

March 31, 2016

Dear Friends,

We've lived here for 22 years and have enjoyed participating in many rewarding aspects of this community. We are writing because we believe that the proposed zoning change for the Waubeeka Golf Course should be closely analyzed for what it actually allows. This concept was originally described as allowing a Country Inn or a Country Inn Boutique, which might help our economy and help keep the golf course open. We have heard almost universal support for that concept. We too support that concept.

However, the language of the proposed bylaw is far broader than the conceptual description that seemed so appealing. This bylaw is in the form of a Citizens Petition submitted by a real estate development lawyer on behalf of Michael Deep, the current owner who wants to develop the property. We should understand what they submitted before we vote at Town Meeting.

At Town Meeting, we do not vote on concepts; we do not vote on attractive drawings. We vote on a legal document which, in this case, is over two pages of terms and conditions. Attached to this cover letter is our attempt to explain the history of the Petition and to describe what it allows. Our analysis is a bit long, but it takes time to explain the numerous concerns with the text of the Petition, which we believe should be addressed before any rezoning of Waubeeka occurs.

Key points include:

- A complex zoning bylaw, especially for this prominent location, should have gone through the Planning Board process and not be written to promote the interests of a single developer/owner. The floor of Town Meeting is not well-suited for trying to improve a detailed legal document.
- Instead of the simple Country Inn being advertised, the text of the Petition would allow up to 40 acres of time-share developments in multiple buildings right along Route 7. There is no limit on the number or square footage of buildings. Vaguely defined 'accessory uses' are also allowed.
- Despite general assurances of protecting open space, this protection is not permanent and can terminate if, for example, the resort fails.
- The Petition allows an undefined number of acres of a solar farm to be built potentially anywhere on land that is considered as open space.

We have tried to be accurate, but if you see anything that is factually incorrect, please let us know. If you have a different interpretation, please keep in mind that if a provision lends itself to more than one reading, such ambiguity itself could be a cause for concern. (As two lawyers, we've debated the meaning of a couple sections.) We urge you to help us avoid having the public discussion regarding the Petition be simplistically, and wrongly, characterized as a debate over pro-development versus NIMBY objections. Instead, let's focus on the serious issues raised by this Petition.

While there is general consensus that some development at Waubeeka makes good sense, we need to make sure that any zoning change provides for an appropriate scope and scale, as well as meaningful protection of open space. We appreciate your interest in this important public issue.

Anne and Andy Hogeland

ANALYSIS OF THE PROPOSED WAUBEEKA BYLAW: REASONS FOR CONCERN

INTRODUCTION

Town Meeting will vote on a Citizens Petition to rezone Waubeeka Golf Course and allow extensive development of this 200-acre parcel. For several months, owner Michael Deep presented a verbal description of his desire to build a Country Inn or Country Inn Boutique. He has received positive feedback from the entire Planning Board and broadly throughout the community. We agree. There has been no opposition expressed to the general concept of a Country Inn at Waubeeka, and we continue to support this concept.

However, the text of the Citizens Petition upon which we will vote at Town Meeting is far broader. The Petition allows a hotel and a time-share development on up to 40 acres and, in our view, provides insufficient commitment to open space. By presenting this Petition with his own version of a bylaw, Deep has bypassed the normal Planning Board process for developing zoning bylaws, which could have produced a bylaw more tailored to the original concept.

Especially since Waubeeka is located along our scenic gateway, we should not be granting important new development rights without a very close look at the details. We believe a small-scale Country Inn might have a positive impact on our economy and community and that an appropriate bylaw could have been drafted to further the long-term best interests of the Town.

BACKGROUND

In September 2015, Deep approached the Planning Board requesting a zoning change that would allow him to build a Country Inn at Waubeeka. Since then, he repeatedly explained that this Inn would require about 2-3 acres.¹ (Willinet tape of 12/8/15 PB Meeting, 1:26:30-45, 1:21:50-59) Deep or his attorney, Stan Parese, appeared at each of the next five Planning Board meetings, and at a site visit in December. At that visit, Deep showed Board members and townspeople a space north of the clubhouse that occupies about 5 acres. On each occasion, the Board and citizens expressed interest and support. They asked for more details that would help explain Deep's vision, but Deep provided none.

Finally, the Planning Board voted on January 26th to table further discussion until Deep provided a regional hotel market study, schematic design information on location, size and dimensions, and information regarding the partner, if there will be one. The information could have been used by the Planning Board to draft an appropriate bylaw.

Instead of providing the requested information, on February 5th Parese filed a Citizens Petition with his own version of a bylaw, circumventing the Planning Board's normal process for developing zoning bylaws. Under state law, a Citizens Petition has to go directly to the voters at Town Meeting as written. Both the

¹ His initial estimate of 2-3 acres is consistent with the estimates published by hotel development companies (Fairfield Inn and Suites, Hyatt House, and H&W Management) for new 80-140 room hotels with parking facilities - developments larger in scale than a "Country Inn" or "Country Inn Boutique." Other amenities and facilities could increase acreage needs. Note: voters at Great Barrington's 2008 Town Meeting adopted a zoning bylaw imposing a 45-room limit on new hotels and motels.

Planning Board and Select Board have the opportunity to recommend to Town Meeting a YES or NO vote, but they have no power to change the text of the Petition itself. The Planning Board was required to hold a public hearing, and did so on March 15th.

Just prior to the hearing, Deep provided some schematic drawings to illustrate examples of what might be built if the Petition passes, but the text of the Petition itself allows a development several times the number and size of buildings depicted in the schematics.² At the conclusion of the hearing, the Planning Board voted 3-2 against recommending that Town Meeting approve the Citizens Petition. On May 17, Town Meeting will be voting on the text of the Petition, not what is shown on any drawings or described verbally.

The lack of any square footage limitation on building size - coupled with the very large acreage size and reversible open space protection - raise serious concerns as to the overall scale and impact of this project. The Petition has departed significantly from the original concept of a small-scale Country Inn, for which a bylaw could have been drafted allowing a development envelope of approximately 3-5 acres (with subsurface infrastructure allowed outside the envelope).

WHAT THE CITIZENS PETITION ALLOWS

As noted above, local residents and officials and all five Planning Board members have consistently expressed support for the concept of a Country Inn at Waubeeka. But the Citizens Petition instead allows a much larger real estate development project. The Petition provides for ALL of the following:

1. Allows a hotel or time-share development (plus accessory facilities) to cover up to 40 acres. That is far bigger than the Spring/Latham/Water/Main Streets block, which occupies about 26 acres. The Petition does not expressly mention the 40-acre figure. Instead, the Petition states that 80% of the parcel shall remain open space. Since the parcel is 200 acres, that leaves 20% of 200, or 40 acres, for this development.

2. Allows multiple time-share buildings. The petition inserts a new definition of “Hotel” to include a building or group of buildings “in accordance with Massachusetts General Law Ch. 183B.” Chapter 183B is the state law known as the “Real Estate Time-Share Act”. The Petition does not limit the number of these buildings or their footprints (other than up to 40 acres in area).

3. Imposes NO restriction on the square footage of the hotel or time-share buildings, or the number of rooms or time-share units. Time-share developments, including examples nearby, can be very large in scale, since each unit often contains a kitchen and living/dining areas. (Our current zoning bylaw does not allow kitchens in hotel units.)

4. Changes the definition of “Hotel” throughout the entire Town. The Petition is written in such a way that the new definition of “Hotel” to allow time-shares is applicable to any hotel location in town, not just to Waubeeka. The consequences of this zoning change have never been analyzed by the Planning

² Deep displayed posters showing a resort occupying approximately 6 acres, whereas the Petition allows a 40-acre resort. He also had in-hand a copy of a document he referred to as a marketing study from STR (a benchmarking firm that provides analytic data), but Deep said that it was proprietary and that he could not provide copies to the Planning Board or public.

Board. We should not make this Town-wide change without some more serious evaluation, including the effects on our existing hospitality industry.³

5. Requires that all resort development be built in a highly visible strip within 500 feet of Route 7. This provision provides no flexibility for the Zoning Board of Appeals (ZBA) to require placement of the development in a less visible site farther back from Route 7 (but not on more visible higher ground). In addition, since the Petition retains the dimensional standards of the underlying RR2 district, the required setback from Route 7 for the new development is only 50 feet. (Deep's schematics show a large hotel building at the 50-foot setback line, with parking facilities for 319 or 297 vehicles located even closer to Route 7.)

6. Although the Petition refers to 80% "open space" defined as "areas left substantially in a natural or landscaped state," it allows within the "open space" a number of permitted improvements, including "solar voltaic infrastructure and panels" and accessory buildings up to 600 square feet each.⁴ Deep's letter to the Planning Board dated March 3, 2016 states his plans for "using 67 acres off Hole #13 as a solar farm". The Petition does not limit the size or location of a solar array, except qualifying it as an "accessory use". (The wording of the Petition could leave room for debate as to whether the size, location, and appearance of the solar farm and other improvements permitted within the "open space" category fall within the scope of the ZBA's special permit review or are permitted as of right within the overlay district. All these matters should fall explicitly within the purview of ZBA review.)

7. The Petition DOES NOT require that any land be permanently protected as open space, by means of a conservation restriction or otherwise. If the Town is going to allow such a significant development in a scenic rural residential area, it is reasonable to get meaningful protection of open space in return. Conservation restrictions are agreed to by many golf course owners (and other landowners) across the country⁵, and they are used elsewhere in Williamstown's zoning bylaw as a condition of certain major residential developments.

8. Provides that the open space protection shall expire if the developer surrenders his special permit (or if the permit is permanently revoked), thus allowing houses to be built in the future, after the hotel or time-share resort is closed. Deep's March 3rd letter states his view that any open space protection afforded by the proposed bylaw applies "for so long as the hotel is in operation". The expiration provision is especially troubling given the lack of any permanent open space protection.⁶

³ Although Parese explains he added this provision allowing time-shares at Waubeeka and hotels throughout Town to give hotels flexibility, there has been no evaluation of the impacts of this change. (Willinet tape of 1/12/16 PB Meeting 1:08:40-1:09:15; 3/15/16 PB Meeting 3:14:50-3:16:15.) Our zoning bylaw currently defines "Hotel or Motel" as "...providing transient sleeping accommodations to the general public in guest units without kitchens...."

⁴ The Petition describes a process whereby a developer shall submit a plan to the ZBA defining open space areas and building envelopes, and the special permit shall include "a condition approving and referencing the Open Space/Building Envelope Plan". Any proposed bylaw should clarify that the ZBA would retain its ability to determine compliance with special permit criteria before approving the plan, as is generally the case with the ZBA's exercise of authority under our zoning bylaws. (See 70-8.4(C)(3)).

⁵ A national association of golf course owners has worked to retain federal tax benefits for those courses upon which conservation restrictions are in place. (See <http://perspective.ngcoa.org/home/2016/01/08/golf-and-conservation-easements/>).

⁶ Also, in the event the resort is partially or totally built and later fails, there is nothing in the Petition addressing how it should be decommissioned so as to avoid the Town being left with a large vacant resort complex. Other recent Williamstown zoning bylaws allowing development of wind turbines, cell towers,

9. Broadly defines Accessory Uses as “uses customarily accessory to New England resort hotel properties.” This poorly defined category, rather than an itemized listing, is so vague that it could pose a challenge for the ZBA to determine what is allowed. This definition also leaves the Town open to potential lawsuits if the ZBA interprets the size and types of permitted Accessory Uses more narrowly than does the developer. This category could be interpreted to allow the types of facilities offered, for example, at Jiminy Peak Mountain Resort.⁷

10. Even though the Petition doesn’t expressly mention a wastewater treatment plant, Deep’s March 3rd letter states he told his architect to include a plan that would “create a wastewater treatment plant should the need arise”. Previous discussions had focused on an underground septic field. It is not clear in the Petition whether water and septic will be the responsibility of the landowner to provide on-site. If they are not, voters might be asked at a later Town Meeting to incur municipal debt in order to furnish these services to the development.

CONCLUSION

Deep asserts that his Petition will enhance Williamstown’s economy, by creating jobs and saving the Waubeeka golf course from the closure. We leave it to others to evaluate whether this proposal offers the financial benefits that have been advertised. Of course, we support thoughtful economic development⁸ and have both made efforts to enhance it, but we should not accept a developer’s proposed bylaw without examining it closely to identify features that could be of concern to the Town.

It’s also important to keep in mind the many years of careful planning and generous efforts that have contributed to retaining the beauty of Williamstown’s rural southern gateway.⁹ A Country Inn at Waubeeka could be entirely consistent with these efforts, but the expansive language contained in this Petition could jeopardize them. We urge a careful and more balanced approach to rezoning Waubeeka than is exemplified by the Citizens Petition.

and solar arrays include (1) requirements for the owner to remove the structures when they are no longer in use, and (2) measures to protect the Town from having to absorb the costs of removal and remediation in the future. (See 70-7.2G(7)(wind), 70-7.2F(11) (cell), and 70-7.2J(4)(b)(5)(solar)).

⁷ Proponents argue that, in general, the broad wording of the Petition should not be worrisome because the ZBA will ensure that all development is consistent with the special permit criteria set forth in our existing bylaw at 70.8-4(D) (which we believe may be cited incorrectly as 70-8.3(D) in the Petition). However, Town Meeting is the place where we establish the legal framework for ZBA review and consideration.

⁸ Note: The section of the December 2015 report of the Economic Development Committee (EDC) entitled “Core Assets and Community Values” states, “Any further economic development should be accomplished without detracting from the character of the town.” Also, the EDC recommended that the Town “Identify and protect the scenic and rural landscape and open spaces especially along the entrances to Williamstown.” (EDC Report at pp. 17-18, 52).

⁹ These include: The designation of this area as RR2 in the Town’s zoning bylaw, first adopted in 1955; the State’s 1982 Landscape Inventory; the Town’s and Commonwealth’s 1983 acquisition of an APR over Green River Farms; the 1984 bequest of Field Farm to The Trustees of Reservations; the Commonwealth’s designation in the 1990s of the nearby Green River Wildlife Management Area; the Town’s 2002 Master Plan; the Town’s 2003 draft Open Space Plan; the ongoing acquisitions by both the Town and the Williamstown Rural Lands Foundation of conservation restrictions over several nearby tracts of land; and the Town’s 2015 Economic Development Plan.