

APPROVED 4.21.15

TOWN OF WENHAM

Board of Selectmen
Meeting of April 6, 2015
Town Hall, 138 Main Street

Pursuant to the Open Meeting Law, M.G.L. Chapter 30 A, §§ 18-25, written notice posted by the Town Clerk delivered to all Board members, a meeting of the Board of Selectmen was held on Monday, APRIL, 6 2015 at 10 AM in the Selectmen Meeting Room.

WELCOME AND OVERVIEW OF THE AGENDA

With a quorum present, Mr. Wilhelm called the Board of Selectmen (BOS) meeting to order at 10:03 AM.

Selectmen present: Jack Wilhelm, Chair; Catherine Harrison, Vice Chair

Not Present: Ken Whittaker

Also Present: Town Counsel, Paul Weaver; Special Counsel Mark Bobrowski; Catherine Tinsley, Minutes Secretary

Also present but not participating: Emilie Cademartori, Planning Coordinator; Selectman Candidate John Clemenzi

PUBLIC INPUT

ANNOUNCEMENTS

NEW BUSINESS

Discussion of Development Agreement: Mullen Property, 36 Essex Street

The Zoning Board of Appeals (ZBA) has received an application from RCA requesting a Special Permit under Section 4.4.2 - Change in Non-conforming Use and Section 4.2.3 Educational Non Exempt Use to repurpose existing structures and parking areas for use as a mental health, substance abuse and rehabilitation counseling center which would provide educational, counseling, and treatment services to persons afflicted with addiction and mental health issues.

The purpose of this meeting was to discuss a Development Agreement between the Town of Wenham and RCA. Ms. Harrison noted the meeting was properly posted and explained the unusual date/time of the meeting was to accommodate the schedule of Special Counsel, who was unavailable to attend an evening meeting. Selectmen Whittaker was out of the State when it was necessary to hold the meeting and therefore, regretfully, he was unable to attend.

Selectman Harrison briefly explained the purpose of the meeting was not to discuss the merits of an Agreement or the application before the Zoning Board of Appeals (ZBA) but as a parallel discussion to prepare a Development Agreement. Such an Agreement is negotiated to protect the Town in area's not covered in conditions imposed by the ZBA in a Special Permit.

The Development Agreement must be submitted during the (ZBA) open hearing process to be a part of the record; therefore, an Agreement needs to be in place by the end of April 2015.

Mr. Wilhelm reviewed that a Development Agreement is typically in place when zoning changes are made. A Development Agreement was made between the Town of Wenham and (current) property owner Jim Mullen when he purchased the property in 1987. Although this is not a change in zoning, there are concerns that should be addressed in a Development Agreement, that are outside the prevue of a Special Permit.

Attorney Bobrowski reiterated that it takes time to negotiation a Development Agreement and the Town should be ready with an Agreement to submit to the Zoning Board of Appeals, if a Special Permit is granted. If a Special Permit is not granted, the Development Agreement becomes null and void.

Attorney Bobrowski outlined the major concerns addressed in the Development Agreement:

- o The neighbor's have voiced concern with a safety plan for the premises. The Wenham Police Chief will be asked to make a recommendation for Security Policies. He noted it is possible to include safety/security issues in the Special Permit.

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o Finances:

- RCA is offering to pay to the town \$500,000 upon the issuance of the Certificate of Occupancy. Attorney Bobrowski opined this is a fair number but can be negotiated.
- RCA will install a water tank as the preferred option as stated in the peer review by Weston & Samson Engineering. The tank would be located on the Mullen property with an access road for the town. A water tank would benefit that side of Wenham, not just Penguin Hall.
- RCA will agree to a PILOT (Payment In Lieu Of Taxes), that the Town be paid approximately \$250,000 annually should the property be turned over to a non-profit, tax exempt purpose. RCA has proposed this be for a 20-year period, which would run concurrently with the property ownership under RCA. Example given; if RCA owns the property for 12 years and flips the property to a non-profit use, the town would receive 8 years of PILOT payment. Attorney Bobrowski noted the PILOT is negotiable e.g. increasing the term of the PILOT, and incorporating an annual increase. Ms. Harrison noted that taxes would continue to increase over time and supported both extending the term and increasing the annual payment.

Observing that there were many people in attendance, Mr. Wilhelm opened the meeting for comments and questions. Those residents that addressed the Board were residents who live on Grapevine Road, Larch Row, Charles Davis Drive, and Parson's Hill.

Regarding the gift to the Town being seen as possibly a "bribe", Attorney Bobrowski cited case law showing the courts do not see this as a bribe but as a way for the applicant to cover unforeseen costs to the town as a result of the project. The question was raised if RCA was similar to Cross Keys in clientele. Attorney Bobrowski noted that although both are similar in purpose, Cross Keys is in a residential area and Penguin Hall is on a 45-acre parcel that previously served an insurance company and advertising business and is properly zoned.

It was confirmed that RCA could seek a "Reasonable Accommodation" under the Federal Disability Act.

Mr. Wilhelm reiterated that addictions are covered under the Federal Disabilities Act and the Town is prohibited from imposing restrictions. If a project went forward under the Disabilities Act, the Town would not have the same advantages as being discussed in the Development Agreement.

There was support in the room for the Town to appeal if there was a decision to award a Special Permit for RCA. Mr. Weaver responded that appeals are a lengthy and costly process, and if the Town were unsuccessful in their appeal, the Town would be required to pay all attorney fees /costs for both parties. Mr. Wilhelm went on to say if Special Counsel were to advise the Town that there would be little chance the court would overturn the ZBA's decision, it would be irresponsible for the BOS to spend tax payers money; they must act on the best interest of the whole town. Some residents in the room thought this to be a minimal expense on the tax rate if spread out over the whole town and would be worth the effort.

Ms. Harrison noted that the money agreed in a Development Agreement is used to reduce the tax rate, thus benefiting the whole town.

It was confirmed there are no restrictions for this type of facility being near a school.

The ZBA can include conditions to modify the project that are tied to land use, traffic, and drainage.

The ZBA has not closed the hearing. The ZBA meets next for Penguin Hall on April 29, 2015.

In closing Selectmen reviewed that Mr. Mullen has been trying to sell the property for six years while still paying taxes on the property of \$190,000. He is the largest taxpayer in the town of Wenham, noting Mr. Mullen is entitled to an abatement of taxes, as a business with no economic income, and has been good steward to the Town in his considerations.

If he donates the property, the Town would lose the tax revenue and those conditions that would be sought in a Development Agreement and Special Permit.

Some Residents suggested the Town buy the property as open space and were informed the Town does not have \$10 million dollars to buy the property. Attorney Bobrowski noted such a purchased would (most likely) be contested and that the court would look unfavorably citing a purchase and sale agreement has already been reached between RCA and Mr. Mullen.

ADJOURNMENT

Ms. Harrison moved to adjourn at 10:59 AM and it was unanimous to do so.

Respectfully submitted by
Catherine Tinsley

4.6.15