

WENHAM BOARD OF SELECTMEN
Meeting of Monday, July 14, 2014
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 JULY 14, 2014 at 7 PM in the Selectmen Chambers.

WELCOME AND OVERVIEW OF THE AGENDA

With a quorum present, Chairman Wilhelm called the meeting to order at 7:03 PM

Selectmen Present: Jack Wilhelm, Chair; Catherine Harrison, Vice Chair; Ken Whittaker, Clerk

Also Present: Mark Andrews, Town Administrator; Emilie Cademartori, Planning Board/ZBA Coordinator

David Geikie, Planning Board Chair; Catherine Tinsley, Minutes Secretary

NEW BUSINESS

The only item on the agenda for this meeting of the BOS was to discuss an overview of lot #4 and lot #5 of the originally proposed William Fairfield Drive Developer.

Chairman Wilhelm referenced a Town issued letter to neighboring residents of William Fairfield Drive parcels 4 & 5 asking for input regarding the proposed settlement of the landowner to build only one house.

Mr. Wilhelm went on to explain that the Town and the landowner have different opinions regarding the term of the covenant on the property to remain unbuildable. The property owner believes the amended covenant on the property filed in 1981 expired after 30 years and these parcels are now buildable. The Town's understanding is that these parcels remain unbuildable in perpetuity and the amendment does not change the restriction. If a settlement is not reached, this will go to land court. The disadvantage of litigation is the cost, estimated at \$50,000, and that legal counsel has cautioned the BOS that there is no definitive answer and there is equal likelihood for both parties. If the court sides with the landowner, as many as four houses could be built collectively on the two lots.

The Selectmen asked to confirm that (some) abutters were willing to defray the cost of litigation, of up to half the cost. Although there was some willingness to do so, the total funds were not specified.

The public was invited to ask questions and give comments.

There were various opinions given and questions asked over the next hour. During this time, the Chairman recognized William Henney, who identified himself as the Attorney of the KBK Realty Trust, and owners of lots 4 & 5. With permission, he clarified that Mr. Kelley purchased the abutting lots (4 & 5) to his house in 1985 for \$40,000.

He opined that the amendment to the covenant filed in 1981 does not use the term "in perpetuity" and the appropriate steps were not taken according to MGL Chapter 184, Section 31 & 32, and therefore the Trust has the right to go forward with the permitting process to build on the lots at this time.

Attorney Henney provided a plot plan of the proposed one house settlement, which included a barn, paddocks, and a pool with pool house.

The neighbors questioned if Mr. Kelley has considered donating the land to the Town and it was confirmed that this discussion took place but the cost to the town was unattainable.

David Geikie spoke saying he was on the Planning Board when the William Fairfield Development was permitted. He reviewed the Planning Board wanted to preserve some open space to maintain the character of Wenham. The developer, Reynolds Nippe, agreed to build further back in the woods to keep the vista long Route 97 open. The applicant filed the registration with the deed. The Planning Board believed the land was protected in perpetuity, not for just 30 years.

It was noted that Mr. Kelley has been paying taxes on the property as conservation land, and not as buildable lots.

The value of the land as buildable lots in today's market was estimated at half a million dollars.

The neighbors asked Attorney Henney to leave the room so they could discuss the options without his being present but Mr. Henney refused to do so and the meeting was adjourned by the BOS unanimously at 8:19 PM.

The residents caucused after the meeting.

Respectfully submitted by

Catherine Tinsley

7.23.14