 per ton, the rough value of the material removed each year is \$15,000-\$22,500. J. Knight expressed that once the land is ready to hay, the value of the land is infinite with harvests multiple times a year. Chairman stated that the decision they were making was based looking at the value now for the area of Phase III. The haying will not begin to occur until the earth is removed, this land was not previously used for haying as it was previously forested. The farm currently farms hay, corn, and sells cattle.

D. Kiley addressed the Chairman stating that the Board should be looking at three factors, as discussed at the previous meeting. Looking at the intensity of the use, the incidental use, compared to what will be left behind. The property owners are looking to remove a hillside and create a smooth transition hayfield. K. Hubacz-Kiley, Bond Sand & Gravel, stated that Bond has always considered this as a surface mining operation and not an earth removal operation. Bond is not taking out all the good material possible. The farm is able to keep operating with fields that are easy to hay. If Bond took out all the material, the property would be left with steep embankments that would be unable to hay. They have worked with Mrs. Kulas for ten years on this reclamation project. K. Hubacz-Kiley expressed she has always worked to coordinate with the Board and provide them with whatever they need. Chairman noted that Mrs. Kiley has always been cooperative.

Issues were raised regarding the inclusion of 240 Babcock Tavern Road (Mrs. Knight) into the operation given setback requirements. A minimum setback is required between an earth removal operation and the abutters. This is unique situation where the abutting property also would like the land included in the regrading and reclamation. Crossing the property line was of concern. One has an agricultural exemption while the other use is single family residential. Mrs. Knight does own the two properties, her home is on one in her name and the farm is in a trust. K. Crosby asked about a buffer zone between agriculture and residential uses. There is not between uses, but there is a 50' buffer with earth removal operations. Chairman stated if both parties are working towards an aesthetically clean landscape with shared common interest (hay fields) it seems worthwhile to work to an agreeable proposal that leaves all the parties involved happy. K. Hubacz-Kiley stated that in other towns they have had similar projects, crossing property lines (Oakham and North Brookfield), Bond have a legal agreement drawn up between the two parties and it is submitted to the Special Permitting Board. The titles to the two properties are in held in different names. Mrs. Knight's home is not in Chapter land. There was discussion of using an ANR plan to move lot lines.

E. Hancock stated that the two properties are very clear. The farm is in a life estate, with J. Knight and Mrs. Knight. The residential property is held in a separate title. If there is over 1,000 cubic yards of material being removed from a single property, the Zoning Bylaw

requires a Special Permit.. E. Hancock the Board is there to uphold the law, and should not make exceptions merely for aesthetics. If 1,005 cubic yards of material are removed from the property then she would expect the Board to require an earth removal permit from 240 Babcock Tavern Road. E. Hancock asked if any material had been removed from 240 Babcock Tavern Road thus far in the operation. K. Hubacz-Kiley stated that no material had been removed from Mrs. Knight's property.

J. Kusinerz asked if Special Permit for earth removal was granted, how deep could the operation go regarding removal of material. When a earth removal permit is issued, the project typically takes out all the material possible for the most project. In Ware, this is 10' from the high water table. If there is a Special Permit, they could put a condition of this depth. K. Hubacz-Kiley stated there is a substantial dip in the land behind Mrs. Knight's property. She stated this area, there would most likely be more grading in that area than removal out of any work proposed, but she would have to speak to the engineer on the specifics. J. Knight stated that they could possibly level out the land and possibly not need to remove any material from Mrs. Knight's farm. The cut and fill look to even out. The Director showed several pictures she had taken in the spring from Babcock Tavern Road. The trees have been removed, the land is clear but not stumped.

The Board scheduled a site visit for Sunday August 16, 2020. The site visit will be posted.

E. Hancock asked Mr. Knight to share the income history of the farm. Chairman and Vice Chairman stated that information cannot be requested. She stated that when you fill out the Chapter Land application each year, you have to include the income from the farm. Chairman stated the area for this project isn't the entire farm, it is only the area of the project. The Director said that she requested this information from the Assessor's office and was informed it is not public information. E. Hancock consulted a public records attorney in Boston and had since been provided the information. The Chairman then agreed the information could be shared, so long as it wasn't an income tax return. E. Hancock stated that the farm made \$12,000 in fiscal year 2019, and \$16,000 in 2020. She stated gravel income from back in 2010: \$1.50 per yard. In 29 days that year, \$9,784 was paid to the farm. Hubacz-Kiley stated that the previous company the removed that earth left a mess and Bond had to do a significant amount of work to repair the damage. The first two phases of the project were necessary to fix the damage. Phase II was needed to transition the grade into Phase I. Phase III is completely new. E. Hancock expressed distaste for the entire project with the project going back to 2010. Chairman explained that back then, the Planning Board was satisfied with the documentation the farm provided at that time. They were working with the farmer to try to solve a problem and not create a bigger one that would include more expenses to the farmer. Farming is not an extremely profitable operation, the Board has always tried to work with and help the farmers in Town. The Board mentioned other uses for the property that could be established: a subdivision, a solar field, and earth removal operation that removed more earth than what is proposed. E. Hancock asked what guarantee was given that this operation would indeed be hayfields. The Board felt that the precedent has been set with the hayfield created

in Phase I. E. Hancock expressed concern of the outcome ten years into the future. The meeting continued to discuss different thresholds of the Henry case as well as other concerns E. Hancock wanted the Board to consider in their discussion.

Tony Swiercz, resident, brought up three matters that he was concerned about: the predication, the timeline, and the money earned from the project. Back in 2010, the Board's decision for the exemption for a Special Permit for earth removal was in contradiction of Town Counsel's opinion. The timeline: this project has been ongoing for ten years. The money: the attorney stated that the gravel is worth about \$1.50 a yard, there seems still be a question of what is incidental to agriculture. The total income from the farm is less than what the income will be from a portion of the farm (earth removal).

E. Hancock mentioned the 2010 documentation from the Grassland Reserve Program and asked the Board to look into documentation from the USDA on the status of the farm. She asked why the Board didn't mandate this information. Chairman stated that back in 2010, there was no support staff to the Board other than administration. At the time, the Board took Town Counsel's opinion into consideration and made a decision based on all the facts they had at the time.

The discussion was tabled until the next meeting on August 20, 2020.

J. Knight Rejoined the board at 8:10 pm.

New Business

- Chairman recommended Subdivision inspections. E. Murphy offered his time to help with inspection.
- Penny Brook Estates – Coldbrook Drive. Was previously brought up to standards but never proceeded forward with acceptance.
- The bank's attorney working on Wildflower Drive is corresponding with town counsel to move towards acceptance.
- Aim for the next Town Meeting for some proposed definitions. Director will bring proposed language to the next meeting.

Town Planner Updates

- Dog Park is complete- ribbon cutting will be held Friday 8/7/2020 at 5 pm.
- Osborne Road subdivision application has been submitted and a public hearing will be scheduled for early October 2020.
- Couture and FT Smith solar projects are scheduled for the next board meeting on 8/20/2020
- Church Street solar project. Forefront Solar is currently working at Canadian Tree on Belchertown Road.

Motion by J. Kusnierz to adjourn the meeting at 8:19 pm. Seconded by E Murphy. All in favor. Approved 5-0

Next meeting is scheduled for 8/20/2020 at 7 pm.

Minutes from August 6, 2020

Respectfully submitted by,

Jack Carolan- Department Assistant

Minutes Approved on: _____

Starodoj _____

Kusnierz _____

Knight _____

Murphy _____

Crosby _____