



# TOWN OF WARE

## Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

## Zoning Board of Appeals

Meeting Minutes from

**January 26, 2022**

Board of Selectmen Conference Room, Town Hall

### Board Members Present:

Lewis Iadarola (Remote)  
Jodi Chartier (Acting Chair)  
Chuck Dowd  
Greg Eaton  
Phil Hamel  
David Skoczylas (Alternate)

### Board Members Absent:

George Staiti (Alternate)

### Staff Present:

Rob Watchilla (PCD Director)  
Anna Marques (Zoning Enforcement Officer)  
Stuart Beckley (Town Manager)  
Laura White (PCD Admin. Assistant)

### Public in Attendance:

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### PLEDGE OF ALLEGIANCE

Acting Chairman J. Chartier called the meeting to order at 7:01pm and led the Pledge of Allegiance.

### ADMINISTRATIVE

#### D. Skoczylas recognized as a voting member of the Board

**Motion** made by J. Chartier to recognize D. Skoczylas as a voting member. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 5/0/0.

### **Approval of meeting minutes from October 28, 2021**

**Motion** made by P. Hamel to approve meeting minutes from October 28, 2021. Seconded by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

### **Approval of meeting minutes from January 13, 2022**

**Motion** made by P. Hamel to approve meeting minutes from January 13, 2022. Seconded by D. Skoczylas.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

### **NEW AND OLD BUSINESS**

#### **Zoning Bylaw Changes**

- **Earth Removal** (§4.8.5)

##### **Exceptions** (part C)

Part C states “A *special permit is not required for the following situations:*”

J. Chartier gave an example of a property the second part of point 1 would apply to. Point 1 states, “*For moving earth within the limits of a parcel or contiguous parcels in common ownership, **provided that no such moving shall take place across or within the street.***”

J. Chartier stated the second part of point 1 should not be removed for safety and environmental concerns.

A. Marques inquired about whether the Board thinks one special permit would cover both properties.

The Board discussed what would be covered by a special permit in this situation.

The Board agreed to keep point 1 as written.

R. Watchilla read point 2a which states, *“For the purpose of Earth Removal, the definition of ‘structure’ within §4.8.5 shall not include: pole, sign, fence, wall, any small constructs (less than 100 sq.ft.), or any part of the above.”*

The Board agreed to point 2a as written.

**Motion** made by P. Hamel to accept point 1 and point 2a, as written. Seconded by D. Skoczylas.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

#### **Operational Standards (part D)**

The Board discussed point 2 which states, *“No excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary. If an abutting property is conducting an earth removal operation, a waiver of the 50-foot buffer on the shared property boundary may be granted by written agreement of the involved parties and super-majority vote of the Special Permit Granting Authority.”*

R. Watchilla informed the Board that the Planning Board suggested changing “super-majority vote of the Special Permit Granting Authority” to “an approval for the modification of the applicable existing earth removal permit by the Special Permit Granting Authority.”

J. Chartier stated concerns about environmental effects of waiving the buffer between two earth removal projects.

The Board discussed possible effects of waiving the buffer between two earth removal projects.

L. Iadarola suggested shrinking buffer to 25’ instead waiving the buffer altogether.

A. Marques stated concerns about a smaller buffer creating an “Egg Carton” effect.

R. Watchilla brought up a scenario where two abutting earth removal projects are owned by the same party. He stated, in this situation, there would likely be no buffer between the two projects.

L. Iadarola suggested, in that scenario, there may still be a need for a buffer, depending on if they were two different projects or in two different phases.

J. Chartier brought up a scenario where two abutting earth removal projects are being done to accomplish two different objectives. She stated one could just be a gravel operation, with the intention of leaving the parcel empty, while another could be done with the intention of building homes on the property.

L. Iadarola stated concerns about two different earth removal projects having different finishing grades.

L. Iadarola suggested editing point 4 in this same section, which currently states, *“All excavated area shall, upon completion of the operation, be covered with not less than four inches of loam suitable for seeding, brought to the finish grade and seeded in a manor complying with Mass DOT Standards.”* He suggested the addition of “or within two years of the issuance of the permit,” after “upon completion of the operation...”

Upon request, A. Marques explained the “Egg Carton” effect to the Board.

The Board discussed situations in Town where this point may apply.

**Motion** made by P. Hamel to not recommend the proposed addition to point 2 that would allow for a waiver of the 50’ buffer between two earth removal projects and to recommend the addition to point 4, as suggested by L. Iadarola. Seconded by L. Iadarola.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

The Board discussed point 6 which states, *“For Earth Removal projects requiring a special permit, no excavation shall be made at less than 10 feet above the annual high water table, as established from test pits, soil borings, and monitoring wells which are installed and gauged quarterly.”*

**Motion** made by P. Hamel to accept point 6, as written. Seconded by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

#### **Decision (part F)**

Point 1 states, *“The SPGA (Special Permit Granting Authority) will take into consideration the following in reaching its decision:”*



The Board discussed the proposed addition of section “d” which states, “*The removal will not violate section 4.3.24 of this zoning bylaw in regard to vibration and noise.*” The Board also discussed the noise and vibration limits set in §4.3.24.

**Motion** made G. Eaton to accept point 1, section “d,” as written. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

Point 2 states, “*The SPGA may impose conditions pertaining to:*”

The Board discussed the proposed addition of section “c” which states, “*Hours of operation to be set by the SPGA on a zoning district basis.*”

**Motion** made D. Skoczylas to accept point 2, section “c,” as written. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

The Board discussed the addition of section “h” which states, “*An updated topography map of the project site showing the current grade with volume calculations shall be sent to the SPGA every 5 years.*”

L. Iadarola suggested adding, “Or at the completion of the project.”

A. Marques inquired about whether or not the surveyor or engineer must submit an as-built after completion of the project to close it out.

R. Watchilla stated that this is covered in section “j” which states, “*Sufficient security and covenants to ensure compliance with the special permit, which shall not be released until the surveyor or engineer has filed with the SPGA an as-built plan and certification that the site has been restored in compliance with the special permit and the plans.*”

A. Marques asked about, in cases where a special permit extension is requested, if they would need to submit any plans showing a progress update.

The Board discussed whether or not to change the language of section “h” of the Bylaw.

R. Watchilla suggested changing “every 5 years” to “on a basis determined by the SPGA.”

L. Iadarola suggested leaving section “h” as is, but adding “or as determined otherwise by the SPGA.”

**Motion** made by L. Iadarola to add “or as determined otherwise by the SPGA” to section “h.”  
Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

The Board discussed section “i,” which states “The SPGA may request as a condition that the applicant furnish a performance bond, of cash certified check or a surety company to the Town as an obligee in a penal sum to be fixed by said SPGA as it shall deem sufficient to cover the cost of the performance of all the conditions, limitations, and safeguards may be imposed by said SPGA in connection with the removal of the particular earth substances for which the permit has been issued.”

The Board discussed section “i,” subsection “i” which states, “The bond, check or cash deposit shall be held by the Town Treasurer until all conditions of the permit have been met to the satisfaction of the SPGA. If after (18) eighteen months from the issuance of the permit all conditions as required in the permit have not been met (especially grading and seeding), the SPGA shall cause the monies to restore the site to its natural state.”

S. Beckley informed the Board that no current projects were under 18 months. He suggested that, in subsection “i,” after the statement, “If after (18) eighteen months from the issuance of the permit,” adding, “or extension thereof.”

**Motion** made by G. Eaton to add “or extension thereof” to subsection “i”. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

- **Junkyards (§4.3.25)**

R. Watchilla informed the Board of the reasoning behind the definition of **Junkyard** and **Junk** in the Bylaw.

D. Skoczylas stated the importance of adding these definitions to the Town Zoning Bylaw.

R. Watchilla read the current definition of **Auto Salvage** as well as the proposed definitions of **Junkyard** and **Junk**

L. Iadarola stated concerns that adding these definitions to the Town Bylaw will not solve issues of existing junkyards. He also stated that a clear distinction must be made between Junkyard and Auto Salvage.

S. Beckley stated the Bylaw would only apply to businesses, anything else would be classified as an unkempt property.

The Board discussed the possibility of existing businesses that could be categorized as a Junkyard and, in passing this section of the Bylaw, unintentionally granting carte blanche to these properties.

S. Beckley agreed with L. Iadarola's concerns, stating "automobile graveyard" does not belong in the definition of Junkyard.

The Board discussed the possibility of prohibiting Junkyards altogether and keeping the definitions in the Bylaw.

L. Iadarola stated more thought is needed on this section until any decisions can be made.

D. Skoczylas inquired about the differences between Auto Salvage and Junkyard.

**Motion** made P. Hamel to table the discussion of Junkyards until the next meeting. Seconded by D. Skoczylas.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.



- **Earth Processing (§4.3.27)**

R. Watchilla read §4.3.27, which states, “*Earth Processing (f-5) shall be defined as the processing of earth materials (soil, loam, peat, sand, gravel, or stone) brought on site or brought in and stored for processing in any 12-month period, this includes gravel pits. Earth processing shall be allowed by special permit (see §7.2) in the Rural Residential (RR), Highway Commercial (HC), Commercial Industrial (CI) and Industrial (I) zoning districts. In addition to a special permit, earth processing operations over 500 cubic yards shall warrant a site plan review by the Special Permit Granting Authority (SPGA). A special permit for the earth processing may not be required if:*

- *Conducted on the site of an earth removal operation that was allowed by special permit,*
- *Conducted on the site of a privately owned subdivision for the sole purpose of developing the private roadway,*
- *Conducted on the site of, incidental to, and in connection with earth removal necessary for the construction of a principal or accessory structure permitted by the Zoning Bylaw.”*

The Board discussed what would require a special permit in this section of the Bylaw.

L. Iadarola suggested the following amendments to the verbiage of this section:

- Limits for total materials brought onto a site, not just materials processed
- Remove “Incidental to”
- Remove “Rural Residential”

A. Marques stated concerns about how to monitor total materials brought onto a site.

L. Iadarola offered to write up suggestions for earth processing to send to R. Watchilla.

**Motion** made P. Hamel to table the discussion of Earth Processing until the next meeting.  
Seconded by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

R. Watchilla reminded the Board of the soft deadline of February 15<sup>th</sup> to submit proposed changes to the Bylaw.

The Board agreed to meet again on Thursday, February 10<sup>th</sup> at 7:00pm to discuss the following topics:

- Junkyard
- Earth Processing
- Cannabis
- Proposed Definitions (if time allows)



## ADJOURN

**Motion** made by L. Iadarola to adjourn at 9:00pm. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
G. Eaton	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 6/0/0.

**NEXT MEETING DATE:** Thursday, February 10, 2022 at 7:00pm

Minutes from January 26, 2022  
Respectfully submitted by,

Laura White  
Administrative Assistant  
Planning & Community Development

*Minutes Approved on:*

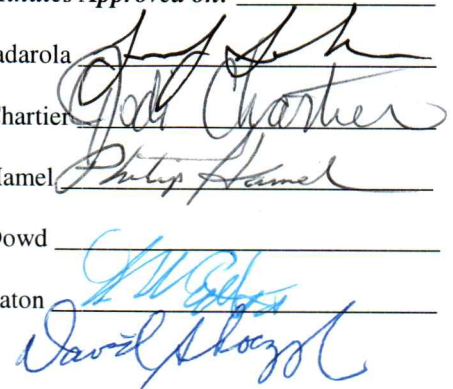
Iadarola

Chartier

Hamel

Dowd

Eaton

Handwritten signatures of the board members in blue ink. The signatures are written over horizontal lines next to the names: Iadarola, Chartier, Hamel, Dowd, and Eaton. The signature for Skoczylas is not present in this section.