

RELEASED 1.10.17

APPROVED 8.5.15

EXECUTIVE SESSION (ES) CONFIDENTIAL

The ES was part of the **Wenham Board of Selectmen (BOS) July 21, 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

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

Paul Weaver, Town Counsel; Attorney Mark Bobrowski, Special Counsel Douglas Louison- Louison, Costello Condon, & Pfaff as hired by MIIA Insurance Co.

The attorney's reviewed and updated the Selectmen regarding Cross Keys, DBA 110, Inc. at 76 Topsfield Road, a substance abuse facility located in a residentially zoned area of Wenham that was allowed to operated with special conditions granted by the Zoning Board of Appeals (ZBA).

The discussion included action taken, or threatened by Cross Keys, through their Attorney Paul Holtzman, Krokidas & Bluestein, LLP, and Dr. Miller through his attorney Ben Tymann.

This included the appeal of the Building Inspector's decision of September 22, 2014 to grant the request for zoning enforcement, the decision of the Zoning Board of Appeals filed June 2, 2015 to uphold the Reasonable Accommodation and allow the operation of the facility with special conditions supervised by the ZBA, and the "Settlement Agreement and Release of Claims" to exempt Cross Keys from Zoning restrictions that would interfere with Cross Keys' operations.

The Town, along with specifically named officials, has been included in some of the court cases and it is the responsibility of the Selectmen to determine the defense in litigation involving the town.

The appeals process was further explained, including an estimated time line and possible outcome that potentially would impact the town financially and in future decisions/appeals.

Cross Keys specifically identified two of the (ZBA) conditions included in the June 2, 2015 decision that may be appealed:

1. The ZBA may in the future limit the number of guests
2. Specific admission screening of the clients

The defense to uphold any part of the ZBA decision would not likely be covered by the Town's insurance policy, that litigation does not include any claims for damages.

The Selectmen supported strategy that would not lead to the filing of new lawsuits against the town.

Legal action, taken by Dr. Miller, abutter to Cross Keys was also considered as an important part of the scenario. The Selectmen were informed of potential legal action Dr. Miller could take and how it could impact the Town and Cross Keys.

The ZBA members joined the Executive Session at 6:08 PM.

ZBA Members Present: Jeremy Coffey, Anthony Feeherry, Shaun Hutchinson

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Mr. Weaver reviewed in detail the facts before the BOS saying the Town is in the process of responding to pending issues involving the ZBA; one being the decision to defend or overrule the decision of the ZBA to allow Cross Keys to (continue) to operate.

It was the position of the ZBA that their decisions were carefully and deliberately decided and that additional time would be necessary to consider the request to modify their decision to allow Cross Keys up to 14 guests and accept their proposed intake screening. The ZBA asked that a "red line" draft of the proposed changes to the June 2, 2015 decision be provided to them.

It was expressed to the ZBA, if they agree to these changes; Cross Keys will not take further action.

Regarding RCA, the BOS were told the ZBA denied the request for a special permit to operate a drug rehabilitation on the Mullen Property (Penguin Hall), Essex Street, Wenham.

It was questioned if RCA still has standing, if there is a Purchase & Sale Agreement.

Mr. Feeherry was told the BOS has not acted to reappoint him to the ZBA to date and his term expired on June 30, 2015.

The BOS has not discussed this appointment to date and therefore no action has been taken.

The ZBA informed the Board that their posted meeting for 7:30 pm (July 21, 2015) would not be held and the following agenda item would not be heard:

Continued Public Hearing for 36 Essex Street

Applicant: RCA Group LP

Nature of hearing: Appeal filed pursuant to MGL c 40A ss 8 & 15 of the Zoning Enforcement Officer's May 18, 2015 denial of RCA Group LP request for reasonable accommodation for the property at 36 Essex St pursuant to MGL 40A s 3, the Americans with Disabilities Act, the Fair Housing Act and the Rehabilitation Act of 1973

Adjournment

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

Respectfully submitted by

Catherine Tinsley

7.25.15