

EXECUTIVE SESSION (ES) CONFIDENTIAL

The ES was part of the Wenham Board of Selectmen (BOS) **August 5, 2015** 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 Selectmen and notice of such approval has been entered into the regular minutes.

The purpose of the ES was to discuss two matters:

- 1) Litigation Strategy -76 Topsfield Rd pertaining to claims & appeals of Lawrence Miller/ Cross Keys
- 2) Litigation Strategy – Recovery Centers of America (RCA)

Selectmen Present: Catherine Harrison; Jack Wilhelm; John Clemenzi

Also Present: Peter Lombardi, Town Administrator; Catherine Tinsley, Minutes Secretary

*Paul Weaver, Town Counsel; Attorney Mark Bobrowski,

Paul Weaver participated remotely according to 940 CMR 29.00

Attorney Bobrowski reported RCA has withdrawn its appeal of the Building Inspector's Administrative denial of the reasonable accommodation "without prejudice", but noted this was filed months after the 30 day appeal and should be considered "with prejudice".

He stated under Chapter 40A Section 16 a board must approve the withdrawal of a special permit or variance commenced in a public hearing, but does not reference the withdrawal of an Administrative Denial; therefore Attorney Bobrowski advised the BOS they did not need to approve the withdrawal.

Attorney Bobrowski further explained that RCA cannot come back to the town under the original application for two years unless they show specific material changes to the original plan, but did not sense this would happen. The Attorney for RCA, Jim Ward, has filed the Plaintiff's Notice of Voluntary Dismissal Without Prejudice dated July 31, 2015.

Regarding the request to withdraw the appeal of the ZBA's denial of a Special Permit, Attorney Ward will be asked to send the Town a copy of the *Stipulation of Dismissal*.

Attorney Bobrowski and Town Counsel fielded general legal questions of understanding from the Selectmen. This discussion included the legal details related to the Zoning Board of Appeals (ZBA) currently with two appointed members. The two remaining voting members are a quorum of the three member board and have the ability to open and close a hearing, and vote to affirm the denial; but with only one of those members having attended all hearings, and the necessity for a three member board to be unanimous in their vote to reverse the Building Inspector's denial, no additional action can be taken.

Regarding Cross Keys, the Selectmen were informed that Cross Keys has agreed to the conditions as currently put forth by the ZBA in their decision, and accept a financial settlement of \$20,000 as authorized by MIA. The court scheduled the hearing on the motion to dismiss for September 22, 2015.

The Zoning Board of Appeals joined the executive session meeting after opening their posted meeting in accordance with Open Meeting Law, M.G.L. c. 30A, §§ 18-25

ZBA Members Present: Jeremy Coffey, Acting Chair; Shawn Hutchinson; Also Present Tony Feeherry

Attorney Bobrowski and Town Council gave a brief summary to update the ZBA related to RCA, explaining the appeal of the denial of RCA Reasonable Accommodation has been withdrawn, and that Cross Keys has agreed to the terms in the decision of the ZBA.

A general discussion regarding the legal process ensued.

Mr. Wilhelm moved, and it was seconded to adjourn from executive session and return to open session. The motion carried unanimously by roll call vote.

Respectfully submitted by

RELEASED 1.10.17
APPROVED

Catherine Tinsley
8.7.15