

**TOWN OF WARNER – PLANNING BOARD**  
**Approved Meeting Minutes**  
**August 7, 2017** **7:00 PM**  
**Warner Town Hall, Upper Level**

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

**Absent:** James Gaffney Alternate

**Also Present:** Land Use Secretary Lois Lord

**1. OPEN MEETING**

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

**2. ROLL CALL**

Roll was taken with seven members present

- 3. MINUTES APPROVING** – The meeting minutes of July 17, 2017 were brought forth for review with a few corrections. Barbara Annis made a MOTION to approve the meeting minutes with the corrections. MOTION was seconded by Ken Millender; a voice vote was taken with all in favor 7-0-0.

**4. OLD BUSINESS**

**Review of Materials Submitted in Fulfillment of Conditions of Approval for Dragonfly Holdings**

**Property Owner:** Dragonfly Holdings, LLC – Eric Miller

**Applicant:** Dragonfly Holdings, LLC – Eric Miller

**Property location:** Warner Road, Map 3 Lot 33, Zoning District C-1

**Site Plan** for new construction of two buildings connected by a breezeway for use as an indoor gun range and retail store.

Approve/Deny, or Continue Meeting

Chairman Frost noted that since the board has last met, the Superior Court made an order on the ZBAs process and although there are a variety of different things going on there, in sum the Court has voided the ZBAs decision and instructed it to start over, because the state was not notified of the hearings properly and the state owns three abutting parcels. Selectman Dabuliewicz noted the judge said the Zoning Board didn’t take up the issue of regional impact and now they will need to consider it.

Chairman Frost stated that the ZBA is free to do what it chooses but if the ZBA determines there is not regional impact that could be litigated. Be that as it may, the decision of the ZBA to grant the special exception has been voided, they have to start over. We have a communication here from Attorney Nolan who is present here tonight from the Alfano Law Office with a variety of request. Chairman Frost noted he spoke with her and the applicant Eric Miller before the meeting regarding the position of the Planning Board. We have on the agenda to determine whether the conditions have been met. There is some ambiguity in our site plan regulations as to what the sequence is. It can be interpreted one way meaning that we don’t have jurisdiction to proceed or it can be interpreted that we do have jurisdiction to proceed but not to issue a final decision. Chairman Frost continued that given that ambiguity he did consult with legal counsel today and they both agreed that the better thing for the Planning Board to do tonight would be to effectively seek to add to its existing approval another condition that the ZBA must grant special exception before the Planning Board proceeds. Chairman Frost noted there is a

procedural way to do that which he can walk the board through but wanted to open it up to discussion first. He presented it to Eric Miller and Attorney Nolan and they are satisfied with that outcome for tonight's proceedings. If effectively puts a stay on our consideration until after the ZBA is done. If the ZBA deny a special exception then here will be nothing else the Planning Board can do because we cannot proceed without a Zoning Board approval. If they approve it, then there may be conditions of their approval that have an impact on what the Planning Board will need to do and we would take that up at that time. It seems to be the most efficient process to wait until the ZBA is done.

Barbara Annis said she agrees that we should get one thing settled before we proceed with anything further.

Chairman Frost said a motion to reconsider would be made and if passed, and he thinks anyone except Peter can make the motion because he did not vote on it. Because it was unanimous amongst the other 6 members, any of the 6 can make the motion to reconsider. If that motion passes, that revives the motion that was made so it's as if we didn't vote on the motion to approve. At that time, we can add a condition to that motion and then vote on that amended motion if that's the direction the board wants to go in. If the board agrees to that and votes yes, we would wind up with an approval with conditions with the added condition in addition to the existing conditions that we've already imposed, that the ZBA has to grant a special exception first.

Don Hall asked where the stopping point is as we have a substantial list of conditions. Chairman Frost replied that we only want to add the condition that the ZBA needs to deal with the special exception. Otherwise our existing conditions are what they are, that is the only change. Selectman Dabuliewicz said if we do what you are saying tonight, will we determine if other conditions have been met? Chairman Frost said we will put that off. Selectman Dabuliewicz said if the ZBA grants the special exception is it your opinion that we can operate on the same application that we got that was not right because there was no special exception properly granted? Chairman Frost replied yes, there would not have to be a new application and it essentially hits the pause button on this and if the ZBA grants the special exception and say it does so without conditions that have an impact on the Planning Board's decision, then we hit play again and start up from where we left off and if it is denied we do nothing until further litigation compels us to. Chairman Frost continued that part of the direction tonight that he is suggesting the board take is in consideration of the fact that Judge McNamara has indicated the likelihood that once the Planning Board's decision, which has been appealed, and the Zoning Board's decision assuming it makes one and that gets appealed, those will be consolidated. We want to make sure we have as good a record as possible and as clean a decision as possible. There is no rush for us at this time because the ZBA hasn't taken up special exception again. There were no more questions from the board.

Chairman Frost said he would entertain a motion to reconsider the board's motion approving the site plan for Dragonfly Holdings, the decision made on June 19, 2017. Ken Millender moved the MOTION, seconded by Barbara Annis. A roll call vote was taken with all members in favor 6-0-0. Peter Anderson abstained from voting as he had not voted on the original decision.

Chairman Frost said that if the board has further proceedings on this, given that Peter has attended the meetings and is acquainted with the record he should be able to vote.

Chairman Frost stated the motion is back before us to approve conditions and at this time he would entertain a MOTION to amend the motion to add a condition that the ZBA must grant special exception before the Planning Board's decision will be final. Barbara Annis moved the motion, seconded by Don Hall. Selectman Dabuliewicz said he objected to using the word "final", it's not in our ordinance and is being used inappropriately in court filings and he doesn't want to use that term as there is no such thing. He suggested they use the wording

“approval for signature of the plan”. A voice vote was taken with all in favor 6-0-0 with Peter Anderson abstaining.

Chairman Frost said we have before us now again the MOTION to Approve with conditions as amended with this added condition and asked if there was any discussion. There was none. Chairman Frost asked for a vote on the MOTION and a voice vote was taken with all in favor 6-0-0 with Peter Anderson abstaining.

Chairman Frost stated we will wait to see what happens in the proceedings of the ZBA.

## 5. OLD BUSINESS

### **Scheduling of Gravel Excavation Site Walks**

Lois Lord asked the board to come up with some dates so she can ask property owners if they are available. The board arrived at the date of Wednesday August 2 starting at 7 a.m.

## 6. COMMUNICATIONS AND MISCELLANEOUS

**Chairman’s Report** – Chairman Frost noted they did do a site walk at the Courser Excavation site on Poverty Plains Road on Wednesday, August 2<sup>nd</sup> at 8:00 a.m. Rebecca and Gerald Courser were there as well as Chairman Frost, Don Hall and Peter Anderson who did not walk it. There is no activity at the site to report other than some very minor removal of material by family members which is incidental to its use as a gravel pit and it is naturally revegetating. There is quite a bit of material they could take out if they wanted to but there’s no activity to report at this time. There are two others that have yet to be scheduled. Lois Lord stated Mr. Hill can only do it on a Saturday and suggested August 19<sup>th</sup> or the 26<sup>th</sup> at 7:00 a.m. The board decided they would do that site visit on the 19<sup>th</sup>. Lois said she is waiting to hear back on Warner Aggregates.

**Compliance Reviews** – Lois Lord said there were none.

**Secretary’s report on Land Use Application Submittals** – Lois noted that Mr. Pellettieri is planning on submitting his Site Plan for an addition to be presented at the September meeting. On another matter, she had visit from Mike Jones at Knoxland who is filling in some wetlands to store equipment. It will be about half an acre and he is in touch with the DES, it is tree wetlands with sand below it. They are also in touch with Warner Conservation. Selectman Frost said it sounds like an amendment to the site plan. At this point Don Hall stated he has put paperwork in with the DES and asked Lois if he had gotten approval on that. Lois replied she didn’t know, when he came in he said he was in touch with the DES but didn’t bring in any feedback. Chairman Frost said that is a lot of fill. Lois said Mark Mosher who is an engineer who came in with Mike described it as tree wetland with sand. Chairman Frost stated the board would leave it to the DES.

Chairman Frost said with regard to Aubuchon, is there going to be additional landscaping around the building or is it just going to be paved with sidewalk. Lois said she wasn’t sure and Barbara Annis noted when they were in she was trying to get at that and asked about them about the bumper in front of the entry or was there going to be shrubbery. At the time she didn’t receive a response from them on it. It was decided that it is probably going to be all pavement.

**Selectman’s Representative Report** – Selectman Dabuliewicz stated the Odd Fellows Building sale was completed last week to Nate Burrington for \$10.00. Chairman Frost asked what he planned to do with it and Selectman Dabuliewicz said he is planning on renovating it and he was made aware he would need to come before the Planning Board with a conceptual. The agreement was that if he resells the building he will pay the town \$80,000.00

On the Fire Station the historical review was completed with no historical impacts. There was one bid on the house. A Geotechnical study was done and conditions are favorable for a new building.

We are making some progress on fulfilling the Fire Compliance inspection report and we were told by the Fire Marshall it's up to the Fire Chief. With limited use occupancy we can use the downstairs prior to installing a sprinkler system but we're not at the point yet. He mentioned the CIP and that the Planning Board didn't put in anything for it. Last year we put in for new software.

Peter Anderson confirmed we did not put anything in this year but he thinks the Economic Development Committee is going to submit something to cover that. The deadline was discussed and whether it had been passed. Peter stated to his knowledge there is no deadline and Selectman Dabuliewicz said he was told by the Town Administrator that the deadline was last Friday. Peter Anderson said he as the Chairman of the committee does not recognize any deadlines.

Chairman Frost noted that for the record he has not received any communications asking if the Planning Board wanted to submit anything. Peter Anderson said his opinion is that the Economic Development Committee, who is meeting on August 15<sup>th</sup>, will be making a request for the software that the Planning Board requested last year. Chairman Frost said he would talk to Charlie Albano about it.

Peter Anderson gave an update on the CIP noting that their goal is to have it to the Planning Board at the meeting in September and to the Budget Committee in October. He sees no reason that will not be met.

## **PUBLIC COMMENT**

Barbara Annis said she has a couple of things. One is in talking about amendments to Site Plans; we have a business in town that appears not to want to come in to update their site plan anytime they make a change. It's Bookends and is her understanding they are now going to be building a smaller stage. They didn't come in for the solar or anything else they are doing. She doesn't mind herb gardens being added or vegetables gardens but when a structure is added to the property without them coming in for some input it bothers her.

Chairman Frost asked if anyone remember when they amended the site plan last and to his recall it was for the amphitheater. It was agreed that was 4-5 years ago. Chairman Frost said presumably if they are doing structural work, they will need a building permit. He said to Selectman Dabuliewicz that it would be helpful if there was some communication there and Selectman Dabuliewicz said he would do so.

Barbara Annis said that also we have a gap in our procedures. We had something that came up in the Selectmen's minutes that Tom Baye said all he does is inspect the building. We have Peter Wyman who is the Compliance Officer but all he does is look that the grounds for commercial or multi-family dwellings. If someone is building a house and putting in septic and a well, nobody looks at the grounds and where the house is in relation to the septic and well. Barbara said she is saying it's not a bad thing but we are kind of missing protection of the public. She doesn't know how to make sure that happens but is something we should address at some point.

Chairman Frost said he thinks the point is that when building permits are being issued, there's no one checking to make sure the existing zoning is being met, whether it's placement of the well or septic system relative to each other or property boundaries, additions to structures falling within the setback. If all Tom is doing is looking at the structure, then it's accurate that no one would be considering the zoning issues. And as a consumer protection issue, the property owner may unwittingly wind up with a nonconforming structure.

Selectman Dabuliewicz asked historically, what has happened in the past, did previous building inspectors look at those things? Barbara Annis said not that she knows of but it was not required of their job. Selectman Dabuliewicz said he wonders if inspectors in other towns do that and Chairman Frost said they do but it is a job description issue and that is it that the Board of Selectman is expecting the Building Inspector to do. Is it, not so

much code enforcement because it's not a code enforcement question, but insuring that the code is being met. Someone could wind up with something they don't know doesn't comply and could go to a bank and a surveyor finds that the property is not in compliance and they can't get a mortgage.

Don Hall gave an example that many years ago they had a residence built in close proximity to an artisan well which was a water supply for the town of Warner and we were forced to shut it down because somebody didn't pay attention. Barbara Annis said she is also thinking that her former next door neighbor put up a lean to against the wall with no building permit or anything. They didn't get a building permit so it wasn't assessed for a while.

Barbara asked Chairman Frost about a presentation he made to the Conservation Commission. Chairman Frost said it wasn't so much a presentation as it was an invitation from the Conservation Commission to chat about interboard dialogue. His suggestion to them was based on his experience as Town Administrator in Hollis many years ago. We had a quarterly meeting of the different Land Use boards including Zoning, Planning, Conservation Commission, Historic and Heritage Commission and an Agricultural Commission. We got together to talk about issues which sometimes were issue spending before boards and the board that had jurisdiction couldn't participate in it. It was in an effort to open communications amongst the boards. I anticipate that, at least based on what the Conservation Commission Chairman had said, she plans to organize such a meeting perhaps in October. Essentially the board Chairs and anyone else who wanted to could participate. We would provide public notice.

Peter Anderson asked about residents that have yard sales on a weekly basis and are they running a business at that point? Chairman Frost said that is a good question and he doesn't know that the Zoning Ordinance has anything about frequency of yard sales and if so, is that a business subject to Home Occupancy and Site Plan Review. Chairman Frost said he believes that is a legitimate inquiry, not necessarily specific to the property and he hates to over regulate. Peter asked where one would raise the question, to the Zoning Board? Chairman Frost said it would be the Board of Selectmen.

Don Hall asked if he could ask Natalie Wells who was in the audience to explain the federal money that was donated to the town and what it's all about. He said he wanted Peter to note it while he is in the process of putting together the CIP that this could be substantially into the highway department if it's used in the right way.

Natalie Wells said there is \$30 million for the whole state and we are getting a onetime grant to the town. She is assuming we should have it by now and it's only for highway and infrastructure and can't be used for anything else. Chairman Frost asked if there was a definition of infrastructure and Natalie replied that it has to be something that is related to repair of a road such as grading.

Peter Anderson noted that the Selectmen last week determined that the sprinkler system funding could come from the highway and roads because the pipe has to go out to the road. Selectman Dabuliewicz said he doesn't think they determined anything. Part of what they want to do is lower the road near the Odd Fellows Building and funds from the one time grant could be used for that. Chairman Frost asked Natalie if she recalled what the bill number is and she said it's SB 93.

## **7. ADJOURN**

Chairman Frost declared the meeting adjourned at 7:42 p.m.