



TOWN OF WARE

Planning & Community Development

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Planning Board

Meeting Minutes from
Wednesday, October 17, 2018
Board of Selectmen's Conference Room

- Planning Board members present:** Rick Starodoj (Chairman), Josh Kusnierz (Vice Chairman), Chris DiMarzio, Fred Urban, Joe Knight, Ed Murphy
- Planning Board members absent:** none
- Staff present:** Rubén Flores-Marzán, Director of Planning & Community Development
Judi Barnard Mosso, Assistant to the Director
- Public:** (as taken from the sign in sheet and observation): Randy Neubauer, Gusto Enterprises; Rodney Neubauer, Gusto Enterprises; Michael Merwin; Celeste Noad; Ken Noad; Brad Wilson, Ecos Energy; Frank Sapowsky; AnnMarie Sapowsky; Andrew Choquette; Christopher DeSantis; Lauren DeSantis; Daniel von Allmen; Anna Marques, Building Inspector; Daniel Healey; Mary Healey; Jennifer L. Muche

Chairman R. Starodoj called the meeting to order at 7:04 p.m. Attendees said the Pledge of Allegiance.

1. Administrative

- a. Approve minutes from October 3, 2018 – Motion by J. Kusnierz to accept the minutes as presented. Seconded by J. Knight. So voted 5/0/0.

2. 7:05 p.m. Public Hearing on SP-2018-05 and SPR-2018-07 for Christopher DeSantis

Construct and operate a dog kennel at 84 Greenwich Plains Road. The Hearing was opened at 7:05; J. Knight read the legal notice into record. R. Starodoj discussed procedure for the hearing. C. DeSantis presented the project:

- building includes noise-reducing insulation
- 8-14 kennels
- 5' fence around open area, and attached to kennel side
- Most business will be conducted inside the building

QUESTIONS FROM THE BOARD (answers in parentheses)

- Do you plan on building a home on the property? (may consider it in the future)
- How close is nearest neighbor? ($\pm 1/2$ mile)
- What types of services will you offer? (boarding, training, day care, grooming; no breeding; most of the animals will come for day care "boarding is subordinate to the day care")
- Does the structure include an office? (yes)
- Where is the proposed parking; nothing marked on plan; no waiver requested? (considering 3-7 spaces with 2 handicapped spaces)
- How many daily customers anticipated? (8-12 dogs, and evening classes)
- What will outdoor area be used for? (for dogs to exercise, play, train, no runs as dogs will be secured indoors; entire outdoor area for dogs will be fenced in)
- What is length of long-term boarding for dogs? (about one week)
- Explain "hotel for dogs" (large 8'x8' kennels as opposed to the smaller 4'x6' ones; there will be no "destination rooms for dogs)
- Lighting is not indicated on plan; no waiver requested (will have floodlights. National Grid will install utility pole).
- No waste removal on plan; no waiver requested (trash will be bagged and placed in standard 50 gal. wheeled tote, curbside pickup; looking into eco-friendly composting system for dog feces)
- Kennels are an accessory business to a residential property but this is a stand-alone use on the property
- Who will staff the business? (Chris and Lauren DeSantis will staff the property with one part-time employee; a surveillance system will be installed; she will go home at night; all overnight dogs will be in kennels; day care will be M-F; both office and kennel area has heat and AC)

- *What material is driveway? (gravel with crushed blacktop, plan to pave later)*
- *Applicant will follow general noise ordinance regarding tone and address complaints as they arise*
- *Abutters spoke in support of project; just do not want excessive barking in this quiet neighborhood*
- *Discussion about loading and unloading, cars entering and exiting, parking, and where will trash be stored*
- *Discussion of possible conditions*

Motion by J. Kusnierz to approve the Special Permit (SP-2018-05) and site plan (SPR-2018-07) with the following conditions:

1. *Plan will show additional three (3) parking spaces at the northwest portion of the proposed driveway (board marked current plan and applicant signed)*
2. *Applicant shall indicate exterior lighting; and lights shall be aimed and hooded in order to reduce light spill onto abutting properties*
3. *The Board acknowledges no screening for trash; and that trash is a common 50 gal. rubbish tote*
4. *Public business hours of operation will be 7:00 AM to 8:00 PM; evening hours are to accommodate for evening classes only*
5. *There shall be a maximum of fourteen (14) kennels*
6. *The maximum number of dogs on site at any one time is fifteen (15)*
7. *Any dogs outside will be accompanied by the business owner; absolutely no dogs allowed outside without business owner's presence*
8. *This permit shall be attached to the applicant, current owner Christopher J. DeSantis of 80 Cummings Road, Ware; and NOT attached to the land (84 Greenwich Plains Road)*
9. *Possible use of this property as a dog kennel under a different owner requires the new owner to apply to the Ware Planning Board for a new Special Permit*

Seconded by F. Urban.

Roll call vote:

Starodoj AYE

Kusnierz AYE
DiMarzio AYE
Urban AYE
Knight AYE

So voted unanimously.

3. **7:15 Public Hearing on Ecos Energy, solar on subdivision (SP-2018-04 & SPR-2018-06)** – B. Wilson distributed plan that reconfigured the lot into 16 parcels. There are 16 parcels because it suits their financing.

Discussion

- R. Starodoj stated that if the lots are to be reconfigured and consolidated, the public hearing for the original subdivision must be reopened because there is substantial change to the original, approved plan
- B. Wilson only recently learned that one single parcel is a viable possibility for the project, but he has received no further details at this time
- C. DiMarzio stated that using the property as a single lot goes back to his original argument in support of rescinding the subdivision
- R. Starodoj stated that when the project is complete, it would have to have the original subdivision dissolved and for a new, current (at that time) subdivision proposed under the bylaw at that time. B. Wilson not open to that and wants to move forward with project. R. Starodoj stated that the Town must deal with the land subject to conditions at the time including current best practices, which is safest for the Town
- B. Wilson suggested condition that prior to issuing a building permit, that the existing land will be reconfigured to 16 or fewer parcels; C. DiMarzio stated that a condition like that is moot because if the subdivision is dissolved, the owner has the right to divide the lots by right
- B. Wilson stated that the project would not be built out in the existing subdivision configuration; C. DiMarzio stated that the Board would require specific wording from Town Counsel in order to protect the Town
- Parties agreed that the frontage lots would not be sold or developed for the life of the solar project as it serves as screening for the project
- The reconfiguration omits the parcel lines so the project no longer encroaches the setbacks

- *B. Wilson confirmed that the Conservation Commission continued their review and voted to request peer review for the stormwater on the entire parcel; Planning Board will be copied on report; wetland flags are also being reviewed. Ecos agreed to stormwater performance bond and cost for peer review*
- *Discussion about timeframe for peer review report, new survey plan, public hearing for rescinding the subdivision*
- *C. DiMarzio stated that Ecos' ownership of the parcel could be a possible condition of the Special Permit*
- *J. Knight stated that that much clear cutting all at once is very impactful; large-scale errors are even more impactful. Gave example of poor performance of prior project and permanently affected area farmers' fields*
- *E. Murphy stated that clear cutting that much acreage just for solar is counterintuitive; he understands the benefits of solar but disagrees with the method*
- *Possible condition: Third party inspector during construction with twice-monthly reports to the Board; inspector to go to site after significant storm events*
- *B. Wilson stated that the clearing is phased (7 acres at a time); stabilized w a horizontal grinder which produces shreds that help to stabilize better than chipped material; plans to have site stumped for the ballasts*
- *J. Knight would like to see peer review report on stormwater before taking a vote*
- *R. Starodoj clarified that it is not the Town's responsibility to fix any problems on site; it is the responsibility of the owner or the bonding company; will reject any town-owned bond that is proposed; bond would need to be held by and problems fixed by the bonding company; Town should not be saddled with fixing a private project, Town is not the contractor; would trigger prevailing wage law*
- *Condition: National Grid (NG) is amenable to using the Hendrix spacers*
- *Need for any new poles would be decided by NG*
- *Condition: western portion of property to be placed in a Conservation Restriction (CR) before Ecos applies for a building permit; CR language to state that at the end of the project, the top of the ridge running north/south shall be a wildlife corridor*
- *MA SMART program open for applications on November 26*

- **Condition: construction and decommissioning bonds will two separate bonds and amounts**
- **B. Wilson stated that approximate cost of project is somewhere between \$9-13 Million; Board would need to see final cost in order to establish surety amount; need legal language approved by Town Counsel**
- **Condition: No diesel fuel trailer to be used on site in order to avoid Spill Prevention, Control and Countermeasure (SPCC) Rule problems**
- **Condition: no chemical herbicides or fungicides other than those approved by the Ware Conservation Commission; Planning Board via the Planning & Community Development Department staff, to be copied on approved uses**
- **B. Wilson would like conditional approval pending Conservation approval; A. Marques stated that the plan before the Conservation Commission now will be changing and is not close enough to the revision; R. Starodoj stated that reducing the project is fine – increasing or expanding is not**

The public hearing closed at 9:30 p.m.

Motion by C. DiMarzio to approve the site plan and special permit as revised this evening with all conditions discussed above and at earlier Planning Board meetings and with these additional conditions:

- 1.) **Applicant understands that the Ware Police Department will not police their unfenced project; that site security is solely in the applicant's care**
- 2.) **Other than the proposed area of construction, there will be no deforestation**
- 3.) **No development or sale of any property on the plan will be sold prior to decommissioning of the project**
- 4.) **Prior to construction/building permit issuance, a final plan consistent with the October 17, 2018 plan, outlining configuration and consolidation will be submitted**
- 5.) **Prior to construction/building permit issuance, a public hearing will be held to rescind the 2007 subdivision**
- 6.) **Between the time of approval and decommissioning of the project, a plan will be submitted to**
 - a. **Return the parcel to one single lot**
 - b. **Remove the Yorkshire Estates subdivision plan (Plan Book 215, Page 68)**
- 7.) **Prior to construction/building permit issuance, there will be a mutually-agreed upon Memorandum of Understanding between the applicant and the Town that permits granted are conditional on removing the Yorkshire Estates subdivision (Plan Book 215, Page 68)**
- 8.) **Prior to construction/building permit issuance, a delineated Conservation Restriction (CR) will be approved and recorded; said CR**

shall be comprised of approximately 20% of the entire parcel and will indicate that the top of the ridge shall remain a north/south wildlife corridor

- 9.) *Prior to applying for a construction/building permit, the construction bond, in an amount agreed upon, shall be paid; proof to be submitted to the Planning Board*
- 10.) *Prior to building, applicant shall meet with all applicable boards and commissions for a preconstruction meeting to determine current best practices*
- 11.) *All third party inspections and reviews will be at the applicant's expense including during the construction phase, and for erosion and sedimentation controls*

Seconded by F. Urban.

Roll call vote:

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|-----------------|------------|
| <i>Starodoj</i> | <i>AYE</i> |
| <i>Murphy</i> | <i>NO</i> |
| <i>DiMarzio</i> | <i>AYE</i> |
| <i>Urban</i> | <i>AYE</i> |
| <i>Knight</i> | <i>NO</i> |

Brief discussion of voting requirements; J. Mosso indicated that per MGL Chapter 40A, Section 9, site plan approval needs simple majority (3/5) for approval and special permit needs super majority (4/5) for approval. Thus:

Site plan approval passes.

Special Permit does not pass.

Applicant and property owners inquired about what findings were not met and asked for an explanation from those who voted "NO". Chairman explained that Board members are not required to explain their vote. F. Urban stated that the vote is the vote. R. Starodoj stated that per MGL and 7.2.3.G of Ware's Zoning bylaw, the applicant must wait two (2) years before applying again in order to avoid repetitive applications.

- 4. **Discussion with Dan von Allman, Clearway Energy, re solar project at Upper Church Street** – Dan von Allman presented a handout about Clearway Energy, the long-term owner and operator of the solar project on Upper Church Street; was NRG but they sold off their renewable energy branch which is not Clearway Energy. J. Mosso pointed out that although the handout pages stated "proprietary and confidential

information”, it become public record since it was presented at an open public meeting; Mr. von Allman acknowledged this fact. Mr. von Allman is the contact until actual operations begin. He expects construction to being in 2019. Board’s primary concern is the screening/plantings at the southern boundary; R. Starodoj strongly recommended that Clearway plants the screening now, not when they’re ready to build. J. Kusnierz confirmed that if Clearway acts quickly, they can plant by the end of November; asked Mr. von Allman to confer with him so he has the correct planting list. Brief discussion about planting schedules and availability of certain specimens. The Board recommends that Mr. von Allman reach out to the Monettes and Slattery regarding the screenings.

Chairman called for a recess at 10:00 p.m.

Meeting resumed at 10:08 p.m.

5. **Discussion re proposed zoning amendments**

- a. **Definitions of storage, Use Table, Cannabis, Solar** – R. Flores-Marzán and J. Mosso presented revised drafts of bylaw amendments based upon comments from last meeting. Discussion about hoop houses, green houses and the Building Inspector’s guidelines for those structures. The Board does not support cannabis cultivation in hoop houses or other membrane structures. Minor changes made to amendments. **Motion** by J. Kusnierz to accept bylaw amendments as revised and to send to the Selectmen for review and ask that they request a public hearing date be set. Seconded by J. Knight. So voted 5/0/0.

Solar moratorium proposed by Selectmen – Via a memo dated 10/16/2018, the Board of Selectmen has requested that the Planning Board amend the zoning bylaw by “enacting a nine-month moratorium on the permitting of Large Ground-mounted Solar Facilities in the Rural Residential District”. There was discussion about the request; the Board is adamant about not placing a moratorium on something that is already allowed for in the current bylaw; the suggestion is not based upon consideration of relevant factors and so is arbitrary and capricious; the townspeople can decide for themselves at Town Meeting. **Motion** by J. Kusnierz to revise the language submitted by the Select Board to include all zoning districts and resubmit to the Select Board for approval and have the hearing date be set. Seconded by F. Urban. So voted 5/0/0.

Brief discussion about tax exempt information related to solar facilities. A, Choquette reported that there is a bill before the State Senate for tax exemptions, as well as court cases appealing that these facilities are taxable.

Motion by J. Kusnierz to submit the Board's solar bylaw amendment which increases the setback for large ground-mounted solar facilities to 100'.

- b. Set public hearing date – J. Mosso led discussion about timeframes and legal notices, suggested to set public hearing date for the December 5, 2018 Planning Board meeting. **Motion** by J. Kusnierz to set the public hearing date for bylaw amendments for December 5, 2018. Seconded by J. Knight. So voted 5/0/0.

6. **Updates**

- a. Scenic Road designations – J. Kusnierz spoke briefly about scenic roads. Many other towns in the area do not even know if they have this designation or not. R. Starodoj stated that DPW will probably be the most vocal about this kind of designation due to maintenance requirements. Board will discuss further at a future meeting.
- b. Earth removal and bridges – Bridge on Old Belchertown Road is closed for repairs. Large tractor trailers/haulers are using the spillway bridge at Beaver Lake which may not be able to handle the heavy loads; 3-Mile Bridge (Rt. 32 at Old Belchertown Road) is also in poor condition but that is a state-owned road. The Board expressed great concern over the matter and wants to see load limit signs posted.
- c. Unfinished subdivision roads and winter maintenance – no further updates.

7. **Other** - J. Kusnierz will be discussing scenic road designations at a future meeting.

8. **Adjourn** – **Motion** by J. Kusnierz to adjourn at 10:41 p.m. Seconded by J. Knight.

Documents reviewed:

- Minutes from October 3, 2018
- SP-2018-05 and SPR-2018-07 applications for Christopher DeSantis
- SP-2018-04 and SPR-2018-06 Ecos Energy application and related documents
- Handout from R. Flores-Marzán re marijuana cultivation regulations, Use Table
- Handout from J. Mosso re zoning amendments

- *Handout from J. Mosso re summary of subdivision site visits*
- *10/16/2018 memo from Board of Selectmen re solar bylaw amendment*

Documents received:

- *Lot Consolidation/reconfiguration Plan from Ecos Energy*
- *Information packet about Clearway Energy*

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| Minutes Approved on: _____ |
| <i>Starodoj</i> _____ |
| <i>Kusnierz</i> _____ |
| <i>DiMarzio</i> _____ |
| <i>Urban</i> _____ |
| <i>Knight</i> _____ |

*Respectfully submitted by
Judith P. B. Mosso, MPA
Assistant to the Director*