

TOWN OF WENHAM

Planning Board
Meeting of April 28, 2016
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 Planning Board was held on Thursday, April 28, 2016 7:30 PM in the Selectmen's Meeting Room.

With a quorum present, Mr. Geikie called the meeting to order at 7:30 PM.

Board Members Present David Geikie, Chair; Minot Frye, Vice Chair; Stephen Kavanagh; Don Killam; Virginia Rogers
Also present: Ilana Quirk, Esq. Kopelman & Paige, Town Counsel; Catherine Tinsley, Recording Secretary

Public Information:

Agenda
Variance Deadlines
Land Use Training
Open Meeting Law

Land Use Workshop with Town Counsel - Attorney Ilana Quirk

Attorney Quirk provided the Board with information related to her review of Land Use permits, timelines, actions, and the Open Meeting Law. Attorney Quirk talked in detail about the important regulations and responsibilities of the Planning Board and referenced the printed documents provided.

Of importance was *Variance Deadlines G.L. c.40A, §10, §11 and §15*

Attorney Quirk recommended the Board refer to this timetable and information when considering each application.

Land Use Training included the following topics:

- Making a Defensible Decision
- Avoiding Litigation
- Communicating with Town Counsel
- Handling a New Lawsuit
- Open Meeting Law Issues
- Conflicts of Interest
- Public Records

Attorney Quirk stressed the importance of following the process for a Public Hearing

- Advertise the Application
- Conduct Public Hearing including asking for public input/questions
- Close the Public Hearing
- Make Decision – A “good faith decision” after the findings of the fact, may include local knowledge.
- Perfect the Decision

Attorney Quirk further explained, “Perfect the Decision” to mean to file the decision with the Town Clerk and mail the decision to the applicant and parties of interest.

The Board was advised that Applications have to be accepted even with deficiencies or a constructive grant situation could arise.

Attorney Quirk noted of importance:

- If the Board is in a situation that after they have voted to close the public hearing, another piece of information is asked to be considered, if no one (public included) has left the room since the vote to close the hearing, the Board can

Approved 8.11.16

consider making a motion to reconsider closing the hearing. If the Board votes in the affirmative to reconsider closing the hearing, a second motion would be made to reopen the hearing. This motion should include the language “since no one has left the room since the closing of the public hearing”. If people have left the room, the hearing could only be re-opened if is re-advertised.

- Regarding the newly accepted bylaw voted at Town Meeting, Attorney Quirk recommended the Planning Board review the tax delinquent list twice a year and follow G.L. c.40 Ch. 57 to refuse to issue or renew or to revoke certain licenses and permits if applicable local taxes, fees, and/or assessments are not currently paid. It was noted that a tax bill couldn't be contested if it hasn't yet been paid.
- The term Super majority was explained to mean one less than the membership of a Board/ Committee.
- It was further explained that if a five-member board is meeting with four in attendance, then all four members must vote in the affirmative; super majority vote is based on membership, not quorum.
- It is possible the Rule of Necessity may be invoked if someone has recused himself or herself for a conflict of interest.
- A motion to approve an application is made and fails to achieve the necessary votes for approval, then the motion fails and the project is deemed DENIED. (Not necessary to make another motion for denial)
- Under Zoning Act, once a public hearing is advertised, the application cannot withdraw without prejudice unless approved by the Board.
- A denial of an application must have in it listed the details for the denial. If the applicant “fixes” the issues for which they were denied, the Board must approve the application.
- There was a brief discussion of the Dover Amendment and how it applies to the Planning Board.
- It was strongly recommended the Planning Board members avoid social media regarding an application
- Decision should include the language “any relief not expressly granted hereunder is hereby denied.”
- The Planning Board can meet in Executive Session in accordance with the OML
- Town Board/ Committees do not have the right to invite the public to site visits on private property; the property owner can be requested to allow public.
- MGL 53 G does not allow funds to be used for site plan administration review. The Board should set up a gift account under MGL 53A for this purpose.

Attorney Quirk fielded questions from the Board.

Attorney Quirk left the meeting at 9:38 PM.

The chair updated the Board on the timeline for hiring a Planning Coordinator saying preliminary interviews for the position are next week, with final interviews on May 11. The Board strongly supported Attorney Quirk be involved somehow by giving guidance to the town on the applicant's knowledge and directed the Recording Secretary to inform the Town Administrator.

The Board talked about voting a new chair at the next meeting in May, being the first official meeting of the Planning board following the annual elections.

The Planning Board discussed the necessity of an alternate member.

The Planning Board reviewed the BOS plan to organize an Open Space Committee for a one-year term and although they are not mandated to have representation on this committee, it was agreed it would be advantageous to so. Letters of Interest are due to the Town Administrator by May 11, 2016.

Respectfully submitted by

Catherine Tinsley
5.1.16