



**TOWN OF WAYLAND**  
MASSACHUSETTS  
01778  
**BOARD OF APPEALS**

TOWN BUILDING  
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**MINUTES**

**ZONING BOARD OF APPEALS  
WAYLAND HIGH SCHOOL 264 OLD CONNECTICUT PATH  
NOVEMBER 29, 2017**

Attending the meeting held at 7:00 p.m. at the Wayland High School auditorium located at 264 Old Connecticut Path were members Jonathan Sachs (Jonathan S), Thomas White (Thom W), Aida Gennis (Aida G.), David Katz (David K), Jim Grumbach (Jim G) and Associate Member Linda Segal (Linda S). Also present were Town Counsel Atty. Amy Kwesell (Amy K), Joseph Peznola (Joe P), Massachusetts Housing Partnership consultant, and David Porter, Executive Assistant to the Town Administrator. Video and audio recorded by WayCAM.

**7:00 p.m. Application for Scott, Gary and Bruce Sweeney/Yankee Craftsman for any necessary approvals, findings, special permits and/or variances as may be required to operate a home occupation or renew Zoning Board of Appeals Decision #07-29 dated November 27, 2007 to conduct a Home Occupation (restoration and sale of antiques) under the Town of Wayland Zoning By-laws Chapter 198; including but not limited to, Sections 201, 203, 901.1.2, Table of Permitted Accessory Uses by District (Use#62). The property is located at 357 Commonwealth Road which is in an R-30 Single Residence District. Case #17-29**

**Panel: Thomas White, Aida Gennis, David Katz, Jonathan Sachs and Jim Grumbach**

Scott Sweeney, 357 Commonwealth Rd; it has been 40 years since the first permit was issued; we are committed to meet annually with the Board of Health and the Wayland Fire Dept. We are thankful to be able to offer our services to the community and to be accepted by the neighborhood. We are glad to answer any questions or concerns.

Linda S: Have there been any issues with the annual inspections; that was a condition of the permit? Scott S- none whatsoever. Jim G- How long in duration of a permit are you requesting? Scott S- 10 years. Jonathan S- Will everything remain the same? Scott S- Yes. Jonathan S- Have there been any violations or complaints? Scott S- None that we know of. Jonathan S: Counsel, do we need to make any findings? Amy K: The findings would be what Linda S asked: that there have been no complaints and that they have abided by the conditions of their special permit. Linda S: The reason, as noted in the permit, had they started this business from scratch 10 years ago (not having had this business at this location for 40 years), they would not have complied with current zoning.

**Jonathan S: Move to renew the special permit issued in decision 07-29 for 357 Commonwealth Rd., finding that there have been no known violations or complaints of said permit that we renew it for a period of 10 years as requested. Second Jim G. Vote all in favor, David Katz will write the decision.**

Minutes of August 22, 2017, September 7, 2017 and September 26, 2017. Linda S- can we include the minutes of August 8, 2017? Jonathan S: we will add August 8, 2017. Any comments or changes?

**Jonathan S: Motion to accept and approve the minutes of August 8, 2017, August 22, 2017, September 7, 2017 and September 26, 2017. Voted approved (5-0-1), Jim G. abstaining, he was not a member at that time.**

**7:15 p.m. Application of Eden Management, Inc. for a comprehensive permit pursuant to G.L. Chapter 40B filed for 60 (60) units of rental housing, of which fifteen (15) are proposed to be restricted as affordable to households under 80% of the area median income (AMI), to be constructed on the property located at 113, 115, 117 and 119 Boston Post Rd., Wayland, MA. (the site of the Mahoney's Garden Center) containing 6.59 acres+/- of land area. This property is located in the Single Residence (40,000 SF area and 180 feet of frontage) Zoning District as shown on Assessors' Map30, Parcel Nos.70-71 Case #17-19 (Cont'd from 8/22/17, 9/26/17 and 10/26/17.**

Paul Haverty (Paul H)- Bobrowksi, Blatman & Haverty, LLC, representing Eden Management The Applicant participated in a workshop on Nov. 14 with town staff, Peer Review consultants, and consultants for the Protect Wayland neighbors. The Applicant is reviewing the suggestions from the meeting and is in the process of considering a new conceptual design, to help to reduce the impact of the project. The Applicant expects the redesign to be completed by the next scheduled meeting.

**Board or Public Comments - there were none**

### **Summary of Working Session – (Joseph Peznola)**

Joe P: the working session was held the week before Thanksgiving; in attendance were representatives from the Board of Health, Conservation, DPW engineering, Planning, ZBA member David Katz, Amy Kwesell (Town Counsel), Sean Reardon (Peer review from TetraTec), the applicant's representative, the Protect Wayland representative and myself.

The meeting started with a discussion regarding the ground rules, making sure the Applicant understood the concerns of the town departments, and preliminary findings from the peer review. Focus was on how to address the concerns to move the project forward. The 3 main issues discussed were:

- 1) Riverfront and whether the site is prior degraded (Applicant) - Applicant delineated prior degraded areas on the site and shared them with ZBA and Conservation. The Applicant will clearly delineate the prior degraded areas and share with Conservation and ZBA.
- 2) Flood plain does not have FEMA assigned elevations. FEMA identifies 2 types of flood plains; one with elevations after study and the second type are without elevations. The flood plain for Pine Brook has not been assigned elevations. FEMA does recognize and map the flood plain, they require that when developing property of more than 5 acres and/or more than 50 units the elevations must be determined and assigned to the area. The Applicant understands this and is moving forward to have the elevations assigned. This remains an open issue, the Applicant's engineer has contacted FEMA, but a time frame has not been identified.
- 3) The scope and time frame for the hydrogeology study. The applicant has been working with the Board of Health to determine the scope of the study, the number of monitoring wells, the time frame for the results from the study (some have been undertaken), the time frame for the completion of the hydrogeology study is 6 weeks out (from date of working session). Based on

that 6 week time frame the ZBA Board will have to decide how they will make their decision on the Board of Health waivers without the information available from the hydrogeology study.

Regarding the potential redesign; Mr. Cliff Boehmer from Davis Square Architects (peer review) summarized his preliminary thoughts, asked some questions and offered to work with the Applicant's architect, that will happen in a sub-meeting on 11/27/17, of the applicant's architect, ZBA Peer architect and the Town Planner, Mr. Sarkisian. The Applicant is taking the information from the main workshop and the sub-work session and moving forward.

**Board or Public questions regarding the workshop- there were none**

### **Stormwater and General Civil engineering Peer Review**

Joe P: In my written summary of 11/22/17

<https://www.wayland.ma.us/sites/waylandma/files/uploads/feedbacknovember.pdf>

There was a response from Sean Reardon (Tetra Tech) on 11/21/17

<https://www.wayland.ma.us/sites/waylandma/files/uploads/tetrattechltr11212017.pdf>

Sean Reardon (Sean R) (Tetra Tech) civil engineering peer review consultant; having worked 25 years as a Professional Engineer. Mr. Reardon completed his preliminary peer review which involved review of the initial design plans, the stormwater report and various correspondences to help establish that the proposed design has been designed properly and that the design is permissible. The complete report can be found at:

<https://www.wayland.ma.us/sites/waylandma/files/uploads/tetrattechltr11212017.pdf>

The Peer review process is set up to let the ZBA know if the proposal can be constructed under state regulations including the Wetlands Protection Act (Conservation), those are not waivable.

The Wetlands Protection Act protects Pine Brook with strict performance standards for the 200' from the river. There are strict rules as to what can be done within the 200'. There is a big gap between what is permissible and what has been proposed, that still needs work.

The flood plain is also under the State Wetlands protection. In order to construct the building, there will likely be some changes in the plan due to the length of the building (over 500') and the fact that there is no access to the back of the building for fire equipment. Fire regulations require not more than 250' from an accessible route for emergency vehicles to any portion of the building. This will require the building length to be shortened or the project split into two buildings.

In general the plans and documents we reviewed were well planned and presented. It is still uncertain that the plans presented are permissible under the State Regulations, we are looking forward to work with the Applicant, town staff, boards and committees to try to bridge the gap. We will probably have to do an additional review after the plans have been redesigned.

**Board or Public questions- there were none.**

Ms. Oltman's (TEC) Peer review report of 10-25-17 can be found at:

<https://www.wayland.ma.us/sites/waylandma/files/uploads/feedbackoctober.pdf>

Response from Rob Nagi (VHB) dated 11-21-17 can be found at:

[https://www.wayland.ma.us/sites/waylandma/files/uploads/vhbresponsetotraffic\\_study11212017.pdf](https://www.wayland.ma.us/sites/waylandma/files/uploads/vhbresponsetotraffic_study11212017.pdf)

Ms Oltman's reply to Mr. Nagi dated 11-27-17 can be found at:  
<https://www.wayland.ma.us/sites/waylandma/files/uploads/tecresponseltr11272017.pdf>

**Liz Oltman (Liz O) TEC Peer review consultant for Traffic**

After our meetings, the Applicant has agreed to all of our issues; they have agreed to contribute to the study of OCP & Rt. 20 intersection. The only outstanding issue from TEC is parking. Due to the location on RT. 20 with no direct access to public transportation, we would like to see more like 100 to 105 parking spaces, to provide for all residents and to be able to accommodate visitors to the site.

Linda S: These designs will have to be approved by the State; has that been applied for? I want to be sure the ZBA will be copied on that correspondence. Liz O: I do not believe they have yet applied to the State, I will be sure the board is kept advised. Linda S: A comment was made in the Applicant's paperwork regarding restricting resident parking to one car per unit. Is that permissible with Mass Housing? Joe P.: I don't know of any restrictions from the housing programs, regarding allowing or restricting residents to a certain number of cars, I will check on that.

Liz O: The applicant can provide transportation demand management measures: by providing a transportation shuttle to a commuter rail station or T station.

David K: There had been previous discussion regarding expanding the study to look at traffic west of the site traveling east, during morning rush hour. Liz O: I think traffic bottlenecks in the vicinity of the site are from the intersection of RT 20 and OCP. The Applicant has committed to contribute to a study of that area in the hope of make recommendations for improvement to the intersection with the goal to improve the traffic in that area of Rt. 20. I had previously stated that additional studies will not show anything other than the bottleneck at RT 20 and OCP.

Rob Nagi, VHB- Applicant's traffic engineer. We want to make clear that the unit count and number of trips that will be generated by this project will have a minimal impact on the existing traffic on those roadways. We have agreed to work with the town to help fund the study of the intersection of RT. 20 and OCP.

**Public comment:**

James Haber, 9 Sylvan Way: concern that the traffic study is not reflecting westbound traffic turning left into the site from RT.20.

Liz O: The report analyzed the movement of westbound turning traffic using standard engineering calculations that show the left turn into the site will not be a significant delay. Rob N: The impact I was referring to was at Plain Rd; yes, there will be a delay for left turns into the project. 5 to 10 seconds, not any different from a turn into any of the other businesses east or west of the project. A reminder that this plan will have to be submitted to the State for its review and comments. Mr. Peznola has mentioned there may be some modifications; that is something that will require a separate review when those plans are submitted.

Carol Grumman, 10 Pine Brook Rd. Question regarding additional parking for deliveries, were these accounted for? Jonathan S: Based on my review of the traffic report and peer review reports, I am of the understanding that those additional trips are accounted for based on the number of units. Liz O: that is correct, the studies we use for the calculations take into account all those additional trips.

Presentation from the Town Planner, Sarkis Sarkisian, which can be found on the ZBA website at:  
<http://www.wayland.ma.us/sites/waylandma/files/uploads/townplannerpresentation11292017.pdf>

The Town Planner's PowerPoint presentation provided a streetscape of the existing conditions, from an aerial view and from eastbound and westbound on Rt. 20. He provided maps of the existing site with the parcel boundaries, adding Pine Brook, Wetlands, 100 and 200' riverfront buffer zones and the bordering land subject to flooding. A letter from Camp Chickami dated July 26, 2013 with photos of the flooding event that closed the camp were included. The presentation went on to provide details on the Parcel Zoning, waivers requested, current conditions of the lot; size, frontage, building footprint, wetlands area, flood zone, non-buildable land and total buildable land. Options regarding other types of projects that the Planning Board believes to be more suitable to the site and neighborhood were presented. Photos of the neighboring businesses, residential homes and suggested options for architectural styles. Finally, drawings of the current proposal on the site with elevations to reflect the proposed height of the structure.

Linda S: Has the Planning Board discussed this proposal with the Applicant? Sarkis S: We had one workshop open to the public and then attended the second workshop at the architect's on Monday and presented this to the Applicant. The Planning Board would like to work with the Applicant for design suggestions.

**Public Comment- there were none**

**Presentation by Protect Wayland.org.** Attorney Luke Legere, McGregor & Legere, P. C. –Letters supporting the PowerPoint presentation can be found at:  
<https://www.wayland.ma.us/sites/waylandma/files/uploads/protectwaylandcorrespondence11222017.pdf>

The complete PowerPoint presentation can be found at:  
<http://www.wayland.ma.us/sites/waylandma/files/uploads/protectwaylandpowerpoint11292017.pdf>

Brandon Faneuf (Brandon F), PWS (professional wetlands scientist), CWB (certified wildlife biologist) and soil evaluator. Mr. Faneuf has a Bachelor's and Master's Degree in Wildlife Biology and Wetlands Conservation from UMass, and is the founder and principal scientist at Ecosystem Solutions, Inc. Mr. Faneuf has been hired by Protect Wayland.

Mass Div. of Fisheries and Wildlife has been conducting studies on Pine Brook since the 1980's and most recently in 2013. Protect Wayland has asked Mr. Faneuf to update the study. The information was gathered in September 2017 during a low water condition, access to Pine Brook was from private property across Pine Brook from the project site.

The cold water trout must have high quality water to survive and depend on the water temperatures to be in the low to mid 60's. If the temperature of the water rises to the high 60's, it stresses the trout, temperatures in the low 70's can be critical to the trout and mid 70 degree temperatures would kill off the trout population.

Water quality tests showed a high calcium content which produces the insect shell production, the primary food sources for the trout. The trout spawn in the fall with the females laying up to 5000 eggs; the eggs incubate approximately 100 days (late winter early spring) hatching as frye, then fingerlings, then after about 2 years they are adult full sized trout, and will live for a period of 5 years. In winter months the trout will migrate to the deeper water of Great Meadows Wildlife Refuge and the Sudbury River.

Mr. Faneuf references Memos from the Conservation Administrator (8/16/17) and the Director of Public Health (8/17/17) and those can be found at:  
[https://www.wayland.ma.us/sites/waylandma/files/uploads/august\\_2017\\_feedback\\_correspondence.pdf](https://www.wayland.ma.us/sites/waylandma/files/uploads/august_2017_feedback_correspondence.pdf)

In addition he referenced a memo from the Conservation Administrator dated 11/6/17:  
<https://www.wayland.ma.us/sites/waylandma/files/uploads/feedbacknovember.pdf>

References to the YMCA letter to ZBA dated 9/25/17:  
[https://www.wayland.ma.us/sites/waylandma/files/uploads/september\\_2017\\_feedback\\_correspondence.pdf](https://www.wayland.ma.us/sites/waylandma/files/uploads/september_2017_feedback_correspondence.pdf)

**Public Comment-** Tom Largy- Moore Rd. letter from Trout Unlimited. Jonathan S: please submit letter to Building Dept. to have entered into the record The letter can be found at:

<http://www.wayland.ma.us/sites/waylandma/files/uploads/feedbacknovember.pdf>

Mr. Largy spoke regarding concerns for the cold water trout in Pine Brook. Trout Unlimited asks the ZBA to give serious consideration to Pine Brook.

Jonathan S: This is an important natural resource; everything I hear from the Applicant's side is not disputing that this is an important cold water resource; I believe the question is how the project will impact the resource.

Applicant, question for Mr. Faneuf: The Conservation Commission has proposed that we deep channel the brook where there are rock walls on both sides of the brook, to help with the flooding and the Applicant will be cleaning up the debris presently in the stream. Do you have any thoughts on the work we propose doing to the stream?

Brandon F: I have not spoken with anyone who is completely opposed to a project, just the one that is presently proposed. Part of the wetlands permitting involves the applicant making an effort to improve the resource that it is going into. With what the applicant is proposing, that issue would certainly be on the table.

Applicant: Any thoughts on the storm drains running from Rt. 20 directly into the stream? Brandon F: I do not like to see that pipe draining directly into the stream. I would like to see some type of pre-treatment, specifically for the protection of the cold water resource. We request that the Board please consider not waiving the Conservation or Board of Health variance requests.

**Dave Nyman (Comprehensive Environmental Inc.), Professional Engineer** (45 years), Peer Review projects for 25 years, storm water, has assisted MassDOT regarding stormwater issues and wildlife habitation stream crossings. Author of a handbook regarding principles of hydrogeology and stormwater; he has been requested to speak on behalf of Protect Wayland.

The applicant's original architectural and civil engineering plan dated July 2017 can be found on the ZBA website:

[http://www.wayland.ma.us/sites/waylandma/files/uploads/architectural\\_civil\\_engineering\\_presentation\\_july\\_2017.pdf](http://www.wayland.ma.us/sites/waylandma/files/uploads/architectural_civil_engineering_presentation_july_2017.pdf)

The Civil engineering peer review by Sean Reardon of Tetra Tec can be found at:  
<https://www.wayland.ma.us/sites/waylandma/files/uploads/tetrachltr11212017.pdf>

Mr. Nyman presented a PowerPoint that covered his review of the Wastewater management design, Stormwater management design, Flood plain management and Stormwater calculations.

The presentation was closed out by Luke Legere, McGregor & Legere, P.C., who has requested that the PowerPoint presentation be entered into the record and a copy of the presentation will be delivered to the Building Department in the morning.

Mr. Legere gives a general overview of the requirements for a comprehensive permit, with arguments regarding the impact on Pine Brook covered by the WPA, RPA and related regulations. He provided a list of reasons for which the ZBA may deny the project as well as a list of reasons the ZBA may downscale the project (reducing the number of units) and deny requested waivers. The Board may test the downscaling of the project. Mr. Legere discussed a list of items that fail to comply with the Riverfront Protection Act as well as the Wetlands Protection Act. He additionally gave a list of design flaws in the proposed septic system. He is asking the board to please not waive the BOH regulation regarding design flow for the septic system.

**Board questions:**

Jonathan S: Mr. Legere, you mention the ability of the Board to consider mitigation and the standard of rebuttable presumptions. I want to be sure the public understands that this is not an all or nothing proposition, but that the Board can consider mitigation, with the consideration of whether or not an issue could be mitigated.

Paul Haverty for the Applicant: A lot of the points brought up in the presentation by Protect Wayland are items the Applicant and the team do not agree with, including a number of items regarding determinations for compliance with Riverfront and Wetlands Acts. This is not a time to be discussing a reduction in the number of units or the denial of the permit. It was stated that the Applicant is considering an alternative design; the new design will take care of address a number of concerns that have been presented to the Applicant.

Chapter 40B does not require the Applicant to prove that it needs each specified waiver. The issue of applicant's financial projections may not be discussed until after the board has issued a draft decision and then, only if the applicant notifies the board that the decision and waiver decisions in the aggregate may render the project uneconomical.

**Public comments:**

Scott Sweeney, Commonwealth Road- The video of the trout in Pine Brook is available on the website.

Jim G: Listening to the presentation and discussion between Atty. Legere and Atty. Haverty, we have a limited amount of time to hear and decide this case. Atty. Haverty, the Applicant does not agree with the Protect Wayland conclusions, and I understand the board's concern; however, the board has not seen a lot of the calculations from the Applicant, nor the alternative design and the potential solutions that were discussed in the workshops. Jim G: We have been shown the position of Protect Wayland; I may or may not agree, but I think the applicant should address the concerns and why the proposed project can be built with Pine Brook so close by. We are early in the process and the clock is ticking, I understand the applicant has time concerns and needs, the more quickly you can get us specific information to rebut the Protect Wayland presentation.

Atty. Haverty - We will get the information to the Board; we have been meeting within the Applicant's team as well as the peer review design consultant and there will be another meeting this week.

Jim G: It strikes me there may be some major concerns, and with the clock ticking, I wonder if we may need to expand the time frame.

Paul H: we are working on a new submittal and we feel it will address many of the issues raised tonight. There will only be preliminary plans, not the final plans.

Linda S: Question regarding the drains found from Rt. 20: does anyone know if there is actually drainage flowing? Are they active? Brandon F: During my assessment, I did notice one pipe on the Mahoney's side that was dribbling during the low water season, I am not sure where the flow was coming from. Linda S: I would expect there might be state records or plans. We often see flooding when things are clogged up. Applicant: I have located several pipes to the river; white PVC pipes from one of the buildings and two vitrified clay pipes from Rt. 20 to the brook. The Town Engineer has the most definitive records; he has several versions of the pipes' locations. Sarkis S: Those pipes are part of the State highway drainage system, the town does not have clear records of them, there was one old plan of Rt. 20. I am glad we have actually located one of the pipes, but we have not done any investigation of the pipes to confirm their condition. Jonathan S: Are there any records of easements? Sarkis S: No, Mr. Chairman, there are no records; Rt. 20 is a very old road, we have no idea of when the pipes were placed, further research must be done.

Carol Grumman, 10 Pine Brook Rd. I know there is one PVC pipe from one of the buildings; there may be records from their meeting with the Conservation Commission from 10 to 13 years ago.

Mr. Legere: I would like to respond to Mr. Haverty; regarding this presentation as the views of Protect Wayland only, when in fact it reflects much of the information received from the peer reviews and multiple town officials. I appreciate that the Applicant will be presenting a redesign, we are commenting tonight on the plans that are presently before the Board.

Sharon Botwinik, 58 Pequot Rd- I wish to acknowledge the hard work of Protect Wayland and all the experts and the Town ZBA Board. Why are we still looking at this project, with so many issues involving the environment, safety and health? Jonathan S: Under the 40B regulations, we have to consider the application and apply the standards that have been set. Jim G: Part of our charge is to recognize the need in Wayland for affordable housing. This project is very large and is sited in a very sensitive area, which raises issues of environment, health and safety.

Jack Fucci, President YMCA (Camp Chickami): Protect Wayland submitted their findings. Can you turn down this proposal tonight to save time and restart the clock with the new proposal? Jonathan S: Do kids go in the brook? Jack F: They go in the fringes of brook to do some classes; the camp is only open 8 to 10 weeks and everyone is gone before the spawning season begins in the fall. Please protect these resources.

Mark Hays- 1 Sylvan way- letter from Temple Shir Tikva that will be added to the record.  
[https://www.wayland.ma.us/sites/waylandma/files/uploads/protectwayland\\_submittal\\_jan.2018.pdf](https://www.wayland.ma.us/sites/waylandma/files/uploads/protectwayland_submittal_jan.2018.pdf)

9:31 p.m. The hearing will be continued to December 20, 2017 at 7:00 p.m. at the Wayland High School to present the Architectural design and review followed by the neighborhood concerns and mitigation for landscaping. Joseph P: I believe the Applicant will have the presentation for the redesign. Jonathan S: If we do not have the redesign presentation at the December meeting we will have reconsider the scheduling of the project.

**Motion to enter Executive Session** pursuant to G.L. c. 30A, Section 21(a)(3), to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the Town's litigating position, and the Chair so declares. Specifically, the Board will review the executive session minutes from 5/11/17 and the discussion of 150 Main Street v. Wayland Planning Board to determine whether the minutes may be released with or without redactions. The Board invites Town Counsel Amy Kwesell and Executive Assistant David Porter to attend.



Roll call vote: Thomas White- yes; Aida Gennis – yes; Jonathan Sachs – yes; David Katz - Yes; Jim Grumbach- Yes; and Linda Segal - Yes.

The meeting adjourned at 10 p.m. after voting to release redacted executive session minutes for 5/11/17. Roll call vote: Thom White – yes; Aida Gennis – yes, Jonathan Sachs – yes, David Katz – yes, Jim Grumbach – yes, and Linda Segal – no.

Motion to adjourn was unanimous.

March 20, 2018

DATE MINUTES APPROVED



prepared by: Patti White