

TOWN OF WENHAM

Zoning Board of Appeals  
Meeting of August 27, 2014  
Wenham 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 Zoning Board of Appeals (ZBA) was on August 27, 2014 at 7:00 PM in the Selectmen Chambers.

With a quorum present, the meeting was called to order at 7:00 PM.

ZBA Members Present: Jeremy Coffey, Anthony Feeherry, Timothy Mansfield, and Associate Shaun Hutchinson

Also present: Emilie Cademartori, Coordinator; Attorney Mark Bobrowski, Special Counsel for the Town; Charlie Brett, Building Inspector; Catherine Tinsley, Minutes Secretary

Officials present not participating: Selectman Harrison; Selectman Whittaker

Mr. Feeherry announced that the meeting was being video/audio recorded by the applicant for 76 Topsfield Road.

Mr. Feeherry announced that the Penguin Hall applicant has requested their hearing be continued to September 24, 2014; this is on the agenda for later in the meeting.

**Continued Public Hearing**

**Location: 76 Topsfield Road (Map 25, Lot 17)**

Applicant: 110, Inc. Cross Keys Retreat (Cross Keys)

Appeal filed pursuant to MGL c 40A ss 8 & 15 of the Zoning Enforcement Officer's July 2, 2014 *Cease-and Desist Order* and decision that the operation of Cross Keys Retreat at 76 Topsfield Road is non-compliant with Town of Wenham Zoning Bylaw allowable uses in a residential zoning district.

Present for the applicant: Attorney Ben Fierro, & Attorney Paul Holtzman, Krokidas & Bluestein

The following information relative to the application hearing was received and/or considered by one or more of the members of the by the ZBA:

- o Case Law cited by the parties
- o Letters from the building inspector to Cross Keys
- o Letters from counsel on behalf Cross Keys (November 7, 2013, November 8, 2013, July 7, July 11, & August 20)
- o Letters from counsel on behalf of Mr. Miller (May 5, May 7, June 11, and August 25)
- o Briefing in the litigation currently pending in Federal District court
- o Massachusetts Department of Public Health regulations on Licensure of Substance Abuse Treatment Centers – 105 CMR 164.001, et seq.
- o Transcript of the May 6 Board of Selectman meeting
- o Video of June 5 Board of Selectman open forum
- o Three letters from Wenham residents (one abutter) supporting the Cease-Desist Order
- o A letter from Cross Keys Cofounder David Ray, dated August 27, 2014, was submitted to the Board and a copy provided for Attorney Tymann.

Mr. Feeherry stated that the person he spoke to at the Department of Public Health was unable to participate in the hearing to speak to whether or not Cross Keys needs to be licensed.

Mr. Coffey confirmed that he did a site visit to 76 Topsfield Road, as previously discussed at the hearing last week.

Attorney Fierro addressed the Board stating that Attorney Holtzman was present in Attorney Jill Brenner Meixel's stead. Attorney Holtzman is counsel for the applicant in the litigation against the Town.

Attorney Fierro read the letter to the ZBA from Cofounder David Ray in response to Mr. Coffey's site visit during which Mr. Coffey asked if someone could attend the hearing to provide further insight into the educational nature of Cross Keys.

## Approved 11.5.14

Attorney Fierro went on to say that he had two people that could give testimony to the educational aspect of Cross Keys and introduced Dr. Terry Shaller, who served at Harvard University in several capacities and Dr. Carter Crocket who is the Director of the Centre for Entrepreneurial Leadership at Gordon College.

The ZBA noted that there is no financial filing on record for 2013 to review such things as program expenses associated with education. They also asked about the discrepancy of the Article of Organization for 110 Inc. that states the objective to provide a recovery from addictions for people who have been clean sober for 30 days compared to the retreat in Wenham that states guests must be sober for four days. Attorney Fierro did not have the specific answer but noted all guests must be medically cleared and have a CORI check. He went on to suggest that the difference is that Wenham is a short-term program for the first stage and the Wakefield location (known as No. 16) is for an extended program. Attorney Fierro also noted that with respect to the educational program this is referred to as a peer-to-peer educational program. The staff is also trained in a peer-to-peer programming.

Mr. Coffey commented on his visit saying that during his visit there was no question on the program's merit and worth. Mr. Coffey questioned whether education is the dominant use of the property compared to other uses of the property (e.g., programs, events, activities that happen during the day on the property).

Mr. Terry Shaller spoke briefly on the merits of the educational programming at Cross Keys. He identified himself as a recovering alcoholic who has successfully been through the programming of 110 Inc. He claimed his career as a Dean at Harvard qualifies him as having an understanding of what education is and went on to describe the schedule at 110 Inc. to be educational including reading & writing (three 90 minute sessions/day) and classroom time (4-5 hours/day), noting that the writing was evaluated, stressing every day is an educational experience. He reiterated this is not a medical program or a treatment program. It is an educational program to allow people to receive a wide range of instruction and training through meditation, religious and spiritual study, and classroom lesson including writing/ reading to live healthy productive substance free lives.

Dr. Carter Crockett, Ph.D., Director Gordon College. Dr. Crockett explained he has his PhD in Entrepreneurial Ethics and teaches Entrepreneurial Ethics through "peer to peer", from one entrepreneur to another. This often includes habits, guidance, and community service. Dr. Crockett stated that Cross Keys provides classes in a similar manner, from one to another.

The hearing was open to those in opposition that did not speak at the last hearing.

Dr. Miller, 66 Topsfield Road, addressed the Board saying he was not present at the last meeting and did not speak, but acknowledged Attorney Tymann spoke on his behalf. Attorney Tymann was not present at the August 27 meeting. Dr. Miller reiterated his concerns that this is a business in a residential area and has nothing to do with the merits of Cross Keys. This single-family home has undergone a change of use into a commercial, multi-family, business that houses fourteen men recovering from addictions. This use in a residential area is prohibited by Wenham Zoning Regulations. He suggested that if the Town "even handedly" applies the zoning restrictions, it would not constitute discrimination as suggested by the applicant. Dr. Miller went on to say that the Town could not, would not, allow a e.g. Bed and Breakfast in this location or similar business providing short term housing, nor would a business that "teaches" for example, weight loss business or a gun range that teaches shooting/ gun safety be allowed. In referencing the Alcoholics Anonymous web site, he noted that this program is spiritual in nature, not educational. He questioned this setting precedent in the town for future situations.

Mr. Mansfield replied that the Zoning Board is very stringent about change of use. Mr. Coffey noted that the decision on this appeal would not set a precedent, as each case will be treated individually.

The hearing was opened for public comment from the proponents.

Steven Piero spoke in favor of Cross Keys, citing his sons have been through No. 16 program. He added that the families of the guests were also offered educational programming with family meetings of how to deal with addictions.

Jesse Stansfield, identified himself as a teacher in the Salem public school system who volunteers and mentors in a peer education system comparing the education that he is familiar with in Wakefield No. 16, as similar peer to peer education as is taught in scouting.

Kate Riley, a parent of a guest of No. 16 also supported that education is extended to the family even before the family member is admitted.

## Approved 11.5.14

John Nikolaou identified himself as one of the founder's fathers. He spoke in support of the educational component and described the teaching and education of the kids on how to recover and learn how to change from addiction.

Mr. Feeherry explained that the public input of the hearing would be closed to testimony or evidence, but that he Board would deliberate in public session.

*Vote: Mr. Mansfield moved, and it was seconded, to close the hearing to public testimony. The motion carried unanimously.*

The Board discussed at length whether education is the primary component of Cross Keys' use of the property, noting much of the testimony related to No. 16, a sister facility located in Wakefield, mostly due to the shorter period of time the Wenham Retreat has been operating.

The Board also recognized that the Cross Keys program is a shorter-term program focused on the earliest stages of a guest's recovery, and questioned whether it was more of a time for guests to detox for two to four weeks.

The Board agreed that the case law presented was not determinative in this case, noting that certain of the cases negated themselves and no case directly addressed qualification under the Dover Amendment of a drug/alcohol residential program similar to the Cross Keys program.

It was noted that the Board must vote unanimously to reverse the Building Inspector's Cease and Desist Order.

Mr. Mansfield compared the Cross Keys program to boarding school, noting that a boarding school was something with which he was familiar. Mr. Mansfield posited that education is constant in such a setting and not just measured in a classroom and if Cross Keys has crossed that threshold.

Mr. Coffey stated that although his visit confirmed there is an educational component to the Cross Keys program, he came away from the site visit unconvinced that the educational component was dominant. Mr. Coffey stated that he understood one purpose of Cross Keys is teaching about the AA book, but he also noted other purposes (e.g., providing a sober living environment, recreational activities, providing guests with a structured schedule to begin their recoveries, profit-making for the principals of the program, meditation, prayer, etc.). Mr. Coffey suggested further discussion was warranted as to whether education constituted more than 50% of the use of the property.

Mr. Feeherry noted his concern that a portion of time spent at Cross Keys is to be sober, noting the four-day sober requirement is minimal at best and he questioned whether education is the primary activity at Cross Keys for guests during this time.

Attorney Bobrowski provided input to the board. He noted that alcohol and drug free homes are not covered by the Dover Amendment, but further noted that Cross Keys is not licensed, which suggests it is not a sober house. Attorney Bobrowski recommended the Board suggested the Board view the applicable case law as a spectrum and consider where Cross Keys fell on this scale.

The Board talked about continuing the meeting to allow the other members to conduct a site visit.

It was also noted that the trial date for the Federal litigation commenced by Cross Keys had been changed from September 3, 2014 to a later date.

*Vote: Mr. Mansfield moved to continue the deliberation regarding 76 Topsfield Road to a date certain on September 3, 2014 at 7 PM in Town Hall. The motion carried unanimously.*

### **Location: 36 Essex Street (Map 40 Lot 3)**

Request for Special Permit under Section 4.4.2 Change in Non-conforming use and Section 4.2.3 Educational Non Exempt use

Applicant: RCA Group LP; Brian O'Neil Principal

Proposal: 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 metal health issues

Approved 11.5.14

Present: James Mullen, property owner

Attorney Matthew Snell, Nutter, McClennen, & Fish, of Boston was present as representative for the applicant. Mr. Snell noted that a letter had been submitted to request the hearing be continued to the next available meeting date.

*Mr. Mansfield moved, and it was seconded, to continue the hearing to a date certain of September 24, 2014 at 7:30 PM in Town Hall. The motion carried unanimously.*

**Administrative**

- Minutes – August 6, 2014; August 21, 2014

The minutes were deferred and no action was taken.

- Update - Middlewood (Burley Street) Ms. Cademartori reviewed that the approved revised site plan required a matching black fence be installed along the structural crossing because of a four-foot drop. She noted there is a sidewalk but no fence. Ms. Cademartori confirmed it had yet to be done and stressed this is a serious safety issue. She also noted that some units have been sold and are occupied, therefore, the snow would need to be removed, and sidewalks cleared this winter. The Building Inspector stated he would speak directly with the Contractor regarding these issues. The Board agreed the contractor be given a week's time to complete the fencing as required.

The Board unanimously adjourned at 8:57 PM.

Respectfully submitted by

Catherine Tinsley

9.2.14