



TOWN OF WARE

Planning & Community Development

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Planning Board

Meeting Minutes from

Thursday, August 20, 2020

Select Board Room, Town Hall

Planning Board Members Present: Rick Starodoj (Chairman), Josh Kusnierz, Ed Murphy III (7:05), Joseph Knight, and Ken Crosby

Staff Present: Rebekah DeCoursey, Director; Jack Carolan, Assistant

Public in Attendance: Tom Barnes, Elizabeth Hancock, Keith Kruckas, Tony Swiercz, Bernie Bergeron, Karen Hubacz Kiley, Dale Kiley

PLEDGE OF ALLEGIANCE

Vice chairman J. Kusnierz called the meeting to order at and the Board led the Pledge of Allegiance.

ADMINISTRATIVE

Approval of Minutes from August 6, 2020 Planning Board Meeting and Site Visit of August 16, 2020. **Motion** by J. Kusnierz to table approval of the minutes until the next meeting. Seconded by K. Crosby. All in favor. Approved 4-0

PUBLIC HEARINGS (both are continued until October 1st, 2020)

- Ware Solar III LLC (c/o Melink Solar Development) for Special Permit (SP-2019-07) and Site Plan Review (SPR-2019-06) for a 4.2MW ground-mounted solar energy facility approximately 14.5 acres on Greenwich Road, Location is Parcel 35-0-12, owned by F.T. Smith.
- Ware Solar IV LLC (c/o Melink Solar Development) for Special Permit (SP-2019-06) and Site Plan Review (SPR-2019-05) for a 1.5 MW large ground-mounted solar energy facility encompassing approximately 6.2 acres. Location is Parcel 40-0-79 owned by Richard & Edward Couture.

TOWN PLANNER UPDATE

R. DeCoursey announcement that both Ware and Palmer have been awarded Covid-19 relief funds that are available through CDBG. Ware funds will go towards the Domestic Violence Task Force, Hardwick Senior Outreach, and other forms of social services. The Palmer portion of these funds are the micro-business enterprise grants that are available for business with 5 or

less employees and for up to \$10,000. Microenterprise funding will be provided through the Town of Palmer and are expected to be administered to QVDC.

Upcoming applications: Osborne Road Subdivision which will be held in October and 319 Palmer Road Self-Storage proposal. T. Barnes noted that the Conservation Commission is still waiting to do a site visit in conjunction with the Town of Hardwick at the Osborne Road site.

E. Murphy joined the meeting at 7:05.

OLD BUSINESS: Kulas Farm-Babcock Tavern Road: Discussion of Earth Removal

J. Knight recused himself.

Chairman R. Starodoj stated the Board held a site visit on Sunday August 16, 2020 and that he has been reviewing pertinent documents. He also stated that the goal for this meeting should be to reach a conclusion regarding an agricultural exemption of requiring a Special Permit for earth removal.

K. Crosby asked for clarification on what percentage of the property is being used for earth removal. J. Knight stated that the property is approximately 200 acres and he would guess about 5% of that is being used for earth removal. The Director supported this estimate.

K. Kruckas asked if J. Knight has filled the proper paperwork with the State Ethics Commission to go through with this process given he also sits on the Planning Board. J. Knight stated he had not given that he recused himself.

T. Swiercz asked to be recognized and read from the Town Counsel opinion from 2010 regarding the Kulas property. The report stated that creation of land for haying through earth removal is not incidental to the primary agricultural use. The opinion also stated that the Town of Ware's earth removal zoning bylaw is inconsistent with the Zoning Bylaws Use Table. T. Swiercz stated he was concerned about legal liability to the Town since the board went against Town Counsel opinion ten years ago and requested that the Board seek additional legal opinion before rendering a decision on Phase III of the proposed earth removal project.

Chairman R. Starodoj stated that Town Counsel opinion from ten years ago was an opinion and not a directive, which is why the Board allowed the project to move forward with an agricultural exemption in 2010. T. Swiercz stated he think the Town should seek legal counsel in order to potentially save a lot of money down the road.

K. Kruckas stated that since no one on the board is a lawyer they should absolutely take whatever advice or recommendation is given by Town Counsel. He claimed that by not seeking and following Town Counsel advice that the burden keeps falling on the taxpayers.

T. Swiercz stated that large-scale prolonged earth removal operations in RR are not in line with the expectation of current and prospective property owners in that zoning district. It was pointed out that earth removal is allowed by Special Permit in RR district.

E. Hancock requested to make a brief presentation to go over the points discussed in this matter. She referenced four previous earth removal projects that were used as a comparison for the Kulas operation. Those include Campbell, Klassanos, FT Smith, and Gagliarducci. The Campbell Farm never used an agricultural exemption but instead fell under an exemption because they never removed any earth from their property – they moved earth around their property. The Klassanos property also did not use an agricultural exemption and instead fell under an exemption related to an Order of Conditions under the Wetlands Protection Act. She stated that the Kulas Farm is the only property in town that has sought an agricultural exemption for earth removal.

E. Hancock also raised the issue of the distinction between commercial and non-commercial. She claimed that any time profit is being made that it automatically makes that a commercial use. E. Hancock referenced the Henry Case in which approximately 300,000 cubic yards of earth was removed which is in line with the Kulas project. She continued to state that she felt the scale and timeframe of the Kulas project does not make it eligible for an agricultural exemption and similarly referenced the legal opinion from 10 years ago. She again raised the issue that the primary source of income for the property is from earth removal stating that the property will make approximately \$225,000 of pure profit over a 10 year period. E. Hancock also stated to that the property needs to be taken out of Chapter 61A protection because it does not allow for there to be a gravel pit on the property.

Chairman R. Starodoj stated that nothing new has been presented by Ms. Hancock and it was review of what has been previously heard. He declared the board must take a vote. K. Crosby stated that he would like to hear from Town Counsel before voting. J. Kusnierz agreed that it couldn't hurt to seek Town Counsel opinion and asked if they could be present for the next meeting. He would like to know if a gravel operation can exist under Ch61A. Chairman R. Starodoj stated that seeking Town Counsel opinion would not negate the vote taken by the Board.

Motion by J. Kusnierz to call for a vote to see if the Kulas Farm will be granted an agricultural exemption for earth removal on the property. Seconded by E. Murphy. No further discussion amongst the board. Chairman R. Starodoj called for a roll call vote along with each member stating their reasons for their vote.

R. Starodoj- **NAY**

His decision is based on the letter and opinion from town counsel from May 2010. He believes that the vote taken 10 years ago was the correct one at the time in order to protect a small farmer. He believes that Phase 3 of this project is separate from Phase 1 and 2 and that the revenue from the earth removal far exceeds the revenue from haying.

He also felt that based on the site visit, less earth could be removed than is being proposed to accomplish the goal of the project.

J. Kusnierz- YAY

His decision is based on the previous statement from Kathy Knight at the Site Visit regarding that she really does not care about the money being made from earth removal and that running the farm is simply what she loves to do. His decision is also based on past precedent of what J. Knight has done on the property showing how it will always be a hay field.

E. Murphy- YAY

His decision is based on the fact that only a small percentage of the farm is being impacted by the earth removal operation. He also stated that the property owners are trying to be as respectful as possible and their true intentions are to make the farm viable for generations to come.

K. Crosby- NAY

His decision is based on the fact that the majority of income over the last 10 years has been from earth removal and not hay farming. He does not see how the earth removal project fits into the whole farming scheme. He also stated that he agrees with R. Starodoj on the point that less earth could be removed from the property to achieve the desired results.

Vote: 2 – 2

R. DeCoursey proposed that the next step should be to seek Town Counsel advice.

J. Knight decided to remain recused for the rest of the meeting siting he was uncomfortable if any of the proposed Zoning Bylaw Amendment discussion were to occur concerning earth removal or fences. He left the meeting at 7:45pm.

NEW BUSINESS

Discussion of Zoning Bylaw Amendments

R. DeCoursey brought up the proposal of an overlay district along the Belchertown Road (Route 9) corridor. The purpose of this overlay district would be to allow certain properties within the district to pursue business operations not currently allowed. R. Starodoj liked the idea but was concerned about creating an "open playing field" for potential businesses/uses. He also stated he would not want to see the overlay district in the Historic Town Center district. He also said his biggest concern would be making sure the set backs are large enough both from the street and other residences.

B. Bergeron raised issue with the zoning changes and the impact it had on his business and the DeSantis garage and the Chrabaszk tank farm. He disagrees with the designation of the zoning district where their businesses are considered as rural residential. He also brought up the proposal by a developer for a battery storage facility to work in conjunction with his solar operation. B. Bergeron also stated that he wished he had been more aware of the zoning amendment process when it was going on so today he would have more use for his property. He also stated he is in favor of the proposed overlay district. R. DeCoursey told the Chairman that some mapping could be done to get a better sense of the parcels and their dimensions in the proposed overlay district.

The conversation continued into a discussion on allowing solar as an accessory use. Currently in the Rural Residential district, only one use is allowed on a parcel meaning a commercial solar farm cannot be on the same parcel as a residence.

R. DeCoursey presented the Board with some example and draft definitions for: freight & trucking terminal, campground, estate lot, and town line/boundary line. This discussion also included fences in relationship to corners and visibility, as well as the definition of structure.

Motion by J. Kusnierz to adjourn the meeting. Seconded by E. Murphy. All in favor. Approved 4-0.

The next meeting is scheduled for Thursday September 3, 2020 at 7 pm.

Minutes from August 20, 2020

Respectfully submitted by,

Jack Carolan- Department Assistant

<p><i>Minutes Approved on:</i> _____</p> <p>Starodoj _____</p> <p>Kusnierz _____</p> <p>Knight _____</p> <p>Murphy _____</p> <p>Crosby _____</p>
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