



TOWN OF WARE

Planning & Community Development

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Planning Board

Meeting Minutes from

Wednesday, January 2, 2019

Board of Selectmen's Conference Room

- Planning Board members present:** Rick Starodoj, Chairman; J. Kusnierz, Vice Chairman; Joe Knight, Clerk; Chris DiMarzio (7:07 pm); E. Murphy, Alternate
- Planning Board members absent:** F. Urban
- Staff present:** Judi Barnard-Mosso, Assistant to the Director of Planning & Community Development
- Public:** (as taken from observation; sign in sheets have not been returned to office): Anna Marques, Building Inspector; Michael Biskup; Stuart Beckley, Town Manager; William St. Croix; Paul Opalinski; Tracy Opalinski; Keith Kruckas; MEDIA: Sloane Perron, Ware River News; Terrance Smith

Chairman R. Starodoj called the meeting to order at 7:00 p.m. Attendees said the Pledge of Allegiance.

1. Public hearing on proposed bylaw amendments (continued from December 5, 2018)
The Chairman reopened the public hearing at 7:02 p.m.

DISCUSSION

*See packet for actual language changes

** Chairman stated that the PB would spend some time on the bylaw and then open the meeting to other business

- There was brief discussion about the solar moratorium.

- *Some people felt that a 12-month moratorium would be better so the P&CD Department could acclimate a new Director*
- *T. Smith and W. St. Croix called for a committee to be formed to explore more details of cultivating marijuana and to receive input from Ware’s farmers. J. Kusnierz volunteered to represent the PB on such a committee. Chairman stated that forming committees is under the direction of the Board of Selectmen (BOS), suggested they request that of the BOS*
- *Chairman stated that additional information is always welcome and clarified that the PB makes amendment recommendations to the BOS; BOS place articles on the town meeting warrant. Ultimately it is up to the voters at town meeting to decide (or modify) what is presented at town meeting*
- *Someone suggested using Town Counsel for bylaw draft; some suggested using Pioneer Valley Planning Commission (PVPC)*
- *W. St. Croix stated that he felt no progress was being made*
- *Chairman stated that the Ware PB has been ahead of the changes and already has provisions for marijuana, and essentially our process has been relatively fast. There are legal requirements and timeframes that the PB must adhere to so these changes do not happen overnight*
- *Town Manager (TM) stated that when the PB met with Ware farmers back in June 2018, that the proposed bylaw was to benefit the farmers of Ware – which is a very different discussion than what we’re having now: all of the Rural Residential (RR) zone with maximum canopy tiers (square footage) allowed by the Cannabis Control Commission (CCC) – PB members agreed; also stated that there is a difference between CCC guidance and Massachusetts law*
- *Initially, it was generally agreed that in order to participate in cultivating marijuana in the RR, farmers must have a Schedule 19 designation*
- *C. DiMarzio stated that Indoor cultivation operations for farmers provides a layer of protection for weather as well as sight in the RR district; this process has been “mob rule” and it needs to be reeled back to the original intent; PB shall not be portrayed as villains. If the amendment that is presented to the STM is too loose, he will not support it – there must be a balance to include protections for people who do NOT want cultivation in the RR zone; the town is not even required to allow it. The amendment must be in line with what was in the legal notice; must create a bylaw that is passible at STM, so a balance is crucial*

- *Chairman stated that solar amendment and cannabis amendment must be kept separate, and that marijuana is not considered agriculture*
- *M. Biskup stated that not everyone should have the ability/right to grow cannabis; he would like to protect his right as a farmer to grow what he chooses. He supports a new Rural Agriculture zone and a committee to research the finer details*
- *Chairman reminded folks that a forming committee would delay the process and the proposed marijuana bylaw amendment would not be presented at the STM later this winter [meeting has been set for March 11].*
- *There is a difference between an accessory use and a crop; a primary crop is what is most cultivated (what you have the most of), NOT what is most profitable; Marijuana as a primary use would open up the use to everyone*
- *Must be controlled by lot size; base size of cannabis grow area by a percentage of lot size (what happens if lots are combined?)*
- *T. Smith stated that what has been presented by the PB has been well thought-out – enough to present to the voters; would like to see a committee to fine tune the amendment; get it on the books and change it later – the state regulations are changing as well*
- *Brief discussion about setbacks*

Motion by J. Kusnierz to continue the public hearing to January 16 at 7:30. Seconded by J. Knight. So voted 4/0/0. The meeting will only be televised if Mr. Ciukaj is available.

2. **Possible ANR, Terrance Smith** – Mr. Smith described that he is consolidating his lots. R. Starodoj stated that this does not need approval from the PB nor does the plan need to be signed by the PB. J. Mosso placed the matter on the agenda because Mr. Smith had his plan and an ANR application form stamped in by the Town Clerk.
3. **Administrative**
 - a. **Approve minutes from December 5, 2018** – **Motion** by J. Kusnierz to approve the minutes as presented. Seconded by J. Knight. So voted 4/0/0.
 - b. **Sign second original of Special Permit for recording at Registry (Mexicali Grill, SP-2012-01)** – J. Mosso had discovered that the 2012 Special Permit Decision was never recorded. Chairman Starodoj stated that there was a bylaw amendment at the time after which the use (restaurant) was allowed by right.

J. Mosso stated that Mexicali applied on 3/5/2012 and the legal notice for the amendment was not published until 3/15/2012 so technically they had applied under the previous bylaw and it was right to have them record the Decision.

Motion by J. Kusnierz, that the PB recognizes that this Special Permit was previously approved in 2012, to have R. Starodoj and C. DiMarzio sign the Decision for recording purposes, on behalf of the current PB, as they were on the PB at the time of this Decision. Seconded by J. Knight. So moved 4/0/0.

- c. Terrance Smith Special Permit for solar, currently incomplete but stamped in by Town Clerk – Mr. Smith does not have a complete special permit application for the board to review, however some documents, including the special permit 1-page application was stamped in by the Town Clerk. No public hearing has been set. Mr. Smith stated that he has been working with a solar company for over a year now and that MGL allows for a preliminary plan to be submitted in order to freeze current zoning. There was brief discussion about “preliminary plan” only refers to subdivisions, and not the use of the land.
 - d. General discussion re buildable lots – Brief discussion about 2 unbuildable lots due to lack of square footage. PB stated that as long as non-buildable lots are designated as such on a plan and that the proposed lots meet frontage and size requirements, it may pass muster with the PB.
4. Discussion re rezoning 15 South Street (DTC to Mill Yard), P. Opalinski - Mr. Opalinski owns 15 South Street (4 lots) including 120,000 sf mill complex (see attached). Was zoned Downtown Commercial prior to the 2012 bylaw rewrite. He would like it to be in the Mill Yard district. There was discussion about allowed uses in both zones. C. DiMarzio supported the change, stating that historically, the properties were part of the mill yard and that the DTC zone is more restrictive. **Motion** by J. Kusnierz to recommend to the Board of Selectmen to change the 4 parcels at 15 South Street (57-0-64, 57-0-65, 57-0-66, and 57-0-67) from DTC to MY district. Seconded by J. Knight. So voted 3/0/1 (DiMarzio).

Chairman called for a brief recess at 8:47 p.m.

Chairman called to order at 8:51 p.m.

5. Discussion re rezoning parcel 11-0-22 on West Warren Road (to allow hotel/outdoor recreation), J. Fryer – Mr. Jonathan Fryer presented to the PB 2 maps of his property on West Warren Road (~150 acres). He is interested in opening an outdoor recreational facility (“adventure tourism”) that offers ziplines, ropes courses, nature education, and a hotel. Under current zoning, he can have a camp or an inn by special permit (limited to 8 units) but not a hotel. He wants to offer everything or else the project is not feasible. Current zone is Rural Residential (RR).

There was discussion about avoiding “spot zoning” (i.e would have to allow hotels for the entire RR zone), elevation, utility services, possibly splitting hotel definitions to small and large hotels, overlay is not the right solution, is it near a rail trail, how close is it to Palmer Motorsports Park.

PB would want to require site plan review and architectural features at the very least. PB must avoid changing zoning for just 1-2 people. The PB asked Mr. Fryer to research what similar businesses do and what type of resort he is proposing.

6. Updates

- a. Wildflower subdivision – create punch list – We have FINALLY heard back from an attorney for Berkshire Bank! They are interested in learning next steps needed to get Wildflower Drive accepted as a public way. J. Kusnierz has been in contact with several residents who have been clearing brush where they can; they are eager to see a resolution and have the road accepted. PB reviewed the letter from town counsel to Hampden Bank dated 6/2/2010. There was discussion about the Homeowner’s Association and when that is supposed to take effect; and the Board takes no responsibility or liability with regard to the modified (by Belco Construction) drainage structure at 12 Wildflower Drive.

R. Starodoj and J. Kusnierz will conduct a site visit and create a punch list with the DPW Interim Director. The bank is looking for a final list so it should be comprehensive including final coats of pavement and sidewalks, etc. PB should also consider timeframes and have an acceptable bond (held by bank) in case some items are delayed.

7. Other

- a. **Director of Planning and Community Development** – There was brief discussion about the search for a new Director of Planning and Community Development. J. Kusnierz spoke very highly of the previous Director, Rubén Flores-Marzán and supported the great work he did while he was Director. **Motion** by J. Kusnierz to send a letter of appreciation to Mr. Flores-Marzán [J. Mosso will draft the letter]. **Seconded** by C. DiMarzio. **So voted** 4/0/0.

- b. **Executive session** – J. Knight stated that the PB will meet in executive session on 1/16/2019 before the regular PB meeting.

8. Adjourn – **Motion** by J. Kusnierz to adjourn at 9:35 p.m. **Seconded** by C. DiMarzio.

Documents reviewed:

- Proposed Amendments Information Packet
- T. Smith plan of land
- December 5, 2018 minutes
- Map of West Warren Road property
- Letter to Hampden Bank dated 6/2/2010

Documents received:

- Map of West Warren Road property

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|-----------------------------------|-------|
| Minutes Approved on: _____ | |
| Starodoj | _____ |
| Kusnierz | _____ |
| DiMarzio | _____ |
| Urban | _____ |
| Knight | _____ |

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