

TOWN OF WARNER – PLANNING BOARD
Meeting Minutes
February 6, 2017 **7:00 PM**
Warner Town Hall, Lower Level

Members Present: Chairman Ben Frost, Vice Chair Barbara Annis, Selectman’s Representative John Dabuliewicz, Ken Millender, Don Hall, Ben Inman, Peter Anderson Alternate

Also Present: Land Use Secretary Lois Lord

Late Arrivals: James Gaffney Alternate

Absent: Aedan Sherman, Daryl Parker Alternate

Public Present: Marianne Howlett, Rebecca Courser, Ed Mical, Jonathan Lord

1. OPEN MEETING

Chairman Frost opened the meeting at 7:00 p.m.

2. ROLL CALL

Roll was taken with seven members present and three absent. Lois Lord clarified she had not heard from any of the absentee board members. Chairman Frost asked Peter Anderson to sit in for absentee Aedan Sherman.

3. MINUTES APPROVING – Chairman Frost brought forth the meeting minutes of 1-9-17 for approval. Barbara Annis made a MOTION to approve the minutes, seconded by Peter Anderson. A voice vote was taken with all in favor 7-0-0.

4. PUBLIC HEARING – DOCUMENT REVISIONS

Chairman Frost brought forth the amendments to the Subdivision Regulations, Rules of Procedures and Site Plan Regulations for public hearing. He explained the amendments were relative to a statutory change on notice of applications to the Planning Board which was changed last year with regard to deadlines and is RSA 676:4.

Chairman Frost noted in the Subdivision Regulations the change is on page 6, section C *Application Procedures 5.a.Timing for Formal Consideration*. The number fifteen has been crossed out and replaced by the number twenty-one. This is to mirror the statutory change.

Ben continued, the next change is the Rules of Procedure, page 9, section XII.B *Application/Decision*. It’s the same change, from fifteen to twenty-one days.

Chairman Frost explained the last change as being in the Site Plan Regulations, page 9; section VIII.A *Site Plan Application Procedure*, again changing fifteen to twenty-one.

Ben asked before opening the Public Hearing were there any questions from board members. Barbara Annis asked for a clarification on the documents being amended.

The Public Hearing opened at 7:05. Ed Mical asked if this was the only change and was told that is correct. Everything else is the same. There were no further comments and the Public Hearing was closed at 7:06.

There was no deliberation by the board. Selectman Dabuliewicz MOVED to approve the changes, seconded by Ken Millender. A voice vote was taken with all in favor 7-0-0.

5. OLD BUSINESS

Mike McChesney, Map 30 Lot 32 – Conceptual Consultation follow up

Lois Lord handed out documents from Peter Wyman, Mike McChesney and Tom Baye. The board took a few minutes to review them.

Chairman Frost noted Tom Bayes letter stated that window sizes needed to be changed and Peter Wymans letter expressed concern about Fire and Safety Codes. Ben asked Lois about the letter from the Fire Department and she replied that she tried to get one but had not succeeded yet. Chairman Frost said he had not been present for the conceptual with Mike McChesney and asked if this is what the board was looking for, other than the Fire Departments letter. The board was in agreement that it was other than the Fire Department letter and Ben noted that no action can be taken at this time as we are lacking the Fire Department letter and when we get that we can act upon the request to amend the site plan.

Don Hall stated they had also asked the secretary to go back into the archives and pull out any additional information pertaining to this whole thing that we discussed a year ago. Barbara gave some explanation of what Mike wants to do, stated the zoning requires two exits and that was explained to the board verbally but is not in writing to refer back to. Chairman Frost clarified that what Barbara is saying is that they need in writing from Mike a statement indicating how he will provide two means of egress from the apartment.

Peter Anderson said he feels the issue is he originally asked for one apartment and now there are going to be two for a total of three. He noted they had asked him to return a modified application. Chairman Frost said his understanding is the building is not going to be physically altered from the exterior so that actual site plan does not need to be altered. He continued, to be clear we need two more things from Mike, a letter from the Fire Chief and a written description of how Mike will supply a second means of egress to any of the apartments. Peter stated they were asking for a note to be put on the original plan.

Lois Lord said she believes that at the meeting the board asked Mike to request an amendment to the original site plan. When she told Mike what he needed to do she went through the meeting minutes and she doesn't recall there was anything about a note on the site plan. Pete said Mike had asked the board about doing that. Chairman Frost said in fairness to Mr. McChesney he wanted to make sure what we're expecting of him is clear. Ben then looked at the minutes from the 9th.

Selectman Dabuliewicz asked what it meant to amend the original site plan, just to write a letter stating you are hereby amending the site plan?

Chairman Frost noted the motion on the 9th and read it which said the board would like to see Mr. McChesney amend the original application of the original site plan to add two more apartments to the building. Ben said it sounds like he was not asked to amend the site plan itself but the application. To amend the site plan would require a civil engineer.

Selectman Dabuliewicz asked if Mr. McChesney should reference the section of the application being amended and Chairman Frost said that would be helpful. He said he was open to suggestions having not been a part of the discussion with Mike and what would the board like to specifically ask him to do?

Selectman Dabuliewicz asked that he reference the section of the application being amended and exactly how it's being amended and provide the Fire Department letter. He asked Lois when she asked Chief Raymond about that. Lois replied she had emailed him the week of the 9th and also made multiple calls as late as this morning. Don Hall noted we had discussed the situation down there because the overall time limit that he was given was running out. We brought that back before the board to see what to do, if we

should extend his time or what. That's why I mentioned to the secretary to see what was pending if anything on the original site plan. There was discussion of other buildings Mr. McChesney was going to bring in and whether anything was left hanging.

Lois asked Donnie when that was and he replied it was about a year ago. Lois noted Mr. McChesney came before the board last year to see if he needed to do another site plan to add these apartments and he was told he did. Chairman Frost asked Don if there was something else. Barbara asked how long is a site plan in effect; his original site plan had more to it that he hasn't done. Ben said if there is no time limit placed upon it as a condition of the boards approval then it lasts forever unless there are changes to the regulations or zoning ordinance that make it not conforming to the new regulations. It also depends on whether he's made investments in the property based on the application but generally speaking it lasts forever.

Chairman Frost noted Mr. McChesney has a little work to do and he was trying to recall what the issues were and asked Don if he came before the board three years ago. Don said it has been a few years. Ben asked Lois to research the meeting minutes from a few years ago to see if there was anything helpful and that if we can't find the meeting minutes it's hard to say we told him to do something even though we may recall it. Selectman Dabuliewicz noted that may have nothing to do with the current situation. Chairman Frost noted that not withstanding other issues we can't proceed with this because other information is as yet incomplete.

Selectman Dabuliewicz asked Lois if Mr. McChesney had received a copy of Peter Wymans letter. She replied she had only received it this morning but had read it to Mr. McChesney during a phone conversation they had.

Excavation Permit Renewal Letters

Lois explained permit renewal letters were sent out December 27th with a requested reply date of January 27th and they have received one letter from Mr. Hill. Chairman Frost asked if the board had done a site walk at the location last year and it was confirmed that was done in the beginning of November. The board discussed that they are required to walk each site annually and Lois was asked to begin scheduling site walks for this year. Selectman Dabuliewicz asked when the permits expire and it was clarified they expired the end of last year.

Rebecca Courser who was in the audience noted she would be submitting a letter regarding the Courser Excavation site this week. It was explained that the state permit can't be issued until the town one is issued.

Chairman Frost asked the board if they were prepared to act on Mr. Hill's letter and vote on a renewal. It was clarified that a site walk does not have to be done before renewing a permit and that the permits are good for three years.

A MOTION was made to approve a renewal for the Hill Excavation Site permit for a period of three years commencing January 1, 2017. The MOTION was moved by Ken Millender, seconded by Don Hall.

Discussion ensued regarding a point in Mr. Hill's letter that he is intending to plant some pine trees. The MOTION was amended to state the permit would be renewed subject to the terms in Mr. Hill's letter of 1/22/17. A voice vote was taken with all in favor 7-0-0.

6. NEW BUSINESS

Letter from Board of Selectmen

Chairman Frost noted the board had before them a letter from the Board of Selectmen regarding the potential sale of the Odd Fellows building. The board had just received copies of the letter so took a minute Meeting Minutes of 2/6/17 as approved by the Planning Board 3/6/17

to review it. Ben stated the Board of Selectmen are looking for the input of the Planning Board and any concerns, questions or helpful information they might have.

James Gaffney arrived at the meeting at 7:30 and Chairman Frost explained to him what the board was currently reviewing.

Chairman Frost asked Selectman John Dabuliewicz to shed some light on the matter other than what was included in the letter such as, the letter states *Mr. Burringtons planned uses of the renovated building are allowed under the present zoning regulations.* Ben noted it doesn't say what those uses are.

Selectmen Dabuliewicz said he does not agree with that statement as Mr. Burrington specifically talked about doing wood working in the building and he thinks that would require a special exception in the B1 District. He explained that in order to do this the Board of Selectmen have to hold two public hearings. They haven't negotiated terms and he doesn't know if it's actually going to happen or not but they have been talking about it for months. The plans are to use it for a cabinet shop, possible residential and commercial and those uses are permitted with the exception of a wood working cabinet shop which would be light industrial.

Selectman Dabuliewicz said the town has removed contaminated soil in the basement but there is still asbestos and lead paint in the building and that the monitoring well hasn't shown anything. Chairman Frost clarified that the soil is now clean but the building is still contaminated and asked where the monitoring well is and John replied it's where the new parking area is. Chairman Frost noted the first public hearing is the 14th of February.

James Gaffney asked Selectman Dabuliewicz to speak to the scope of what is indicated in the last sentence of the letter which reads: *Timely completion of foundation reinforcement and improvements to building safety and exterior aesthetics are being incorporated as a condition of the purchase and sales agreement.* James noted there is a lot that can be encompassed within that last sentence.

Selectman Dabuliewicz replied that he agreed with James and couldn't add anything to it at this point other than those are the things that need to be addressed.

James said most people's concern over the last few years has been safety to everyone around the building. It would be nice to have the town out from under the burden of that even if they sold it for \$1.00.

Barbara said she is concerned that the Selectmen have got to follow RSA 41:14a which says very specifically "*After the Selectmen receive the recommendation of the Planning Board and the Conservation Commission, shall hold two public hearings.*" We haven't even addressed it and the Conservation Commission has already met for the month of February. Chairman Frost clarified with Barbara that this was not on the Conservation Commissions agenda at that meeting. Barbara noted they don't have the recommendations yet they've already scheduled two hearings. Selectman Dabuliewicz voiced that he had the same concerns.

Ben asked Selectman Dabuliewicz if this was being proposed for Town Meeting. John said it will be talked about at Town Meeting but the sale won't require Town Meeting action as the Board of Selectmen have the authority to do this. Chairman Frost said the objective of the timing of the hearings he assumes is to provide the public the opportunity to hear what the Selectmen has to say and to comment on the proposal prior to Town Meeting. Selectman Dabuliewicz said it really doesn't have anything to do with Town Meeting.

Chairman Frost said his question, rhetorically, is what is the rush in the public hearings unless it's being driven by the purchaser. James Gaffney said it's not as if there have been a whole line of potential buyers so he can understand why there might be some interest in selling it. Selectman Dabuliewicz said there also is a petitioned article that will be at town meeting directing us to plan and implement the demolition of the building, saving the clock tower and turning it into a green space and parking.

Ben asked is there any information we would like to have that we feel we need in order to make a recommendation to the Board of Selectmen. Is there reason for the Planning Board to delay making some sort of recommendation is his fundamental question. Ben pointed out he is not saying yes or no but looking for the boards thoughts.

Don Hall said this thing is like dealing with the dinosaur age, we've had it so long and it hasn't gone away. He hopes that the attorney would include a default clause so that at no time could this come back to the town of Warner under any circumstances. Ken Millender noted the letter said they are requesting the Planning Boards review of the proposed sale, it doesn't say anything about recommendations. It doesn't mention the Purchase and Sale Agreement, so what is it that they are asking us for? Thumbs up on the Purchase and Sale which we haven't seen or the theory of whether we should sell the property or not and then there's the review versus recommendation. Ken stated he is not clear on what the board is asking us for and it may be answered by RSA 41:14-a. Don Hall stated he doesn't think we have what we need yet.

Selectman Dabuliewicz read from the statute as follows: *Shall first submit any such proposal for acquisition or sale to the Planning Board and to the Conservation Commission for review and recommendation by those bodies.*

Chairman Frost said in this case the statute does not ask us to review the Purchase and Sale agreement; it's the concept of the sale. There may be a reason that the Planning Board is aware of that the town should keep a parcel of land for some reason.

Ben said he thinks he understands Dons concerns but wants to separate out some issues. On one hand we have the sale of the property which is within the Selectman's purview. And then we have the use of the property which is Zoning Board of Adjustment and Planning Board. If a use were to be undertaken on this property, it would have to go to the Planning Board for Site Plan Review because everything that's been done there has been long since abandoned. I suppose you could make an argument that if it's a conforming use then and what's proposed is a conforming use now it might not need Site Plan Review. Chances are this is going to come before the Planning Board if it proceeds. Would that sort of review meet your concerns and would you be willing to recommend the sale of the property subject to appropriate Site Plan Review which is the real question.

Barbara said she had a problem the letter saying Mr. Burrington presented a proposal and a timeline. We have heard a timeline going way back with other potential buyers and it's gone on for fifteen years. They don't say anything about a timeline and how soon this would be developed, is it going to be another fifteen years?

James Gaffney questioned whether that mattered and if there is someone who is interested in purchasing the property and ownership goes to that person then the responsibility to insure that it is a safe structure falls on them. Barbara asked if the town has some sort of moral obligation and what if it catches on fire. James said we have been burdened with that structure for decades and if there's a buyer that's interested in it who has interest at some point in time in making it available for other uses that are compliant with existing town regulations then so be it. Why do we care beyond that?

Peter Anderson asked Selectman Dabuliewicz if the proposal timeline would be made public at the hearing and was told it would not be as there would not be time to negotiate it, they are in the midst of it. John said that Ben is headed in the right direction, what the Select board is looking for is review and recommendation on the sale, not the terms of the sale. Peter said he was trying to clarify if the public is ever going to know those terms and Selectman Dabuliewicz said they would know eventually and he's not sure a public hearing is required to have that level of detail. He made the point that he voted against the original purchase of the building.

Chairman Frost said he's not sure more information would really be helpful to this board's consideration of what to do with the property. He said he is interested in the petitioned warrant article and Rebecca Courser who is one of the petitioners and in the audience was asked to speak.

Rebecca said it directs the Selectmen to devise and implement a plan for the demolition of the Odd Fellows building. She said she would probably make an amendment from the floor because there was confusion on whether the building would come down in 2018 or whether the Selectmen would have to come back with a plan at the 2018 town meeting. After the demolition that site would be used as green space parking and the clock tower would be sited on that property.

Rebecca continued that in the beginning she was in favor of taking on that property and there was a committee for a couple of years. She was on a second committee for about eight years and when she got off of that committee it was with the statement that she felt they had reached all of their options and the building needed to come down. They had looked at government, public, private, apartments, senior housing, workforce housing and office space. The numbers just did not work because it's too small, would need an addition, and there is not enough space on that lot for an addition. Some of the problems have been resolved with drainage and extended parking which might make it a little bit more feasible. She stated she feels it's become a real hazard to the buildings around it with the kids at the nearby school every day. She would hope they would take into consideration any work done on the building exterior be done in the summer when the kids aren't in school. There are a lot of issues with the building.

Chairman Frost said you would be looking at, absent the sale of the building, demolition sometime in 2018? Rebecca said it would be 2018-2019. Ben said if she is going to amend the warrant article he would suggest they provide a certain date. That would actually help the Board of Selectmen in developing a timeline for the sale. Selectmen Dabuliewicz said it is all contingent on the money involved for demolition which is a six figure amount. Discussion continued on that is a good reason to have a plan for it, if it's sold what happens to the plan of dealing with all the hazardous material, that the buyer would be responsible for that, does the current potential buyer have the funds needed and if not it could take a long time for the project to be completed.

James Gaffney said he doesn't think that's really our interest. The town's interest is to sell the building and get taxpayers out from under the liability associated with it. Whether it gets torn down or further abatement is done, we're facing half a million dollars to a million just to mitigate the risk of owning the building. His big question is that he doesn't know how the town can vote on a warrant article to tear it down and require that Selectmen to do it without there being some approval of funds.

Marianne Howlett in the audience asked to respond to Mr. Gaffney's comments that if the town sells it for a dollar we would have no responsibility. She said she doesn't wish any ill will on anyone who would develop that building but the state laws do state, if we follow the tax lien procedure, there is always the possibility the town could own a piece of property and by selling it, it doesn't guarantee that you will never have to deal with it again. James said there are things the Selectmen can do legally from a purchase and sales agreement to help minimize that.

Selectman Frost said the town does not have to take the property for nonpayment of taxes, they may and they could also condemn the property and compel its demolition if that were warranted. He directed the discussion to the issue at hand and asked if anyone wanted to make a motion.

Peter Anderson made a MOTION to approve the sale of the Odd Fellows building to Nate Burrington. Motion was seconded by Chairman Frost.

Selectman Dabuliewicz stated he would abstain from the vote. Planning board members discussed what might influence their vote. Barbara Annis said for her it is the procrastination by the Selectmen for so many years and she believes this is going to go on and on as it already has. There is nothing she can see that will change that and action needs to be taken. Chairman Frost made the point that selling the property is action. Barbara replied it isn't as we don't know the conditions of the sale. James asked if that mattered. Several board members agree that it did and that the petitioned warrant article is worded that if there isn't a purchase and sale agreement the warrant article would then kick in. Selectman Frost made the point that they could be running in parallel tracks.

James said that assuming a most favorable outcome to raze it and create a green space, that's going to be easily a year and a half in the future of town hall meeting at best. We're two town meetings away from the possibility of providing funding to do that. The funding is going to cost easily half a million.

Jonathan Lord in the audience noted there is a CIP estimate of the cost which is about \$185,000: \$100,000 to mitigate the hazardous waste removal and \$85,000 to take it down. It was agreed that this is a modest estimate.

Peter Anderson said he doesn't understand the opposition to approving the sale. James said he has heard for many years that people want to save the building and now that there is someone who wants to save it, there is opposition to it. Chairman Frost shared James puzzlement over this and the question is do we want the town to sell the property. James said is it that we want the town to sell the property, or as a Planning Board is this the right decision for the town. It's important for people to put aside their own personal feelings about this as there are a lot of them in this town and it's important to do the right thing for the town. Selectmen Dabuliewicz noted Nate Burrington has expressed an interest in the building but they haven't presented him with any terms to accept and for Selectman Dabuliewicz protecting the town is number one.

Chairman Frost called a vote on the MOTION. A roll call vote was taken with the following results: Peter Anderson yes, Don Hall yes, Barbara Annis no, Ben Frost yes, Ken Millender no, Ben Inman no, Selectman Dabuliewicz abstained 3-3-1.

Ben noted it was a tie vote and therefore failed. He asked if there was any alternate motion and there was none. Chairman Frost said we would conclude this discussion and the Board of Selectmen can read the minutes of this meeting if they see fit, there is no recommendation forthcoming from the Planning Board.

Chairman Frost directed his statement to Selectman Dabuliewicz and said that if the Selectman is at some future time prepared to give the Planning Board a greater body of information in advance of a meeting that would help this board's deliberations. Ben noted he had, in an email to the Town Administrator, specifically asked that he or the Board of Selectmen provide links to the reports on the town's website germane to the Odd Fellows building and reference to the dates of discussion in the Board of Selectmen minutes that the Planning Board could review.

Selectman Dabuliewicz noted any discussions were in nonpublic sessions and therefore were not available because it was all in negotiations. Ben said he did ask for a link and providing us with a letter on the day of the meeting is not really helpful. Selectman Dabuliewicz clarified that the letter had been received today. Lois stated that she received the signed letter today, had seen a draft letter last week from Jim Bingham but had not sent it on to Ben.

Letter from Zoning Board of Adjustment

The letter was discussed and the board was in agreement that it could be filed for future reference for consideration in the 2018 Zoning Ordinance changes. Selectman Dabuliewicz said he feels the Planning Board should have a joint meeting with the Zoning Board of Adjustment to understand some of the things they were asking for, or at least have the Chairmen meet with each other. Chairman Frost agreed a joint meeting was not a bad idea, perhaps after Town Meeting when new members are on board.

7. SUBCOMMITTEE REPORTS

Chairman Frost said he was sorry about not making the last Master Plan Subcommittee meeting but it was unavoidable on his part. He noted the Planning Board workshop this month would normally be held on the 20th which is a holiday and asked what the board would like to do.

Barbara Annis said before going into that too much, she would like to consider disbanding the subcommittee as we started it a year ago when Rick was on. He presented some material that was supposed to be included such as broadband and electronics. Two people volunteered at that time to rewrite it and nothing has been done. Barbara noted we have not been fortunate enough to meet on a regular basis and so are getting further and further behind. She said we were going to update the plan and now the Energy Committee is updating their section, the Historical Society has a brand new section so now the Energy is going to be brand new and now the Conservation Commission wants to update theirs. Barbara made the analogy that we now have a fruit salad made up of fresh fruit and canned fruit and she would rather keep the information we have and hire Central NH to come in and clean the whole thing up next year.

James Gaffney said he doesn't agree with having Central NH coming in as he thinks it's something that should be put together by the town and if it takes another year or two to complete then so be it. Ken Millender said it is one of Central NH's primary duties, to upon request produce Master Plans or individual sections of it and he agrees with Barbara that they should at least consider that in deciding how to move forward on the Master Plan.

The board continued to discuss the role Central NH would play and that they don't necessarily write it for the town but assist with putting it together, that nothing has yet been finished on the Master Plan and that the Planning Board has prepared the town's Master Plan according to a particular approach which is to revise the entire Master Plan at once. Chairman Frost made the point that plenty of towns do the changes incrementally, working on one chapter a year as opposed to doing the entire thing all at one. He stated he doesn't think it's a problem to have different chapters of different vintages as long as they not too totally out of whack.

Chairman Frost asked what the board members felt about Barbara's proposal and the general consensus was to keep working on it, potentially with some help from Central NH. Ben asked if the Planning Board wanted to meet again this month to talk about the Master Plan further or have the Subcommittee to continue meeting. He said he feels the Subcommittee can continue its work and it is now reduced to James, himself and Darryl Parker and Darryl may not continue on the Planning Board as he was considering devoting more energy to the Economic Development Advisory Committee. James suggested picking one subject and

focusing on it. Chairman Frost asked Lois if there was any reason to meet as a board later this month and she said there was not. Ben said he would talk to James and Darryl and decide how to proceed.

8. COMMUNICATIONS AND MISCELLANEOUS

Chairman's Report – Chairman Frost noted Barbara had asked him to comment on pending legislation and there are about 100 bills he is following right now, most of which are not relative to the Planning Board. He noted there are three bills that seek to modify the Accessory Dwelling Unit law and all three are positive changes. One would allow municipalities to prohibit subsequent condominium conveyance of accessory dwelling units. Another would address how septic standards would affect accessory dwelling units. A third would allow municipalities to prohibit accessory dwelling units from being used for short term rental units such as Airbnb and VRBO and things like that. The question right now is what is short term, there is an existing statutory definition that deals with the meals and room's tax which says it is 180 days or less, there is another bill in the house that deals with short term rentals which defines it as less than 30 days which seems like a reasonable standard. Those three bills are actively pending in the house and the senate.

Chairman Frost said there is a bill pending in the house that would affect how Zoning Boards of Adjustment vote on variances. A similar bill passed the house last year but was killed in the senate and he's not sure how it will move forward this year.

Ben continued, there are a couple of ZBA related bills that deal with continuation of public hearings and that's all he recalls at this time. Barbara asked about one that further defines accessory dwelling and Ben noted that is part of the one on prohibiting subsequent condominium conveyance and there is a hearing on that on Wednesday.

Compliance Reviews – There were none.

Secretary's report on determination of Site Plan Review Applications – None.

Selectman's Representative Report - Selectman Dabuliewicz sated there is a public hearing on the Solar Array tomorrow night and an information session on the Fire Station on February 15th at 7:00 p.m.

Barbara mentioned Peter Anderson brought up at the last meeting, possibly meeting with the Economic Development Committee. She said she had spoken to Mike who has twice said he would contact Chairman Frost and Ben confirmed he had not heard from Mike and Barbara should ask Mike again.

9. PUBLIC COMMENT

There was none.

10. ADJOURN

Chairman Frost declared the meeting adjourned at 8:30 p.m.