

Wayland Historic District Commission

September 30, 2010

Approved October 21, 2010

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 meeting and began this evening saying that at the table we have the six persons who will be able to vote on any decisions that are made. We have two members of the Historic District Commission who have been recused throughout the process, they live in the district and that is Chris Hagger and Margery Baston and they will continue to be recused they are citizens amongst all of you. Today and late in the afternoon we received a new settlement proposal and nobody on the commission has seen it. Gretchen saw it about a half an hour ago and has not read through the entire thing, and we think that it's important for our counsel to help us understand the proposal and it means to us in terms of the litigation that we are trying to settle so we are going to have an executive session and I really apologize for this to all of you because I know that you are here because you want to talk about this case. I want to say a couple things and that is that we received a lot of e-mails, I know there's a lot of passion about this topic. All of the e-mails have been copied, they've been forwarded to all of the members on the commission, they've been copied, are in a folder and anyone is welcome to look through that. A couple of letters have been received as well in the post. All correspondence has been duly noted and seen by all the members of the commission and I thank you for your interest and your passion and I apologize for the fact that we are going to have an executive session so that we can truly understand the new proposed agreement that has been sent late this afternoon. Also there was a misunderstanding last week in which I actually thought that the agreement was going to be going back and forth between the counsel, and the developer Twenty Wayland thought that we needed to have that in our packets for, the week ahead, so that a proposed settlement delivered last week and that has been since scrapped and the new one is on the table which we have not seen yet and so that's what Barbara Buell is going to take us through when we have executive session so may I have a motion please.

George Ives moved that the Historic District Commission enter into executive session to meet with HDC counsel and respectfully ... Twenty Wayland LLC versus the Historic District Commission in order for counsel to inform the HDC on some issues that are pertinent to the future discussion of settlement in legal case ... agreed upon time for executive session was 50 minutes, the HDC will begin an open session at 8:30 and the meeting will continue with discussions for the hearing. Desmond McAuley seconded the motion. The voice vote was as follows: Kevin Crowley-NO, Meaghan Winokur- YES, Gretchen Schuler – YES, George Ives – YES, Steinberg – YES, Desmond McAuley – YES. Vote carried (5-1-0)

The members of the HDC adjourned to the Planning boardroom for executive session.

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The HDC returned from executive meeting at 8:30. Gretchen announced that Meaghan Winokur was recording the meeting to aid in note taking and she said that Linda Segal was recording the meeting as well.

George Ives made a motion to re-open the hearing. Desmond seconded the motion.

Vote was: 5 to open hearing, 1 against (Gretchen Schuler) (5-1-0)

Gretchen said we are here tonight for a hearing and to discuss the traffic improvements in the historic district and to consider new information relative to the certificate of hardship granted on 7/5/09 and filed with the town clerk on 7/10/09. As a result of discussion with our counsel, Barbara Buell about the proposed settlement agreement which was received this afternoon, the HDC has decided that it will not address the new proposal point by point this evening, as there are legal issues that have to be addressed by the parties counsel. She said that it's appropriate to see if the developer has anything that they would like to talk about.

Dan Dain, counsel for 20 Wayland LLC made the following statement:

I'm here on behalf of Twenty Wayland, I would like to thank Chairwoman Schuler, the individual commissioners, and Barbara Buell on their commitment and dedication to working constructively to see if there's a mutually beneficial settlement that we can reach to resolve the lawsuit between the parties. My client Twenty Wayland appears before you not to talk about the lawsuit but to talk about the resolution of the lawsuit tonight. Twenty Wayland is serious about settling the case tonight; it is hopeful that we can leave here tonight with a settlement in place. As we all recall the parties last met here on September 1st it was a positive and productive meeting. A few points that I want to reiterate from the last time. Litigation is expensive, distracting and acrimonious. Twenty Wayland's lawsuit; however, was not meant to be personal, the lawsuit was intended, was not intended to be a personal attack on any individual commissioner's commitment to the historic preservation and seriousness with which each commissioner undertakes his or her responsibilities. Once the commission issued the certificate of hardship last fall with conditions that conflicted with other permits, approvals and agreements Twenty Wayland had only twenty days to appeal it to Superior Court, thus the filing was necessary to preserve rights. However, once a lawsuit is filed it takes on a life of its own that does not mean that the parties should not pursue a resolution beneficial to all parties. At the September 1 meeting we were able to identify the crux of the dispute between the parties, the commission had voiced understandable concern that Twenty Wayland would undertake roadway improvements to the historic district but then be unable to actually build the town center. The commission did not want the intersections changed unnecessarily. The commission decided it would address its concerns by directing that the roadway improvements could not be undertaken until the completion and occupancy of the first 94,000 square feet of retail space, even though they acknowledged that this requirement has a timing conflict with other permits and approvals and agreements. Twenty Wayland itself is indifferent about the timing of the roadway improvements as we talked about on September 1 in fact it's the developer who'd rather do town litigation commitments after it had income from the project. However the other permits, approvals and agreements tie Twenty Wayland's hands as to the timing. By identifying the crux of the dispute when we last met we were able to develop a framework for settlement. Twenty

Wayland would take steps, other than completion and occupancy of the first phase to assure the commission that if the roadway improvements were undertaken the town center project would actually be built. In exchange, the commission would amend their certificate of hardship to relax the timing commitment, the timing condition that was the framework of the ... on September 1. Twenty Wayland left the meeting on September 1 with essentially a to-do list. These were:

1. Arrange a meeting between the town's traffic consultant and members of the commission.
2. Provide a copy of the Stop & Shop lease to Ms. Buell for her confidential review, we agree that Twenty Wayland could redact the most highly business sensitive material if they were unrelated to conditions under which Stop & Shop could terminate the lease before occupancy.
3. Provide other assurance that Twenty Wayland will be able to finance the first phase of the town center project.
4. Prepare an agreement under which Twenty Wayland would ... to a) submit an application for a building permit in a form acceptable to the building commissioner and
 - a) Complete 50% in demolition to the office building before the roadway improvements could be undertaken
 - b) Complete the demolition within a year
 - c) Notify the commission within 24 hours if Stop & Shop exercise the contingency to terminate.

Since our September 1st meeting Twenty Wayland has completed all of its to-do list tasks over the last month. The meeting between Kevin Dandrade, Desmond McAuley, Kevin Crowley, Fred Turkington, and Frank Dougherty took place on September 9th. On September 15th Twenty Wayland submitted to Ms. Buell a copy of the Stop & Shop lease and a letter from Bank of America. Twenty Wayland has offered on several occasions to meet with Ms. Buell to answer any questions she may have ... for Bank of America ... to confirm the bank's commitment to the project. On September 20th Ms. Buell sent me a fax; I understood the fax to give Twenty Wayland instructions to submit a written settlement proposal directly to the commission by September 23rd. Thus on September 22nd Twenty Wayland submitted a proposal directly to the commission under which you would agree to dismiss the lawsuit, provide releases, and provide all the covenants that had been discussed at the September 1st meeting, if the commission would lax the condition via public hearing and not appeal to amend the certificate of hardship. Of the conditions that we had talked about September 1st probably the most important that we talked about is the commitment to demolish the office building, it is indicative of Twenty Wayland's commitment to the town center project as we discussed on September 1st. Right now, at any time Twenty Wayland could abandon the town center project; re-tenant the office building to give cash flow to the project. If Twenty Wayland went back to the office building it would not have to pay millions of dollars in litigation to the town as part of the permit for the counsel on the project. Once the office building is demolished, as we propose to covenant to you as part of the settlement, Twenty Wayland has crossed the Rubicon, it has no choice at that point but to do this thing. We believe that there is no greater sign of Twenty Wayland's commitment to the town

center project. I spoke to Ms. Buell by telephone yesterday, we first discussed the materials submitted to her on September 15th regarding the Stop & Shop lease; she did not have any questions for us. Regarding the Bank of America letters that we had submitted on September 15th. I explained that it demonstrated intent by the bank to lend on the first phase of construction if Twenty Wayland secured all of its permits. I will read from the letter so that everyone has the benefit of it. This is what Bank of America had said as to Bank of America's commitment to finance this project. Bank of America wrote, "Bank of America has provided financing for numerous types of projects throughout New England for the principles of Twenty Wayland. In every instance they have completed the project in a timely manner and all debts have been handled in an exemplary fashion. The bank currently has an acquisition of property loan on the property, is in the process of finalizing the underwriting for construction loans for both the first and second phase of the town center project. As the specific terms and conditions of the bank's financing are confidential, and subject to final bank approval I am unable to share said terms with you here. However, we are very comfortable stating the bank is fully supportive of the project and is confident that we will be the construction lender provided all necessary permits are received in a timely fashion. In addition we do know through our extensive relationship with this group they have the required equity for this project as well as a current appraisal that gives us comfort that this will be a successful project. We look forward to continue working with Twenty Wayland on this project and seeing the successful development of the town center project."

In summary the bank's letter says that the bank intends to lend based on:

- a) A long track record with the principals of Twenty Wayland
- b) The fact that it has already provided a loan on the project for permitting and acquisition
- c) Its review of Twenty Wayland's equity and the appraisal on the property

Mr. Dain continued; keep in mind that Twenty Wayland would not demolish an office building and undertake millions of dollars in town and ... litigation if it did not believe that it had financing secure condition on securing all permits. If the town center project does not get built then all these costs, including five years of permitting, will come out of pockets of the people from Twenty Wayland here before you. We hope this gives the commission comfort that Twenty Wayland has the financing and the equity and ability to do this project. Turning back to my dialogue with Ms. Buell where I tried to understand what her and the commission's terms or questions might be about the settlement proposal that we sent over, Ms. Buell mentioned six points that she asked Twenty Wayland to address. I'm about the read through the six of them. Ms. Buell corrected Mr. Dain saying there were 7 items.

Dan Dain Continued:

We have proposed a settlement agreement ... between Twenty Wayland and the commission; we suggested that we do it in the form of an agreement for ... at our report. Twenty Wayland agrees with this and has re-drafted its own proposal in the form of an agreement ... this is a discussion from yesterday and that's why a new document was submitted to the commission today.

Ms. Buell was concerned with the scope of the proposed non-disparage language. Thus Twenty Wayland would covenant not to publicly say things like the commission never had jurisdiction in the first place. We would simply say that all issues have been amicably resolved.

Ms. Buell was concerned about limiting the speech of commissioner's and private individuals; we understand that concern and thus have revised the agreement for judgment to clarify that non-disparaging language does not apply to commissioner's as private individuals and would only mean that the commission or commissioner's in their official capacity would not disparage Twenty Wayland.

Ms. Buell expressed a concern that Twenty Wayland would perform a bait and switch, undertaking the roadway improvements and then doing a different project from what was permitted. We understood this concern and therefore have added language to the agreement for judgment that commits Twenty Wayland not to seek to amend the master special permit to change the use from a town center project.

Ms. Buell asked about the possibility of new sidewalks along Route 27. The problem is that doing the sidewalks would require a battery of new permits, Twenty Wayland is interested in settling now and moving on and did not agree to any conditions that would require the uncertainty and delay of more permitting. Twenty Wayland understands that the town may decide to do sidewalks but the litigation ... Twenty Wayland is already committed. Twenty Wayland believes that the cost of designing new sidewalks would be about ten thousand dollars (\$10,000) As a compromise Twenty Wayland proposes a new condition in the agreement for judgment under which Twenty Wayland would make ten thousand dollars available to the town if the town decides to go forward with sidewalks.

Next Ms. Buell mentioned a desire for new integral colored, stamped, concrete pavers in all crosswalks to be reconstructed by Twenty Wayland in project roadway improvements. Twenty Wayland is agreeable to doing this and have put this in the agreement for judgment.

Ms. Buell inquired about burying conduits as part of the roadway work for future use in burying electric wires; Twenty Wayland has studied the feasibility of this closely in the past. Putting wires underground is immensely expensive and requires additional permitting and requires approvals and coordination with all abutting property owners. That is expensive and impractical because the placement and design must be coordinated with the actual burying of the wires. Thus this just cannot be part of the settlement that we would do now.

Twenty Wayland believes in good faith and has undertaken its entire to-do list over the past month and has agreed to adopt all other feasible issues raised by the commission's counsel yesterday. Twenty Wayland therefore asks that the commission vote tonight to ratify the agreement for judgment as submitted and if it does so, that Twenty Wayland would co-execute the agreement for judgment voting to amend the certificate of hardship as outlined.

Twenty Wayland understands that for the commission to make these votes it must take public comment in a public hearing. I caution the audience, the issue before the commission tonight is the settlement agreement and not the propriety of the town center project itself or the merits of the lawsuit. I urge everyone, including supporters of Twenty Wayland to keep your comments focused because we have a limited window to settle this case. Twenty Wayland wants to settle tonight because there is still an opportunity to get going on the project this fall before the ground freezes. If we cannot settle tonight then that window will close and the earliest that Twenty Wayland could get going would be the spring. For us to wait that long, it no longer feels the urgency to settle and to make the conditions, the concessions that it is prepared to make tonight.

The alternative then is to continue litigation. I know this is not a result that either party desires, so let's stay focused tonight and get this done. Thank you.

Gretchen asked Ms. Buell if she had comments. Ms. Buell addressed her comments to Mr. Dain as follows:

The only other thing is that, as we were talking about our conversation yesterday I said that we were making progress and coming to common ground, and that the 7th item which was my 1st item, was our response to some of your issues and your requests and we didn't go into that, then I said that there were additional items that I thought, some of them came from me, for example the agreement for judgment and so on, but that there were others, and most of these others you've now addressed. I told you I was not speaking for the commission, but I thought that these were issues that would be of concern to them. The sidewalks, the conduits, those three. But the response to your comments to the certificate of hardship and those which you agreed, of which there were several, many even, versus those that are unclear, for example the location of the control box ... that one we never did get to talk about yesterday. I don't think it's a big issue and I think that if the commission tells me what it wants, you and I can work that out.

Dan Dain indicated they would like to resolve this issue. If the commission has a suggestion for language it would like to put in, he would like to handwrite changes to the proposed amendment and get it done.

Ms. Buell replied. I think you're language in response to the certificate of hardship had to do with making best efforts and Twenty Wayland making best efforts to do something. It's one of those things that are really difficult to measure and we don't want to go into looking to try to measure that. So I think if the commission or individuals from the district, or individuals in town had the opportunity to seek to obtain permission for the control box, for example to be located on a particular piece of land that they had in mind as to where that would be. That they and you would work together, so it wouldn't just be on your shoulders to make your best efforts but that perhaps we could contribute and actually make that happen so that the control box is out of sight as it were.

Dan Dain replied: From Twenty Wayland's perspective, it doesn't have a stake in the location of the control box. We would like the control box to be wherever people would like it to go. The issue for Twenty Wayland is if conditions say, it has to go in a location that it can't control then that creates uncertainty and if it requires additional permitting if an amended, certificate of hardship or condition on the outcome of the initial approval process, then that's not going to settle it now. So we're absolutely willing to work with the commission and if the language isn't strong enough, I'm all in favor of giving the commission the comfort that we will do everything we can to try to satisfy the commission. But what we don't want to have happen is that at the end of the day we don't get the approvals to locate the control box where the commission wants it and as a result Twenty Wayland is not getting the approvals, suddenly you can't do the project because of the location of the control box. So if we can come up with a balance where if we don't get the approval, we're able to do some alternative, where we can still do the project we're all in favor of that and if it requires us adjourning for a few minutes and talking about language or doing it publicly where we can come up with alternative language, that's fine but we would like to do it tonight and I have suggested language that I think addresses that, and I can read it out loud if any of the commissioner's have suggestions I think that would be great if they don't

like what the current language is in section reference B (12), page 4 of new proposed Agreement for Judgment:

“This condition will be deemed satisfied if Twenty Wayland working in good faith with the town in an effort to secure any necessary approvals for the sighting of traffic signal control box on Town of Wayland land. Thereafter this condition will be waived if such approvals are not secured by the time Twenty Wayland is ready to commence the roadway improvements in compliance with the timing of condition in section C below.”

Mr. Dain continued, so that was an attempt to try to balance it, but if there’s alternative or stronger language they would entertain those ideas.

Gretchen replied that the concern is if Twenty Wayland would like to begin the roadway improvements this fall, there would be doubts about having the location secured in the next couple of weeks.

Dan Dain replied he did not believe the roadway improvements would be done this fall as the demolition of the building has to take place. He added there’s asbestos in the building and a whole bunch of other things, demolishing the building’s going to take considerable time.

George offered: How about if we committed to resolve that at the annual town meeting next year in April or May of 2011, that if the Twenty Wayland could wait until then, then we may have a deal.

Mr. Dain asked: Can we put in language now that says that? That would comfort you. That the parties covenant that this issue will be resolved one way or the other. “Thereafter this condition will be waived if such approvals are not secured by the time Twenty Wayland is ready to commence the roadway improvements in compliance with the tie-in condition of section C below.” So in any event no later than town meeting in 2011.

Ms. Buell stated that the attorneys should work out the right wording. Mr. Dain would like to get the right wording tonight

Gretchen indicated that there are many conditions in the revised agreement that were discussed in the HDC executive session meeting that are problematic and she did not think it’s going to be something that we’re going to hammer our right now or tonight. George indicated that it was about legal issues, not the substance of it. Gretchen agreed it was definitely the way in which certain things were worded.

Tony DeLuca of Twenty Wayland said “We may not be able to solve them tonight but do we have to keep guessing? Can you tell us what they are? We’d like to walk through each and note them”. Gretchen answered it would be easier for just the two counsels to work out. Mr. DeLuca answered that in the last month it’s been very hard for the two counsels to get together. We’re here tonight; we’d like to know the issues then next time we’ll be able to solve them.

Ms. Buell offered that if the commission gives its opinion as to principles that she and Attorney Dain could work out the exact language.

Gretchen said that the covenants that Twenty Wayland would be releasing the commission and each of its members from, covenant 5(b), covenant 5(g), the HDC does not think that language should be there or should definitely be changed. The commission does not believe it has done anything wrong, therefore we don't think there's anything that Twenty Wayland would have to release the HDC from.

Mr. Dain said Twenty Wayland would be happy to take the language out, Gretchen indicated that this is something between the two counsels saying this is something Ms. Buell could explain in a better fashion. The HDC had talked about it in executive session and how it could be changed slightly.

Mr. DeLuca indicated that Twenty Wayland does not want to change, if the HDC doesn't like it they will eliminate it, "it's done, we just eliminate 5(b)".

Gretchen thought that would be inappropriate because the legal ramifications are unknown, we only had 50 minutes for discussion, and weren't able to go through each item as to whether the language should be changed or whether it should be deleted. That's something the attorney's would work on together.

Gretchen indicated the member's could discuss what issues the HDC had with the updated agreement so that both parties would have any understanding of what areas would need to be amended or removed. There was discussion on the following:

Page 6 sections 6 (b) and 6(c)...Not publicly disparage Twenty Wayland or the Town Center project...not appeal, challenge or speak out against any other agreement, permit or approval...Mr. Dain said that as a private individual the member's would be absolutely free to speak their minds.

Gretchen answered if there was something that was going to harm the historic district that we thought as a commission that was improper, we would as a commission have to be able to talk about any issue and take it under consideration as warranted.

Desmond added that the HDC is trying to articulate is that in essence we're talking about some of the legal language in the document. The HDC thought it appropriate when we spoke during executive session that it makes sense to cut to the chase and have the two lawyers hammer out the "legalese" The HDC is saying that those are the sticky issues that we see. The members thought it appropriate that the two lawyers get together and hammer this out in a very timely fashion ...understanding there are time constraints. That's what the HDC wanted to be sorted out.

A member of the audience asked the commission for clarification. Gretchen stated that the Public Comment would be discussed at the appropriate time in the hearing. The gentleman was persistent in commenting. Gretchen again said that this was a discussion between the HDC and Twenty Wayland and public comment would be at the end of the discussions.

Mr. Daine said all of the concerns that you've addressed are one's that we understand and I think through drafting we can address, and by all means I'm absolutely happy to sit down with Ms. Buell and to go through it. Just so the commission understands there is a frustration on our part in terms of the timing, I won't go through all that again. But what we're looking for, is there a

way that we, because whatever the commission does there's then going to be a twenty day appeal period that has to be added on as well. So that if we leave here tonight we know we're just going back to another round of negotiations and therefore we have to come back again for another public hearing and vote on another public hearing and then add twenty more days to that, this is really taking a lot of time. I suppose one thing we could talk about is if these are really settlement terms, I think there's a way that you could vote on an amendment to the certificate of hardship. That would start the twenty day appeal period running tonight but that the condition is placed on the amended certificate of hardship that's basically contingent on, signing of a settlement agreement. Because I don't think the settlement agreement part is part of the hearing, and if my understanding is that, wording is substantially the same we would be able to make a motion to vote on it and move forward.

Kevin C. said we did talk about that in our meeting. We didn't have a specific twenty day period that may fit in within the appeal period or the period that we're talking about. What we talked about is coming forward and voting on what we have here in front of us, pending an agreement on some of the issues Mr. Dain just talked about. And agreeing to go forward with it but the issues that Gretchen pointed out is either taken out of the agreement in that time frame and we would agree to move forward on the settlement.

Mr. Dain said the points that Chairwoman Schuler were replying to, were things that would be in the settlement agreement, not in the amended certificate of hardship as well. What we're contemplating is settlement agreement which I think the commission can authorize someone to sign, through executive session or otherwise to resolve a lawsuit, and have it entered as an order of the court, those would be essentially commitments that resolve a lawsuit, commitments, that Twenty Wayland's making separate from conditions in the certificate of hardship, the amended certificate of hardship. The substance of it is addressed in the settlement agreement but is really a separate document. And if it's the legalese that is addressed in the settlement agreement as opposed to the conditions that you could do in a certificate of hardship. I do think that there is a way that you could vote on a certificate of hardship but condition it to say that Twenty Wayland may not benefit from any of the changed conditions unless a separate settlement agreement is signed, twenty day period is run and as entered in the court.

Desmond said that it is putting the cart before the horse. We have to be realistic about this, the two attorneys should be available to go into a session very quickly, deal with these issues very quickly and we should be able to get together very quickly and deal with the issue. I think that can happen but, it's not going to happen tonight.

Meaghan asked if the attorneys could make an appointment to sit down together and then send the members of the HDC the information so they had time to review it and be ready for the next hearing. Gretchen stated that once it is sent to the members, it becomes a public document and can be circulated.

Mr. DeLuca complained that Twenty Wayland had done this previously and were "scolded". They had sent the information to the entire board. Gretchen said that she had explained to Mr. DeLuca that it was a misunderstanding. Mr. DeLuca said everybody did have it and thought it was disingenuous when Gretchen started off the early meeting saying that the HDC didn't get it until 3 o'clock this afternoon. Gretchen stated that there was confusion about the 1st and 2nd

version- when they were received- and she had explained this at the beginning of the meeting she was talking about the 2nd version.

Mr. DeLuca stated Attorney Buell has been very busy the last couple weeks. We have had numerous calls and made numerous attempts to work on the agreement-we don't want this to keep going on and on. If we had great discussions over the past month, we had one discussion, what was it last night at 5 o'clock? The night before the meeting, we don't want to go through that again. That's why we're very hesitant, that's why we want to get this as far along as possible, we don't want to spend the next thirty days waiting until the night before the meeting to have a discussion

Meaghan asked again if the attorneys could make an appointment to sit down and work on the issues and legal language, then the members of the HDC could review the information and make a decision based upon the outcome of those discussions. Meaghan said that she would not be able to vote on the latest Agreement for Judgment or any wording added this evening. She stated that she understands and appreciates Twenty Wayland trying to do the best that they can, but she was uncomfortable with making a decision based on wording written "on the fly".

There was discussion of time constraints for the attorneys to have negotiations finalized, that the attorneys must prioritize negotiations, how soon the commission could legally reconvene (hearing would be continued and at least 48 hours notice required for a Public Hearing), if commissioners would be available for a hearing in the following week.

Kevin C. asked if it made sense to make a motion to settle pending agreement on the line items in the settlement agreement. Ms. Buell said it could be done, but the commission would have to give some guidance on the issues- sidewalks, location of the control box, letter to the Massachusetts Historical Commission other items mentioned in this evenings discussion.

There was discussion of the items that should be addressed:

1. Twenty Wayland agrees to the color stamped paving.
2. Twenty Wayland does not agree to work towards having the conduit for overhead wires in the district to be installed, now or at a future date, under the roadway. Twenty Wayland refuses to obtain additional permits or incur the expense of this issue.
3. Twenty Wayland refuses to seek additional permits for the sidewalks.
4. The control box location would be determined and resolved by close/end of the spring 2011 Town Meeting as previously discussed.

There was discussion about the words "Bait and Switch" used in #5 (f). Gretchen asked that the language be changed as this was not the intent of the commission. The concern of the HDC being if the project were permitted and was not yet developed and another entity took over the project, it would be a different project altogether. Mr. Dain agreed.

Mr. Dain said he understands that Ms. Buell's going to send to him, a markup of what he sent to her in word version in, the next business day or two, meet with her in person or e-mail the version back. But the process is they would agree on something within the next week and then the HDC would post a notice for the next hearing which would be scheduled for Tuesday, October 12, 2010.-

Ms. Buell and Mr. Dain discussed that should there be an agreement between the parties; Twenty Wayland would request no additional applications. Gretchen added that if there was a change in the project there would have to be a new hearing.

Regarding the letter from Bank of America, Gretchen stated that she had only seen the letter yesterday when Ms. Buell showed it to her. The letter was addressed to her but had not arrived at the Town Clerk's office. She said it was not a letter of commitment as she understands a letter of commitment to be. There were comments of what should be in the letter such as amount institution would be lending for the project, what percentage of the project Bank of America is lending for -a mortgage commitment- etc.

Mr. DeLuca said the following: I'm not sure, I mean I've done ... borrowing in the past year and a half. And until I signed the dotted mortgage the bank always has a right to jump out of any loan at any time after they do the underwriting. So you're never going to get a commitment. That's as solid as you're going to get a bank to write. And we also try to schedule meetings with Ms. Buell because we want to sit down with her and show her the amount of net worth we had that even if the bank walked away from us we have enough equity to do phase one without any help from anybody. We can never get this happening. But that's the strongest letter you're going to get from a bank that says once we get permits we're ready to lend. I'm not sure what else you're looking for. You have to help me here. We actually offered to have the banker call Ms. Buell but she didn't want to speak to our bank. So I'm not sure what you're, I don't want to leave here with things to do I want to know what I have to do so we're not guessing at the next meeting, on the 12th.

There was further discussion of what the commission would require as far as a commitment letter. Mr. DeLuca said that he would get a new letter from the bank stating that it would lend enough money for completion of Phase one of the project

This letter should be sent to Gretchen Schuler as chairwoman of the HDC

Kevin C. asked for clarity of the items that were discussed. They are items 5(b) and (g), and 6(b) and(c). Gretchen agreed. His understanding is that, wording is substantially the same and we would be able to make a motion to vote on it and move forward. Meaghan said if the parties could come to an agreement on the wording.

Gretchen opened the meeting to Public Comment and asked that the comments address the issues being the Certificate of Hardship and the Issue of Settlement which is what we are here for tonight and not the Town Center Project itself.

FOR CLARITY THE PUBLIC COMMENT IS ADDED AFTER THE COMMENTS BY KEVIN DANDRADE, TRAFFIC CONSULTANT

Gretchen referred to a recent meeting between Kevin Dandrade, Desmond McAuley, Kevin Crowley, and Frank Dougherty. Fred Turkington was also in attendance at this meeting. Desmond gave a brief summary of the meeting Kevin D. gave a brief summary of the documents regarding the traffic studies and related issues.

Desmond asked if the introduction of vehicles from the construction CVS project on Route 20 lead to deterioration in the intersection. Kevin D. is not aware of any but has not studied that aspect.

Gretchen is concerned about how the emergency vehicles will be able to get through the intersection due to traffic signals being used at the intersection. Kevin D. said there is special equipment called "Emergency Vehicle Preemption" that will address these issues at the intersections under discussion.

Meaghan asked if the issues were a congestion issue or a safety issue. Kevin D. said it was both as the two issues were related.

A citizen asked if the traffic information was germane to the discussion of the hearing. Gretchen said that the whole point of the Certificate of Hardship and the timing conditions were they were based on the phased development, and because we knew that the traffic mitigation was intended for the full development, we thought if it was a partial development- 1/3 for the first x number of years, we had a problem with changing the historic district because we feel that the changes are a derogation to the district. That's why we had the timing conditions to ask to wait, so it's important to understand what Kevin D. is telling us about the safety issue. Therefore it is germane.

Tony DeLuca stated that Twenty Wayland is caught in a Catch-22. He is confused by this conversation as the developer is not a part of that. They did not want to get into that discussion.

Desmond said he asked Kevin D. to talk to the points that were discussed at the meeting recently held where two of the HDC members were in attendance. He wanted Kevin D. to speak to the issues that had been discussed so that the other members of the commission would be informed appropriately.

A citizen asked Kevin D. if the proposed plan were safer than the current situation. Kevin said he did.

Shirley Jacobson, Old Connecticut Path- asked about the letter from the Bank of America

Dana Davies, 14 Squirrel Hill Road – read an e-mail on behalf of Joe and Dana Volman, 5 Old Sudbury Road as proponents of the Town Center Project and roadway changes.

Lew Russell, Pelham Island Road – spoke in favor of the Town Center Project, hoped that the Raytheon Building would not be leased out again as office space, urged the commission to complete this process.

John Jacobson, 242 Old Connecticut Path, said that the commission was not representing the people, the HDC is representing themselves, are not acting in good faith and are not representing him.

There was applause, Gretchen stated that this is not a popularity contest; this is not the way the HDC runs its meetings, nor is it the way the HDC makes its decisions.

Tom Sciacca, Rolling Lane, -thanked the commission for representing him. Said that some do appreciate that the HDC for its efforts.

John Boyle, 3 Cobblestone Circle, - thanked the commission for their efforts in protecting the historic district. He urged the commission for expediency and asked that the commission vote one way or the other.

Alice Boelter, 106 Lake Shore Drive- said that this commission needs our support for upholding the regulations to which they have sworn. That they must abide by when they take on the responsibility of serving on the HDC (or any other board). If anyone was allowed to come in and override what the rules and regulations of commissions, we are giving cart-blanch to anyone who wants to come into this town and do whatever they want to do.

Linda Segal, Aqueduct Road – commented that as a hearing may need to be closed before a vote is taken, without the public having seen the paperwork, and this being considered, that the commission may not be ready to take a vote this evening. Asking what the list of permits the developer would need for them to move forward, through this commission- as there are other permits that are needed from other commissions- so that the public could be made aware and understand what is needed.

Gretchen said at the last meeting that was discussed. Kevin C. answered that it would be a demolition permit and a building permit that are written into the settlement agreement.

Gretchen asked if Mr. DeLuca could explain what permits are required. He said he did not understand as they would not start the project without all permits in hand. Gretchen asked if any other permits that are relative to the historic district that could conceivably change this permit or require any sort of change.

Mr. DeLuca talked about the order of permits that must be obtained and are hinging on boards decisions- they have been told they will get a vote this evening from the Conservation Commission. He knows there are a number of permits that they need to apply for – you can't get a Building Permit until you file for the building- and he said they would not incur any more costs moving ahead on the project.

Robin Jones, 7 Old Sudbury Road – Thanked the commission for what they had done, she lives in the historical district and appreciates the time, energy and effort the HDC has put into this issue. She stated that it is time to move on; it's been a long and embarrassing process. The town center as it stands now is ugly. Has read what the developer is willing to do to make this easy for all of us. Moved to Wayland 6 years ago. Feels that the public does not have a say anymore. Thinks the HDC would feel great if it had a hand in shaping and making the town look more beautiful than it already is.

Gretchen clarified that contrary to some emails that have been received; the HDC has not dragged this issue out for 4- 5 years. The HDC did not have an application (permit) before 2009, within 5 months it had issued a decision, and the decision was appealed by the developer. The HDC has not been involved since 2006 as is often assumed.

Shirley Jacobson, Old Connecticut Path, concerned with issue of delay again. About the issue of the bank, she understood that the bank would not give the information about how much they would lend and has a fear that this will come up again at any other meetings. Mr. DeLuca said that he would have the bank draft a new letter and it would be discussed between counsels.

Chris Reynolds, Draper Road, urged the commission to complete a term sheet, a standard non binding letter of intent for the attorneys to discuss and not engage in further dilatory behavior.

Holly Elias, 115 Lincoln Road – this issue has been discouraging. Asking the HDC to move forward and represent the majority. Discussed her personal experiences related to traffic. Asked who the HDC is representing. Meaghan answered that the HDC represents the historic district and represent the minority that live in the district and the HDC follow legislation that must be upheld. Ms. Elias asked if the HDC had taken a poll from the residents of the district. Meaghan responded that we had had communications with the residents of the district.

Ms. Jones said that she lives in the historic district and has never talked to anyone on the committee. She knows that her neighbors have never met the HDC. They have met with the developers over the years and have concerns but want to be a part of something they think will have a positive influence in the town. She is here because she cares. You represent the district; represent all who live in the district. Gretchen indicated that the HDC does not communicate with all owners, but does with owners in the district. Ms. Jones said she does not hand-pick who she communicates with. She includes everyone.

Jean ..(inaudible), Hidden Springs Lane – Asking that the HDC work this out, stop delaying and stop having meetings. Urges that the HDC finish this.

Marge Baston, Cochituate Road- is a member of the HDC and proud of it, the HDC is doing a very good job and has been professional. The HDC abides by state regulations and is trying to work with the developer. The HDC issued a certificate of hardship to move ahead. Town hurdles are preventing this from happening, not the HDC. Don't bash the HDC. Talked about the changes that may take place and the implications to the property owners in the district.

Susan Cummings, Eden Road – Appreciates all the time and hard work the HDC has given to this cause and the commission. She thinks it's important to keep in view what it means to preserve the historic district, she is for Town Center. Has lived in town for 5 years. Does not know where the historic district actually is. Thinks it's shocking that an eBay store is in our historic district and would like to preserve the district in a way that is not contradictory. Commented on the lack of amenities in the town and the traffic issues. Gretchen replied that the district could not speak to the use of a property. That is not in the HDC's jurisdiction.

Following the Public Comment part of this hearing, Kevin Crowley made a motion to move forward and accept the Agreement for Judgment pending the final resolution of those 4 or 5 line items that had been identified earlier by the HDC. Gretchen asked for a second but then questioned the timing of the motion prior to closing the hearing. There was no second and George Ives said he would enumerate the provisions under discussion. Kathie Steinberg asked Kevin C. to table his motion in order for the hearing to be closed.

Gretchen stated that if the hearing were closed, the HDC could not accept any additional information with the exception of the wording of the agreement. The HDC could only consider information that was entered into the public record. George Ives said that we would want to continue the hearing not close it. Gretchen suggested that the HDC could indicate the sense of the Commission in a motion.

George Ives stated that the HDC should not close the hearing but that Twenty Wayland had asked for a clear path and he thinks that the HDC could do that. Therefore he moved that the sense of the Commission is that it agrees with the Settlement Agreement proposed and amended with the exception of the following sections: 5.b, 5.g, 6.b, 6c.

Kevin C. asked if that motion would become valid if those four items are agreed upon. George was just saying that it was the sense of the Commission to agree with that and that he was outlining what parts of the agreement need to be reworked – those 4 line items. Meaghan said that the HDC would not be actually agreeing to the entire agreement per se. Gretchen indicated that George's motion was in essence the same motion that Kevin had made previously but was more the sense of the Commission rather than a definitive vote. It was also indicated that the Certificate would have to be amended to be consistent with the agreement proposal. Kevin asked again if those were the 4 line items. Ms. Buell added that the control box issue would need to be addressed also. Kevin stated that the control box issue would be addressed no later than the May 2011 Town Meeting (Annual Town Meeting). Desmond asked George if that was his motion. George indicated that it was, thus Kevin seconded the motion.

Gretchen said that she liked the idea of the motion but was concerned that no one had read through the full agreement front-to-back quietly. Kathie asked if that could happen now within the meeting.

Desmond wondered about what the problem with the motion was and explained that the lawyers will talk about eliminating language in those four items (5.b, 5.g, 6.b, 6.c). Attorney Buell suggested that the HDC direct her to cooperate with Dain starting with #3 to develop reasonable language for Agreement for Judgement and for an amended Certificate of Hardship that incorporates # 3 through #6 of draft Agreement except 5b., 5.g, 6.b, 6.c to the extent that it is her recommendation that those be deleted. This became the motion: to direct counsel to negotiate language for #3 through #6 except those four paragraphs. (She noted that she is not sure what #s 1 and 2 say but does not think they are material.) Voting members passed the motion – 6-0-0.

George moved that the meeting be continued to October 12, 2010 at 7:30pm. Kathie Steinberg asked how the information would get sent to the HDC. Kevin C. asked that the attorney's written agreement be delivered into the HDC members hands by October 7, 2010, giving the HDC members 5 days prior to the October 12, 2010 HDC continued hearing to become familiar with the document. Gretchen asked for a second to continue the hearing to October 12, 2010 at 7:30pm. Desmond McAuley seconded the motion. Mr. Dain stated he was satisfied; his concern is that the 5 items not be delayed. Ms. Buell and Mr. Dain discussed meeting times and agreed that they would begin discussions no later than October 4, 2010. The HDC will see the information by email on October 7, 2010 and it will be incumbent on Ms. Buell to make the information available to the HDC. Gretchen asked for a vote on the continuance to October 12, 2010. Members voted in favor, 6-0-0.

The meeting was adjourned at approximately 10:15pm

Respectfully submitted,

Meaghan Winokur