

## WAUBEEKA WARRANT ARTICLE 35:

# UNOFFICIAL VOTERS GUIDE

Questions and answers prepared as a public service by Citizen Media, Inc., publisher of *The Greylock Independent*

EDITOR'S NOTE – *Care has been taken to provide a neutral, fact-based point of view in this document. The latest version may be viewed at **The Greylock Independent** website: <http://www.greylockindependent.org>,*

### **Q: What is Article 35 on the Town Meeting Warrant about?**

A: Article 35 proposes to change the zoning of South Williamstown property owned by Waubeeka Land LLC, a company whose only public officer is North Adams insurance-broker and property owner Michael Deep.

During the winter, Mr. Deep's attorney Stanley Parese filed a citizens' petition signed by himself and about 20 other Williamstown citizens to add an article to the Town Warrant—in simple terms, a proposal to be voted on at Town Meeting. The article asks Williamstown voters to create a special zoning “overlay” district encompassing only land owned by Waubeeka Land LLC. The area is mostly occupied by the Waubeeka Golf Links in South Williamstown.

### **Q: What must voters decide?**

A: Voters must decide whether to approve or reject a zoning change that would allow commercial resort-style lodging development in South Williamstown. If approved, the new zoning would apply to any owner or owners of the land and permitted buildings. The zoning law would allow condominium or timeshare ownership. Form of ownership may not be regulated by zoning.

### **Q: What is the purpose of this zoning change?**

A: This is not clear. On the ONE HAND, the printed warrant article and the proposed Acreage Controlled amendment recommended by selectmen states an intent “to permit and encourage redevelopment at the Waubeeka property” which (a) preserves most of it for community recreation and “open space asset”, (b) is consistent with the history of South Williamstown and (c) “promotes the public welfare by encouraging the

reuse and enhancement of an existing economic asset.” The term “golf course” is not mentioned. On the OTHER HAND, the Planning Board-approved amendment has this statement of intent: “The Waubeeka Overlay District is intended to preserve the existing golf course by allowing new income-producing uses on the property and allowing for open space.” The zoning process does not address whether or not the golf course will remain open.

### **Q: Why is a zoning article coming to Town Meeting from a group of citizens rather than from the Planning Board?**

A: Starting last September, Deep and Parese began meeting with the Planning Board to request a zoning change to build a hotel resort at Waubeeka. In January, the Planning Board voted 3-2 to table further consideration of the issue until Deep provided further information about his proposal. In early February, Parese filed the citizen-petition to bring his own

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proposed zoning change directly to Town Meeting. Citizens' Petitions have to be published on the Town Meeting Warrant as written and cannot be changed until Town Meeting.

**Q: Where is the language Town Meeting will be voting on?**

A: It's not yet clear. The language in the printed Town Meeting Warrant has become outdated by recently actions and was not supported by either the Planning Board or Selectmen. Both the Planning Board and Selectmen have each recommended versions -- distinctly different from each other -- that would entirely substitute for what is printed in the warrant. In addition, any voter at Town Meeting may propose additional changes. Parese has a possible amendment that has been shown to the Planning Board but was not approved by it, and the Planning Board has recommended its own possible amendment. The Selectmen have recommended Parese's amendment.

**Q: Are there other changes to what is in the printed citizen's petition?**

That depends upon which amendment to the warrant article is being considered **and there are** ~~There are~~ two which are expected to be considered. ~~and~~ Each of them would entirely replace the language in the printed-booklet warrant article **and are fundamentally different from it. They also differ from each other.** ~~They contain different language.~~ Town Meeting has the option to consider either one, or both, or to propose further sub-amendments to either or both. Other options for Town Meeting could include: (a) Tabling the entire warrant article; or, (b) Referring the matter to the Planning Board with or without instructions; or, (c) Postponing consideration to some **future Town Meeting date in the near future** by putting the Town Meeting into recess for that purpose.

**Q: What is one of the two known proposed amendments that would replace the printed warrant article?**

A: One is Parese's a "Acreage Controlled" amendment. He is expected to propose it at Town Meeting. It **is has been** endorsed, 4-1 by **the Selectmen**. Besides the 10-acre "envelope" for building development, it, among other things: (a) Establishes a process for putting in place a 67-acre "conservation restriction" on wooded acreage not currently used by the golf course, but would allow some development on the 67 acres including a solar farm, tree cutting, digging, drilling, piping and roads; (b) Prohibits any housing development on the rest of the golf-course property only so long as the country inn is operating. But if the inn closes -- or is never built

or opened -- the owner could 'surrender' his special permit, and cause the zoning to go back to current zoning and build housing without going through Town Meeting. The hotel is limited to 120 'units' but there is no definition of how large a unit can be. There is no limitation on the square-footage of the hotel-restaurant-golf buildings.

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**Q: What is the second of the two known proposed amendments that would replace the printed warrant article?**

A: The second is a "Square-Footage Controlled" amendment approved, 3-2, by the Planning Board at the board's May 4 meeting. In addition to a more stringently defined Conservation Restriction on the same 67 acres, the Planning Board possible amendment would: (a) Impose a base case gross-floor-area restriction of 50,000 square feet on the size of all hotel-restaurant-golf buildings (b) Permit an additional 10,000 square feet (for a total of 60,000) if a developer agreed to incrementally put additional acreage under a Conservation Restriction . This proposed amendment is recommended 3-2 by the Planning Board. It does not limit acreage of development. Waubeeka's owner, through attorney Parese, has objected to a square-foot limitation and has declined to state any upper limit restricting building size other than his proposed physical limitation of 10 buildable acres.

**Q: What is a "zoning overlay district" ?**

A: Cities and towns frequently use special "zoning overlays" to change laws about how landowners can use

their property. Overlays may broaden or narrow the scope of use and communities adopt them for many reasons such as protecting special areas for public use or enjoyment or to facilitate economic development considered to be in the public interest.

**Q: Is this "spot" zoning?**

A: The term "spot" zoning sounds simple, but is an area of law which is highly complicated and constantly changing based upon contemporary court rulings. It refers to the idea of changing a small section of land within a larger area of common zoning. Whether such a change is in some way illegal -- either rewarding or punishing a landowner unfairly or not in the public interest, often cannot be determined without litigation. In this case, there have been conflicting claims about whether the Waubeeka amendments constitute "spot" zoning. It meets one test -- it affects only one property owner -- Waubeeka Land LLC. But that does not mean it constitutes "spot" zoning. Typically a town would be advised by town counsel on this point.

**Q: If a zoning change is permitted, what could be done that can't be done now?**

A: The zoning change, which by state law must be adopted by a two-thirds majority of those voting at Town Meeting, permits construction of a "country inn" and restaurant and golf-course structures, at least some of which must be on the northeast corner of the golf course adjacent to U.S. Route 7 (New Ashford Road).

**Q: How is the Waubeeka land preserved as an open-space asset?**

A: There is conflict about this between the Planning Board-recommended and Selectmen-recommended amendments. The Selectmen opted to support language which forbids the owner from residential development so long as a "country inn" is built and operating. However, if the inn closes, then 2.5-acre residential lots become legal again. The Planning Board-recommended language would (1) require that for every 1,000 square feet of inn-and-golf structure building over 50,00 square feet, four acres of golf-course land must be placed under a perpetual conservation restriction; and, (2) extinguish forever the right to do residential development on the golf-course land once an inn begins operating.

**Q: Where can lodging structures be built?**

A: This is not clear. On the one hand, the Acreage Controlled amendment recommended by selectmen says the 10-acre parcel can be anywhere on the golf course so long as some of it extends into a 2.5-acre parcel at the northeast corner of the course. But it could extend, in

spaghetti-like fashion similar to some congressional districts, into the main golf-course property as long as some of it remains in the northeast corner. On the other hand, the Planning Board-approved amendment says, clearly, "all major buildings shall be in the northeast quadrant" of the new zoning district.

**Q: What is a "country inn" vs. a hotel/motel?**

A "country inn" is defined in all active amendments to the article as: "An establishment where overnight transient sleeping accommodations are provided to lodgers in one or more guest units without kitchens, not to exceed 120 such units." A restaurant, swimming pool, hiking trails and tennis courts are allowed. This definition is different from the definition of "hotel or motel" in the town's zoning bylaw: **A "hotel or motel" is** "A building or portion thereof, or a group of buildings on a single lot, providing transient sleeping accommodations to the general public in guest units without kitchens . . . ."

**Q: Is there any difference between how the town defines a hotel/motel vs. the new "country inn" designation for the Waubeeka Land LLC zoning change?**

A: Yes. The town's overall zoning bylaw says a hotel or motel provides "transient sleeping accommodations to the general public in guest units without kitchens . . . ." All versions of the proposed Waubeeka Land LLC special zoning say the country inn is "where overnight transient sleeping accommodations are provided to lodgers in one or more guest units without kitchens . . . ." There has been no public discussion about the use of "lodgers" rather than "general public."

**Q: What is a "guest unit without kitchens?"**

A: None of the active amendments to the article refer to a hotel "room" but use the term "guest units, without kitchens," which may contain more than one room. Kitchens are defined in the town's zoning bylaw as "a place for preparation of meals, having a stove and either or both a sink and a refrigerator."

**Q: How much acreage is involved?**

A: The original citizens' petition language, which is printed in the Town Warrant, proposed 40 acres out of the 207-acre parcels owned by Waubeeka Land LLC for the lodging development. However, attorney Parese has said he will immediately propose to amend the language in the Town Warrant to reduce that figure to 10 acres.

**Q: What are the square footages of other hotels in the area?**

A: According to information provided by Town Planner Andrew Groff, The Orchards has 51,346 gross square feet (GSF) and the Williams Inn has 70,491 GSF.

**Q: How will we be voting on this at Town Meeting?**

A: The Moderator will try to ensure an orderly process for making motions to amend and for debating the issues raised. Motions to amend a proposed bylaw have to pass by a simple majority; motions to pass a bylaw require a 2/3 majority.

**Q: Why was the 67-acre parcel chosen for a Conservation Restriction?**

A: The 67-acre parcel is owned by Waubeeka, but is not part of the golf course. Because of the steep terrain, it is not suitable for development. The parcel is heavily wooded, full of streams, wetlands, and springs, so is considered environmentally sensitive and deserving of conservation protection.

**Q: What happens to the golf course and viewshed if Town Meeting decides zoning should remain unchanged at Waubeeka?**

A: The golf course can continue to operate and make golf-related improvements as it has since 1966. Its owner has the right to subdivide under RR2 zoning and sell between eight to 11 residential parcels of 2.5 acres or more without town approval. Under RR2, an owner at any time could initiate a proposal seeking town approval for a residential subdivision or an "assisted-living residence." An owner could also start a process with the state under M.G.L. Chapter 40B for a so-called "affordable housing" cluster development. The state has various requirements for where such projects may be sited, typically near services and public transit in a town center. There is also the possibility that the owner could ask the Planning Board to begin a new process of discussion about zoning changes. If the golf course ever closes, the parcel's zoning goes back to what exists elsewhere in South Williamstown -- RR2.

**Q. ZBA: Can the Zoning Board of Appeals control the size of the structure on its own?**

A. No. The ZBA does not have the authority to control the size or aesthetics of the structure, if none are presented to it in the by-law.

**Q: What are some other issues and questions?**

There are many subjective and objective issues involved in this proposed zoning change, many of which can be expected to be raised on the floor of Town Meeting. Among some of the issues raised over the course of more than a month of actively town discussion are (in no particular order):

1. Is it appropriate to debate zoning changes and amendments in detail at Town Meeting, especially those that have not been approved by the Planning Board?
2. What will be the impact on the local tax base of an operating "country inn" at Waubeeka?
3. How many, and what type of jobs would an inn and golf resort create?
4. Would employees be able to afford to live in Williamstown?
5. What was the intention of Town Meeting when it created 2.5-acre residential zoning in South Williamstown? Have times changed?
6. What stewardship responsibility do Williamstown's residents have to preserving, sustaining or altering the "viewshed" in South Williamstown? What is the economic impact of the viewshed? A **viewshed** is the geographical area that is visible from a location. It includes all surrounding points that are in line-of-sight with that location and excludes points that are beyond the horizon or obstructed by terrain and other features (e.g., buildings, trees).
7. How do we control the overall size of the buildings unless we give the ZBA a limit on overall building square footage?
8. How do we know how large a 120 'unit' hotel can be? Can a 'unit' include more areas than a simple hotel room? How large can the other buildings be?
9. Would the proposed bylaws allow 'units' to be time-shares? Should we allow that? Is there any legal way to prevent it?
10. What protection does the Town have if the builder/developer decides to quit or runs out of funding? What then becomes the status of the property, especially if the Special Permit the developer was granted, becomes revoked or surrendered?
11. If the hotel goes out of business, should the owner be able to decide if the zoning reverts to allow housing, or should a future Town Meeting decide that?
12. How meaningful is a Conservation Restriction on the 67 acres if it allows a solar farm, tree cutting and other development?
13. On what basis is the Town confident that the development will maintain at least a 60%+ occupancy rate throughout the year? <sup>1</sup>

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<sup>1</sup> -- This unofficial guide was prepared by Bill Densmore (wpdensmore@gmail.com) at the request of The Greylock Independent from individual and public sources.