

## Wayland Historic District Commission

September 1, 2010

Approved 10-12-10

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

Others: Barbara Buell (counsel for HDC), Daniel Dain (counsel for Twenty Wayland LLC), Andy Rockett, Frank Dougherty and Tony DeLuca (Twenty Wayland LLC), and list attached of other attendees

The meeting was called to order at 7:35 pm once a quorum was present. The purpose of the meeting was for the HDC to meet with Wayland LLC and respective counsels to discuss Twenty Wayland's appeal of the HDC Certificate of Hardship granted 7/10/09.

### *1) Introduce Members of HDC, counsel, and Twenty Wayland LLC.*

Gretchen Schuler, Chair asked members at the table to introduce themselves, she then explained that since Margery Baston and Chris Hagger had been recused for all HDC review and decisions on the Twenty Wayland LLC application for Transportation Improvements in the Historic District, they would continue to be recused and would not sit at the table with the Commissioners. She also explained that the alternate, Kathie Steinberg, would participate and vote (if and when votes are to take place) due to the recusal of two members.

### *2). Purpose of Meeting and Procedures.*

Gretchen Schuler explained that the purpose of the meeting is to discuss a proposed settlement letter from Daniel Dain, counsel for Twenty Wayland to Barbara Buell, counsel for HDC. She then explained that due to the nature of this topic – as a settlement of a legal case- there would be no public comment allowed at this meeting. Due to a request from HDC counsel, a motion for Executive Session was made. George Ives made the following motion:

I move that the Historic District Commission enter into Executive Session to meet with HDC counsel with respect to litigation of Twenty Wayland LLC vs. the Town of Wayland Historic District Commission in order for counsel to inform the HDC of some issues that are pertinent to the future discussion of settlement of the legal case.

Executive Session shall last for 10 minutes and the HDC will reconvene in open session at 7:52 and the meeting will continue with a discussion of the legal case and settlement letter.

Kathie Steinberg seconded the motion. The Executive Session voice vote was (5-0-0). Crowley – yes, Ives – yes, McAuley – yes, Schuler – yes, Steinberg – yes.

At 7:52pm the members of the Commission voted to exit Executive Session and return to Open Session. The voice vote was (5-0-0). Crowley – yes, Ives – yes, McAuley – yes, Schuler – yes, Steinberg – yes.

Commission Member Meaghan Winokur arrived at approximately 7:54pm.

### *3. Legal Case History*

Barbara Buell outlined the facts of the case as follows: Introduced herself and explained she was the Pro Bono attorney for HDC filed an answer to the complaint filed by Twenty Wayland. On July 5, 2009, HDC rendered a decision on the application Twenty Wayland LLC and issued a Certificate of Hardship with conditions. The Developer then appealed within the specified period of time. At about the time of Labor Day (2009) the town/Board of Selectmen being unwilling to grant counsel to the HDC, and Mark Lanza (Wayland Town Counsel) being conflicted out of the case, Barbara was asked to represent the HDC on a Pro Bono basis, and agreed. The HDC was “up against the wall” with hours left to answer the complaint in that they had not had legal representation and had not been able to answer the complaint. Att. Buell filed the answer to the case, which now sits at the Superior Court of Middlesex. The court has not heard the case on "merits" but has ruled on a few motions by the developer and one by Att. Buell and has preliminarily ruled on the most recent motions by developer for a decision on the pleadings which is in the nature of a summary judgment. That ruling was against the plaintiff but without prejudice pending further fact taking by the court which has not happened yet. So the developer wants one set of things to happen and the HDC having one year ago rendered its decision and suggesting a different time frame than proposed and desired by developer. The Board of Selectmen asked the HDC approximately 3 weeks ago if the HDC would be willing to meet with the Developer to see if some common ground could be reached between HDC and Developer. On one side HDC interested and charged with a mission of preservation of the Historic Districts by virtue of a statute passed in the early 1960's as towns in Massachusetts that have Historic Districts were authorized and they have one mission and that is, on behalf of the public to preserve the historical character of a particular area. On the other hand, there is a developer who wants to create a development and contribute to the community in that way. There is a failure of matching of the goals of both sides. Here tonight to try to find the common ground. Not mediation but here to explore, in the presence of all, where the common ground may be. There are things upon which we can agree, things on which we cannot agree but where there might be caveats or guarantees of one side or another with the goal of avoiding further process in the Superior Court. Barbara said that she and Attorney Dain had talked and agreed that this meeting must be civilized, must not have heckling or voluntary comments and that the public is here only as observers and not participants, but are welcome to observe quietly but as long as the commission members, attorneys and developers and their staff are not distracted by the public. Gretchen Schuler stated that this is an open meeting and the commission is observing the Open Meeting law.

Daniel Dain as legal representative of the developer spoke and agreed with Barbara Buell's sentiment. He had preliminary statements to make before getting into substance and that he hoped that this meeting will set a good framework for settlement. He said that Twenty Wayland is committed to seeing if they can resolve this lawsuit in an amicable fashion, they are looking for common ground as Barbara Buell stated. Settlement is in everyone's best interest, certainly Twenty Wayland's best interest. Litigation is expensive, time consuming, distracting to business, and acrimonious. And everyone benefits in resolving this. Mr. Dain said he had a conversation with Barbara Buell on phone about the settlement and she asked why had the lawsuit been filed. He is here saying that they (the plaintiff) are committed to resolving the lawsuit. Ms Buell had also asked that if they were committed to resolving this, why did they not negotiate first. Mr. Dain explained that there is a 20 day appeal period (preserved rights). They needed to file the lawsuit and that once a lawsuit is filed they take on a life of their own. Mr. Dain said again that lawsuits are expensive, time consuming and distracting to business but the fact that the lawsuit being filed does not change the developer's hope to address the legitimate concerns of the commission and find common ground. Mr. Dain said that the lawsuit is not meant to be personal against the members of the Board and that sometimes they can feel that way and understand and appreciate that each of the commissioner's takes seriously and has a commitment to do the job and make decisions that they believe are in the best interest of preserving the character of the Historic District. Mr. Dain reaffirms that the Developer is committed to working things out with the Commission. The developer understands that, is committed to that and believes that. Mr. Dain referred to in the Certificate of Hardship, section B, the specific conditions that went to the aesthetic and siting issues of the roadway improvements "reaffirms that Twenty Wayland is committed to all of those", but with one caveat, they want to work together with respect to the siting of the control box (B #12), they are not against that, but some of that is out of developers control as that is town property the developer respects why The Commission have made that condition.

Crux of conditions is the timing or phasing of project. Timing condition says that the roadway improvements are not to take place until after the construction of Phase I the first 94,500 square feet at the beginning of Phase II.

The Certificate of Hardship recites the motivation for Condition C, which is some skepticism in 2009 about a developer coming in and saying that they are committed to doing a project and then it not happening. They have to acknowledge that in 2009 there is some basis for why people would say "is this really going to happen" the HDC concern that Developer would do the road way improvements within the Historic District and not do the project are understandable.

Drive around Greater Boston or read the paper and see that lots of developers are proposing projects and then not doing them so the concern is legitimate and we acknowledge it the problem is that because of a whole series of other terms and because there is a certification from the public safety issue we have to do the roadway safety improvements before we start construction.

The question is in terms of trying to find common ground. Can the Developer give assurances; address the legitimate concerns raised in section C of the Certificate of Hardship - where the Commission's provision says that we need something concrete that gives us assurances before we want changes to be made to the Historic District. What the district came up with was basically "Show me the money" to start the project. Is there something else developer could do that would give the HDC comfort to settle the lawsuit and amend the Certificate of Hardship, Condition C that would allow us to determine obligations of the public safety officials and also address the legitimate concerns of the HDC, in lieu of actually doing construction, which cannot happen before the road work. That is the crux of what we hope will be a productive effort to come to common ground.

Obviously have to acknowledge that there is a lawsuit, talk about the lawsuit itself and try to convince the HDC that the developer has great arguments and the HDC trying to convince the developer the same will not be productive tonight. The Developer can talk about the lawsuit itself and focus in on giving the HDC the assurances it needs. Dain said that because there is a lawsuit, because they are trying to settle it, it is called a "Privileged Settlement" discussion or negotiation, what that means is the parties in litigation have a discussion about settlement, that cannot be used for purposes of the lawsuit, the idea being to encourage candor. Dain said he would be a lot more hesitant to sit here tonight and say I acknowledge your legitimate concerns about the direction of the project, if the next time we have a motion in the case he was being quoted back to the court, so this discussion cannot be used for purposes of the lawsuit. The discussion is public tonight but at the same time the court is not going to hear about it, so we can have full candor. Again agreed with HDC Counsel Buell to keep discussions civil as he said previously. Discussed again how lawsuits seem like they are personal on both sides. Recognize that the HDC may need to go into Executive Session to consult counsel and the developer may need to step out of the room to consult with their counsel and that it is typical for the attorneys to work things out between them. Ms. Buell and he have discussed mechanics of settlement of the lawsuit. We cannot tonight enter into binding agreements that would alter the HDC's position; what we hope to do is come up with something everyone is happy with and put it on an agenda for a public meeting for the HDC to approve or disapprove. Mr. Dain said that his client would commit themselves to coming up with something that they are not going to further negotiate on because at some point we need to say "this is what it's going to be, and they will have to settle the case or they will have to litigate. Put it to the HDC after a public hearing to either approve or disapprove if developer came up with an agreement that the HDC was agreeable to, then the lawsuit would be dismissed.

There was discussion between Gretchen Schuler and Mr. Dain about whether he meant a regular Public Hearing that takes public input and he said yes but that not every settlement with the municipality or board of the municipality would require that and it would depend on how the settlement would be framed. There may be a clear way through the settlement that would not require a public hearing but believes there would have to be an amendment of the Certificate of Hardship and thinks that would be the correct procedure.

Mr. Dain read from the letter sent via Federal Express on 8-19-2010 to Attorney Buell Re: Twenty Wayland, LLC v. Town of Wayland Historic District Commission Civil Action No. 09-2967.

Page 2, Paragraph (3) beginning..."The only area of disagreement, then, is the timing of the roadway improvements. Twenty Wayland understands and appreciates the Commission's concern that in this economic environment when all of us read regularly about abandoned real estate development opportunities that Twenty Wayland might in fact build the New Town Center. Twenty Wayland hopes that if it can give the Commission the appropriate assurances that the Town Center project will happen, then we can resolve this one final obstacle. Such assurances, however, have to be short of actually undertaking construction of the Town Center project in order for Twenty Wayland to comply with the various permits and agreements that require, as the Certificate of Hardship acknowledged, the roadway improvements before commencing construction."

Pages 2-3, Paragraph (4) beginning..."There is one step that Twenty Wayland can take that equates to crossing the Rubicon on this project, yet which is not inconsistent with the referenced permits and agreements. As we know, a former Raytheon and Polaroid office building still sits on the Town Center site. Twenty Wayland's easiest path to reestablish cash flow on its property is to re-tenant the office building. Based on our cash flow projections, such a re-tenanting would conservatively create a minimum of \$10 million of value for the site. As long as that building remains up, Twenty Wayland has an alternative to the Town Center project, albeit on that the overwhelming majority of the residents of Wayland does not want to see pursued, and on that would not lead to the significant mitigation commitments made by Twenty Wayland. Clearly, Twenty Wayland would not want to demolish the building if it were not fully committed to seeing the Town Center project through. And herein lies the assurance that Twenty Wayland can provide: Twenty Wayland will, as part of a comprehensive settlement agreement, commence demolition of the office building before it begins the roadway improvements at the Routes 20/27/126 intersections. In addition, as farther evidence of Twenty Wayland's commitment to seeing the Town Center project through, it will file for a building permit for at least 94,000 square feet of space before beginning the roadway improvements."

Mr. Dain said that that is the substance of the proposal and at this point they would welcome questions or comments

Gretchen Schuler said she has a problem with the wording of "commence" as there have been problems with prior projects and developers that have used this wording to their advantage. She mentioned trees being cut down, one window being removed from a building and nothing being done for two or so years. The wording would have to be much more substantial. Mr. Dain said he understood.

Desmond McAuley reflected on the fact that "there is a large hole" in downtown Boston (referencing the Filene's Basement Building (Downtown Crossing, Boston) where a developer took down an existing building with the idea of putting up a tower of condominiums and other space and as of this

morning the hole was still there. The point being that you can take these with all the intentions in the world of making something happen, and that it doesn't mean it's going to happen.

Mr. Dain commented regarding the Filene's Basement Building. He said that that was a project that they did do demolition because it was their understanding that they would have difficulty leasing the building without first doing demolition so they did demolition without having financing. That's a different situation than we have here, where the developer has the ability financially to do the Town Center project.

Tony DeLuca (with others from the development team adding comments) said he is not sure why they would want to build the intersection and keep working with the HDC just to do that work and not build the town center. It doesn't make sense, he said that they wish they didn't have to do off-site work but they have to so are caught. No developer wants to spend \$2 million on site work down the road from a project; they only want to do it on their own site. He said that they are moving forward with the project and have a fully executed lease with Stop & Shop. The developers must get all their permits, before all the contingencies expire, so that Stop & Shop could not pull out. The developer needs to get their permits so that Stop & Shop is locked – the reason the developer is pushing so hard to get these permits.

Ms Buell asked:

1. Would you be willing to notify the HDC within 24 hours if you got notice from Stop & Shop that they were walking away from the lease?
2. Are you willing to demonstrate financing?

DeLuca asked if that was in addition to paying \$4 million in taxes and other expenses so far.

Mr. Dain said I think we can provide assurances on the state of the financing and asked if there was something particular that you would like to hear from the Lender, Bank of America.

Ms Buell said that it is typical in private entities dealing with governments that the private entities demonstrate its "Bona Fides" that it can do what it says it can do and it's not an unreasonable question for the HDC to ask.

Tony DeLuca asked what would the HDC actually be looking at, could they get a letter from the Bank of America that they will provide financing, Bank of America has a loan on the property right now - big picture the loan is \$18 million, the developer has invested \$40 million, \$22 million has come out of their pocket. An \$18 million loan is secured by the office building so the Stop & Shop lease better be in place or Bank of America will not let them knock that building down. Mr. DeLuca said they do have a construction loan in place but they have to put a lot of their own money in to get to the next step. Don't want to say yes at this point - want to know what the HDC is looking for so they can help. They can have the bank show the HDC a letter that they have \$20 million in CD's and they can spend

their own cash. They have done that on other developments. Look at web site, they have never walked away from a project; "never not" finished a project that they have started. DeLuca said that he is the only one in room that has been here since day one and they are going to do the project. DeLuca said to tell him what type of assurance HDC needs from the bank and he will help get it. He assumes that counsel will be looking for contingencies.

Desmond McAuley commented that he is not a banker he's just an architect and as he walks by every day where the Filene's Basement Building used to be and he see's...Tony DeLuca commented that people might be happy if the (Raytheon) building was taken down. A number of people including Gretchen Schuler, Desmond McAuley and Meaghan Winokur all stated "no" emphatically, not until they are ready.

Gretchen commented that it has been lost in the whole concept that the only reason the HDC did this was because of the downturn in the economy and we thought that this type of change in the Historic District might not be necessary for a project that was about 1/3 of what the original project was and that was based on what your first phase was going to be with a diagram and sketch or map submitted by the developer to the HDC. That's where the HDC started and that the HDC just wants to make sure that the developer was going to develop beyond that so that the changes in the HDC are necessary. Gretchen explained that the HDC unanimously decided that the traffic mitigation would be a derogation to the District.

MW commented that around the time the HDC was making a decision on the application, Stop & Shop had pulled out of a development (that had been built) in Maine and there was a large mall left empty because they had pulled out and the smaller businesses did not want to lease because there was no longer an "Anchor" store. She said that it was on the mind, but was not the only reason for her decision.

Desmond McAuley said that the HDC put all the pieces together and were trying to understand what the impact on the District, the logic was fairly clear to us at the time. Of course, if the intersection is not safe, something has to be done about it, it seemed to the HDC and to him that the intersection would be unsafe when the build out occurred, thus when the developer started phasing back a full build out of the intersection seemed detrimental. Desmond addressed Frank Dougherty and asked that he correct him if he was wrong but Desmond understood that Frank had seemed to agree that what HDC was talking about in that it might not make sense to make all the changes to the roadway in the first phase. Desmond asked that Frank correct him if he was wrong in characterizing what Frank had indicated to the HDC. Desmond said that it seemed to him that the District would have to accommodate something that was not necessary at the time and that was really the HDC's position just to allow both things to occur to allow the district to be the entity that it is and allow the project to move forward in an appropriate fashion. That was the crux of the logic. Frank Dougherty did not reply.

Mr. Dain said that the developer and the HDC probably don't view this project as all that differently. As the developer they would much prefer not to have to spend the \$2 million on roadway improvements that are not a part of the project itself and will not bring economic revenue to them. In some ways this isn't a debate between what the developer wants and the HDC wants. The developer does not have a stake in whether the roadway improvements are done and what the timing is. If the project is going to happen at all, the roadway improvements have to happen first. There is a certification that states that the introduction of any construction will create an unsafe condition, and they have to live with that, and acknowledging the legitimate concerns about Filene's Basement and referenced Kensington Place in Boston where there are holes in the ground, legitimate concerns about not doing something that affects the Historic District, but the developer wants to assure the HDC that this part really is going to happen.

The developer went on to say that these questions and comments are really good because they get to the heart of the matter and are legitimate. So, if they can get the HDC to understand, that we wouldn't knock down a building with the intent to go back to an office building if you were not committed to the project, then the HDC has a legitimate concern. That brings up the next question of what assurances can they give. Bank of America is the lender and says when it is permitted; the construction loan will be in place so that this project can go forward. The financing is in place, Stop & Shop is committed to the project for which we will tear down the office building. They hope that it gives the HDC a comfort level that they are not going to have a situation where there is change to the Historic District for no good reason if the project ends up not happening.

George Ives said that we are not going to work out what that demonstration of Bank of America is going to be but sounds like you could cooperate and get a letter of commitment.

Mr. Dain said if we leave here tonight saying if the developer does the following things by the time of the next public hearing, present them at that hearing, and then the HDC could decide is the HDC satisfied or not.

Kevin Crowley said that Gretchen Schuler had mentioned about the "commencement" in document wording, it is fairly simple to deal with Building Inspector once he issues the demolition permit, and there would be a certain amount of time for the demolition to occur.

Desmond McAuley had a question and asked for clarification about the wording of "introduction of construction -of Day One- vehicles would render the intersection unusable" is that correct. There was discussion that the Public Safety Official's certification states that it would be an unsafe or dangerous condition in the intersections when construction commences.

Gretchen stated that the manner in which the certification from the Town Public Safety Officials was brought about was not the developer's problem, but that the letter is very difficult for the HDC to process because the first time the HDC had seen the certification letter was in the developer's new application. That she had asked for it, heard about it, did not receive it from the town; it is not on



Town letterhead, and it is very problematic; and she had no idea how this occurred. Meaghan Winokur asked if the letter had been stamped into the Town by the Town Clerk. Gretchen indicated that it had not been stamped in and does not show up in any of the Board of Selectmen's packets.

Meaghan Winokur asked if the Demolition Permit had been filed with the Building Department. Frank Dougherty indicated that it had not been but that the Foundation Permit had been. Meaghan asked if everything was in order for that permit. Frank said that they had not received any comments yet. Gretchen said that she asked the Building Commissioner if a "foundation" permit is the same as a "building" permit and the answer was "no." Frank said that they could tighten up the requirements in the agreements for settlement. Gretchen said that it must be a Building Permit. Gretchen said there was no site plan filed as part of the foundation permit so it was unclear as to where the foundation would go and she said that she doesn't know how it could be acted on. She said that is not complete so if there is going to be a Building Permit as a trigger for intersection work, it must be complete so that the building Inspector can act on it. Ms. Buell stated that there has to be a commonality or understanding of what constitutes the definition of a Building Permit. Kevin Crowley said they would need a Demolition Permit first.

Mr. Dain asked the Commissioners if they felt they should go into Executive Session to consult with Ms. Buell for a list of what the developer should apply for. For example: this is what we want you to apply for, this is what we want on demolition, this is what we want to see from Bank of America and present that to the plaintiff. If agreeable to the developer, then Mr. Dain's client could say if the HDC were to amend the Certificate of Hardship, then the developer would dismiss the lawsuit "with prejudice".

Gretchen Schuler said she had no problem making the list in Open Session. Ms. Buell was in agreement and said she was here to serve.

Mr. Dain began by outlining the following:

1. Working towards writing language the HDC would be comfortable with.
2. Developer will decide if the HDC would issue a Certificate of Hardship in accordance therewith, they would commit ourselves to dismissing the lawsuit.
3. There would be Notice and a Public Hearing, the HDC would vote for or against, and if the HDC decided to issue a Certificate of Hardship, in accordance with an agreement, the developer would be contractually obligated to withdraw the lawsuit.

George Ives said that what the HDC wants is to open the hearing technically, to proceed on as is and move on.

Desmond McAuley would like to meet in Executive Session to get some clarification from counsel.

Gretchen wanted to proceed with the outlining so that the HDC will only have to go into Executive Session one time. Desmond agreed.

Gretchen outlined the following as ways in which the HDC may have more clarity that the project is going forward:

1. Demolition of the existing Building.
2. The Building Permit, application for at least 94,000 square feet and it is important that the application be capable of being acted upon by the Building Inspector. Particulars on the permit requirements could be obtained from the Building Inspector.
3. Complete building permit applications, including fees.
4. 24 hours notice of any changes to the Lease with Stop & Shop.
5. Time frame of when Demolition must be completed. Time frame could be based on when the Permit is issued and a requirement of a certain number of days for completion, not based on commencement dates.
6. Work together on location of control box, although it is understood that the HDC and developer are in agreement already on this issue.

Mr. Dain began to write the following language:

“Twenty Wayland agrees to dismiss the lawsuit with prejudice following the Public Hearing to amend the Certificate of Hardship if..... “

Ms. Buell stated that Mr. Dain could put together the language while the HDC was in Executive Session. Mr. Dain said that he thought that if we were talking about specific language it should be done at this time because then he could give it to the HDC and they could talk about it in the Executive Session. Gretchen said that she would leave the specific language to the attorneys to work out.

Gretchen said that she is not willing to give up Condition C.1. which states that the Certificate has a time limit of 5 years. She stated that other permits had time limits on them such as the Board of Road Commissioners Alterations permit which she believes is 6 years and the MEPA Certificate which is five years. Mr. DeLuca indicated that he had no problem with retaining that condition as he must have this built within five years.

At 8:45 a motion for Executive Session was made. George Ives made the following motion:

I move that the Historic District Commission enter into Executive Session to meet with HDC counsel with respect to litigation of Twenty Wayland LLC vs. the Town of Wayland Historic District Commission in order for Counsel to inform the HDC of some issues that are pertinent to the future

discussion of settlement of the legal case. Executive Session shall last for 15 minutes and the HDC will reconvene in open session at 9:00pm and the meeting will continue with a discussion of the legal case and settlement letter.

The Executive Session voice vote was (5-0-0). Crowley – yes, Ives – yes, McAuley – yes, Schuler – yes, Steinberg – yes.

At 9:00 pm the members of the Commission voted to exit Executive Session and return to Open Session. The voice vote was (5-0-0). Crowley – yes, Ives – yes, McAuley – yes, Schuler – yes, Steinberg – yes.

Following the Executive Session Attorneys Buell and Dain discussed how Buell would review the Stop and Shop lease to determine that it was valid and binding. She stated that she will have to see enough of lease so that she can advise her client that there are assurances that it is a valid lease; she would not discuss details; assumes that parts of it would redacted or not submitted for her review; and she is happy to sign a confidentiality statement. Mr. DeLuca noted that she could not see the financial terms, which several people acknowledged. Meaghan Winokur said that she understands that those terms are fine to be withheld, that the HDC only needs assurance of reasonableness of the lease's terms.

Mr. Dain said that Twenty Wayland could show enough to assure Attorney Buell and could negotiate for more sections if necessary. Ms. Buell indicated that she would want to see the terms under which Stop and Shop could break the lease – if it is during the time in which Twenty Wayland is securing its permits. Mr. Deluca said that they built in two 6-month extensions in order to not lose the leasee. He noted that they could not and would not build only a 50,000 (plus or minus) sq. ft. building.

Desmond McAuley inquired of Frank as to whether there was a way to have a meeting where he could look at the plans to see if there is a way to go forward while possibly opting for an agreement to phase the traffic mitigation. He also indicated that he would like to try to at least understand impact of 94,000 sq. ft. or whatever amount of the first phase of the development would be. Desmond stated that he was looking for a way for Twenty Wayland to uphold legal requirements and still protect as much of the district as we possibly can by reducing some of the impact. Desmond indicated that he is looking for a conversation with the plans rolled out – a conversation about any maneuverability within the Rts126/27 legal settlement between the Town of Wayland and Glezen Lane plaintiffs.

Frank Dougherty said that if he understood correctly, he was willing to work with HDC within the “certification” as long as everyone was realistic about the outcome. Kevin Crowley asked for Twenty Wayland to develop a schedule of how improvements have to occur. Dougherty said that to phase the traffic mitigation the “road” permit would have to be altered to which Schuler noted that they did not yet have the Mass Highway permit. Desmond ended the conversation by saying that he would be looking for a functioning and legal intersection– look at modeling –roll out the development plans to

try to understand the traffic numbers. Frank said that he would arrange a meeting to include Kevin Dandrade (town traffic consultant) for next week to include Desmond and Kevin Crowley but that everyone had to be reasonable about the expectations. ---

Mr. Dain asked to have the hearing on next agenda. Schuler explained that the notice requirement made it impossible to hold a public hearing on September 16<sup>th</sup> on this issue and pointed out that the new application is on the agenda for 9/16/10 in order to meet posting requirements. There was a brief discussion as to whether this Certificate could be moved into the new application. Twenty Wayland and counsel asked for a quick break in order for them to confer privately.

Upon returning Frank Dougherty said he would not want to start hearings on the new application on 9/16/10 until after conversations about amending the permit for the old application had concluded. The two parties agreed to hold a future meeting on 9/23/10 or 9/30/10 depending upon the availability of all the parties and the progress of the two attorneys in drawing up agreements.

Mr. Dain said that Twenty Wayland would like to preserve momentum and rather not talk about the old and new application together. Therefore they would like to hold a public hearing on the issued Certificate (old application) at a separate meeting. After some checking of calendars it was agreed that Schuler would send an e-mail to all parties involved asking for availability on September 23<sup>rd</sup> or 30<sup>th</sup> and would advise as soon as possible.

Ms. Buell would like to have assurances that the project will proceed. Mr. DeLuca indicated that the lease was complex and some of it confidential so that only part of it could be available for her review. Mr. Dain reiterated that the HDC attorney could have access to the Financial Agreement and Lease Agreement with Stop & Shop as long as Attorney Buell signed a confidentiality agreement with the developer's attorney. Thus she would read and advise the HDC about the security of the lease and Letter of Commitment from the bank.

Desmond asked if the developer was willing to let us know the hurdles or impacts in the next few days to see what we can do

Gretchen Schuler moved to end the discussions for now. Desmond McAuley seconded the motion. The vote was (6-0-0). Crowley, Ives, McAuley, Schuler, Steinberg, Winokur.

Meeting adjourned at 9:30pm.

Respectfully submitted,

Meaghan Winokur