



TOWN OF WESTPORT
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PLANNING BOARD

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PLANNING BOARD MEETING WORK SESSION MINUTES

January 16, 2018

Chairman James T. Whitin called the meeting to order at 5:00 pm with Vice-Chair, David Cole and members Marc De Rego and Robert Daylor and Town Planner Jim Hartnett. Member Andrew Sousa was absent.

Zoning By-Laws Discussion

- a. Discussion on proposed Recreational Marijuana Zoning By-Law in anticipation of Public Hearing next week on January 25, 2018 at 7:30 pm. Hartnett will prepare a slide show for the public hearing. He noted that the State's Cannabis Control Commission issued additional information and those changes will be available at the public hearing.
- b. Review Zoning Article 24 Solar Energy Systems. Whitin read the purpose into the record. He explained time is very short to make any changes for this town meeting. Cole asked if any changes that could be made could be done at subsequent town meetings. He said the Planning Board was initially trying to facilitate two types of solar installations that would be consistent with the community. He noted the public hearing process that led to the creating of this by-law with guidance from the state. The state allowed large-scale solar photovoltaic systems to be regulated but not prohibitive. Cole suggested that the Planning Board be given the chance to exercise the opportunity to make those amendments in a responsible way. De Rego was concerned about future boards and their ability to make changes that may not be as reasonable. He asked if there were safeguards that could be made now and was concerned for solar use on forested land vs. already cleared land. Whitin noted the state may be making some changes to sites that are totally forested. Hartnett noted the Board provides discretionary approval and can ask for what they feel is appropriate for each site. Whitin suggested enlarging setbacks to screen more. Daylor also noted that any application would have to be reviewed and applicants would need to explain how the project fits in the community. Cole suggested getting through the current project then looking at how to improve the by-law. He felt that it was not something that would be able to go to this year's town meeting. Whitin would like to take a look at the different areas in town. With this in mind, consideration must be given as some areas are densely populated and other areas are scarcely populated. Mr. Whitin asked for any public comment.

Grant Moore of Gooseberry Farm Lane presented a solicitation letter from another solar company to his neighbor to the west for the record.

Anne Barnes of Division Road suggested that if the current by-law is amended, the 100 ft. residential setback from the property line needs to be increased and the setback should start from the edge of the work area. She noted that drinking water wells and wetlands all have 100 ft. setbacks and therefore solar arrays need to also be 100 ft. from the array's perimeter fence. She stated at heart of the town's Master Plan it maintains the protection of public health and welfare. She stated solar panels are known to generate electro-magnetic fields and testing should be conducted before and after construction. De-vegetating a forest removes the intrinsic value of

trees. There should be more attention given to a forest and protection of the trees, ground water, drinking water and the air that we breathe. If the land is already disturbed, land where activity was decommissioned (which could be residential), this would be a better situation. She noted that the Town of Dartmouth has changed their Solar By-law to exclude residential areas. She noted that forests should be protected as these will protect the ground water.

Whitin stated that most are concerned with the environment and with the generation of electricity and he stated the Board could consider a 100 ft. setback from the fence and also require a greater setback where it's going to have visual impact, through the process of a Special Permit. He also agreed that whole forest should not be cut back. No further comment was taken.

Matters not reasonably anticipated (amended 1-15-18)

Meeting with Tibbetts, Delphi and TCB regarding detention basin overflow issue this weekend at the Noquochoke Village construction site on Route 177.

Due to the weather conditions on 1-12-18 (rain, melting snow and frozen ground) the rain event was substantially large.

Whitin read a ConCom report dated 1-12-18 into the record followed by the Tibbetts Engineering report from 1-13-18 submitted by the consultant engineer who was on site 1-13-18. Whitin then reviewed the photos while on site Friday afternoon 1-12-18 and a short video of the water running outside of the berm of the smaller retention pond before the rain began.

John Frazier introduced Keith Shaw, Chief Operating Officer from Delphi. Also present was Scott Haskell, site manager and Phil Cordeiro, Engineer from Allen Major. Frazier stated they looked at the events and looked at how to address this in the future. Shaw noted this weather event was more than the site could handle due to the concurrence of rain and snowmelt. They employed pumps and redirected the water to other areas of the site that could handle it. The water was not able to flow through the culvert and made its way to the adjacent area. Since then, TCB have re-designed the berm and closed the overflow from the large basin. The culvert will need to be in working order. They will also be on site to pump out additional rainfall expected due to the frozen ground. Whitin asked why no one was engaged to deal with this situation. He stated that the clerk of the works was in the trailer and not aware of the situation. Whitin stated that they own to the center of the road and could have taken care of this. Frazier was not aware of all that was happening at that time.

Daylor stated that when he arrived on site on Friday 1-12-18 after 4:30 pm, they were still laying out hoses and not pumping yet. He noted that the water was running on the outside perimeter of the dyke (berm). There was no room to get any machinery in between the berm and the chain-link fence along the access roadway. If they were able to get in along their side of the fence, they would have been able to get material in along the berm. The whole purpose of the basin is to control water runoff in these conditions. He said it was not a 100-year storm and it is not an unusual circumstance for rain and snow to thaw at this time of year. The lack of space between the berm and the fence did not give the contractor space to work in a responsive way. The contractor stated that the basins were designed to work this way. Daylor stated that it may have worked well hydraulically but it did not work well according to their NPDES permit in keeping the water on site. It did not protect the neighbors or the water from flowing down stream into the river. The ditch along Route 177 is not a significant environmental resource compared to the river itself. The primary action is to keep all the mud and runoff on site. There needs to room where the materials can be brought in. Daylor did not

disagree with the actions the Town took; these were necessary actions to protect the abutter. Shaw stated that if the culvert was not blocked, it should have flowed through. Daylor stated that the river could not be part of the stormwater system.

Cordeiro stated that they have no intention to pollute the river with runoff and the east branch of the river is not part of their storm water system. He said they are cognizant of the driveways and they have several check-dams in place and they are cognizant of not creating runoff especially into the river. The temporary diversion basin is designed to hold water and pass through to the culvert. The water from American Legion Highway also flows through that culvert and drains through to the Westport River. He said, not in an accusatory or blaming fashion, that he understands the intention was to place the berm in the right of way to hold water. However, through the actions of installing crushed stone in the front of the culvert, it inadvertently blocked the pipe and water from the basin and American Legion Highway backed up in the swale and could not go through that pipe and backed up into the site. It was a combination of the two sources of water from their site and from American Legion Highway that could not get through the culvert.

East Coast construction was aware of it and they were preparing to bring in pumps to drain the basin. Their action going forward is to make sure the water is going through and asked who will be taking action. They need to get the culvert back open. Daylor asked that they coordinate with the PB, MassDOT and the construction group. The culvert is MassDOT's property. Cordeiro stated that water did not leave the site until there was backup from the culvert but that was due to the water from American Legion Highway joining theirs. Cordeiro commended all who came on site to assist containment. They will continue to be on site and maintain the site.

Whitin asked why they did not look at the possibility of the pond water draining backwards. Cordeiro stated they looked at it hydraulically but with the sudden thaw, the crew was aware and were in the process to place pumps to address the basins, before the weather issues came into play. He said that they had taken action before Friday night and Saturday and pumps and were pumping later on Friday. Whitin thanked the Highway Department for their help.

Hartnett asked if the pipes had been cleaned out periodically. Cordeiro stated that they have not physically snaked the pipes because they had been functioning adequately. Hartnett stated that their original report listed them as being crushed which would have caused clogging. Daylor said he observed water passing through the hay bales. He said that there may have been water leaving the site before the town got there. Cordeiro stated that they were engaged and were monitoring the weather coming. He wants to establish a line of communication and again stated how appreciative they are to the Town.

Cordeiro stated that the direction to the contractor made sense but the execution was not as expected. He said they are preparing for new rainfall in the morning.

Whitin thanked Pam Costa in alerting the Town without which the Town could not mitigate a potential problem.

Bill Harkins of the Board of Health stated he e-mailed John Fraser asking what will be done to better the abutter's problems. Fraser stated that no runoff from the site entered the property of the abutter at 1185 American Legion Highway. Mr. Harkins had asked the abutter to test their well and septic. Their tap water was discolored. Cordeiro stated there was no visible evidence getting in or around

their well and does not feel the discolored water is from surface water. They have no evidence of surface water entering in or around the Costas' well; it is not contaminated by any water from this site. The well is close to the driveway and they are aware of where it is. If there was soil movement, it was surface water and not from the site. Cordeiro stated that they do not believe that any additional testing is warranted at this time.

Whitin asked if the amount of water sitting on the surface could affect the ground water level. Cordeiro stated they are impounding water at the lowest point of the site. He said it is close to an abutter and said there is probable interaction with the groundwater - it may affect ground water temporarily. There is temporary mounding of the groundwater but finds it unlikely that the abutter's system is contaminated from any water from the site. He knows that the Costa's well is shallow and is drawing water from the highest levels of the groundwater. The depth of their well is 30-40 feet, by his recollection, and if there were any transported materials, these would be filtered out before it got to the water table that the well is drawing out of. Cordeiro stated there is a possibility that the impounding of the water affects the ground water as it sits there.

Whitin assumed that the bottom of the basins were not frozen. Cordeiro agreed with this; there was still water movement. Whitin speculated that there could be a problem - a lot of pressure could force the groundwater up and asked if this force would affect the nearby well.

Harkins stated that the BOH has taken a water sample for bacterial testing. He said that Cordeiro would comply with any testing required on site. Harkins was also told that the fill that was used on site could not be moved because it is subject to testing. There is a test well on site, but it has not been tested. It is 40-50 feet deep because the Costa's well is not very deep. Whitin asked him if they were going to test it. Cordeiro stated they are waiting to see the results of the Costa's well test to make a determination.

Cordeiro clarified what Harkins stated: soil on site is not contaminated because their contractor is under the obligation to test it. However, the material from the Highway Department, was not tested. Cordeiro stated they did not want to put their own tested material with silt on the right of way and because they were working with the directive that they are not to disturb the neighbor. He said for the record all their soils have been previously tested.

Daylor asked what is the plan to clear the culvert and put it back into service and could the crushed stone be used to build the dyke (berm). Cordeiro stated that they are looking to identify ownership. They have reached out to MassDOT and told them of the status of the culvert and asked if they can clean it out. They plan to go in and remove the crushed stone and plan to rebuild the swale after the winter.

Whitin stated that the Highway Department has an emergency access permit and asked if it can be determined who is doing what tonight. Hartnett stated that it was his understanding that the culverts were going to be cleaned out as a condition of approval. Cordeiro said that they did not dump a truckload of stone over it. Whitin asked if they would reimburse the Highway Department for any work. Whitin insisted that there needs to be a responsible party who will take care of this.

Chris Gonsalves stated that he would have to call MassDOT to see if the developer could do the work under his permit. He said the pipe is half rotted and that the crushed stone would have to be cleaned out.

George Block from Tibbetts Engineering supposed that it would be ok with MassDOT. He stated that when this project was reviewed, he was under the understanding that the culvert was in good condition and he sees from the images that this needs replacing and not just cleaned out. He feels that what is being said is that the culvert pipe is collapsed and that it needs replacing not just cleaning out. Whitin asked Block to assist to see if the water of the pond is effecting the well of the neighbor. Block stated he could recommend a hydrogeologist for that task.

Fraser stated that it was his impression that the culvert was functioning before this event and was just blocked now. He does not know what is involved but will look into whatever it takes.

Hartnett asked if they could submit an action plan within the next few days to the Planning Board. He also asked they take another look at the well and septic system and if it's effecting the abutters. He asked to keep communication open with the town and the abutter.

Fraser stated they would review the letter from the Board of Health and do whatever they are required to do. They are fully vested in the town and want to be good neighbors and to do what they are accountable for. Whitin stated it looks like that they are trying to side step their responsibility for this culvert because they knew of its condition. Fraser will put together an action plan.

At this time, the Planning Board Members moved from the meeting room to their office.

Whitin asked Block about what the developer did. Block was not aware that the culvert pipe was not replaced. Whitin asked what went wrong. Block stated that the pipe was assumed in order. Discussion ensued over the way the basins were constructed. Members agreed to have Tibbetts look at the size of the ponds and review the action plan. Hartnett stated they will submit their stormwater prevention plan and Planning will submit to Tibbetts for review. Hartnett asked that Tibbetts go out now and take a look.

BWC Bass River Blossom Rd A (16-003SPA-LID/SP-S).

Request by applicant for final inspection.

Rich Riccio from Field Engineering was present. He stated that he is trying to obtain a sign-off from the Building Department. The project is not fully complete. The as-built plans were submitted but there are items that are not complete. There is minimal vegetation on site along with other items. Members were amenable to a bond. Tibbetts would need to make an estimate, if that were the case. There was an urgency to get the solar array open in time to meet opening deadlines. Discussion ensued.

De Rego motioned to issue a temporary 6-month certificate of compliance/occupancy permit. Cole seconded the motion and the vote was unanimous with all in favor.

Whitin asked Riccio if the setback requirements could be a setback if increased to more than 100 feet. Riccio said he felt it was not an issue. The members asked about allowing for wild life to transverse the array. Riccio noted they elevated the fencing for that purpose but deer have been known to jump the fence.

Administrative Items

- a. Review and approve Annual Report. De Rego motioned to approve. Seconded by Daylor. The vote was unanimous with all in favor.
- b. Review and approve Annual Inventory. De Rego motioned to approve. Seconded by Daylor. The vote was unanimous with all in favor.

Correspondence.

- a. BOS: Vote forwarding the ZBL amendments to PB for the public hearing process. Noted.
- b. BOS: Deadlines for Annual Town Meeting Warrant Articles (2/2) & Town Report (1/26). Noted.
- c. Accountant: 2018 Mileage reimbursement rate now 54.5 cents per mile (vs 53.5 in '17). Noted.
- d. ZBA: Notice of two decisions 246 Howland Rd and 1 Freedom Ct. Noted.
- e. Buzzards Bay Coalition letter to WRMC (copy) re reducing nitrogen in the River. Noted.
- f. Letter from James Wood addressed to the BOS re M 77 L 12c for 2.48 acres to be removed out of Ch16A (Plan recorded as Book 172 Page 73). Noted.
- g. TEC Reports since last meeting as of 12/05/17. Noted.

Minutes.

November 14, 2017

Daylor motioned to approve. Seconded by Cole. De Rego abstained. The vote was three in favor.

December 12, 2017

Daylor motioned to approve. Seconded by Cole. The vote was unanimous with all in favor.

Invoices.

None.

ADJOURNMENT

Members unanimously voted to adjourn at 7:45 p.m.

Respectfully submitted,
Lucy Tabit, Assistant Planner