



TOWN OF WARE

Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

Planning Board

Meeting Minutes from

Thursday, January 19, 2023

Selectboard Meeting Room

126 Main Street, Ware MA 01082

Planning Board Members in Attendance:

Rick Starodoj	Chair
Nancy Talbot	Vice Chair
Ken Crosby	
Ed Murphy	
Chris DiMarzio	
Elizabeth Hancock	Alternate

Staff Members in Attendance:

Rob Watchilla	PCD Department Director
Kristen Jacobsen	PCD Dept. Admin. Assistant
Anna Marques	Building Commissioner, Zoning Enforcement Officer

Members of the Public in Attendance:

Donald Frydryk, Sherman & Frydryk	Sadie Milner
Karen Hubaz, Bond Construction	
Kathleen Knight	
Jennifer Knight	

PLEDGE OF ALLEGIANCE

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

ADMINISTRATIVE

Approval of Minutes from January 5, 2022 & December 15, 2022

Motion by N. Talbot to approve the January 5, 2022, meeting minutes as submitted with one correction to the name of Brian Winslow. **Seconded** by E. Murphy. **Discussion:** None

R. Starodoj		Aye
N. Talbot		Aye
E. Murphy		Aye

K. Crosby		Aye
C. DiMarzio		Aye
All in favor. Approved 5/0/0.		

Motion by N. Talbot to approve the December 15, 2022, meeting minutes with corrections to pg. 11. And areas where E. Murphy was marked as absent. **Seconded** by E. Murphy. **Discussion:** None

R. Starodoj		Aye
N. Talbot		Aye
E. Murphy		Aye
K. Crosby		Abstain
C. DiMarzio		Aye
Four in favor. One Abstention Approved 4/0/1.		

Public Hearing

7:05pm: SP-2022-10 (Bond Construction Corporation) [CONTINUED]

Applicant is requesting a Special Permit to remove earth materials at 219 Babcock Tavern Road. Deeded in the Hampshire County Registry of Deeds, Book 12833, Page 207, and Book 07177, Page 314. Assessor's Parcel 4-0-14 & 4-14-2. Zoned: Rural Residential (RR).

R. Starodoj reopened the Public Hearing

E. Hancock recused herself.

D. Frydryk presented the revised plans for the earth removal project at 219 Babcock Tavern Road.

These revisions can be found on pages 7 & 8 of the meeting packet.

- Updated well measurements on the four monitoring wells.
- Limit of work changed on the southerly side to maintain a 50-foot offset from the property line.
- Estimated volume of removal as been reduced to 189,000 cubic yards.
- The line type for the limit of work has been changed and labeled.
- Erosion control has been proposed on the easterly side and shown on plans.
- Four cross sections have been included.
- The well and septic for 240 Babcock Tavern Rd has been included.
- The home of the southerly abutter has been added based on MassGIS data (no record of the well and septic for that property could be found)
- Additional topography has been added (outside the limit of work)
- The applicant proposes to fuel on site equipment at the northerly end of the proposed limit of work.
- For sites that do not have stormwater leaving the site to waters of the USA, no EPA filings are necessary. If needed the applicant will prepare and submit the required filing.

K. Crosby inquired about the grading on the road. The board and D. Frydryk discussed the grading and the refueling of machinery. The only refueling that would be done on site would be the machinery and not the trucks used to haul.

K. Crosby asked about the wells. D. Frydryk answered that wells 1,2,& 3 were dry. K. Crosby and K. Hubaz discussed the groundwater found in well 4.

R. Watchilla inquired as to the type of permanent markers that would be used to delineate the project boundary. K. Hubaz answered that once the project gets within 100' of the boundary permanent pins would be installed and would be flagged until that time.

R. Starodoj asked if any board members had further questions and when none arose opened up questions to the audience.

E. Hancock spoke addressing the SWPPP*, the cease-and-desist order which was issued 9/19/19, rescinded on 9/23/19. R. Starodoj spoke saying that as long as the trees weren't being stumped it was not disturbing the land and would look at the cutting of trees differently from stumping it out. E. Hancock and the board discussed when a SWPPP would be called for. The board D. Frydryk discussed that they do not anticipate storm water leaving the site, if they do need to file an SWPPP they will do so. K. Hubaz spoke stating she would file any paperwork she needed to regarding any environmental issues. K. Hubaz stated she had met with a member of the Conservation Commission at the site and the individual did not say there was any additional paperwork they needed to file. R. Watchilla clarified that K. Hubaz was referring to Conservation Agent J. Prenosil. E. Hancock and D. Frydryk discussed the request made by J. Prenosil to add the wetlands area onto the plans.

E. Hancock discussed the Massachusetts Erosion Control Guidelines for Urban Planners*. R. Starodoj discussed his thoughts on the tree removal of the area. K. Hubaz discussed the trees saying they were pine trees on sandy soil and even though she didn't have anything to do with the initial tree removal it was a safety issue as the trees did not have large root balls. She went on to say they are not stripping the entire area only stripping and stumping the areas they are going to mine. R. Starodoj spoke about the current brush growth and how it helps stabilize the soil. C. DiMarzio stated if it weren't an earth removal permit they would have to remove the trees as they so choose and would have the right to harvest the natural resource on their property. K. Knight spoke of having a tree fall on her barn and another hit the side of the garage. Comments from her insurance agent prompted her to remove the trees. R. Starodoj discussed her reasons for removing the trees. E. Hancock spoke of a site walk performed on the property in October 2019*.

E. Hancock spoke about the trees being used as a marker between the proposed phase II and phase III project areas*. R. Starodoj added that although the trees were trimmed down the roots and stumps are still there and are an indicator of where the line is. E. Hancock and R. Starodoj discussed the trimming down of the trees, R. Starodoj said there was no way of preventing them from taking trees down.

E. Hancock spoke about an email from 5/5/2020* and a Planning Board Meeting 8/6/2020* R. Starodoj stated he believed that was rescinded. A. Marques spoke stating a tree was being used as a visual reference point and they have pictures of in their records. As far as the access road it was not for the removal but to get to the higher elevation. E. Hancock stated she was not made aware of this. A. Marques said she did provide the information to whomever requested it.

E. Hancock spoke regarding Bond Construction being noted as the applicant on the Special Permit Application and cited an email from 10/14/2020*

E. Hancock discussed an email from town consul which said the Planning Board vote was invalid and the only person who can decide that are the owners of the property. The board and E. Hancock discussed the nature of the applicant being Bond Construction on behalf of the property owner. R. Watchilla stated K. Knight did submit a new landowner authorization form including both 219 and 240 Babcock Tavern Road and authorizing Bond as an applicant. R. Starodoj proposed of having the Kulas Life Estate as the Applicant (and Bond Construction). E. Hancock said that should satisfy the matter. The board and E. Hancock discussed the permit staying with the land and its control by the owner.

E. Hancock discussed the need to close out Phase II. The board and K. Hubaz spoke about how that portion is has piles of loam there and the trucks are using it to turn around and the areas of banking have had loam spread.

K. Hubaz and K. Crosby discussed the volume being carried by the trucks and the measurements of weight.

E. Hancock spoke about a comment made by J. Kusnierz during a site walk of the property after she had voiced her concerns. J. Kusnierz suggested she sell her home. E. Hancock discussed the drop in property value of homes abutting gravel removal pits.*

J. Knight and R. Starodoj discussed the purpose of the gravel removal with J. Knight saying its ultimate purpose was to make the farmland more profitable. R. Starodoj questioned if that was the intent.

E. Hancock spoke of comments made by K. Hubaz during the 12/1/22 Planning Board Meeting*. E. Hancock questioned the duration of the project and sought clarification on the timeline. C. DiMarzio spoke about the earth removal permit and if they can be compliant with the conditions. He went on to discuss how the ultimate use of a property has not been asked of other earth removal permit holders and is not a concern. R. Starodoj spoke of the concerns of others regarding the use of the land, he further discussed the financial toll running a farm takes and what it costs to maintain a property of that nature. R. Starodoj discussed that the money coming from the gravel operation is a way to maintain property in an open space and encourages it not to be developed. R. Starodoj asked what other type of use E. Hancock would like to see on that property. E. Hancock questioned what Mrs. Knight wanted from the project. R. Starodoj responded saying Bond is speaking for Mrs. Knight and they are asking for gravel removal to have a field at the specified level. E. Hancock discussed the timeline of the project and asked if Mrs. Knight wanted to wait 15+ years to have the project completed. R. Starodoj said it would be based on the market for the gravel. E. Hancock discussed the history of the earth removal on her father's property and her concerns about the future of the project. R. Starodoj spoke saying he could not speak to what could happen in the future, the regulations and tools in place leaves it to future board members and control officers to control that. C. DiMarzio spoke about the bonding and protections in place to protect against the issues she has mentioned.

C. DiMarzio sought clarification on E. Hancock's wishes. He discussed the project and that he appreciates her concerns and that the board was acting upon a permit for a commercial gravel pit operation and that is their primary focus. R. Starodoj stated there is not a gravel permit currently issued that has a final timeline. C. DiMarzio said as they move forward he would be interested to hear what Hancock's concerns are regarding buffering, hours of operation or things of that nature. E. Hancock stated her primary desire is to have a timeline for the project, to have no work done on the weekends. K. Hubaz added that they haven't removed gravel on the weekends and discussed that they do refuel and do maintenance on the equipment during that time if necessary and possibly grading.

E. Hancock stated it was mostly the beeping noise and inquired if it could be turned off. K. Hubaz answered that they are mandated to have the back up alarms. R. Starodoj stated they can put it as a condition that they not operate machines with them during certain hours. K. Crosby asked if the material was being processed onsite. K. Hubaz answered that they only screen the material there.

N. Tabot asked for any remaining comments from E. Hancock. E. Hancock inquired about limiting the hours of operation. The board and K. Hubaz discussed the potential hours, K. Hubaz said the final truck leaves by 3pm and the first arrives by 7am. E. Hancock discussed the noise produced by the trucks and would prefer to have them from 8am-4pm. The board discussed three hours of 7am-4pm M-F. E. Hancock asked for some screening at the buffer zone and asked for trees to be planted. K. Knight said some of the remaining trees are 12' tall. The board discussed the conditions of the buffer zone.

The board and K. Hubaz discussed the equipment there and where the material is processed and the timeframe of selling it.

E. Hancock read a statement from her notes (page 5 2nd paragraph) *

C. DiMarzio discussed the gravel operation near Beaver Lake.

R. Starodoj & K. Crosby asked if there were new unheard points to be discussed.

E. Hancock read a statement about free speech*

R. Starodoj stated what happened before is not relevant to this permit. E. Hancock disagreed and continued reading her statement. E. Hancock sought to read the history of the project. R. Starodoj declined stating it did not concern this permit and is not new information. R. Starodoj stated it is not Phase III it is a gravel removal permit. C. DiMarzio spoke saying if there was proof of negligence via police records that could be presented. R. Watchilla clarified that regulations applied to Phase II do not apply now.

E. Hancock spoke about the invalidity of the vote the board took in 2012. E. Hancock stated the board was lied to. K. Knight stated the issues were under her sisters ownership and she has since passed away. E. Hancock discussed issued the Planning Board in the past. C. DiMarzio discussed how this was not the appropriate arena for that conversation.

E. Hancock asked for an endpoint. R. Starodoj stated that it is as the market allows. The board can discuss that and make it a condition.

J. Knight asked as part of the Special Permit if they needed to do a checking yearly. R. Starodoj confirmed they would.

R. Starodoj and K. Crosby discussed the possibility of defining an endpoint and that it seemed unreasonable.

E. Hancock stated it would need to come out of 61A. R. Starodoj stated that was outside of their purview.

Motion made by E. Murphy to close the Public hearing of **SP-2022-10 (Bond Construction Corporation)**.

Seconded C. DiMarzio. **Discussion:** C. DiMarzio spoke with K. Hubaz asking if they would agree not to process material at the site. K. Hubaz confirmed that they would. E. Hancock requested that latitude and longitude be added.

R. Starodoj	Aye
N. Talbot	Aye

E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
All in favor. Approved 5/0/0.	

**Please see appendix for further information*

Motion made by N.Talbot to table discussion of Subdivision Regulations until the next meeting. **Seconded** E. Murphy. **Discussion:** None

R. Starodaj	Aye
N. Talbot	Aye
E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
All in favor. Approved 5/0/0.	

Town Planner Update

The hospital meeting is meeting to Wednesday 1/25/23

The sign is not powered and operational. A consultant will return in the spring to touch up a few things.

Town awarded a FEMA hazard mitigation grant.

Sign bases have arrived for the pedestrian blinker signs, awaiting the signs

R. Starodaj inquired about progress on battery storage. R. Watchilla said they are continuing to work with PVPC.

R. Starodaj and the board discussed hotel zoning.

Motion made by N.Talbot to **ADJOURN at 8:50pm**. **Seconded** by E. Murphy. **Discussion:** none

R. Starodaj	Aye
N. Talbot	Aye
E. Murphy	Aye
K. Crosby	Aye
C. DiMarzio	Aye
All in favor. Approved 5/0/0.	

NEXT PLANNING BOARD MEETING DATE:

Thursday, February 2nd, at 7:00pm.

Minutes from Thursday, January 19th, 2023.

Respectfully submitted by,

Kristen Jacobsen
Administrative Assistant
Planning & Community Development

Minutes Approved on:	<u>2/2/23</u>
Starodaj	<u>RAS</u>
Murphy	<u>[Signature]</u>
Talbot	<u>Nancy Talbot</u>
Crosby	<u>Remote</u>
DiMarzio	<u>Absent</u>

Elizabeth Hancock <elizabeth_hancock@icloud.com>

1/2/2023 3:10 PM

Public Hearings and Free Speech

~~To dougetal@comcast.net~~

When a governmental body decides to offer a "public comment" period at an open meeting it provides that citizens may exercise their First Amendment rights. The government may not silence speakers on the basis of their viewpoint or the content of their speech. In essence the governmental body must live up to the values embodied in the First Amendment.

Restrictions on free speech that are content-based and viewpoint-based are scrutinized strictly by the courts.

Limits can be put on subject matter that are not relevant to a discussion at a public hearing by the Chair. However, speaking about the history of the Kulas/Knight earth removal or the Phase I, Phase II, and Phase III project is relevant to the subject matter. In his presentation to the Planning Board Don Frydryk, Engineer for Bond Construction Corp. spoke about the history of the earth removal at the farm at 219 Babcock Tavern Road since 2009 and the Phase II gravel pit. A Chairman must treat both sides equally and cannot suppress free speech. To do so would be an exercise of impermissible viewpoint and content discrimination.

Elizabeth Hancock
254 Babcock Tavern Rd
Ware, Ma 01082

Sent from my iPad

Bond Construction Corporation/Kathleen Knight—Earth Removal Permit

~~219 Babcock Tavern Road, Ware, MA 01095~~

The following narrative is a compilation of events, documents and information regarding the earth removal operation that has been going on since 2009 at 219 Babcock Tavern Road and will now include 240 Babcock Tavern Road as well.

September 13, 2019. Email from: Mary Midura, Executive Assistant to Ware Town Manager To: Selectmen, Town Manager, Building Inspector and Planning Department. Email Stated: "Resident Elizabeth Hancock called me this morning to report that there is an illegal gravel pit operation starting up again with many trees falling today on Babcock Tavern Road on the former Kulas property. She stated that they claim to have a farm permit, but she has researched at Town Hall and through online and there is no such permit."

September 18, 2019. Cease and Desist Order was issued by Anna Marques, Zoning Enforcement Officer because of my complaint.

September 23, 2019. Cease and Desist Order rescinded by the Zoning Enforcement Officer due to a conversation Ms. Marques had with Joseph Knight, Planning Board Member and Karen Hubacz. They stated that they had an Agricultural Exemption previously approved by the Planning Board for the current operations. The Planning Board does not have the authority to approve an Agricultural Exemption for earth removal; I will address this in another section.

The owners of the farm have been claiming since April 21, 2010 (PB Meeting) that they were granted an Agricultural Exemption or Permit from the United States Department of Agriculture's Farm Service Agency in Hadley, MA for their commercial earth removal operations. However, no such Agricultural Exemption or Permit was ever granted by the USDA's Farm Service Agency—nor would the Agency be authorized to do so for such an operation. When I made my complaint about the trees on September 18th I knew this fact as I had already had this confirmed by the FSA in Hadley; and also knew that the only document on file with the Ware Planning Board regarding the Kulas earth removal project was a Grassland Reserve Program Application. This Application was presented to the Planning Board at their April 21, 2010 meeting by Irene Kulas, the owner at that time of the property, and her nephew Joe Knight with the claim that this was their Agricultural Exemption granted to them by the FSA. This was absurd!! The Grassland Reserve Program existed to assist landowners with preserving their lands through long term rental and easements paid to the landowners by the USDA and never, ever for earth removal! Also, the Application was never returned to the FSA in Hadley for obvious reasons. So, instead of contacting the FSA in Hadley—Ms. Marques allowed the current operation to proceed and the tree cutting continued.

October 19, 2019. Site Visit at 2019 Babcock Tavern Road. I again mentioned my concern about the tree removal on the property that was occurring and how the removal was because of the proposed Phase III earth removal project. It was explained by Chairman Starodoj that the land owner could cut down trees, grub and clear the land and regrade it to make a hayfield at the current elevation. (Key here is current elevation). Also, a discussion about the existing tree line was noted by the Planning Board and the Zoning Enforcement Officer. It was decided that the tree line was to serve as a boundary marker between the Phase II and proposed Phase III operation. This notation was to go into the permanent file for the project in both departments. However, all the trees were eventually removed making it extremely difficult to know where the boundary was anymore. Section D Operational Standards of 4.8.5 of the Town of Ware Earth Removal Bylaw, Number 11 states: The boundaries of the area of operation must be clearly marked by the applicant and maintained at all times. This is a violation of this section of the zoning bylaw.

May 5, 2020. Email from: Anna Marques, Zoning Enforcement Officer To: Rebekah DeCoursey, Planning Director "My concern is that he (Joe Knight) will need to provide a site plan—otherwise I think it will be too difficult to differentiate between the phases as it appears there is an access road now between the line of the two phases. (The trees are all gone). Have you been there recently?" Email reply from Ms. DeCoursey: "Yes, it appears there is an access road, most likely to log the Phase III area."

August 06, 2020. Planning Board Meeting. Rebekah Decourcey showed several pictures she had taken in the spring of 2020 from Babcock Tavern Road of the Kulas/Knight property. The trees have been removed, the land is clear but not stumped.

The Phase III Area. As stated : The trees have been cut and an access road has been made. Machinery has been observed operating on the 219 and 240 Babcock Tavern Road parcels making this an active site before obtaining a permit.

Phase II and proposed Phase III operation. This notation was to go into the permanent file for the project in both departments. However, all the trees were eventually removed making it extremely difficult to know where the boundary was anymore. Section D Operational Standards of 4.8.5 of the Town of Ware Earth Removal Bylaw, Number 11 states: The boundaries of the area of operation must be clearly marked by the applicant and maintained at all times. This is a violation of this section of the zoning bylaw.

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Guidelines:

Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas, A Guide For Planners, Designers and Municipal Officials, Best Management Practices: Soil erosion and sedimentation can be significantly reduced by scheduling gravel removal operations into phases of no more than 3 acres at a time with vegetative cover removal by contractors. Clearcutting an entire area for mining should not be allowed. In addition, keeping trees and vegetation in place also helps to reduce dust from sand and dirt blowing in the wind; helps to reduce noise from machinery and trucks, shields abutting properties from an ugly view from unsightly conditions of the land operations; adds to privacy, and provides a wind barrier to reduce property damage to abutters' trees, shrubs and vegetation . The intent Section of 4.8.5 of the Earth removal Bylaw of the Town of Ware is to prevent excessive erosion, control noise, protect neighboring residential properties from any adverse impacts which may be caused by this use; and to protect the aesthetic quality of the area. Best Management Practices are off the table because of the actions taken by the owners of the property and inaction of town officials. This is a violation of this section of the bylaw. Also the proposed removal of nearly 200,000 cubic yards of material to take out the whole hill to the bottom field is an alteration of the existing topography that is not necessary to achieve the goal of making a field for haying . This would be in violation of 4.8.5 F. Decision 1. b).

A Clean Water Act Permit issued by the Environmental Protection Agency (EPA) is required for stormwater discharges from any construction activity disturbing one acre or more of land. Construction activity includes earth-disturbing activities such as clearing, grading, and excavating land and other construction-related activities that could generate pollutants. To be covered under the EPA's Construction General Permit—construction operators are required to develop a Stormwater Pollution Prevention Plan (SWPPP) before land disturbance begins. It should be noted that on April 23, 2020 the US Supreme Court ruled that groundwater that flows into nearby lakes, streams, and bays should be included under Clean Water Act protection. This means that pollutants entering

groundwater that is hydrologically connected to surface water can now be regulated just like pollution that directly enters surface waters. At the December 1st Hearing, Don Frydryk, Engineer for Bond Construction said that they have not prepared a SWPPP.

October 14, 2020. Email From: David Wojcik, Ware Town Counsel To: Rebekah Cornell, Planning Director and Stuart Beckley, Town Manager. Re: Kulas Farm. "It may be that the most efficient route would be for the landowners to file an application for an earth removal special permit with the PB but the decision On whether to do that is solely up to the landowners." 4.8.5 of the Earth Removal Zoning Bylaw Section F Decision No.3. A special permit granted under this Section 4.8.5 may be issued for a period not exceeding one year in duration. Owners of earth removal operations may apply annually for an extension of said permit for a period not exceeding one year. I read this to mean that Bond Construction Corp. cannot be the applicant for an earth removal permit in the Town of Ware.

October 19, 2019 Site Walk of the Kulas Property. I voiced my concerns about the proposed gravel pit abutting the back of my home and property. Planning Board Member Josh Kusnierz made the following statement: "Since you are not happy living here you should just sell your house." Well, that may be very difficult and costly to do! Four different Property Value Studies—Diane Hite, Economist, W.E. Upjohn Institute, Caledonian Property Values Report; and The Ben Lansing Report On Property Values show that the property values of homes abutting gravel removal pits drop an average of 25% to 30%. This would be a reduction of \$69,878.00 to \$83,854.00 of my property value. The studies also found that homes were difficult to sell for obvious reasons. The Intent Section of the 4.8.5 Earth Removal Zoning Bylaw is to protect Property Values. To devalue the property of citizens of the Town Of Ware would be a violation of the Zoning Law.

October 21, 2021. Planning Board Meeting for Bond Construction. The Application and Site Plan are seen as incomplete. Authorization Form not filled out and signed by owners of the property. Site Plan did not meet the standards of 4.8.5 and 7.2 of the Zoning Bylaw. The Site Plan was not signed or stamped by the Registered Professional Engineer for Bond. The Agricultural Exemption for Phase I and Phase II also came up at this hearing when Planning Board Member Ken Crosby asked Karen Hubacz the following question: (From a transcript taken from the video of the hearing) Ken Crosby: "I guess my thought is was there any kind of permit issued for them to do a farm approach project?" Karen Hubacz: "It was through the State." Ken Crosby: "The permit was through the State?" Karen Hubacz: "Well the Farm Bureau. So at the time there was paperwork that I had seen with Irene and we had talked about that was from the Farm Bureau out of Northampton I believe is were all that came from. And that's why our earth removal was designed the way that it was." Ken Crosby: "You were never issued any permits?" Karen Hubacz: "The Planning Board did not. The Planning Board said we're going to let the Farm Bureau handle this." Kathleen Knight: "Right." Ken Crosby: "OK."

December 1, 2022. Planning Board Hearing for Bond Construction. New Site Plan does not have any buffers drawn. No gravel removal boundary line shown for my property except for the proposed erosion control/limit of work close to the boundary line of my property in violation of the 50 foot buffer requirement. Karen Hubacz of Bond Construction requested a waiver of the buffer to my property. Concerns were raised by the Chairman, Planning Director, and Town Manager; and I strongly objected and said I would not agree to this. Don Frydryk, Engineer for Bond stated it would be up to Karen Hubacz "how we proceed to change that to a 50 foot buffer in that area." The Planning Board has the duty to protect the property of an abutter and uphold the law. The Project Narrative was read by Mr. Frydryk. He stated that this application for

a permit is to continue the earth removal under agricultural activities to remove and regrade the steep slopes to permit an increase of tillable land area for the property. However, latter on at the public hearing Karen Hubacz from Bond Construction said: "We're here in front of this board for an earth removal permit so all that agricultural stuff is off." This contradicts the Project Narrative! The Board needs to ask Kathleen Knight, the owner what she wants to see happen on her property: Is she serious about having another field? And if so, how long is she willing to wait to get the gravel out and the land restored?

Bond Construction Company has been removing gravel on the Kulas property since 2010. The company's business model is simple: Make Money and Stay In Business. In an interview on May 11, 2020 with "Pit & Quarry" an industry publication Karen Hubacz said: "We do sand and gravel. We're not a big quarry where all of our reserves are at one site. There are deposits all over central Massachusetts. For me, our biggest deal is having reserves." The company operates out of pits it does not own but also owns pits. One owned by Bond has been active for 29 years in the Town of Spencer. Based on this model, Bond Corporation needs to have access to many gravel pits in the surrounding area in order to sustain their operations and the pits have to be conserved for long-term security of the company. Other considerations that have been mentioned by Karen Hubacz is supply and demand and the price of fuel which determines how often and where Bond operates to get needed material. So, the question is: Will this be an agricultural project with a reasonable timeline to accomplish the task of creating a field or is this simply going to be a long-term commercial gravel pit. Bond Construction has now been on the Kulas/Knight property for over twelve years with more of the farm dug out then when they first came in 2010 to do a six month reclamation project on 2.5 acres of the farm due to an illegal commercial gravel pit cited in a April 16, 2010 Cease and Desist Order. Considering Bond's business model and history I believe the company will be on Mrs. Knight's property for many years to come if allowed to proceed with the proposed earth removal project.

Also, no site plan has been presented to the Planning Board for the closure of the present Phase II pit. Karen Hubacz stated she does not want to do the reclamation before starting the next phase, and no bond was ever required by the Board on the Phase II pit. Ms Hubacz has also asked for a bond waiver for the proposed expansion.

As already stated, the reclamation project was to have been completed in six months. The Planning Board voted on June 23, 2010 to have Bond Construction complete the gravel operation by December 31, 2010, and that was to be the end of the earth removal on the Kulas farm. However, on August 15, 2012 the Board reversed course. The Planning Board voted to begin restoration of the original 2.5 acres of property that had somehow expanded to 5 acres since 2010 and renamed this area Phase I. They also voted to proceed with a new expansion of the earth removal that was to be known as Phase II under the nonexistent Grassland Reserve Agricultural Exemption that the owner claimed to have since 2010. At the January 7, 2015 Planning Board Meeting, Board Member Chris DiMarzio expressed concerns about the ultimate use of the site; "the PB allowed this gravel operation to proceed without special permit based on the use for agriculture, yet we have nothing to say the site will be used for agriculture." The Planning Board had no authority to vote to expand the earth removal operation at their August 15, 2012 meeting under an Agricultural Exemption and this one did not even exist. The only authority that the Planning Board has is to act pursuant to the subdivision control law and to decide on special permits Under the Zoning Bylaw. Therefore, the Planning Board does not have the authority to determine if earth removal comes under 4.8.5 of the Ware Earth Removal Bylaw, Section C. Exemptions, No. 5 For earth removal operations that are accessory to agriculture uses, pursuant to MGL Chapter 40A Section 3. It is up to the building inspector who is the zoning enforcement officer to determine if a landowner can use an agricultural exemption and if they can remove

gravel without a special permit. The vote of the Planning Board on August 15, 2012 was invalid. On April 16, 2010, Michael T. Agnew, the Building Inspector for the Town of Ware determined that Irene Kulas and the contractor removing gravel on her farm had violated the earth removal bylaw and placed a Cease and Desist Order on the operation. He determined that this was a commercial earth removal operation and not a farm project. On September 18, 2019, Anna S Marques placed a second Cease and Desist Order on the Kulas/Knight property. The basis for the Order to Cease and Desist the earth removal operation was that the current zoning adopted on May 14, 2012 required a Special Permit from the Planning Board for Earth Removal Operations. Ms. Marques was right on target in placing this Cease and Desist Order on the property just like her predecessor, Mr. Agnew had done. However, unlike Mr. Agnew she decided to rescind the Order on September 23, with the mistaken understanding that the earth removal was under the Grassland Reserve Program Agricultural Exemption which was also the basis for the Planning Board vote on August 15, 2012. It is my believe that this is an illegal gravel pit operation because of these facts and call on the Building Inspector to take another look at this operation. I also call on the Planning Board to first address the Phase II gravel pit before considering anything else for the future of Mrs. Knight's property. The owner and operator should close out and make the field now and not on some vague timeline in the future as Ms. Hubacz wants to do. She stated she will reclaim it after they move along on the Phase III area and that the Phase II area is needed for her trucks to get around. She never stated when this will happen. Does anyone on the Board even know the acreage of the Phase II area? I have never found any documents or heard any discussion about it. Also, the Kulas farm was put into Chapter 61 A in 2014. The current Phase II portion of the property should not have been in 61A as the classification does not allow for commercial earth removal.

Thank you for the time and consideration the Planning Board and the public has given me to express my concerns about this earth removal permit application.



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Sent from my iPad