

Approved 7.15.14

WENHAM BOARD OF SELECTMEN  
Meeting of Thursday, June 5, 2014  
Public Inquiry: 76 Topsfield Road  
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 (BOS) was held on JUNE 5, 2014 at 7 PM in the Selectmen Chambers.

With a quorum present, Chairman Wilhelm called the meeting to order at 7:01 PM  
Selectmen Present: Jack Wilhelm, Chair; Catherine Harrison, Vice Chair; Ken Whittaker, Clerk  
Also Present: Mark Andrews, Town Administrator; Catherine Tinsley, Minutes Secretary  
Officials Present: Paul Weaver, Town Counsel; Charlie Brett, Building Inspector; Emilie Cademartori PB/ZBA Coordinator

The meeting was recorded with permission by Hamilton Wenham Community Access Media and Attorney Fierro for 110 Inc. (Cross Keys)

Chairman Wilhelm explained that Town Officials would like to receive more information regarding Cross Keys Retreat, a program for men with addiction and alcoholism, which has claimed it is qualified under Massachusetts General Law Chapter 40A Section 3, also called the Dover Amendment, which allows non profit corporations with educational and religious activities from certain zoning restrictions. The purpose of the factual inquiry was to help elucidate the reasons Cross Keys believes they can operate under the Dover Amendment at 76 Topsfield Road.

Present for Cross Keys also known at 110 Inc. were Attorney Benjamin Fierro III, Lynch and Fierro LLP; 110 Inc. Principal and Co-Founders David Ray, and Ari (Aristotle) Nikolaou

Attorney Fierro spoke briefly, acknowledging that the factual inquiry was not a legal proceeding but a public meeting for Cross Keys to “answer questions and dispel myths”. He stated his clients were aware of the letter filed with the Building Inspector, by Attorney Tymann, on behalf of Dr. Miller, for revocation of the occupancy permit for a “Cease and Desist Order.” Attorney Fierro reiterated that Town officials, neighbors, and interested parties are invited to look at the property and talk with the staff. Attorney Fierro summarized that Cross Keys is a non profit, private pay, high quality, residential program for men recovering from alcohol / drug addiction who are taught the *Alcoholic’s Anonymous* twelve- step program to heal and recover from the disease of alcoholism. He went on to say that individuals with alcoholism (including those recovering from alcoholism) are considered handicapped under the *American’s with Disabilities Act*, the *Federal Fair Housing Act*, and the *Rehabilitation Act of 1974*. He claimed that the Towns are required to make a reasonable accommodation for individuals deemed handicapped under these Acts. He suggested this includes waiving or relaxing land use, rules, regulations and decisions; the accommodation would be for Wenham to allow fourteen men to reside for a limited period of time at 76 Topsfield Road while going through the program to learn to live as recovering alcoholics. The property has been maintained as a residential setting to provide tranquility. They are not exempt from the State Building Codes and are in compliance.

David Ray and Ari Nikolaou both talked about their childhood, education, career, alcoholism, and recovery. Mr. Ray offered to provide his statement in writing. Chairman Wilhelm asked that this be provided. Mr. Ray stressed that CORI checks are done on all applicants. The program does not knowingly accept sex offenders, or men with criminal records or mental health issues. A doctor’s authorization is required. He confirmed guests are not allowed to leave the property and must relinquish all electronic devices upon entering the program including e.g. cell phones, computers, etc. and may not have their own transportation.

Attorney Tymann spoke on behalf of his client, Dr. Lawrence Miller, who is a direct abutter to 76 Topsfield Road. He stated this is not about the program provided at 76 Topsfield Road, noting Dr. Miller is a health care professional. The case is about the fundamental issue if this particular facility is authorized under the Wenham bylaws. He suggested Cross Keys is not allowed in a residential neighborhood as a multi family house and/or as business. Attorney Tymann told the Board that being a non-profit does not mean it is not a business, and any residence with four or more unrelated people living together is defined as a multi family and this facility is not permitted by right or by

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special permit. He went on to respond to Cross Keys housing handicapped individuals saying the state statute that governs this is clear how a town can apply zoning bylaws in this case, explaining that it means the town must even handedly apply it's zoning bylaws.

Regarding Cross Keys being allowed under the Dover Amendment, Attorney Tymann responded that it does not apply, reasoning that local zoning is not automatically overridden because there is educational / religious programming. Educational use is determined by a common sense assessment of what is going on at the facility. He claimed that case law is clear that education must be the dominant purpose of the facility. Cross Keys own Articles of Organization state that they are drug and alcohol recovery/ rehabilitation. He went on to note various cases that were denied under the Dover Amendment by the court. He referenced a study by the Department of Public Health that alcohol and drug free housing does not qualify as disabled housing, citing housing for the disabled is residential, not educational. This report was provided to Attorney Fierro and Mr. Brett.

Dr. Miller spoke briefly saying he is not questioning the recovery or heartfelt desire to help others but questioned if Cross Keys is allowed under Wenham Bylaws, and if not, then asked that the Town Officials enforce the Town Bylaws. He told the Selectmen that he was surprised to find out "after the fact" that a business had moved into a next door to him in a residential area. He observed that two properties, both 76 and 78 Topsfield Road, are included under this organization, and were purchased by a private investor and leased to Cross Keys. He stated his concern that decisions made regarding Cross Keys at 76 Topsfield Road will set precedence for the Town.

Attorney Fierro responded saying the acquisition of property was made after meeting with Town officials. The benefactor, Bruce Grant, whose son went through program, purchased 76 Topsfield Road for Cross Keys. He stressed that Cross Keys is not just a sober home, as referenced in the Board of Health study, because in addition to providing housing, it provides educational / religious programming. Attorney Fierro referenced when the Supreme Court first opinion on education in 1887 it stated that "education is a broad and comprehensive term," and went on to cite various definitions of education and how it applies to Cross Keys.

Chairman Wilhelm opened the meeting for questions/comments.

Selectmen Whittaker questioned if the guests have the option to leave anytime. Mr. Ray responded that guests are allowed to leave the program and are driven home by Cross Keys.

The residents that spoke indicated that they were not informed that a business would be operating at 76 Topsfield Road and much of the information is "after the fact". The following questions were asked:

- Can any property owner lease out their home in a similar manner? Mr. Weaver responded "no" and even operating under the Dover Amendment is not a "blank check."
- Does Cross Keys pay property taxes? The answer was they do pay full property taxes.
- Is the septic system appropriate for number of residents? The answer was that building codes apply and the Board of Health fully vetted the proposal and approved the septic.
- Christopher Morley, Sudbury, was recognized and commented that his son went through the Wakefield program and noted that the education continues to parents and family.

Mr. Wilhelm stated that the inquiry would be kept open for the next two weeks for additional thoughts, comments, and/or questions. Letters should be directed to the Town Administrator and the Building Inspector.

*Vote; Mr. Whittaker moved to adjourn at 8:41 PM and it was unanimous to do so.*

Respectfully submitted by

Catherine Tinsley  
6.9.14