

TOWN OF WENHAM  
Planning Board  
Meeting of February 11, 2021  
Wenham Town Hall, 138 Main Street

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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 Thursday February 11, 2021 at 7:30 pm. *Due to the COVID19 Virus pandemic & restrictions concerning in-person gatherings ordered by the Governor, this meeting took place virtually on Zoom. The chair identified the meeting was being recorded and those present.*

The Planning Board oversees the Rules & Regulations governing the subdivision of land, site plan review, and special permits according to the Wenham Zoning By-Law and Massachusetts General Laws, Chapter 41, §81. The Board consists of five elected members, with one member to be elected each year at the Annual Town Meeting: A. Weeks (2021); V. Rogers (2022); D. Pasquarello (2023); P. Clay (2024); D. Anderson (2025).  
Mr. Clay is the Planning Board representative to the Community Preservation Committee.

- Call to order - With a quorum present, Ms. Weeks called the meeting to order at 7:33 pm.  
Board members present: Ann Weeks, Chair; Virginia Rogers, Vice Chair; David Anderson; Peter Clay; Dan Pasquarello  
Also present: Margaret Hoffman, Planning Coordinator; Catherine Tinsley, Recording Secretary  
Selectman Gary Cheeseman

#### **Continued Public Hearings (Continued from December 10, 2020)**

- 60 Arbor Street – Definitive Subdivision – Public Hearing in accordance with the Town of Wenham Rules & Regulations Governing the Subdivision of Land, on the petition of Jeffrey R. & Susan M. Hamilton, 60 Arbor Street, Wenham MA, to approve a Definitive Subdivision Plan for land located at 60 Arbor Street (Map 13, Lots 84 and 84A).
  - Planning Board members Ann Weeks and Dan Pasquarello, as abutters, recused themselves from this hearing.
  - Proposed definitive Subdivision at 60 Arbor Street, January 29, 2021; November 23, 2020/ Revised January 29, 2021  
Sheets C1, C2, C3, C4, C5, C6, C7, C8
  - EBI Letter – January 20, 2021 & February 4, 2021
  - Decoulos Response Letter dated January 29, 2021
  - Eliason Law Office - Letter to Planning Board dated February 11, 2021

Ms. Rogers opened the continued hearing for 60 Arbor Street at 7:05pm.

Present for the hearing:

The applicant, Susan & Jeffery Hamilton, 60 Arbor Street, and the Project Civil Engineer, James Decoulos, PE  
Town Counsel, Attorney Robin Stein, KP Law

Peer Reviewer for the Town EBI Consulting Town, Chris Iannuzzi PE, Sr. Project Manager (A-8:15pm)

Representing Marianne Cannon were Attorney Deborah Eliason, Gloucester and Stephen Stapinski, Merrimack Engineering, Andover

Ms. Rogers told the participants that she would take information in a specific order and for those speaking to identify themselves by name, address, and affiliation.

Ms. Rogers specifically asked for Mr. Decoulos to identify any changes to the proposed subdivision plan for 60 Arbor Street made since the last meeting. Mr. Decoulos said that he has responded to comments and concerns made by the Town's consultant, EBI and by the Planning Coordinator. The final plans were submitted last week with two modifications.

Mr. Decoulos referenced the updated plan: Sheet C2 now shows where a building could be constructed on the lot with setbacks and total frontage for lot 6 and 5, and Sheet C4 includes street lamps at the entrance of the driveway. He noted the Hamilton's driveway to the north has now been eliminated.

Mr. Decoulos referenced the letter *Peer Review of Definitive Sub-Division Application, 60 Arbor Street.* from EBI Consulting dated February 4, 2021, in which Mr. Iannuzzi stated he had no further concerns on the site plans and the design was in conformance with Wenham's Bylaws and Subdivision Rules & Regulations. Ms. Hoffman read the letter.

Ms. Hoffman presented the Board with her report on the project to date. Ms. Hoffman's report is a public document.

In summary, the initial application, for 60 Arbor Street, was submitted in February 2020 for a minor street, the creation of two house lots within the aquifer protection district and a DEP approved zone 2 well head protection area along with several waiver requests. After several revisions, the final plan dated February 10, 2021 was submitted to the Planning Board for consideration. The various town departments have reviewed and commented on the proposed plans; currently there are no outstanding issues.

#### *Approved 4.15.21*

Ms. Hoffman observed that the applicant requested a waiver from installing sidewalks. Although the Rules & Regulations do not require sidewalks, section 4.1.4.3 states the Planning Board determines when sidewalks are warranted.

Proposed language was submitted for a deed restriction that the stormwater system is to be maintained by the property owner. As a private way, snow removal and rubbish pick up are also the responsibility of the property owner of lot 6; this can be reflected in the deed restriction or as a condition.

The name of the proposed private way is Hamilton Circle; this must be approved by the Planning Board.

An Environmental Assessment Report was submitted in June 2020. A revised report has since been submitted.

The Fire, Police, Board of Health, Department of Public Works, Tree Warden, and Assessors submitted comments during the process that have been addressed by the applicant.

All issues and comments brought up by the abutters were forwarded to the applicant/project engineer.

Ms. Hoffman said she drafted special conditions and general conditions for consideration, pending the Boards decision going forward.

Ms. Hoffman stated that one of the abutters has retained an Attorney and an Engineer, who were present on Zoom.

The hearing open to board members for comments and questions.

Mr. Clay asked to discuss the report from Eliason Law Office.

Ms. Hoffman noted the letter was received a few hours prior to the meeting and had not been reviewed by herself, Town Counsel, or the Peer Reviewer.

Mr. Anderson agreed that the letter from Attorney Eliason warranted further consideration and explanation and requested to hear more about certain points raised in the letter. Ms. Rogers opened the hearing to Attorney Eliason.

Attorney Eliason identified that she represented Marianne Cannon, abutter to the project. Attorney Eliason summarized her letter to the Board, dated February 11, 2021 in which she stated that it was her clients' position that the project was not compliant with the Wenham Subdivision Rules & Regulations and Zoning Bylaws. Attorney Eliason stated that Merrimack Engineering Services was engaged to prepare an analysis of the plan to the town's Subdivision Rules & Regulations; the analysis dated February 9, 2021 was provided to the Board and is a public document.

Attorney Eliason alleged that the analysis included issues not raised by the Planning Board's peer reviewer and that waivers should have been requested. She highlighted one of the most important issues as the encumbrance of 70 Arbor Street (Sheet C6) without consent from the property owner. She surmised that the project, as proposed, would change the development rights for 70 Arbor Street and may constitute a "Regulatory Taking" of 70 Arbor Street. Attorney Eliason also alleged the calculations of disturbed areas were not verifiable and referenced sheet C2 that outlined the building envelope as the entire lot, which is more than an acre, giving the applicant the ability to build anywhere in this area and disturb any amount of soil. Attorney Eliason continued to review her concerns as outlined in her letter.

The hearing was open for questions from the Planning Board regarding Attorney Eliason's letter.

Mr. Decoulos was recognized by Ms. Rogers to respond to the statements made in Attorney Eliason's letter.

He disagreed to each of the points identified in the letter and explained why he opposed these allegations.

Mr. Decoulos alleged that the Engineer, Stephen Stapinski's was unqualified to make the comments he did, therefore the report had no merit. Attorney Eliason responded briefly to Mr. Decoulos.

Mr. Stapinski was recognized by Ms. Rogers. He explained that Merrimack Engineering's review of the plan was not to determine if the Planning Board should find that the subdivision was warranted, but a review of the towns' Subdivision Regulations, item by item, to determine if the plan met the requirements. The stormwater plans were not included in the evaluation. Mr. Stapinski specifically addressed some of Mr. Decoulos responses to Attorney Eliason's letter and those items found to be different from the Town's Regulations. He added that some of these issues were recently addressed by Mr. Decoulos.

The Town's peer reviewer, Mr. Iannuzzi, joined the meeting and stated that he had not reviewed Attorney Eliason's letter, or seen the latest plan set submitted by Mr. Decoulos. He opined that the quality of the plans fell short of the town's Regulations and there were still discrepancies and non-conformance with the Subdivision Regulations.

A contentious discussion ensued between Mr. Decoulos, Mr. Stapinski, and Mr. Iannuzzi.

Mr. Decoulos referenced a letter from Mr. Iannuzzi clarifying and affirming that everything was achieved and fully compliant with zoning bylaws. Mr. Iannuzzi stated he stood by his letter and the plans were ready for the Board to make a decision.

Town Counsel, Attorney Stein answered questions on the process going forward from this point in the hearing and it was the discretion of the Board to continue with the hearing or close the hearing and deliberate.

Attorney Stein was asked to offer an opinion on the theory of a "Regulatory Taking. Ms. Stein observed that she did not review this in detail but believed it was not a factor in the Planning Boards' scope of view, but that it may or may not have a zoning impact on the abutting property and that this was a question for the Zoning Enforcement Office and commented that the board should not deny the plan just because it had a zoning impact.

The hearing was open to the public for comments and questions.

- Ann Weeks and Eric Lustig, 11 Foster Street abutters, questioned the total amount of disturbed area for this project including the roadway and building envelope. Ms. Weeks noted that through the process they heard different amounts of disturbance, but there were inconsistencies in the numbers, and nothing on the plans limiting the grading and earth

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removal. Ms. Weeks stated that there are substantial grades and contours on the property and reiterated the neighbors' concerns if the hill abutting their properties was to be taken down. Ms. Weeks referred the town's Zoning, Regulations and Bylaws that govern earth removal and grading. She pointed out that most recent plan showed a buildable area of the entire lot which would exceed 35,000 square feet. Ms. Weeks reminded the Board that they have submitted numerous letters over the years to bring attention to the concern that there is no limit on the grading or earth removal identified on the plan.

- Maryann Cannon, 13 Foster Street abutter, opined that this discussion tonight along with the previous meetings about 60 Arbor Street were embarrassing for the Town of Wenham and that this plan was being pushed along and that she was concerned with the credibility of the Planning Board.
- Chal Congdon, 70 Arbor Street abutter, commented that although he was not an expert, he did a grading calculation on his own and proposed that the grading along his property line was not possible, and the only way to get that would move the road away from the property line. He mentioned that in some ways the plan was self-ambiguous, that there was drawing after drawing that showed an island with a 60-foot diameter and yet the statement on the plan indicated the island diameter was 40 feet. He suggested this ambiguity allows the person who's executing the plan to basically do whatever they want. Mr. Congdon noted that there was a reference on the plan to a typical cross section of road being 16 feet wide, but there was only one place on the plan where that road was 16 feet wide, and it's not "typical". He alleged that there was a number of inconsistencies and significant number of non-compliances. In closing Mr. Congdon said he doubted anyone would want their bank accounts managed the way this project was being managed.
- Amy Richardson, 70 Arbor Street abutter, spoke of their concerns with the setback issues as identified by Attorney Eliason. Ms. Richardson said that this would extend along their entire property line and if they decided to build a shed or garage, this would limit their options and the Hamilton's don't have the right to take away how they use their own land.

○ Under discussion, Ms. Rogers asked if the Planning Board members had enough information to make a decision on the application as it stands.

Mr. Anderson said although the Planning Board had a lot of information, he would like a more informed opinion on the concept of a Regulatory Taking. He went on to say that he was not sure this was the right plan for Wenham but he was also sensitive to the right of a land owner, but the theory that there would be an adverse consequence to another landowner was of concern.

Mr. Clay agreed that he also needed clarification on a Regulatory Taking. He added that this project has been ongoing over many years and recommended a motion to close the hearing and deliberate with the information they had.

*Vote: The Planning Board voted unanimously by roll call to close the public hearing for 60 Arbor Street at 8:45 pm.*

○ Ms. Rogers opened the hearing for deliberation. Ms. Stein advised that the deadline to for the board to act on the application, and to file its decision with the town clerk was the end of March, and that the Board may want to ask if the applicant would sign an extension to give the Board a little time in the event there was a delay.

Because this is a five-member board, and two members recused themselves, all three remaining members must vote unanimously for the plan to be approved.

Ms. Rogers suggested that because a tense and emotional atmosphere was created during the hearing, the Planning Board members put off deliberations until the next (Planning Board) meeting on March 11, 2021.

Mr. Decoulos stated he did not understand why there was the need for additional time and that the applicants would not agree to an extension.

*Vote: The Board voted unanimously by roll call to continue deliberation on 60 Arbor Street to a date certain of March 11 at 7:30pm by zoom.*

Ms. Weeks and Mr. Pasquarello returned to the meeting at 8:53pm.

Although present, Ms. Rogers went off camera at 8:54 pm and did not participate in the meeting thereafter.

## Administrative

- \*Vote to endorse letter to support legislation, as reviewed by Town Counsel that would allow for continued governance with only one Select Board member.
  - *Letter of support for "an act relative to the continuance of town governance in the Town of Wenham"*
  - *Highlights of the Act*

Selectman Cheeseman was present and spoke on the request that the Planning Board members sign the "*Letter of Support -An Act Relative to the Continuance of Town Governance in the Town of Wenham*". The letter will be submitted to the Governor's Office for State Legislation to authorize Gary Cheeseman, as the solitary Selectman, to perform essential business of the town to maintain the continuation of town government, and to assure the health and safety of the community from January 19, 2021 until there is a quorum of the Select Board after the special election on April 8, 2021. Senator Tarr and Representative Hill are supportive and recommended letters from the town boards & committee accompany the legislation. Similar validation will be presented to the Annual Town Meeting in an article and to the new Select Board after the annual elections.

**Approved 4.15.21**

LETTER OF SUPPORT FOR "AN ACT RELATIVE TO THE CONTINUANCE OF TOWN GOVERNANCE IN THE TOWN OF WENHAM" - *We, as the authorized Town of Wenham Planning Board, hereby supports the filing and the enactment of the proposed legislation "An Act Relative to the Continuation of Town Governance in the Town of Wenham" which would allow the sole remaining Select Board member of a previous three member Select Board (two members resigned in January 2021) to perform specific functions on behalf of the Town until a second Board member is elected at a Special Town Election April 8, 2021. This is an unusual situation and this legislation would allow and authorize the continuation of the town government until a quorum of the Select Board could happen after the Special April 2021 election.*

Mr. Cheeseman fielded questions from the Planning Board.

*Vote: The Planning Board voted 3-0-1 by roll call with Mr. Pasquarello abstaining, to put this letter forward and permit the Chair to sign the Letter of Support for an Act Relative to the Continuance of Town Governance in the Town of Wenham.*

*Ms. Rogers did not vote.*

- Discuss Master Plan Information Session

- PowerPoint Presentation - Town of Wenham Master Plan Information session, February 25, 2021

Ms. Hoffman gave a brief overview of the information session on February 25 to inform residents about a Master Plan for the Town of Wenham proposed in the FY22 budget for \$125,000. Ms. Hoffman noted that the Selectman and Finance Committee expressed support for funding the Master Plan.

The Board members were asked to submit comments for the February 25 session to Ms. Hoffman by next week.

- Discuss MassDOT Environmental Notification

- Letter Dated February 3, 2021 Re: MBTA Forging Ahead Service Proposal Environmental Notification Form.

The MBTA will be reducing services in excess of 10%. This requires the MBTA to issue notification and take public comments. Comments must be received by the MBTA no later than March 2, 2021.

- Meeting Minutes – January 14, 2021

*Vote: The Planning Board voted unanimously by roll call to approve the January 14, 2021 minutes as edited.*

- Calendar:

February 25 - Master Plan Information Session.

March 11 Planning Board meeting. The Board discussed and agreed to begin their meetings at 7pm going forward.

- Adjourn- *The Board members voted unanimously at 9:40 pm to adjourn and reconvene at 7pm on March 11, 2021.*

*Respectfully Submitted By*

*Catherine Tinsley*

*2.20.21*