

TOWN OF WENHAM

Planning Board  
Meeting Minutes of February 15, 2017  
Buker School, School 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 Wednesday February 15, 2017 at 7:30 PM in the Multi-Media Room in the Bessie Buker School.

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: Margaret Hoffman, Planning Coordinator; Catherine Tinsley, Recording Secretary

The meeting was recorded with permission by HWCAM

**Old Business**

Continued Public Hearing – Wenham Pines Flexible Subdivision Application  
Location: 56 -60 Main Street (Continued from February 9, 2017)

Ms. Hoffman updated the Board and summarized that changes were recently made and a draft decision must be revised to include these changes submitted by the applicant regarding the title; this has not been reviewed by Attorney Quirk. Town Counsel, Ilana Quirk sent an email to Attorney Gooding dated February 4, 2017 outlining her recommended response. Ms. Hoffman read this email into the record.

Hello Miranda,

The existence of the litigation and the January 24, 2017 judgment described and disclosed in the above document comes as a surprise. I did not know that there was an issue of this nature.

Having now reviewed the documentation you provided today, I understand that, on January 24, 2017, the Essex Probate Court entered judgment to declare the Trustees of the Flynn Family Enterprises Irrevocable Trust to be the owners of the property described in Exhibit A as attached to that judgment and you indicate that the described land is the same land that is the subject of the Host Community Agreement that the Town has with the Estates of William J. Flynn and the same land as the land that is the subject of the pending special permit before the Planning Board. As you know, both the Host Community Agreement and the special permit application pending before the Planning Board indicate that the Estate of William J. Flynn is the owner of the land and the Estate of William J. Flynn assented to the special permit application and, after the special permit application was filed, the application was amended to include the Estate of William J. Flynn as an applicant.

Obviously, the January 24, 2017 Essex Probate Court Judgment creates issues that need to be resolved.

I recommend that tomorrow evening's Planning Board public hearing session be continued to March 9, 2017, the Planning Board's next scheduled session, to allow time so the following steps can take place before the Planning Board's public hearing on the special permit application is closed:

The Town will need to confirm the land referenced in Exhibit A to the January 24, 2017 Essex Probate Court judgment is all the land that is the subject of the Wenham Pines Project as set forth in the Host Community Agreement and special permit application pending before the Planning Board.

The Host Community Agreement will need to be amended, to make the Trustees of the Flynn Family Enterprises Irrevocable Trust a party to the HCA. The January 24, 2017 judgment indicates that the Trustees of the Flynn Family Enterprises Irrevocable Trust own the relevant property, not as a successor to the Estate of William J. Flynn, but, rather because that trust has been declared to be the owner by the Probate Court based upon the reformation of the deed description in a 2005 deed, a deed that predates Mr. Flynn's death.

*Approved 3.9.17*

The special permit application pending before the Planning Board needs to be amended:

To change the name of the owner to the Trustees of the Flynn Family Enterprises Irrevocable Trust;  
To add the Trustees of the Flynn Family Enterprises Irrevocable Trust; and  
To indicate that the owner and Wenham Pines LLC have confirmed the rights of Wenham Pines LLC to purchase the property from the newly declared owner.

There needs to be a letter of assent to the special permit application to the Planning Board from the newly declared owner of the property.

There will either need to be evidence of a waiver of the appeal period by all of the parties to the litigation in which the January 24, 2017 Essex Probate Court judgment was entered or sufficient time will need to elapse so that there can be a determination that the appeal period has terminated, with no appeal having been filed, before the Town and the Planning Board proceed.

Also, please advise whether, as a result of the January 24, 2017 Essex Probate Court judgment, there will be no further need to “phase” the transfer of ownership of the land to Wenham Pines LLC. I recommend that there be a deadline established to accomplish all of the above before March 9, 2017.

Attorney Quirk recommended the Planning Board continue the hearing to March 9, 2017 to allow for time to review newly submitted documents and take certain steps before the Planning Boards Public Hearing on the special permit application is closed.

Attorney Miranda Gooding was present for the applicant and apologized for the confusion for what she thought was correcting a technical matter to clear up a title defect which evolved because of the way the property transferred from Mr. Flynn to a Trust he established before his death. The Probate Court granted relief as requested to clear the title defect with the consent of the Flynn families.

Attorney Gooding noted that Town Counsel was aware that there was a title defect the family has been trying to clarify the title since September. There remains to be some paperwork that needs to be corrected at the Registry of Deeds.

The entire parcel (56/60 Main Street) is now owned by the Flynn Enterprise Family Realty Trust.

The Host Community Agreement (HCA) referenced does not cover both parcels but only the recreational golf course parcel chapter 61 property, not the residential property. The Host Community Agreement will also be corrected.

When the Town entered into the HCA, the property was going to be purchased by the Tambone family; the HCA will be amended to include being purchased by Wenham Pines.

There would be a surety covenant until substantial completion of road way / infrastructure; upon the approval of the Planning Board the applicant proposes to substitute the Covenant with a surety i.e. bond, cash, tri party agreement.

Ms. Hoffman confirmed the peer reviewer is satisfied and has completed the peer review.

The Planning Board requested the Coordinator set a meeting with Attorney Gooding to go over the decision in preparation for the March 9 meeting.

*Vote: Mr. Killam moved, and it was seconded, to continue the hearing for Wenham Pines to March 9, 2017 at 7:30 pm in Town Hall. The motion carried unanimously.*

## **New Business**

Request for Waiver of Site Plan Approval from Zoning Bylaw Section 12.4.3.1  
Personal Wireless Services Facility) – Daniel Klasnick, Attorney for Verizon Wireless  
Building Mounted Facility at 1 Arbor Street aka 137 Main Street

➤ Letter C. Brett Building Inspector

The proposal is from Verizon Wireless to co-locate wires in the First Church in Wenham; because this project is “De Minimis” in nature, the request is for a waiver of the Site Plan Review requirement.

*Approved 3.9.17*

With Metro Wireless equipment removed, the only carrier currently in the steeple is T-Mobile.

The proposal is for Verizon to install three antennas concealed within the steeple in the space previously used by Metro Wireless, install a new equipment room in the basement, and place two pad mounted condenser units in the recessed stairway.

The Planning Board confirmed that Attorney Klasnick & Verizon was aware that there is an antique clock owned by the Town of Wenham in the steeple. Attorney Klasnick said they would keep the Town informed of the timeline of work.

The steeple will be removed so Verizon Wireless can install their antennas; this has been done previously.

Verizon is not working directly with the church.

The Building Inspector indicated he was ok with the plan, but stressed that the location is in the historic district.

Attorney Klasnick was reminded that all applicable permits e.g. building, electrical are required along with detailed construction drawings. There is to be nothing visible from the outside and no increase in exterior noise or nuisance of any kind.

*Vote: Mr. Killam moved, the it was seconded, to grant the waiver of a site plan review from Zoning Bylaws section 12.4.3.1. The motion carried unanimously 5 to 0.*

### **Discuss recent meeting with the Board of Selectmen** regarding possible Zoning Amendments

Ms. Hoffman briefly reviewed that new legislation allows recreational use of marijuana.

The meeting between the BOS and PB discussed options available to the town to draft a bylaw for sales, growing, harvesting, distribution, sales, etc. of marijuana.

The Town may have the option of a moratorium in the future, but right now, the state is has extended the deadlines to July 1, 2018 to allow the State to interpret the intent of the question.

Ms. Hoffman went on to say that the Rules & Regulations Governing Sub Divisions of Land have not been updated since 1984.

Under MGL the Planning Board has the Authority to vote on these Rules & Regulations after holding a public hearing.

These will be updated a few at a time.

Ms. Hoffman will work with Town Counsel on the updates and bring them to the Board for approval.

The Town is working with General Code to recodify all Zoning and General bylaws; some modification is for consistency.

**Minutes:** January 12, 2017; January 31, 2017; February 9, 2017

*Ms. Rogers moved, and it was seconded, to accept the Planning Board minutes of January 12, 2017; January 31, 2017; February 9, 2017. The motion carried by majority vote with one abstention.*

### **Other Business**

Ms. Hoffman reported she got a call from Mr. West regarding Spring Hill, the proposed development at 79 Dodges Row and questioned if he needs to come back before the Planning Board after DEP renders a decision regarding the stormwater plan.

The Board believed it was necessary for him to come back before the Planning Board to update the Board on agreements or changes. Ms. Hoffman will meet with Mr. West and put him on a future meeting agenda.

The Planning Board received a *Letter of Notice of Withdrawal* from the Attorney working of the cast between Jeffry Hamilton and the Planning Board.

### **Adjournment**

The Planning Board unanimously adjourned at 9:04 pm

Respectfully Submitted By

Catherine Tinsley

3.3.17