



# TOWN OF WARE

## Planning & Community Development

126 Main Street, Ware, Massachusetts 01082  
t. 413.967.9648 ext. 186 / f. 413.967.9642

## Planning Board

Meeting Minutes from

**Wednesday, October 2, 2019**

Select Board Room, Town Hall

### Planning Board Members Present:

Rick Starodoj (Chairman), Fred Urban, Edward Murphy, Josh Kusnierz, Joseph Knight and Jennifer Muche (Alternate)

### Staff Present:

Rebekah DeCoursey, Director of Planning & Community Development; and Nicole Croteau, Assistant to the Director, Anna Marques (Building Official-Zoning Officer)

### Public in Attendance:

Dale Kiley (Corp. Counsel for Bond Construction Corp.), Karen Hubacz (Bond Construction Corp.), Elizabeth Hancock, Marilyn Podkowka, Ken Ross, Keith Kruckas

### Pledge of Allegiance:

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

### Administration:

- **Meeting Minutes**

Approve minutes from September 18, 2019.

F. Urban made a motion to approve the minutes as presented. E. Murphy second. Approved (6/0).

- **New Business**

Cease and Desist Order – 219 Babcock Tavern Road. Zoning Enforcement Officer has requested to attend the meeting in conjunction with the property owner and representatives to discuss with the Board the earth removal operation at the farm.

Joseph Knight recused himself from the Board. Chairman noted J. Muche may hear the discussion and make comment but may not vote on matters relating to this discussion.

A. Marques explained to the Board about a year ago complaints came into the Building Department relating to the gravel being removed at the above address. One year later the Zoning Enforcement Officer is still addressing the original complaint and not having a clear answer of what is and was to be done at the site. (The original complaint is relating to the site acting as a "gravel operation"). A. Marques was asking for clarification of the Board's past understanding of the site operations. The landowner states they are acting under an Agricultural Exemption and therefore do not require the earth removal permit.

Chairman explained that the current Board members were not all on the Board when the operations at the site started about 9+ years ago. He explained the history.

- The original operator at the site was removed from the project
- Bond Construction Corporation took over and cleaned up what the previous contractor left
- June 2010 Planning Board had a site visit and took measurements of the site and at this point it is when the Board decided that the gravel being removed is for the purpose of converting wooded area into grassland.
- From 2010 to 2017 approx. 85,000 cubic yards have been removed

K. Hubacz from Bonds Construction stated the gravel being removed from this site is not in high demand and that is why the length of the project has taken longer than original discussed.

Chairman stated it is improving the farm but not for profit.

K. Kruckas asked the Board if there has been a tipping fee for this project.

Chairman stated there has not been a tipping fee for this site.

R. DeCoursey stated that surrounding towns have a bond in place for damages to the roads rather than a tipping fee. Another approach would be to charge an annual fee with an earth removal permit. Tipping fees are an illegal tax for the use of the roadway.

Chairman presented a slideshow using Google Earth images showing the construction of the site from 2010 through 2018. Explained that this project appears to be coming to an end with that was approved by a vote of the Board with Phase I and Phase II of the project.

J. Knight stated that he would like to propose a Phase III of the grassland (hay fields) around back of the abutters property to eventually connect the property between 240 Babcock Tavern Rd and 219 Babcock Tavern Rd. This would involve tree removal and earth removal. Chairman stated that you can cut trees on your property anytime you wanted to.

K. Hubacz stated the site is categorized as Chapter 61A land. All along the intent of the project is to make sure the site is graded and sloped properly to hay as much as possible in the future. Along the tree line is very steep and needs to properly stabilize this area to have a tractor safely hay.

Chairman continued to state that it was great for the Board and others to have this discussion to make sure everyone was on the same page with the intension of the project. He would like to have any new proposed work such as the connection of land be a separate issue and address the concern tonight about the Cease & Desist.

K. Kruckas asked the Board if there was a Special Permit on this site and if not, then when does it become a Special Permit and/or Earth Removal Permit?

Chairman stated there is not a Special Permit and/or Earth Removal Permit and the owners are working within the limits allowed by the Agricultural Exemption.

K. Kruckas replied it has been 10-years.

K. Hubacz explained the path the trucks hauled the gravel from the site to Bond Constructions Corp site and explained that the drivers do not travel the Beaver Lake route.

Chairman asked K. Hubacz how close to completion is this site. She replied that the area to the left and towards the tree line needs to be complete. Chairman asked for clarification on a time frame. K. Hubacz can't exactly put a time frame on it. Chairman asked how much more cubic yards are planned to be removed. K. Hubacz stated maybe 20,000 but it would take calculations to confirm. She also stated that this year 8,500 cy has already been removed and that is with operations not taking place in May, June, July and August. Each year Bond Construction presents to the PCD Dept. a report about the cubic yards. K. Hubacz read:

- 2019 = 54 days operating at 150 cubic yards per day
- 2018 = 154 days at 155 cy/day
- 2017 = 180 days at 155 cy/day

J. Muche asked for confirmation about how many more yards are to be removed this year (20,000).

D. Kiley expressed concerns to the Board that now the Board is asking for a restriction on this site and the site is exempt. Chairman stated the Board is just asking for what is realistic and not putting such a restriction.

A. Marques asked the Board what are and is the project limits. What is the overall site intention and how far is the project going near the abutters property?

Chairman stated the clearing is to take place up to the now existing clearing line and Bond Corp have started to slope the site accordingly for haying operations. The Board never put a time frame on this project. K. Hubacz clarified that the grades and slope are to take place as gravel is removed. Chairman stated that it appears the southern clearing limit has been reached.

A. Marques stated that the Board was approached last year and a year later we are in the same position. There are 10-years' worth of notes and minutes and no final decision or action has taken place.

J. Knight stated that if there was a meeting initially then we wouldn't be here today addressing the Cease & Desist Order.

A. Marques stated she retracted the Cease & Desist Order but felt it was warranted; although, after reading the minutes the Planning Board did do their due diligence and she respected that.

E. Hancock stated that "she has made complaints over the years and what the Board is saying tonight doesn't match the past PB minutes and requests the Board to walk her property. The Kulas have cleared trees right to her property line and wants to know when will this end. After personal research, the Grassland Permit Application was never returned and confirmed by the State. This is a major gravel pit and ignored your own Town Counsels letter dated May 5, 2010 regarding this matter. Didn't even take into account the advice given. When will this all stop; the beeping, noises and dirt? If there was a Special Permit this would have all been addressed. The Grassland Permit Application states 2.5 acres and now it is Phase 2 and then Phase 3 and now up to my property. This is a major operation and for profit. How many more acres and how much longer will this last?"

K. Kruckas stated he also read Town Counsels letter and asked at what point isn't it agricultural?

Chairman stated that it all under the initial intentions to remove the earth and create grassland hayfields.

E. Hancock stated in frustration that the project isn't going to end any time soon. Continued to state that the Board has turned a blind eye on this operation. What is going to happen to property values and stress it will put on her well operating such large machinery.

J. Kusnierz stated that if Ms. Hancock has concerns about her well contamination, to have the well personally tested and if levels change over time due to the operation than settle that issue in civil court, not here with the Planning Board.

General discussion was made regarding the operations and process which takes place under the Agricultural Exemption. The Board Members, R. DeCoursey, K. Hubacz, A. Marques, J. Knight, E. Hancock decided it would be best for a site walk to take place to discuss the final operation plans. The site visit had been scheduled for October 19, 2019 at 9:00 am to visually confirm the extent of the project limits and to have all parties at interest on the same understanding. The Board's overall feeling was that no additional vote was necessary because the scope of the project has not change in ten years.

End of discussion at 8:24 pm.

- **Town Planner Updates**

- **Solar Energy Facilities** – Distribute comparison chart to Board

Presented a chart to the Board to review certain topics on solar and what the surrounding communities stated in their bylaws relating to that topic.

- **Scenic Road Bylaw** – Present to Board a proposed bylaw for fall town meeting

R. DeCoursey stated the draft Bylaw intention is to protect public shade trees and stonewalls within Ware that are not along a state road. There is a list of streets recommended from local boards, commissions and citizens. R. DeCoursey personally drove on these streets and felt some should not be included and others should be added. Asked the Board how they felt on this Bylaw and the streets listed.

Chairman expressed concerns if the Bylaw would encroach onto properties or is the Bylaw intended to protect trees and stonewalls within the right-of-way only. R. DeCoursey stated she needed to complete additional research to confirm. General discussion was made about which streets should and should not be included. R. DeCoursey stated she would like to see this Bylaw voted on at the fall town meeting if possible. Chairman stated to R. DeCoursey that she needs to clarify any information at the town meeting and the clear intention of this Bylaw to the citizens and how it will affect homeowners on any designated scenic road relating to tree cutting or stonewalls within their property. Chairman also suggested how would this Bylaw affect farmland and agricultural areas.

- **Recap** – R. DeCoursey reviewed upcoming events, submittals and meetings with the Board

- Monday, Oct. 7<sup>th</sup> at 7 – 8:30 pm – Complete Streets – Public Meeting to discuss sidewalks, bike paths and ADA within Town. Meeting will be led by Becky Bash
- Solar Bylaw – Revisions are still in progress and still hoping to have at the spring town meeting
- Scenic Road Bylaw – will research additional topics from tonight's meeting and will report back to the Board next meeting
- There are possibly 3 new solar sites being submitted next week (Monday, Oct 7<sup>th</sup>) and the parcels are subject to a zone freeze by ANR Plans that were filed. Once submitted, plans will be distributed as needed.

Erin & Ken Foss – 5 Chester Ave, Ware, MA

The Foss's expressed concerns over a fence at the corner of Chester Ave and Eagle St (126 Eagle St.). Due to the existing 6-ft fence along the corner of both street, there is no safe line of sight. This caused a recent car accident and their car was totaled. Since there is no bylaw on fence regulations, how can this issue be addressed before someone is killed.

The Board stated this is a safety concerns and to possibly address this to the Police Department. R. DeCoursey stated that creating a fence bylaw would be hard to enforce within the town because it doesn't work retroactively. Current regulations only apply to the height of fences and not the placement or the installing process. Chairman stated that is issue is not in the hands of the Planning Board or the PCD Department but rather address the Select Board, the Town Manager or the Police Department.

End of Discussion.

**Adjourn:**

F. Urban made a motion to adjourn; J. Kusnierz second, no discussion, all in favor.  
Adjourned at 9:08 pm.

Next meeting is scheduled for October 16, 2019 at 7:00 pm.

Minutes from October 2, 2019  
Respectfully submitted by,

Nicole Croteau  
Assistant to the Director

Minutes Approved on:	<u>10/16/19</u>
Starodoj	
Kusnierz	
Urban	
Murphy	
Knight	
Muche	_____