

Approved: February 22, 2021

MINUTES OF THE PROCEEDINGS OF THE
PLANNING BOARD OF THE TOWN OF LANCASTER
Meeting conducted via ZOOM internet conferencing
Monday January 11, 2021

Present: Russ Williston, Chair; Roy Mirabito, Vice Chair, Carol Jackson, Clerk, Tom Christopher;
Jeanne Rich

Absent: None

Staff Present: Debra Dennis, Administrative Assistant

List of Documents:

- On the Move Site Plan Application
- Bestway Site Plan Application
- 840 Sterling St Bestway Comment (Continuance request)
- Scenic Roads By-Law Application Review
- Barrett Planning Group- Feasibility Assessment - Inclusionary Zoning
- December 11, 2020 Proposed Letter from Planning Board to Board of Selectmen 12-14-2020

Chair Russ Williston called the meeting to order at 7:00 PM.

Public Hearing

1. Continued from November 9th: Bestway of New England, Inc., seeks Stormwater Permit under the requirements of the Lancaster Zoning Bylaw Section 220-34 and the Stormwater Control Bylaw 170-5 to construct a new parking lot with approximately 24 spaces and associated site improvements at a property within the General Industry Zoning district located at 840 Sterling Rad (Assessor's Map 40, Parcel 14A). Bestway requested continuance to 3/08/2021

Discussion amongst board members took place regarding the ownership of Bestway and who has authority to request the extension. Roy Mirabito suggested a letter be sent to the new ownership.

Debra Dennis stated the applicant was asked to come in front of the board and explain.

Russ Williston asked if there was anything preventing us from transferring the plan to a new owner?

Further discussion took place concerning the request to continue for two months from Bestway. Jeanne's concern is the site plan must be acted on within 25 days or it may be approved as of right. Carol would like to go with the continuance and see what they say.

Jeanne Rich stated Debra Dennis spoke to Mr Porter explaining we needed something in writing from the new owners since the building was sold. Debra Dennis stated Mr Porter passed the information onto Bob Rego and he is the one that sent the continuance. Jeanne Rich asked if Bob Rego signed the continuance on behalf of Bestway or the new owners. Debra Dennis stated he signed on behalf of Bestway.

Carol Jackson stated how about we continue to the next meeting. Send the letter stating if there is a new owner they need to withdraw and resubmit, or transfer this application to the new owner if allowed. It would be only 2 weeks, and they could get back to us with what they would like to do. We do not have any of the details if they are in the process of selling, or if it is sold. Deb Dennis stated Bestway is sold, but does not know if they are done with the sale. Russ Williston is comfortable continuing to March 8th, 2021. Does not see any problem. Pretty clear Bestway intends to transfer to the new owner.

Tom Christopher agrees with Russ. No harm to extend another couple weeks to get their paperwork in order, so they can reapply.

Tom Christopher made a motion to grant a continuance to the Bestway group to March 8th, 2021 in order to let them finalize plans for transfer of ownership. Roy Mirabito seconded.

Roll call vote

Roy Mirabito yea, Carol Jackson, yea; Tom Christopher yea; Jeanne Rich nay, Russ Williston yea
4-1 motion passed.

Public Meeting

2. Continued from November 9th: Bestway of New England Inc., Site Plan Approval to construct a new parking lot with approximately 24 spaces and associated site improvements at a property located at 840 Sterling Road - continued to 3/8/2021
3. Continued from November 9th: Site Plan From On-The-Move Mobile Storage LLC
Tim Beauchemin present from On The Move
Tom Christopher recused himself from this public meeting for On The Move- went to waiting room in zoom 7:16
Russ Williston went over what the town council stated, that we could not have a condition that would require us to look at the screening in a year.

Roy Mirabito stated looking back at the minutes from December 14th, Jeanne Rich stated that the applicant has 2 acres but Tim Beauchemin stated no, not really, the owner staked out what they could

use. The Building Inspector and code stated you need 64000 square feet. The site is just under 53000 square feet. Even though the lot is 2 acres, they are only allowed to use 53000 square feet. Roy was wondering if the site plan is really a request for a special permit? Discussion took place concerning the size of the lot, the use of the lot and does it meet the 64,000 sq. ft. zoning requirement. Discussion also took place concerning who signed the application, owner or renter. This application was reviewed by the Town Planner and is in order.

The Building Inspector sent a letter to the board which discussed portable buildings, JB Hunt next door having the same portable structures. Also stated the board could enforce setbacks if they wished.

Tim Beauchemin stated JB Hunt operated 24 hours a day. They have dozens of trucks, and hundreds of containers. Tim stated they will do 5 or 6 trips a day.

Russ Williston stated we will be considering this as the 220-86 c, structure for storage, distribution, supplies and machinery. Then we define structure as the combination of materials assembled at a fixed location. Tim Beauchemin stated he does not think that anything they have would be defined as a structure. Russ Williston stated he does not think that this is what they intended to allow on 220-86 c.

Carol Jackson stated her other concern was health and safety. There will be little kids around the soccer fields, running around. With the trucks and forklift moving around, that is a big concern. Tim Beauchemin stated there is a fence around the soccer fields, and this is a private property. Carol Jackson asked Tim Beauchemin if he came back with a new plan with setbacks? Tim Beauchemin stated no, he did not think the setbacks applied to them. He stated the other departments did not state they needed any. Carol Jackson stated the Building Inspector did. He stated if the containers are stored with anything in them they will be required to adhere to the setback requirements.

Carol Jackson stated she does not know, but she thinks there should be setbacks.

Jeanne Rich asked Tim Beauchemin if he could live without row 34-46 along McGovern Blvd?

Tim Beauchemin stated he could set it back somewhat. If that would help to move things along they could move it. He does not understand why, there has not been any negative feedback, why can't we move on with this.

Carol Jackson stated if we let this go, and others come in asking for the same thing it sets a precedent. It is our rule, it will create a long chain reaction. Tim Beauchemin stated he just wants to get this done. He stated not sure what the board would require. No one asked him for anything to date, and we just keep talking about it. He would like to know what the board would like to see. Carol Jackson stated she asked him to look at their setbacks and see about moving things. Tim Beauchemin stated he did say at one point in time he offered to make it 10' from McGovern Blvd. 20' would even be acceptable.

Roy Mirabito asked how many PODs do they currently have on the lot? Tim Beauchemin stated they own 140, 45 on the lot right now. Roy Mirabito stated with the site plan they submitted, they would never have that many PODs on the site. He also saw no reason not to comply with the setbacks because they would not be in business if they had this many POD's on site. Tim would consider the front setback but prefers not to move the sides and back too much.

Roy Mirabito asked with the 50 PODs, you could accommodate those 50 in the middle of the site without any peripheral PODs. Tim Beauchemin stated they could, but would like to position things to make it more efficient for the trucks and snow removal. During the summer they like to spread things out. It gives them easy access. Carol Jackson stated if you agree to a site plan with the front, side and rear setbacks it would not deter you from running your business. Then maybe come back and see about expanding it if needed. Tim Beauchemin stated he is not sure about if the setbacks are really applicable to them.

Jeanne Rich stated she tends to agree with Tim Beauchemin. They are temporary structures. She would like to see that row, 34-46 removed. The you could accommodate the front yard setback, and if they did that she would be willing to make a motion that we approve the site plan with the condition that the front row of PODs be removed, that the PODs can not be stacked higher than 2 high, and since they are not permanent structures that is the best we can do.

Tim Beauchemin stated, like he said he is willing to give a 20' setback from the road. And that should alleviate some concerns. He questions the 40' setback, when they are not near a residential area .

Jeanne Rich stated she understands. She is just trying to get him out of this meeting and not sit here all night

Russ Williston wanted clarification of the conditions to Jeanne Rich's motion

Jeanne Rich stated front row 34-46 not allowed to be located at front. That would give the 16' plus the 2' plus the 30', that would give us a 48' setback from the front. The rest of the property he can store them no more than 2 high, and since they are not permanent structures he can realign them how he would like. She thinks he meets the setbacks in the rear, and one side, The side closer to rte 70 has a 2' setback, but since they are temporary she thinks like JB Hunt and the dealership they can go up to the property line. Carol Jackson requested a friendly amendment, that nothing else is stored on the lot, like file cabinets, and horse equipment and the like. Just POD's.

Tim Beauchemen would like the 40' setback to be 20'. Russ Williston restated 40' setback, stacked no more that 2 high, and nothing beyond the storage containers can be stored on the site. Dan Loring stated there would be a portable toilet, dumpster, trucks and forklift on the property. That should be included . Jeanne Rich amended her motion to include a portable toilet, dumpster, truck and forklift, and vehicles for the employees. Russ Williston stated there is not a second to Jeanne Rich's motion.

Tim Beauchemin stated they are fine with the stacking with no more than 2 high. They have a 2 yard dumpster, a truck, a forklift, and showed up to 4 parking spaces which is all on the plan. He would like to make the front setback 20'.

Jeanne Rich believes the board is looking for her to change her motion to a 20' setback. Neither one of you (Roy and Carol) are seconding her motion, so it sounds like he is dead in the water.

Russ Williston added his biggest concern is that he is not sure that part of the use schedule allows this. It allows structures for storing materials, which have setback requirements. He is not sure this is allowed. Jeanne Rich stated the Zoning Enforcement Officer says it is. Russ Williston stated he did not think so. Carol Jackson stated the zoning Officer also stated that we should have the setbacks on the front and rear.

Debra Dennis stated when Tim came to the planning department Mike Antonellis at the time, and the enforcement officer, were the 2 that discussed this and that is why they came before the board, and this would be a use that is allowed there.

Jeanne Rich asked if she could ask Roy and Carol what they would like in order for this to be approved, or are they just dead set against this business staying in town and let's not waste the next hour arguing about something that is not going anywhere. Carol Jackson stated it is not a matter of, if we want this business in town or not. That is really slanting things stating we definitely don't want this business in town. We just want it done right.

Carol Jackson stated as she has been saying, setback etc, because that is what is in our laws. She is trying to go by what Lancaster had voted on, and what Lancaster wants in Lancaster. We do want business, we just do not want it done wrong. An attitude like that is not healthy.

Roy Mirabito stated that he thinks that is one of the biggest problems, is that we are looking at 100% on site. Typically he is probably running at 20-25 % on site. So, there is a lot of flexibility on this plan for setbacks. Tim Beauchemin stated this is true. His issue is he did not see where the setbacks were a requirement on them. He would like to move on. Carol Jackson stated he could look at 220-11 which states the setbacks for EZ zoning. A little give and take, you can come back if you need to. If business is booming you won't need to. Tim Beauchemin- what do you mean by give and take, are you willing to negotiate on the setbacks.

Roy Mirabito stated the setbacks are pretty firm. He thinks the site plan is overstated. So he thinks he would like to proceed with a more appropriate site plan. Which really represents what you are going to actually have on site.

Jeanne Rich made a motion to approve the site plan with a front yard setback of 40', side and rear setbacks of 30'. Keep the temporary structures outside of the setbacks, allowed to have a porta potty, dumpster, parking for up to 4 employees, truck and forklift on the property. Only able to stack 2 high.

Roy Mirabito seconded, Roll call

Roy Mirabito yea, Carol Jackson, yea; Jeanne Rich yea, Russ Williston yea (Tom Christopher was not a voting member for this public meeting, he recused himself)

Tom Christopher returned to meeting at 7:49

4. Kalon Farms site plan application

Debra Dennis asked if there was a time limit, and we may be reaching that time to make a motion on the site plan application.

Jeanne Rich made a motion to deny the site plan for Kalon Farms due to an incomplete application.

Roy Mirabito seconded.

Roll call vote

Roy Mirabito yea, Carol Jackson, yea; Tom Christopher yea; Jeanne Rich yea, Russ Williston yea

5-0 motion passed

Other Business

5. Review and act as necessary regarding the Stormwater Permit order sent to Zero Point Solar on 11/25.

Tom Christopher stated he received a certified letter in his mailbox that he did not sign for. It is a lawsuit and complaint where the attorney for Zero point and other parties, is seeking judicial review to vacate the order issued by the Planning Board. He believes town council has already received an electronic copy of this. He spoke to Orlando shortly after he received his letter, and will drop it off for the conservation Agent to review. They are taking a very aggressive stance to try to get the court to set aside the Conservation Commissions decisions and orders. There was no mention of the Planning Board in the filing. He will double check.

Jeanne Rich asked if the suit was against the Planning Board or the Conservation Commission. Tom Christopher stated it is against the Conservation Commission. He will double check when he reads through the complaint again. Jeanne Rich stated the stop work order that the Planning Board issued was for not adhering to the stormwater permit. Tom Christopher stated that is correct.

Jeanne Rich asked if we received anything from Zero Points engineers stating we are in compliance with the stormwater, or are they just ignoring us completely.

Tom Christopher stated this all seems to be related to the Conservation Commission. They seem more content to bring this to legal, instead of working to be in compliance with the Wetlands Protection, and stormwater by-laws.

Jeanne Rich asked to send the engineer a letter asking to prove that they are adhering to the stormwater permit and that they are no longer in violation? Tom Christopher stated essentially, they are trying to claim they are not in violation of any of the wetland protection act provisions.

Jeanne Rich asked, they were issued a stop work order, should they be responding to us stating that they are in compliance and therefore the stop work order should be lifted. We need to be separate from the

Tom Christopher met with Orlando Pacheco, David Koonce, Chair of Board of Selectmen, town council who was one of the members of the firm for environmental issues. Rather than file ourselves, the Town council suggested it would be quicker to get to court for a decision. Tom did present some specific photographs of the last incident. It appears Zero Point and Protech do not want to respond in any reasonable way. Mitigation would be preferred rather than lawsuits. Tom Christopher feels he has been personally threatened by some of their associates, at this point he does not want to comment any further, but would be more than happy to provide testimony and evidence if requested.

Tom stated that in the letter, that the Conservation Commission has been served, and this is a separate stop work order. Debra Dennis to draft a letter to Zero Point and Protech on behalf of the Planning Board concerning the Stormwater Permit.

6. Review Scenic Roads By-law and draft Scenic Roads application

Jeanne Rich stated the \$75 requested fee is too low. Debra Dennis stated advertising is at least \$50, along with additional costs \$150 is reasonable. Normally it is broken down as \$100 application fee and \$50 for advertising. This seemed acceptable to the board as reasonable. The board requested to have Mike Antonellis look at it and make sure it meets the new by-law.

Roy Mirabito stated he thinks at the end of the application it should state what the fine schedule is for non compliance. Russ Williston did not think it was necessary, once they are filling out the form, they are already going through the correct process. Debra Dennis will send to Mike Antonellis for review.

7. Poras Realty Trust/Hawthorne Hills Development: Discuss letter the Board sent on 11/25/2020 regarding enforcement and act as necessary in response to any correspondence received. New copy of letter to send to the BOS.

Roy Mirabito asked if we received anything from Orlando Pacheco. Russ Williston stated we did not receive anything new from Orlando Pacheco. Carol Jackson stated it looks like Orlando joined the meeting.

Jeanne Rich stated the email from town council and Orlando's letter states there is nothing more to be done, they had their opportunity, it is basically a done deal.

Russ Williston stated they did say something to that effect. But, the town is in danger of taking control of a parcel with a water pump on it. He is suggesting the BOS act quickly to forestall that if at all possible. Russ did have an edit, it has the wrong date 2020 vs 2021.

Erin Smith, 62 Hawthorn Lane - had a question for the board- structures had to be built somewhere- 2 competing permits. Clearly there was a mistake somewhere. Why the continued pursuit after all the opinions have been offered in this matter? Why is this continuing?

Russ Williston- if you read the subdivision plan approval and the special permit decision it clearly states the developer was not supposed to have control of the parcels by the time they were constructing anything. It should never have happened.

Erin Smith asked where the structure was supposed to be built.

Jeanne Rich stated the definitive plan shows the water booster station, a little square in the plan, and the intent of the board was to have the water booster station located there dependent upon the DEP and the water department approvals if they could not get the easement to the Eagle Ridge development. She doesn't think there was a mistake, she thinks the board did what they were supposed to do. If you read the flexible development, the only time there cannot be anything on the open space parcel is if the land is not conveyed to the town or conservation commission. If the land is going to remain in private ownership, no structure can be put on the open space parcels other than the stormwater drainage easements.

Russ Williston- to correct, it states if it is conveyed prior to the endorsement to the subdivision plan.

Jeanne Rich - maybe that is one thing that was the Planning Boards mistake. Land is never conveyed prior to the development to being finished. If that is something we are going to adhere to then we should be doing this for all developments in town. We have some before us now, where we signed and nothing has been conveyed yet.

Russ Williston stated that it was the decision for this plan, and the results were disastrous. The decision protected the people, and there was not an opportunity for them to appeal.

Jeanne Rich stated they knew it was going to be there, it was on the plan. They could have appealed because it was shown on the plan.

Russ Williston asked if there was a motion.

Jeanne Rich stated she is against the letter, it is foolish wasting the town councils time, effort, energy. To be wasting the Selectmen's time. She thinks we have many bigger issues in town to deal with than this stupidity.

Roy Mirabito made a motion to send this letter as written, correcting the date at the top of the header. Carol Jackson seconded.

Jeanne Rich asked for discussion, she doesn't want her name associated with this letter and asks that the minutes clearly state she is opposed to this letter, even to add to the letter that the vote is not unanimous from the Lancaster Planning Board.

Carol Jackson stated that is not how a board works, is it? Russ Williston stated, no it is not. Any other discussion before we move along?

Roll call vote

Roy Mirabito yea, Carol Jackson yea; Tom Christopher ney; Jeanne Rich ney, Russ Williston yea
3-2 motion passed

8. Discuss peer review process, Debra Dennis sent new peer review engineer

Tom Christopher stated in the Conservation Commision, they use multiple outside consultants depending on what expertise they are looking for. CEI is a credible company. They did a lot of things for the town previously. It would not hurt to shop our projects around.

Carol Jackson agrees, we should not just have 2 on our list. Russ Williston stated it was definitely a risk only having one on our list.

9. Review the Inclusionary Zoning Study from Barrett Consulting

Russ Williston pointed out an issue Roy found. Table 1(matches up to the Fitchburg region) is a table that shows the affordable prices for rental and table 2 (matches up to the Springfield region) for ownership units. They refer to the wrong regions in MA. We are in the East Worcester region. Barrett Consulting will need to correct their tables. Carol Jackson pointed out that a lot of the tables do not add up. Carol Jackson stated that their calculations are completely wrong. Russ Williston stated he will forward those errors to Judy Barrett, and ask her to look at it, and get back to us.

Carol Jackson stated she is not happy with this report at all. A table with calculations like that, are simple calculations. They did not check their work.

Russ Williston stated he would like to see the backup data Judy collected. She had mentioned she collected data from developers and information on rates from banks. If that were included it would let us use the report for longer, because we would be able to see what she is using for numbers in 2020.

Tom Christopher stated it would also be a good idea to have cost projection 2, 5 years from now. Right now the stock market is booming. There is a push for people in urban areas to move further west. He sees prices being driven up. There should be some reflection on that as well. Russ Williston agrees. Some of it was based on affordability on mortgage rates, and they are so low it's hard to imagine that the calculations would not change.

10. Correspondence- BOS asking for input for the National Grid Poles
MRPC unified planning program

Orlando Pacheco stated we got a notification, DLTa next round of projects will be available and asked Debra to email a copy of their flyer to the board and if they had any suggestions, it may be good to get some no cost technical assistance.

Russ Williston- stated the woman who presented the 40R stated we might like to apply again and get a grant to continue. She did not get a chance to complete all she had hoped to.

Orlando stated he is going to speak to MRPC to get more on the scope items. We can do multiple submittals, but we need to prioritize.

Russ Williston asked if there was a deadline. Orlando Pacheco stated the first round is February 2nd is when the proposals are due. He really only needs a couple days to get it ready. Russ Williston stated the only concern if using for the IZ by-law, there is not enough time before town meeting. Orlando Pacheco agreed.

11. Vouchers - None

12. Minutes:

December 14, 2020 minutes

Jeanne Rich stated at our last meeting Carol had a question into the AG's office regarding the scenic roads, rte 117, 62 and 70 did she get a response.

Carol Jackson stated yes she received a response from the Mass Law Library, she is still communicating with them. Right now, they are stumped. They cannot find any state roads that are solely in one town or city. Again that would mean if you have a named road, like Seven Bridge Road (which is part of 117), that is solely in Lancaster, and maintained by Lancaster it could be a scenic road. She is double checking. Why would that statement be in the law, if it did not mean the named part of the state road cannot be a scenic road. It would just state that state roads cannot be part of scenic roads. They are stumped, and will research more.

Jeanne Rich has some corrections in the minutes

Russ Williston suggested we wait until the next meeting to go over the minutes

Debra Dennis asked if we would take public comment on scenic roads

Don Chaisson - stated there are named roads within one town, or many towns. Roads and routes are different things. State routes travel many towns. Washington street, Comm Ave. He thinks Carol is on the right trail, if the name of the road is solely in the town, it could be a scenic road.

Russ Williston was curious when the law came into effect.

Dick Trussel 10 Burbank- it is upsetting that they would continue to work after a stop work order was issued. Is there a monetary penalty for continuing to work?

Tom Christopher stated the Conservation commission has the ability to fine up to \$300 per day. They have issued fines on some projects \$1500. Another \$5000. Upon review, they reduced that fine to \$1500. We do have the ability to fine. Zero Point and Protech decided not to recognize the Conservation Commission authority nor the Planning Board's authority.

Roy Mirabito asked for an update on the Planning Director.

Russ Williston stated we did have a candidate, but the candidate withdrew his application.

Orlando Pacheco stated we received one new resume from Indeed. Not really what we are looking for. Roy Mirabito asked if the job posting was put online. Orlando Pacheco stated Indeed is an online job search company. Carol Jackson asked if the job was posted on any other online job search companies. Orlando Pacheco stated no, just Indeed- he will reach out to the applicant that withdrew his application.

Adjourn

Tom Christopher made a motion to adjourn, Carol Jackson seconded.

Roll call vote

Roy Mirabito yea, Carol Jackson yea; Tom Christopher yea; Jeanne Rich yea, Russ Williston yea

5-0

The board voted unanimously to adjourn at 8:44 PM.