



TOWN OF WARE

Planning & Community Development

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Planning Board

Meeting Minutes from
Wednesday, September 5, 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): John Perry, Dynamic Energy Solutions, LLC; Donna Love, AT&T Mobility, Chris Ryan, Meridian Solar; Paul Moryl; Bill Moryl, Gary Buelow, Dale Kiley, Anna Marques, Building Inspector, George Staiti, ZBA, Jack Cascio, Paul Litchfield, David Kopacz, Sr., Cindy Kopacz, Stuart Beckley, Town Manager

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

1. Administrative

- a. Approve minutes from August 15, 2018 – Motion by J. Kusnierz to approve the minutes as presented. Seconded by F. Urban. So voted 5/0/0.

2. **Public Hearing on SP-2018-03, General Dynamics/AT&T, Major Utility for First Responder Broadband Network.** Chairman opened the hearing at 7:05 p.m.; J. Knight read the legal notice into record. Donna Love from AT&T Mobility presented the project; The First Responder Network Authority chose AT&T to implement a nationwide broadband network dedicated to first responders. There was brief discussion about noise (minimal), fuel tanks (secured and double walled), cell tower sites, ownership, cycling should be on a weekday, other components in the compound.

Motion by J. Kusnierz to approve the plan as presented and approve Special Permit 2018-03 with the condition that the cycling be done on a weekday (Monday through Friday) between 8:00 a.m. and 5:00 p.m. Seconded by F. Urban.
Seconded by F. Urban.

Roll call vote:

Rick Starodoj	AYE
Josh Kusnierz	AYE
Fred Urban	AYE
Chris DiMarzio	AYE
Joe Knight	AYE

So voted 5/0/0.

3. **Public Hearing on Special Permit SP-2018-02 & Site Plan review SPR-2018-05**
Ware Palmer Rd Solar, LLC, large ground-mounted solar facility (continued from 8/15). John Perry and Chris Ryan presented the revised plans. There was discussion about the revised project limits which slightly reduced the total MW, the racking details, and swales.

Motion by C. DiMarzio to grant the special permit for SP-2018-02 and approve the site plan as revised for SPR-2018-05 with the following findings and conditions:

FINDINGS:

1. After the public hearing duly noticed and held, the Ware Planning Board found, as required by MGL Chapter 40 A., Sec. 9, that the

proposal is consistent with the terms of section 7.2.4 and 7.4.7 of the Ware, Massachusetts Zoning Bylaws.

- 2. The construction and operation of a solar energy facility will not be detrimental to the health, safety, or welfare of the neighborhood or town, given that it is a passive use of the land that will not generate health or nuisance problems;*
- 3. The construction of a solar array at this location will not create significant impacts on wetlands, and while it is a far different use than the residential uses nearby, it will fit into the site and with appropriate landscaping, will not be significant to the visual character of the neighborhood;*
- 4. Lighting at the site will be minimal and there will be no significant noise, dust, vibration, or odors created, and minimal glare off the solar panels which should not impact abutting residences in Ware;*
- 5. There will be negligible impact on traffic or pedestrian circulation in the area due to the operation of the solar array at this site, and no public access to the site;*
- 6. There is sufficient space on the site for the operation of the solar energy facility, including loading or unloading of any materials or equipment to be brought in;*
- 7. There will be no impact on public utilities (water, sewer, or drainage); and*
- 8. There will be no foreseeable environmental impacts*

CONDITIONS

GENERAL

- 1. Developer will be held to all applicable state and local requirements*
- 2. The Ware Planning Board reserves the right to conduct a site visit upon completion of the project in order to determine the final outcome of the screening. The Planning Board reserves the right to modify the screening within reason, at the cost of the applicant.*
- 3. Any changes to the plans approved by this permit must be reviewed by the Director of Planning & Community Development (PCD), prior to implementation, to determine if they constitute a significant*

change to require modifying the existing Special Permit and additional public hearings.

- 4. Town of Ware officials (Town Manager and Planning Board via the PCD Department) shall be notified by certified mail thirty (30) days prior to any change of ownership of the property, lease holder and/or plant operating company. Within thirty (30) days of such notice, or at a mutually-convenient time, the new party shall arrange to meet with the Planning Board to review the operating conditions of the Special Permit.*
- 5. The Special Permit is not valid until 1.) recorded at the Hampshire District Registry of Deeds and 2.) a certified copy of the recording is provided to the PCD department. A complete copy of the final permit package, including a reduced size copy of the Site Plan, must be recorded with the permit.*
- 6. The Special Permit must be recorded at the Hampshire District Registry of Deeds within 30 days after the appeal period has ended, or 30 days after the decision on any appeal, or the permit shall become void.*
- 7. All work must be completed within 1 year of the approval date by the Board or an extension request must be filed at least 30 days prior to the end of the 1 year period, with such extension approval not to be unreasonably withheld or delayed if the Applicant can demonstrate that such extension was required as a direct result of the timeline according to the Department of Energy Resources for the Solar Massachusetts Renewable Target (SMART) Program.*
- 8. All applicable local, state, and federal permits and approvals must be in place prior to the start of construction and operations.*
- 9. Applicant will comply with all laws, regulations and requirements of the Town of Ware, Commonwealth of Massachusetts, and the United States of America, the strictest of which shall prevail.*

BONDS/SURETIES

10. *The \$175,000 construction bond may be used for the decommissioning bond*

11. *All surety bonds and other financial and legal documents will be immediately updated at the time of transfer to reflect the new ownership or operating interests*

12. *Prior to commencing operation, a financial surety in the amount of one percent of the project construction costs (as submitted on the building permit application) shall be provided as required in §4.8.3.H.5 of the Ware Zoning Bylaw*

13. *Prior to the start of construction, a construction bond in the amount of \$175,000 shall be issued, with the property owner named as the beneficiary. The purpose of this bond is to ensure adequate financial resources to restore the project area to a stable condition should construction not be completed. Upon satisfactory completion of construction, the construction bond will be released but the decommissioning bond in the amount of \$175,000 must simultaneously replace it.*
 - a. *Satisfactory completion of construction shall be a project that has all major components in place, all site work completed and all construction permits (conservation, building, electrical, etc.) properly closed out or in compliance with all regulations and requirements.*

SITE CONDITIONS

14. *Top soil will not be left without sedimentation controls for a period of longer than six (6) months*

15. *Seeding will take place within 2 months of installation, or by a later date as approved by the Planning Board*

16. *Hydroseeding will include a tackifier in order to ensure that the seed media adheres to the soil particles; or, if hydroseed is not used, hay or straw bales will be used and maintained as sedimentation controls*

17. *The property owner shall be responsible for restoring the property to a stable condition should the solar lessee, construction entity, operator, or any other operator on the property, fail to complete the project*
18. *No continuously-on lights should be present. Motion detector lights at gate and equipment are permitted, provided they can be prevented from mis-cycling caused by wildlife*
19. *All fencing, gates, etc. shall be a dark, earth tone color such as dark green, black, dark red, etc.*
20. *Glare impacting any abutters shall be mitigated by the applicant (or current operator) in cooperation with state and local officials.*
21. *There shall be screening vegetation planted along the western property line of appropriate plant materials to provide effective year round screening of the site from the roadway/abutters. All buffer vegetation shall be maintained and any plants that die are to be replaced within six months.*
22. *All plantings are to be maintained for the life of the solar project.*
23. *The construction area lies adjacent to private wells. Therefore, all equipment refueling should occur as close to Palmer Road or the self-storage facility as possible. A spill kit including adsorbents must be present at the site at all times for all equipment.*
24. *Operators must be trained to report and respond to fuel, lubricant, or other releases. A reportable spill is typically a release of 10 or more gallons of a material. Check the pertinent MassDEP reportable quantities list for applicable substances. When in doubt, contact the Ware Fire Department.*
25. *If blasting is necessary, pre-blasting surveys and post-blasting surveys along with any other required documentation of abutting*

properties' wells and structures, shall be performed at the expense of the permittee.

26. All fencing, gates, etc. shall be 6" off the ground as specified in the application.

27. All plantings are to be maintained for the life of the solar project.

28. In no case shall the project operator allow the site to cause excessive runoff to create a dangerous condition along the roadway, outside of extraordinary storm conditions as evidenced by similar issues in the adjacent areas.

HOURS OF OPERATION

29. Hours of operation shall be 7:00 am to 6:00 pm Monday through Saturday, and 9:00 am to 2:00 pm on Sundays

30. Hours of construction and maintenance operation shall be:

Monday through Friday: 7:00 AM to 5:00 PM

Saturday 8:00 AM to 1:00 PM

NO operations on Sunday; NO operation of machinery for warm up or maintenance outside of the above hours. NO construction operations to occur on New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. Emergency repairs and maintenance, including snow plowing, may occur at any time.

Seconded by J. Kusnierz.

Roll call vote:

Rick Starodoj AYE

Josh Kusnierz AYE

Fred Urban **AYE**
Chris DiMarzio **AYE**
Joe Knight **AYE**

So voted 5/0/0.

4. Discussion with Zoning Board of Appeals possible zoning amendments

- a. Definitions of storage – Building Inspector, Anna Marques provided comment on definitions of storage and the potential for varying interpretation. R. Starodoj handed out document entitled “Permanent Storage Structure” as a beginning talking point. There was discussion about enforcement of temporary storage structures, length of time (including consecutive and chronically consecutive days) that defines “temporary”; track timeline from day the Town is first made aware; mobile storage units; the potential for additional “pre-existing non-conforming” structures. R. Starodoj recommended using the following definitions from the handout:

Cargo Container: A metal storage container, typically 20’, 40’, or 53’ nominal length, designed to be utilized in intermodal transport, and quickly connected with an interchangeable, wheeled, separately-registered and titled chassis for over-the-road movement. A Cargo Container shall be considered a permanent storage structure and must meet all zoning bylaw and building code requirements if it is in place for more than ninety (90) days unless it is being utilized on a site with an active building permit, or a site that is being reconstructed after a fire. In all such cases, the container must be removed or brought into compliance with zoning regulations within ninety (90) days of issuance of a certificate of occupancy following building construction or fire recovery completion. If no active reconstruction after a fire is substantially begun within ninety (90) days of an insurance settlement, then the Cargo Container must be removed or brought into compliance with zoning and building regulations.

Mobile Storage Unit: A storage unit less than 8’x12’, without a wheeled chassis that is designed to be hauled from one location to another on a truck, used for the storage of goods and materials; often marked for temporary (i.e.

ninety (90) days or fewer) storage at residential dwellings; also marketed as “pods” by storage and moving companies. Mobile Storage Units shall be considered a permanent storage structure and must meet all zoning bylaw and building code requirements if it is in place for more than ninety (90) days.

Wheeled Trailer: A storage unit that is purpose-built with permanent wheels and “landing gear” on a non-detachable chassis; typically with a wooden floor and metal sides, roof, and doors. When originally constructed, this kind of unit is issued a vehicle identification number (VIN). The unit utilizes a “king pin/fifth wheel” or “tongue hitch” connection for a motive power unit. An unregistered Wheeled Trailer is considered a vehicle and must comply with general Town of Ware bylaw requirements related to unregistered vehicles. A Wheeled trailer, originally manufactured with a VIN issued, which has had its wheels and/or landing gear removed such that the cargo doors are at or substantially near ground level shall be considered the same as a Cargo Container.

Shed or Permanent Storage Structure: A storage unit that is either a site-built structure constructed of wood, metal, masonry, or other materials; or a similar prefabricated building that is brought to a site from a place of construction.

There was discussion about: cultivating marijuana, requiring that farmers have a Schedule F filed with the IRS; lack of guidance and regulation from the Cannabis Control Commission.

The Board discussed the August 27, 2018 memo from J. Mosso and R. Flores-Marzán (minor changes to bylaw to formalize and polish document). The Board also discussed a hand out (9/5/2018) with potential language for cannabis cultivation. The Board will provide additional comment later.

- b. **Use Table** – The only change to Use Table being considered is changing Marijuana Cultivation in the Rural Residential (RR) district from No to a Special Permit.

5. **SPR-2018-02, All Parts Racing, 55 East Street**

Further discussion re revocation of Special Permit. Attorney Dale Kiley spoke on behalf of Gary Buelow; he discussed Board meeting minutes and letters to Mr.

Buelow from the Board and Department staff. Mr. Kiley discussed that Mr. Buelow did not want to incur additional expenses to revise the site plan to include lighting when the lighting requirement was waived. R. Starodoj explained the difference between lighting requirements as explained in the bylaw and what the Board waived for Mr. Buelow's 2018 site plan application; and that showing where existing lighting is, was still required as it is based upon safety and minimizing negative impacts to neighbors; and that a professionally revised plan protects not only the Town but the property owner as well.

All parties reviewed the hand-altered plan which was received August 14, 2018 by P&CD staff. Chairman Starodoj acknowledged that the Board rescinded Mr. Buelow's special permit and also stated that the Board did not actively seek to have it enforced which provided some relief to Mr. Buelow. Board members provided examples of other applicants providing revised plans that have been professionally edited and resubmitted without and discussion of additional costs; it is the nature of doing business. Building Inspector A. Marques asked about the kinds of light fixtures and hours of operation.

*The Chairman and attorney Kiley agreed to modify the current plan by adding the following language: “*Existing lighting and approx. locations added by Gary Buelow and APR on 9/5/2018 at Req. of Planning Board” and then have Mr. Buelow sign the plan.*

Motion by F. Urban to rescind the August 15, 2018 decision to withdraw the special permit for APR to operate a towing business at 55 East Street. Seconded by J. Knight. So voted 5/0/0.

Motion by J. Kusnierz to approve the site plan as modified this evening and for Mr. Buelow to submit photographs of existing lighting around the exterior of the building at 55 East Street. Seconded by J. Knight. So voted 5/0/0.

6. **Dave Kopacz, Sr. re proposed regulations for convicted sex offenders** – Mr. Kopacz addressed the Board about the higher-than-average number of convicted pedophiles living in Ware (and numbers increasing rapidly) as well as the 2 most recent events surrounding them: 2017 high-profile release of convicted priest Pat Shanley who moved to Ware, and another Level 3 offender who, last month, was accused of re-

offending, released on his own recognizance, and then arrested the same day for drunk driving.

Mr. Kopacz stated that the Town's economic development efforts will be thwarted if the influx of pedophiles and the opioid epidemic are not halted. He said that based upon his research, the sex offender registry had multiple loopholes which precluded offenders from being listed and organized efforts by the National Association of Rational Sex Offender Laws to do away with the list permanently. There was discussion about P. Shanley's release and what Mr. Kopacz called "recidivistic predators". He stated that when someone causes loss or harm to life, liberty, or property, you need to take action. There was also discussion about obtaining a baseline of the number of pedophiles in Ware.

Board members stated that a town bylaw might be a place to start as opposed to a zoning bylaw. Town bylaws are general local laws whereas zoning bylaws are for land use, not occupancy (i.e. people). J. Mosso provided information about the 2015 case where 49 municipalities had their pedophile bylaws deemed unconstitutional by the state's Supreme Judicial Court. The Board applauded Mr. Kopacz's efforts on behalf of Ware's children and recognized that this is an important issue to address. The Board suggested that since zoning is not the right place for it, Mr. Kopacz research existing language that has been upheld by the AGO and start with a town bylaw to present at Town Meeting.

7. Discussion & Updates

- a. PVPC Delegate update – none.
- b. Wildflower Drive – none.

8. **Other** – Paul and William Moryl addressed the Board about constructing a self-storage facility at his farm on Fisherdick Road. He claimed that he has leased it as storage for farmers. The Board stated that no self-storage is allowed in any residential zones; would Mr. Moryl be able to substantiate that he had self-storage before the bylaw came into effect; a business certificate cannot substantiate what exactly was stored (certificate was from 2016 but bylaw was amended in 2012). R. Starodoj stated that it was a major expansion of a non-conforming use and would be difficult to justify. The Board did not support the expansion.

9. **Adjourn** – Motion by J. Kusnierz to adjourn at 9:26 pm. Seconded by C. DiMarzio.

Documents reviewed:

- Minutes from August 15, 2018
- SP-2018-03, General Dynamics/AT&T application and related documents
- Palmer Rd solar special permit and site plan application and revised plans
- Memo from J. Mosso dated 8/27/2018 re bylaw amendments
- Memo from R. Starodoj dated 9/5/2018 re bylaw amendments
- Handout from R. Flores-Marzán related to marijuana cultivation regulations
- Handout from R. Starodoj re definitions of storage
- Hand-revised site plan from APR, signed by Gary Buelow 9/5/2018

Documents received:

- none

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

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