

## Wayland Historic District Commission

October 12, 2010

Approved January 19, 2012

Members present: Gretchen Schuler (presiding), Kevin Crowley, George Ives, Desmond McAuley, Kathie Steinberg, Meaghan Winokur

Others present: Barbara Buell (counsel for HDC), Daniel Dain (counsel for Twenty Wayland LLC) Tony Deluca (Twenty Wayland LLC), Andy Rockett, Frank Dougherty

Gretchen Schuler opened the hearing that was continued from September 30<sup>th</sup> on the revised Certificate and agreement for judgment. She directed attendees to the back table for copies of the drafts of the Agreement for Judgment, revised Certificate of Hardship, and agenda. She then stated that the procedure for the continued hearing would be to introduce new materials, discuss said additions and close the hearing before act on the documents before the HDC. GS also noted that the meeting/hearing is being broadcast and taped.

Attorney Barbara Buell spoke first saying that she had been directed by the HDC to negotiate with Attorney Dain (Twenty Wayland) to draw up a revised Certificate of Hardship, which shows deletion of some items in the first draft agreement and addition of terms of certificate. She itemized the changes from the first hearing (September 30, 2010) and noted that the HDC would need to discuss the draft documents and act this evening by voting to approve or not.

Ms. Buell also explained that the Agreement for Judgment would be filed in the Middlesex Court and that the revised Certificate would be filed with the Wayland Town Clerk, but that the Certificate could not be acted upon until after the 20-day appeal period and approval of the Agreement by the court. Ms. Buell noted that this agreement will bind both parties.

Ms Schuler read new documents into the record including:

- An October 7, 2010 letter from Bank of America, construction lender, finalizing loan for the first 94,000 square feet, signed by a Senior Vice President Erin Fox.
- Certification of unsafe roadway by Traffic Commissioners on Town letterhead (Ms. Schuler pointed out that this had been given to the Developer first and that it was sent to the HDC only last week).

Daniel Dain, Counsel for Twenty Wayland LLC spoke to thank the Chair, members of the HDC and counsel for the HDC, Barbara Buell. He then repeated the schedule that led to this evening's documents pointing out that several clauses were removed from the first draft of the Agreement for Judgment and a new letter from Bank of America (BoA) was submitted. Mr Dain asked that the BoA letter be considered in the context of all the conditions – the assurances that Twenty Wayland has provided for this negotiations, the demolition of the existing building and other assurances that Twenty Wayland LLC will move forward with the development necessitating the road work in the historic district.

Ms Schuler reported that she had spoken to Ms Buell throughout this last process, but that other Commission members had not, so she urged anyone on the Commission to speak up about any issues in the documents. She suggested that all the documents would be voted on after the public hearing and discussion by the Commission members. She then asked for public comment to be kept to the issues at hand and only related to new information, not issues that had been addressed at the first part of the public hearing on September 30, 2010. Ms. Schuler also suggested that the September 1<sup>st</sup> minutes will be voted on later this evening and that September 30<sup>th</sup> would be taken up at a later meeting as the Commission had just received them.

Meaghan Winokur read a statement about how upsetting she found the whole process. It is attached to the minutes. Dana Davies (Squirrel Hill Road) stated that she was confused by the last statement, that it seemed that in fact there is still a deep chasm and asked the Chair to identify the issues that are still sticking points as well as what the hardship is. Ms. Schuler indicated that we have removed the timing conditions and put in bench marks of when traffic construction can occur and have moved the location of the control box all included in the documents that the HDC is considering this evening.

George Ives asked to attach the Certification to Certificate of Hardship. Ms Schuler asked to close public hearing first and then Commission members would discuss the documents. A motion to close the public hearing was made, seconded and voted to approve by 6-0-0.

Mr. Ives asked that the HDC take a stand on letter from Bank of America, which is one of the three conditions that Twenty Wayland must do in order to begin the road work. Ms. Schuler asked how this letter could be binding in the future were the work not to begin soon as she believed the letter should come closer to the time of work. Mr. Ives moved that the Bank of America letter fulfils Condition #3 in timing conditions of the Revised Certificate of Hardship. The motion carried by a 5-0-1 vote with Ms. Schuler abstaining.

Mr. Ives requested that the Certification regarding traffic safety from the BOS be attached to the Certificate. Ms Schuler pointed out that it is mentioned in the documentation. He asked that it also be physically attached as part of the Revised Certificate. Mr. Ives moved to include Certification with Certificate and the motion carried 6-0-0.

Ms. Schuler noted that Certificate is tied to the Agreement and control box was amended. And also noted that the minutes of 9/1, 9/30 and 10/12 be included in the documentation list –open sessions only.

Ms. Schuler then reiterated that the HDC has a draft of the Agreement for Judgment, the Revised Certificate of Hardship, the letter from Bank of America, and an official copy of the BOS Certification of unsafe conditions on the roadway. The changes to the Certificate were removal of the original timing conditions (except the duration of the certificate for 5 years) and replacing with new timing conditions relative to the demolition of the existing building and completed building permit applications for new buildings, and the wording of the location of the control box. The conditions that Twenty Wayland LLC must meet in order to proceed with construction of the intersection are:

- Submit completed application and required fees for building permits for 94,000 square feet of buildings;

- Demolish 50% of the footprint of the existing building.

Some points were made about the Certificate of Hardship including:

Note that under Section E. Documentation #14 – all minutes refer to “open” sessions only.

Comments regarding the Agreement for Judgment were the same as above – to refer to the Certificate as “Revised” and to add the conditions under which traffic work could be done.

Mr. Ives made a motion to approve the Revised Certificate of Hardship dated 10/12/10 with the noted changes above. There was a brief discussion about whether we would do one vote or separate votes for Certificate and Agreement. Mr. Ives amended his motion to include the Agreement for Judgment. Mr. Crowley seconded the motion. The HDC voted 6-0-0 to approve the revised Certificate and Agreement for Judgment. Ms. Winokur asked for a voice vote. McAuley – Yes, Steinberg – Yes, Ives – Yes, Schuler – Yes, Winoker – Yes, Crowley – Yes.

Ms Schuler explained that the Certificate will be filed on the next day (10/13/10) and the 20-day appeal period will end on 11/02/10. Attorney Buell stated that the Agreement for Judgment must be filed with the Court within five days of the 11/02/10 date. The HDC and Twenty Wayland LLC have made this agreement. The Court is independent and will make its own decision; however because the two parties are signing this the Order of the Court will be to settle and accept the terms.

Attorney Dain reminded the Commission that the Certificate is not valid until the Agreement is filed, which is incentive to file it. He noted that this becomes an order of the court as settlement – thus the two parties are bound by the agreement. There was a brief discussion of what would happen if someone else appealed the Revised Certificate. No clear answer except that the HDC would have to deal with it in the same manner as the first appeal.

Ms. Schuler asked Frank Dougherty if they could deal with withdrawal of second application at 10/21/10 regularly scheduled HDC meeting. He concurred.

Ms. Schuler as HDC Chair and Tony DeLuca as principal of Twenty Wayland LLC signed the Agreement for Judgment followed by the two attorneys, Barbara Buell and Daniel Dain.

The minutes of 9/1/10 were approved (6-0-0) with grammar edits. The motion to approve was made by Mr. Ives and a second by Mr. Crowley.

Woody Baston (Cochituate Road) thanked the HDC for its diligence in this case.

Kathie Steinberg stated that going forward the HDC must be pro-active and should continue to follow up on possibility of installing a conduit for future burying or wires and any other issues that may come up. She also asked how the specific conditions in Certificate would be monitored.

Desmond McAuley stated that the HDC should continue to ask questions about process and ask for construction schedules. Again burying the wires was mentioned in reference to the \$3 million gift from developer to which Ms Schuler added that \$3 million is not being given until the end of project when the housing is built. Mr. Crowley noted that any conduit work would

have to be part of the DPW's road opening permits. He also noted that review of plans before construction commences to determine whether the same plans are being used by all boards.

Mr. McAuley stated that we have to ask questions and should continue to ask for a construction schedule including bar charts showing phases of development. Ms. Winokur asked if the town will have a project manager? Mr. McAuley stated that it (the town) would have to for a project of this size – someone other than Dan Bennett to assist him...Mr. Crowley interjected - or a consulting engineer who acts on behalf of the town.

Mr. McAuley asked who could appeal the Revised Certificate. Ms. Schuler stated that she believed it could only be someone living in the district.

It was also noted that it will be incumbent upon HDC members to keep a list of action items, photograph all resources and be diligent about work (no work will occur between November and April).

The meeting was adjourned at approximately 8:55 pm.

Respectfully submitted,

Meaghan Winokur

## **Ms. Winokur's Read Statement**

In political campaigns, negative ads work because (a) people believe the information they hear; (b) when the opposing candidate does not respond, the public only has information from one source to form an opinion. The most famous example is Mike Dukakis failure to respond to the "Willy Horton" TV ads because his campaign managers misjudged the public's ability to assess the facts for themselves. I feel that it is time for me to say something about this issue as a resident.

I will repeat certain phrases that might seem annoying. But I want it to be clear that I am speaking as a resident only.

I am Meaghan Winokur-I live on Bow Road

I was asked several years ago to serve as a member of the Historic District Commission. Having grown up with a deep passion of history and a respect for our government, I thought this would be a good way to contribute to the community I lived in.

I am speaking at this time, not in my role as a member of the Historic District Commission but as a resident of Bow Road. I have never had an agenda beyond what I am required to do by law and legislation in my capacity as a HDC member but wanted to make this statement now. I came to a meeting in July 2005 for discussions regarding the streetscape of the Town Center Project. My father died earlier in the day, but I I felt that it was important to be at that meeting and have continue in that belief throughout all meetings with Twenty Wayland and its representatives. I know I have the ability to separate my feelings from any decisions I am required to make on behalf of the Historic District Commission and my town. I do not profess to be an architect, attorney, builder, historian, urban planner or permit specialist. I'm just trying to give back to the community in my own way.

Like many other government functions, one role of the HDC is to protect the rights of the minority. In our democracy, we have created checks and balances, representative parliaments and committees to help reduce the prospect that a majority rule always wins. The HDC has a role to play in ensuring a fair and balanced approach is taken to meet the needs of Wayland's population without infringing on the rights of a minority - in this case those living in the Historic District.

There is also a role for the commission to ensure the rights of the entire town's population is not compromised for the monetary benefit of a few individuals - in this case the developer.

As a resident and perhaps as a member of the Historic District commission, I don't expect the district to remain as it was in the 1700's, 1800' for 1900's. I think it would be unrealistic to be like Sturbridge Village, Plymouth Plantation or Colonial Williamsburg. Would also not expect that the New Town Center would remain completely unchanged once built. But I do feel and have felt for many years and having a love of history- prior to my time on the Historic District Commission that we have a duty to protect the gems of our history whether they be a home, furniture or any number of things that link us to our past. They tell our story. I heard a very cogent remark while watching c-spans history channel recently. It was "we are a part of history and history is a part of us".

I am speaking at this time to try to help people understand that as a member of the commission I have been privy to substantial amounts of information pertaining to the Town Center project, having been involved since 2005 when preliminary information was being discussed in other boards regarding the proposed project. At or about that time, the Historic District Commission began making repeated request to the Board of Selectmen and the Developer to advise them on what the impacts would be to the historic district and suggesting the developer should submit an application for changes to the roadway. As it would affect the integrity of the historic district not just in parts but as a whole. During that time, the Commission did have some conversations with the developer, but no official applications were submitted to the board until approximately February of 2009- which was after the Glezen Lane settlement with the Board of Selectmen.

I have never hidden the fact that I am a member of the Historic District Commission and will talk to anyone who asks me about it. The problem is that not many people have asked me – I could probably count on my fingers and toes the number of people who have asked me. Not a single person has asked me as a member of the commission what the Certificate of Hardship actually says and why I voted the way I did. Of course as a member, I did talk to the owners of property in the historic district and the few citizens that regularly attend the Historic District Commission meetings.

I want everyone to know that I think about this decision on a daily basis. I have spent restless nights contemplating the issues. I attend meetings, take copious notes and type the minutes so that if residents were to read the minutes, they may have a clear understanding of the issues discussed in meetings. That being said, I am not perfect and no one should expect perfection of me. Spending a great deal of time on this matter, I have sacrificed many hours of my family time with my children, husband and head injured sister in whose life I am very involved with on a day today basis. I have also taken valuable time and effort away from my work time to address this issue.

I do not read things on the internet and feel that anyone can hide behind a screen name, without having to reveal who they are and could disparage and bully others for their beliefs and desires without any personal ramifications to them. I do read the local newspaper and at times have felt that some comments and opinions made by the developer's representatives and residents are a personal assault against me. It has been inferred that I am against the developer, against the Town Center Project against the Board of Selectmen and against my fellow citizens. I take issue with this as I personally voted in favor of the Town Center Project and have stated that fact on several occasions.

I live on Bow Road, and as many may be aware it is close to the proposed Town Center. My road will be highly impacted by the development. It is already used as a cut through road between route 126 and route 27. I was aware of this when I voted for the Town Center project, but saw it would be beneficial to the town as a whole and gladly made that sacrifice. As a resident of Bow Road, I travel through the intersections of routes 126/27 and routes 20/27 several times daily for work, shopping and picking up children at school. I realize that traveling through these intersections may take a few extra minutes and make time for these small delays. I will add that the residents of Bow Road, in my 11 years of living in Wayland, have made repeated requests for changes to the roadway such as making it a one way road, installing speed bumps as traffic calming measures and a resident even offered to give up a piece of their own property to make out road a cul-de-sac with access available to emergency vehicles only. It is my understanding that these requests have been denied or deemed not feasible by the Board of Selectmen (and Road Commissioners), the Chief of Police, and the Fire Chief.

As a resident, I do not understand why the Board of Selectmen did not consult with the residents of the historic district or the Historic District Commission when the Glezen Lane residents required that changes be made to the roadways in the district to alleviate what they (Glezen Road residents), perceived would be increased traffic on their own roadway – I suppose it's the "not in my backyard" (or front yard in this case) mentality. I mention this as a resident and not a member of the Historic District Commission. I personally feel that the Board of Selectmen acted hastily and without regard for the residents of the district, and did not consider the integrity of the district when a settlement was reached in the lawsuit with the Glezen Road residents and the Town of Wayland. I personally believe that the Board of Selectmen made this decision and now are unwilling to try to amend this mistake by any means necessary. I personally feel that they have scarified the historic district and its residents. I personally believe they are unwilling to spend any additional monies, no matter what that may be. I feel it may be small amount relative to what may be large amounts of monies spent on attorney's fees for guidance from Town Counsel, Mark Lanza in numerous executive sessions and such that have been held in regard to the lawsuit and appeal filed against the Historic District Commission by the developer of the Town Center. I will add that as a member of the commission, I have never been invited by the Board of Selectmen to attend any these executive sessions though they are presumably discussing the legal matters brought against a Board in the town. This to me is unbelievable and I myself – as a resident- find that the members of the Board of Selectmen have been disingenuous and self-serving.

As resident, I find it curious and frustrating that the Board of Selectmen have taken this position. They have said in open meetings that they are unwilling to spend the monies necessary for updated traffic studies- which the residents of Glezen Lane requested to possibly amend their legal settlement so that the Town Center project could be done in a phased manner, consistent with the requests made in the Certificate of Hardship granted by the Historic District Commission in July of 2009.

In this Certificate of Hardship, the developer was required to: "affirmatively and expeditiously make good faith efforts to seek modifications to any agreement, permits and approvals that are in conflict with such phasing of such traffic mitigation described in the application including: I reference section 2(b) of the timing conditions on page 5 of the Certificate that reads as follows:

"The judgment on Count II in the case of David Bernstein et al v. Wayland Planning Board, et al, Middlesex County Superior [Court] Docket No. MICV2008-00552 providing anticipated traffic volume generated by Phase I development, including traffic count calculation, and other information necessary for plaintiffs to consider amending the judgment so that traffic construction work in the Historic District shall commence with Phase II"

Mr. Bernstein stated in the August 9, 2010 Historic District Commission meeting, he was contacted and agreed to discuss modification of the agreement but received a follow-up e-mail from Fred Turkington indicating that it was unnecessary to have such talks because Mass Highway would require the improvements and that the Board of Selectmen would not be able to incur the costs of new studies.

As I said, in the Certificate of Hardship the wording says the developer is required to make "good faith" efforts to seek modifications and etc..... Good Faith is described as Honesty; a sincere intention to deal fairly with others. As a resident, I can't say if this is the case.

.As a resident I can understand that the developer does not want to pay for any new traffic studies , but am also surprised at how much it costs to pay for a full color 2 page ad in the local newspaper asking for support from the reader's with headlines declaring that they are in a "Catch-22" Situation. I called and asked the local paper's advertising department how much an ad like this would cost and they estimated that it would cost between \$4000. and \$5000.(approximately 1/3 the estimated amount it would cost to "run" a new set of numbers for a traffic study, based on the numbers already in the report . The Selectmen, I believe put the developer, residents of the district and this town in the "Catch-22 Situation"

As I have had trouble obtaining information regarding information on the November 2009 Special Town Meeting from the Town Website. I have put together some information on the Article that was voted on regarding the request for a reduction in the requirement for affordable housing on the development. If my information is not completely accurate, I hope that everyone will understand of this. I called the town clerk's office and was told that the article was voted on 3 separate times and on the final vote it passed with the required majority. I was curious about this because I personally have not heard of the traffic studies being amended in accordance with the reduction of approximately 50% of the affordable housing units. Based on the wording being 25% of the requirement of affordable housing to 12% of the requirement. This may seem to some as not important, but I was curious as to how many cars and "trips" equates to. As my kids would say, I'm just asking.

My personal feelings, having nothing to do with any decisions made by me in my duties as a Historic District Commission member, They are about the developer and the Board of Selectmen and how they have dealt with the issues regarding the Town Center project as it relates to any permits, agreements or legal matters is as follows: I think that they have created major problems between themselves and the Boards of this town, and many others. I believe that they have no difficulty spending time and money trying to "put out fires" that they have laid, lit and stoked.

It is my understanding that a number of the required permits have been incomplete with both our town departments and state permitting departments. I find it hard to believe that after so many years, so much information is still missing and these problems have not been rectified. I seem to me, again, these are my personal opinions that the developer does not seem to know or care to submit complete applications that can

be acted on in a timely manner. I have noted in my own mind as a resident only that the developer has submitted numerous plans, changes, and amendments. They do not appear to know or care if one board's decision affects another and that I feel is the same for the Board of Selectmen. I think that if they do not get the desired result, they will either attempt to withdraw the application, submit a revised application or threaten to not build the Town Center. I find this to be spurious as a resident.

While growth and development seem inevitable, appropriate caution when making decisions that have irrevocable effects seems prudent. You can't un-ring a bell. A phased approach, while potentially more costly to the developer, seems reasonable with the presumption that once the road work is complete there is no turning back. If we presume the District will forever be changed by widening the road, taking personal property by eminent domain and increasing the number of traffic lights in a town with very few today, why not execute a plan that delays those changes until the demand from access to the new Town Center can be reasonably estimated to require those changes.

I ask that people think about this and I know it's not a perfect analogy. If you were building a home and the general contractor you hired could not tell you exactly what permits were required by the town and state regulators for any issues related to building that home. Be it Building Permit, any kind of restrictions or regulations, what documentation you would need to be in compliance, etc. Would you still use that general contractor and continue to let them represent you in the building of that home. Remember, they are supposed to know these things. And, if you did it keep using that same general contractor, it may take years to build, you would have to wonder how safe and sound it was to actually live in. I don't know how long the average person would keep using that contractor. I suspect most would find another contractor to build that home.

Just remember that this is not just in the middle of the back yard or front yard, of you, your family, or your friends.

It's in the middle of a place most days I like to call home.

Please add to the record and make a part of the minutes.

Thank you,

Meaghan Winokur