

The ES was part of the joint meeting of the **Wenham Board of Selectmen (BOS)** and the **Finance and Advisory Committee (FAC)**, Wednesday, **JUNE 11, 2014** posted meeting.

Pursuant to Open Meeting Law, M.G.L. c. 30A, §§ 22 (f) the minutes of any ES, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under sub clause (a) of clause Twenty-sixth of Section 7 of Chapter 4, as long as publication may defeat the lawful purposes of the ES, but no longer; provided, however, that the ES was held in compliance with Section 21. These minutes will not be released until approved for release by the BOS / FAC and notice of such approval has been entered into the regular minutes.

The purpose of the ES was to discuss litigation with regards to William Fairfield Drive lots #4 and #5.

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

Finance Committee Present: Michael Lucy, Chair; Kathryn Mansfield; Kevin Lech; Richard Quinn

Not Present: Hilly Ebling; Jeff Fotta

Also Present: Mark Andrews, Town Administrator; Paul Weaver, Town Counsel; Justin Cole, Baystate Municipal Accounting Group; Catherine Tinsley, Minutes Secretary

Background: The Tucker Estate sub division plan (William Fairfield Drive) was approved in 1980; the original covenant included a perpetual restriction “That no buildings may be erected on lots 4 & 5 (located on the corner of Topsfield Road and William Fairfield Drive) and those lots shall be used only for agricultural and recreational uses”. The restriction was to protect the historic stonewalls and scenic view. The original covenant expires in 2020. An amended covenant expired in 2011. Brian Kelley owns these lots and has indicated that he is seeking building permits for these lots, claiming the statutory effect of the restriction expired on the 30th anniversary on the covenant in 2011.

At the May 21, 2014 executive session meeting, the BOS requested a legal opinion be sought regarding the expiration of the covenant. They also asked that the neighbors be updated on the possible settlement offer of one house, and their interest in sharing the legal costs be confirmed.

Mr. Weaver reported that outside counsel deemed pursuing the 2020 covenant was not an option. He also said that Tony Feeherry confirmed the neighbors do not want any buildings, and understand the settlement offer including that an unfavorable decision could mean a subdivision of up to four lots.

Mr. Kelley has given the Town a dead line of June 16, 2014 to make a decision.

Mr. Weaver noted that this has a fifty-fifty chance of going either way in court. He added that the neighbors have no standing and it is solely up to the Board to make the decision for what is in the best interest of the Town.

Mr. Wilhelm asked the following be confirmed in writing to the Board:

1. The funding being offered by the neighbors, solely to assist the Town with the cost of defending the covenant
2. The neighbors confirm their understanding that there is a settlement offer in place that would limit development to a single home on a combined lot and that refusal of the settlement, and successful litigation by Mr. Kelley, could lead to the development of up to four houses on four house lots.

Mr. Weaver will speak immediately with Tony Feeherry, the abutters, and the William Fairfield Association, to plan a meeting with the BOS/FAC. He will also speak with Mr. Kelley’s attorney and request additional time to July 1, 2014 before taking action.

Vote: Mr. Whittaker moved, and it was seconded, that the BOS return to open session for adjourning the BOS meeting. The motion carried unanimously by roll call vote.

Vote: Mr. Quinn moved, and it was seconded, the FAC return to open session. The motion carried unanimously by roll call vote.

Respectfully submitted by

Catherine Tinsley