

ELIASON
LAW OFFICE LLC

December 1, 2021

ELECTRONIC MAIL ONLY

Planning Board
Town of Wenham
138 Main Street
Wenham, MA 01984

Re: 60 Arbor Street Definitive Subdivision – 2021 application

Dear Planning Board Members,

I am writing on behalf of my client, Marianne Cannon, an abutter to the above-referenced property. Ms. Cannon and I have reviewed the peer review response submitted by James Decoulos on behalf of Susan M. Hamilton and Jeffrey P. Hamilton (“Applicants”) for the Definitive Subdivision Application filed for their property located at 60 Arbor Street (“Project”). The response does not include an updated plan and in our opinion, it is completely lacking and insufficient to support an approval of the Project by the Planning Board. The Applicant stated in its response that the updated plan would be delivered the week of November 22, 2021. It is now December 1, 2021 and no plan has been received. The Peer Reviewer’s and public’s responses are due December 2, 2021. Those responses are without benefit of the updated plan that was promised last week.

Consistent with Mr. Decoulos’ past practices, his response includes a lot of promises to remedy the defects cited by the Town’s peer reviewer, but he does not actually remedy all of the defects. His letter is replete with statements that the plan will be amended, but yet he has not provided this Board with an updated plan showing that the defects have in fact been remedied. Nor does he provide missing data or waivers that are required for a complete application. Therefore, at this point in time, the Project application is incomplete and should be denied by the Planning Board on that basis alone. The Applicant had plenty of time to provide you with a complete application and an updated plan, but they chose not to do so.

I have attached a copy of Mr. Decoulos’ letter with blue highlighting to show his promises to update the plans and yellow highlighting to show where he promises to correct a defect identified by the peer reviewer or to provide a waiver request. Looking at the highlighting it is clear that the Project application is lacking in the substance and information necessary to approve it. Again, he states that the 2021 application addresses the reasons the Board previously denied the 2020 application, but that is simply not true.

Most importantly, Mr. Decoulos does not request the critical waiver of the 40’ radius that the Town’s peer reviewer states is required by section 4.1.3.5 of the Subdivision Rules

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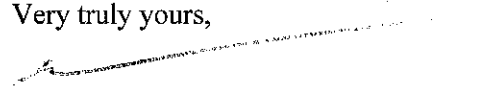
and Regulations ("SRR"). The Applicant has not applied for a waiver and Mr. Decoulos merely indicates that he disagrees with the Town's peer reviewer. Mr. Decoulos states that his method of complying with the SRR is common practice. He then cites the American Association of State Highway and Transportation Officials standards and as well as the Massachusetts Department of Transportation standards for support. He also points to the Town of Plymouth, and the states of Delaware, Michigan and Connecticut. Lastly, he states that many of the surrounding Towns have lesser radii requirements. All of these examples are irrelevant because the Wenham SRR section 4.1.3.5 does not cite to them. It is irrelevant what other states, cities or towns accept. Your SRR requires a 40' radius and the Town's peer reviewer has interpreted the Applicant's plans to be noncompliant with that requirement. Since the SRR are silent on whether compound curves are allowed, they are not allowed. It does not matter whether the SRR are older, these regulations are still the law in Wenham. Therefore, the Applicant must request a waiver and the Board must determine whether it is reasonable to grant what the Town's peer reviewer describes as a critical waiver. Furthermore, the sketch provided by the peer reviewer makes it quite clear what the effect of the waiver will be. I respectfully suggest, that the requested waiver is not warranted and should be denied.

The Applicant takes issue with the Planning Board members not being present during recent soil testing. There is no requirement that members be present and, in fact, it is not common practice for members to be present. Hence the need for such test data to be provided with the application. In several places the Applicant also states that minor streets may be built to less exacting standards than arterial, collector streets etc. What he neglects to include in his quote is that this is only allowed if it is acceptable "in the opinion of the [Planning] Board." See Subdivision Rules and Regulations section 2.1.1.33.

On behalf of my client, I respectfully request that the latest application filed by the Applicant be rejected for all of the reasons set forth above.

Thank you for your continued attention and due diligence related to this matter. If you have any questions, please feel free to contact me.

Very truly yours,



Deborah A. Eliason

DAE/arr
cc: Marianne Cannon