



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

February 8, 2019

TO: Board of Selectmen

RE: Replacement of Town Accountant

Mike Morris' last day of employment with the Town will be July 12, 2019, it is my recommendation to begin the recruitment process for his replacement. The Board, at your November 13, 2018 meeting, agreed with the recommendation to establish a Finance Director/Town Accountant. The responsibilities of the position will change to include oversight and management of the accounting, treasury, collections and assessing. One goal of this transition is for the Board to appoint a candidate who would be able to begin work in Wilmington prior to Mr. Morris' departure. It is likely that qualified candidates may need to provide their existing employer with anywhere from a thirty (30) to sixty (60) day notification of their departure date. The schedule that is outlined below attempts to provide a best estimate for a time line that will enable the Board to make an appointment far enough in advance of Mr. Morris' departure to provide a transition period.

In accordance with the Town Manager's Act, the Board of Selectmen is vested with the authority to appoint the Town Accountant. While the responsibilities and title of the position are being changed, the Board will continue to retain the responsibility of appointment. The following process and estimated time line is recommended:

1. Week of February 11th advertise the position on the Town's website; Massachusetts Municipal Association website; Massachusetts Municipal Auditor's Accountant's Association; Massachusetts Collector & Treasurer Association.
2. Recruitment notice will state that resumes/applications shall be accepted until the position is filled and the expected start date will be June 3, 2019
3. Establish a screening committee to include one or two members of the Board of Selectmen for purposes of screening resumes/job applications and establishing a short list of candidates for preliminary interviews.

4. **Week of March 4th** screening committee review resumes and establish an interview pool.
5. **Week of March 11th** conduct preliminary interviews with candidates for the position.
6. **Week of March 18th** prepare a recommended "short list" of candidates to present to Selectmen.
7. **Week of March 25th** and April 1st Board of Selectmen interview candidates.
8. **April 8th** Board of Selectmen vote to make job offer subject to terms.
9. **Week of April 8th** Town Manager will contact the selected candidate to offer them the position and negotiate terms.
10. **April 22nd** Board of Selectmen vote to make official appointment of new Finance Director/Town Accountant.

This schedule provides a measure of flexibility but should be adhered to as much as possible. The Board may need to convene one or more meetings outside of your regularly scheduled meetings for purposes of interviews.



Jeffrey M. Hull
Town Manager

cc: Michael Morris, Town Accountant
Kerry Colburn-Dion, Assistant Town Manager/Human Resources Director



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

February 8, 2019

TO: Board of Selectmen

RE: Town Clerk Appointment

I am very pleased to announce the appointment of Christine R. Touma-Conway, Esq., to the position of Town Clerk. Ms. Touma-Conway was more recently the City Clerk in Methuen for seventeen (17) years. In her capacity as City Clerk she was responsible for the supervision and training of staff, conduct of city-wide elections, oversight or licensing for alcohol and automobile establishments, responsible for records management and vital records and served as the Records Access Officer.

She is a graduate of Suffolk University with a Bachelor of Science Degree in Journalism and Marketing Communications and obtained her Juris Doctor from Suffolk University. Ms. Touma-Conway maintained a private general practice in criminal and civil law. Prior to establishing her law practice, she served as a Revenue Agent for the Internal Revenue Service.

Christine is a strong addition to the management team and has a strong commitment to public service. I encourage you to visit the Town Clerk's office to meet Christine as she begins the transition of roles with Sharon George on February 11, 2019. Ms. George will be retiring at the end of February after nearly thirteen (13) years of service to the residents of Wilmington.


Jeffrey M. Hull
Town Manager

cc: Kerry Colburn-Dion, Assistant Town Manager/Human Resources Director



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

February 8, 2019

TO: Board of Selectmen

RE: 2019 Annual Town Meeting – Warrant Articles by Petition

Please be advised that the following petitioned Warrant articles, of which copies are enclosed, were submitted by citizens for inclusion on the 2019 Annual Town Meeting Warrant.

<u>ARTICLE</u>	<u>PETITIONER</u>
Authorization to Petition State Legislature to Allow Adam Silva's Test Results from 2018 (and future results) be Allowed for any Employment Consideration as a Fire Fighter	Adam J. Silva
Rezone from Residential 60 (R60) to Residential 10 (R10) Map 84, Parcels 54 and 63A – 54 and 47 McDonald Road	David Brabant
Rezone from Residential 60 (R60) to Residential 10 (R10) Map 84, Parcels 11 and 15 – 17 and 14 Royal Street	Charles Fleming
Town-Owned Land Purchase Map 16, Parcels 59 – Canyon Street	Jean Marie Cole


Jeffrey M. Hull
Town Manager

JMH/bjd

Enclosure

cc: Mark Reich, Town Counsel



Town of Wilmington

Board of Health

121 Glen Road
Wilmington, Massachusetts 01887

TO: Jeffrey Hull, Town Manager

FROM: Shelly Newhouse, Director of Public Health

RE: Plastic Bags

Please see the steps below outlining the rollout of plastic bag ban.

*All retail food establishments have received a notice in their renewal application form reminding them of the plastic bag ban. This went out in December of 2018. Postcards will go out to other major retailers reminding them of the upcoming ban.

*I wrote up a Q & A for Town topics, the Town website and other social media platforms. That will go out in the next few weeks. (attached is a copy of the q & a.) I was planning on starting small tweets about the ban as a reminder. I will start that in the next week or two.

*The Wilmington Community Fund is working with the Farmer's Market to distribute bags.

*The Rotary ordered 500 reusable bags and have been giving them out thru the Senior Center and the Library. They have about 100 left which are earmarked for Deming Way. The next order will probably be 1000 bags.

*New dog waste bags will be purchased for distribution at the earmarked kiosks.

This coming May 5, 2019 the plastic bag ban by-law will go into effect.

In short: The Plastic Bag Reduction By-law will ban thin film single-use plastic checkout bags from stores and restaurants. Bag litter detracts from Wilmington's natural beauty, is harmful to wildlife. Plastic bags are difficult to dispose of. They cannot be part of single stream recycling, and moreover only 5 -10% are recycled today. They end up in the environment. The by-law does not restrict other uses of plastic bags such as for newspapers, dry cleaning, and produce bags within a grocery store.

Q. Why did Wilmington propose a ban on plastic checkout bags?

A. *Plastic checkout bags are not designed for reuse, generally tearing or puncturing after a first use. They are easily transported with the wind and are one of the most visible components of roadside and shoreline litter. They negatively impact both tourism and our own enjoyment of the natural beauty of the Island. They kill countless birds, fish, and marine mammals through ingestion and entanglement. They are not accepted by our local recycling companies and even when disposed of properly, make up a significant component of solid waste in landfills and increase our waste disposal costs. In addition, plastic bags are produced from oil and natural gas, and never fully biodegrade, remaining in the environment as small or even microscopic particles, essentially forever.*

Q. Which bags will be banned?

A. *Plastic bags under 2.5 mils in thickness will no longer be provided to customers during checkout.*

Q. What about the plastic bags grocery stores provide for produce or deli meat, for example?

A. *Plastic bags that are used before checkout for bulk foods, meats and produce, dry cleaning bags and similar items will still be provided in stores. The ban only deals with bags provided by a store to a customer during checkout.*

Q. What about bags for small or easily damaged items?

A. *Bags for carrying small items, such as beads or hardware items that are used before checkout, like produce bags will not be affected by the ban. Paper bags would still be allowed, and could be used to carry small items and things that could be damaged if they were in a larger bag with other items.*

Q. What about bags used to protect newspapers?

A. *The ban only covers carryout bags provided at checkout, so newspaper delivery bags are acceptable.*

Q. What about plastic bags that are "biodegradable" or "compostable"?

A. *They will not be allowed if they are less than 2.5 mils thick. Bags marketed as 'biodegradable' or 'compostable' are not a good alternative to regular plastic bags because the science on these plastic bags is not settled. It's unclear whether they degrade quickly enough to ensure they don't harm animals or the environment. So, allowing their use at this time does not ensure that we would meet our goal to reduce the many impacts of plastic bags. These bags are also unlikely to be an attractive option to retailers because at this time they are more expensive than regular plastic or paper bags.*

Q. Can stores still sell trash bags, Ziplock bags, pet waste bags and the like?

A. *You will still be able to purchase packages of multiple plastic bags such as sandwich bags, Ziploc bags, and trash bags. The ban only deals with bags provided by a store to a customer during checkout.*

Q. I reuse my plastic checkout bags to line wastebaskets. I know people use them to collect dog waste. Now what am I supposed to do for those miscellaneous uses?

A. *You can reuse produce bags, newspaper bags, bread bags and the like which are not covered by the ban. Paper bags can be substituted for many miscellaneous purposes. If you really do need plastic, you will still be able to purchase packages of multiple plastic bags, like sandwich bags or trash bags.*

Q. When I go to a store and they're not allowed to provide me with a plastic checkout bag, what are my options?

A. *Stores can still provide paper bags and plastic bags that are over 2.5 mils or thicker. However, a major objective of this by-law is to get away from single-use bags altogether. Try to bring your own reusable bags when you shop, or a backpack or box or even your own old 'recycled' plastic checkout bags if they are up to it. Here are some tips for remembering your reusable bags:*

- *Try keeping your reusable bags in your car, or at work.*
- *After you put your groceries away, hang your reusable bags by the door.*
- *Keep them by your keys so you remember to take them back out to the car with you.*
- *Finally, if you forget and leave your bags in the car while shopping, just put your groceries back in the cart and bag them at your car.*

A concern of some consumers is that plastic checkout bags are sometimes used as trash can liners and for dog poop bags. There are good alternatives for both:

For dog poop bags, use bread bags, bagel bags, produce bags, or newspaper bags or order inexpensive biodegradable eco-friendly poop bags – 900 for \$19.99 for example. A concern of some consumers is that plastic checkout bags are sometimes used as trash can liners and for dog poop bags. There are good alternatives for both.

Q. Will stores be charging a fee for permitted checkout bags?

A. *This by-law does not require or prohibit a fee – stores may charge a fee if they choose. Or they may choose to provide a credit to customers who bring their own bags. One of the objectives of the ban is to encourage people to bring their own reusable bags when they shop.*

Q. Are any stores exempt?

A. *The ban targets bags, not stores, so no stores would be exempt. All stores will have to stop providing plastic checkout bags under 2.5 mils.*



Town of Wilmington
Board of Selectmen
121 Glen Road
Wilmington, MA 01887-3597

PHONE: (978) 658-3311

FAX: (978) 658-3334

TTY: (978) 694-1417

WWW.WILMINGTONMA.GOV

February 1, 2019

Mr. Daniel J. Veerman
131 Middlesex Avenue
Wilmington, MA 01887

RE: Notice of Executive Session Pursuant to G.L. c. 30A, sec 21(a)(1)

Dear Mr. Veerman:

As Chairman of the Board of Selectmen of the Town of Wilmington, I hereby notify you that at the meeting of the Board of Selectmen to be held on February 11, 2019 at 6:00 p.m. in the Town Manager's Office at Town Hall the Board of Selectmen intends to meet in executive session in accordance with the provisions of G.L. c. 30A, sec. 21(a)(1), to "discuss the discipline or dismissal of, or complaints or charges brought against" you in regard to matters associated with your involvement as a member and Chairman of the Zoning Board of Appeals in deliberations with respect to an application for a special permit to construct a substance abuse detoxification facility at 362 Middlesex Avenue in Wilmington. You have the right to attend this meeting, to speak on your own behalf, and to have counsel or a representative of your choice attend the meeting for the purpose of advising you. You may cause an independent record to be created of said executive session by audio-recording or transcription, at your expense. You may also request that the meeting be held in open session.

If you have any questions, please do not hesitate to contact me at kcaira@wilmingtonma.gov or via my cell phone at 508-663-2681.

Sincerely,

Kevin A. Caira
Chairman

VIA USPS FIRST CLASS AND USPS CERTIFIED MAIL RETURN RECEIPT REQUESTED

cc: Board of Selectmen



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

January 31, 2019

TO: Board of Appeals

RE: Conflict of Interest Allegations

At the Board of Selectmen's meeting on January 28, 2019, a member of the public raised allegations of conflicts of interest involving the proposed development at 362 Middlesex Avenue. No specific circumstances were provided so no conclusion may be drawn from those allegations.

The Town has full confidence in its volunteer boards and commissions and appreciates the services provided by all individuals serving on those boards and commissions. Each member is responsible for taking the State Ethics Commission conflict of interest exam in order to demonstrate understanding of the Conflict of Interest Law. Compliance with that law is a personal obligation for each member and is of paramount importance when decisions are being made that impact the Town. The Town is confident that all members adhere to the legal requirements applicable to their service.

Your cooperation in this regard is greatly appreciated as is your service to the Town of Wilmington.


Jeffrey M. Hull
Town Manager

cc: Board of Selectmen

Jeffrey Hull

From: cmsmailer@civicplus.com on behalf of Contact form at Town of Wilmington MA
<cmsmailer@civicplus.com>
Sent: Sunday, February 03, 2019 5:20 PM
To: Jeffrey Hull
Subject: [Town of Wilmington MA] 362 Middlesex Ave/ Proposed Detox Facility (Sent by Jenny Charbonnier, jennycharb@gmail.com)
Attachments: zba_oxford_letter.docx

Hello jhull,

Jenny Charbonnier (jennycharb@gmail.com) has sent you a message via your contact form (https://url.emailprotection.link/?aVklx-E9oCDBbDmzJhM7qxJE_v9riNPIYUsqJnkmPrYhfZA7T5IJV598M5kDexSWo1DOsnpSRqNS-Jgsxjm-sA~~) at Town of Wilmington MA.

If you don't want to receive such e-mails, you can change your settings at https://url.emailprotection.link/?aVklx-E9oCDBbDmzJhM7qxJE_v9riNPIYUsqJnkmPrakYa687ikTN8cr0JA-w9goTu3_cLkFdzUkYPyMBGQnmA~~.

Message:

Hi Mr. Hull,

I attached a letter I would like you, the town selectmen, town counsel, and the ZBA to consider, as it discusses very pertinent factors including the Fair Housing Act and Reasonable Accommodation. Thank you so much!

Sincerely,
Jenny Charbonnier
27 Shady Lane Drive.
Wilmington, MA 01887
978.604.8852

Jeffrey Hull

From: Town Selectmen
Sent: Tuesday, February 05, 2019 10:23 AM
To: Jeffrey Hull
Subject: FW: [Town of Wilmington MA] 362 Middlesex Ave/ Proposed Detox Facility (Sent by Jenny Charbonnier, jennycharb@gmail.com)
Attachments: zba_oxford_letter.docx

-----Original Message-----

From: cmsmailer@civicplus.com [mailto:cmsmailer@civicplus.com]
Sent: Sunday, February 3, 2019 5:17 PM
To: Town Selectmen <selectmen@wilmingtonma.gov>
Subject: [Town of Wilmington MA] 362 Middlesex Ave/ Proposed Detox Facility (Sent by Jenny Charbonnier, jennycharb@gmail.com)

Hello Selectmen,

Jenny Charbonnier (jennycharb@gmail.com) has sent you a message via your contact form (https://url.emailprotection.link/?aVklIx-E9oCDBbDmzJhM7qxJE_v9riNPIYUsqJnkmPrawSSWt-_OOd6YRrenmAe1A3Mklpfh2jt43wtvSGkX7kw~~) at Town of Wilmington MA.

If you don't want to receive such e-mails, you can change your settings at https://url.emailprotection.link/?aVklIx-E9oCDBbDmzJhM7qxJE_v9riNPIYUsqJnkmPrZgCC2o0DHDeVLMpAnraNM06gx16BjhC1aQOjMGpu8eCA~~.

Message:

Dear Board of Selectmen,

I attached a letter I would like the selectman and ZBA to consider, as it discusses very pertinent factors including the Fair Housing Act and Reasonable Accommodation. If possible could you please forward this to town counsel as well? please let me know if there are any issues opening it.

Thank you so much!
Jenny Charbonnier
27 Shady Lane Drive
Wilmington, MA 01887
978.604.8852

This message is for the designated recipient(s) only. If you have received this message in error, please notify the sender immediately and delete the original. Please be advised that email is subject to the provisions of Massachusetts Public Records Law. MA G.L. c. 66.

February 3, 2019

Members of the Wilmington Zoning Board of Appeals

Daniel J. Veerman, Chair
Anthony J. Barletta Jr.
Raymond Lepore
Thomas W. Siracusa
Jaquelyn Santini

c/o Toni La Rivee or Kelly Malatesta
Secretary, Zoning Board of Appeals
Wilmington Town Hall
Room 5
121 Glen Road
Wilmington, MA 01887

Re: 362 Middlesex Avenue
Proposal to site Detox Facility
Request for Special Accommodations

Dear Chairman Veerman and members of the Appeals Board, and members of the Board of Selectmen:

All who were at or watched the last Zoning Board of Appeals meeting (ZBA) on January 16 saw a group of residents gravely concerned about the impacts to the neighborhood and the town related to the proposal to site a detox facility in the heart of North Wilmington's neighborhood business district. This was not the first meeting, as it has been a prolonged and difficult struggle over a year long, with a multitude of meetings, to have the neighborhood concerns heard, since from the beginning the residents' concerns have been minimized or outright ignored. Despite all this, when the vote came on the Special Permit Application, Mr. Siracusa and Mr. Lepore voted to deny the Special permit, which constitutes disapproval of the Application, since the Permit Application requires a four out of five vote to gain approval. Mr. Siracusa and Mr. Lepore deserve tremendous credit for standing up to protect the town and the neighborhood interests.

Both Mr. Siracusa and Mr. Lepore were very clear on the reason for their disapproval – that the **site proposal/building was not in harmony with the zoning or the neighborhood**, which is the legal standard for making the determination.

In the days following the prior ZBA meeting, on December 12, 2018, neighbors became aware, through a public records request (the information was not freely shared), that the attorney for the applicant submitted two letters, one on November 16, 2018, and one on December 8, 2018, to the ZBA requesting the ZBA “waive” the requirement to comply with the Zoning

Bylaw. This seems by any account to have been an 11th hour action to threaten and bully the ZBA members into voting yes or else face the threat of a lawsuit, and was only taken after their efforts to deal with resident concerns failed. This is also telling that the developer has no interest any further dealings with residents or the neighborhood, and wants to outright nullify the vote of the ZBA.

The request for special accommodations was a brazen one, to completely “waive compliance with any applicable zoning restrictions.” In the November 16, 2018 letter, Mr. Bobrowski’s letter cites the federal Fair Housing Act, and specifically a case, *Oxford House vs. Town of Babylon*, which he alleges is “precisely” the circumstance here. The Board should not take Mr. Bobrowski’s letter at face value. First both the Board and the Town Counsel should review the Oxford House case¹. There are many stark differences in Oxford rendering it not parallel to the matter before the board. The following facts are noted in the Court judgment on Oxford:

- The case centered on an existing home in an area zoned for single family homes;
- The home was leased to Oxford House to provide housing for recovering alcoholics or drug addicts;
- The town attempted to evict the Oxford residents by claiming that there were not a family unit, as set forth in their Zoning bylaw.

The Court did in fact overturn the town’s action, but their reasoning demands close scrutiny for any inclination to compare this case to the case of Bettering LLC. In taking the action, the Court did so affirming that the home “**does not in any way burden the Town or alter the residential character of the neighborhood.**” The Judge also noted that “**Plaintiffs in the present case merely seek to require the Town to permit them to continue to use housing which already exists**”, and the decision clearly suggested that any matter involving construction of a new building would demand more substantial justification. The comparison of a few tenants being housed in an existing single family home with a proposed 48 bed detox treatment facility seems absurd, in regard to impacts and harmony with Zoning requirements. If Mr. Kneeland was transforming his own home to a recovery facility, then the parallels may exist. The Bettering LLC matter involves construction of large, new facility in a neighborhood business area, in complete discord with the town’s master plan, and requiring of a ZBA approval which they failed to secure.

Mr. Bobrowski’s second letter, dated December 8, 2018, focused on *901 ERNSTON ROAD LLC v. BOROUGH OF SAYREVILLE ZONING BOARD OF ADJUSTMENT et al*, No. 3:2018cv02442 - Document 22 (D.N.J. 2018)². This is also a case where there are substantial differences to the Bettering case:

- In making the determination that the Zoning Board’s decision constituted “disparate treatment” (i.e. was discriminatory), The Court indicated the Zoning Board’s denial “did not rely solely on zoning”, citing comments made by the

¹ <https://law.justia.com/cases/federal/district-courts/FSupp/819/1179/1965199/>

² <https://law.justia.com/cases/federal/district-courts/new-jersey/nidce/3:2018cv02442/367077/22/>

Board members during the denial. In contrast, for the Bettering matter, both Mr. Siracusa and Mr. Lepore were explicitly clear and on record why they voted to deny the special permit, and such denial was not based on any animus toward the potential clients. Indeed, Mr. Siracusa stated clearly on the record that the size of the building (2½ story vs. one story) was the telling factor in his denial.

- The grounds for determining that the facility was not provided with reasonable accommodation was that “the use is not permitted anywhere in the Borough”, a fact which neither side disputed. Again, this is in contrast to the Bettering case, where the Town already took action to create a more suitable zoning location for this facility, one which encompasses a large swath of the town, and one in which the proponent already owns a potential site.

I also note that Mr. Bobrowski’s letter is factually incorrect in representing that the Court in *Ernstson Road LLC case* found that the plaintiff had a likelihood of success on its claim of disparate impact, as the Court finding was the opposite.

Fair Housing Act and Reasonable Accommodation

Protected Persons

The U.S. Department of Justice (DOJ) provides detailed information on the Fair Housing Act (FHA) on its website³. The Act is important in protecting parties against discriminatory housing practices. In the information provided, DOJ specifically addresses issues related to the Bettering LLC matter before the Board. First, DOJ notes that “current” users of illegal, controlled substances are not a protected group under the FHA. This is further established in a joint statement, issued collaboratively between DOJ and the U.S. Department of Housing and Urban Development (HUD). The statement includes specific guidance on Reasonable Accommodations under the Fair Housing Act⁴. While alcoholism and drug addiction qualify as disabilities, not all parties are protected. The Act specifically does not protect

“juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances. Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.”

³ <https://www.justice.gov/crt/fair-housing-act-1>

⁴ https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf

Even a cursory review of FHA cases related to housing for those in recovery indicates that the facilities in question have been in all cases, “group” type homes, or “sober living homes”, meant to house those addicted but in recovery stages, suggestive that a period of abstinence and rehabilitative efforts has in all cases preceded their placement. The intention in all of these cases is to provide a home for those in recovery, and not detoxification. In the cited case of Oxford, Oxford homes has, similar to other providers, three basic rules defined for their housing: (1) they must be democratically self-governed; (2) they must be financially self-supporting; and (3) any person using drugs or alcohol must be immediately expelled. Anyone using is not in recovery and is out.

Detoxification by definition of the National Center for Biotechnology Information⁵ is “*the process by which an individual is withdrawn from the effects of a psychoactive substance.*” It immediately follows an active use of the opioid (or other drug), and there is no doubt that such individuals would test positive for illegal drugs. To classify those in detox not as “current” users would defy logic. Such an event would in all cases result in an individual being removed from a sober house or group home, where protections under the FHA do exist. The matter of current users being excluded from FHA protections is set forth in United States of America, Plaintiff-appellee, v. Southern Management Corporation, Defendant-appellant, 955 F.2d 914 (4th Cir. 1992)⁶. Current drug use excludes their protections under the Act.

Reasonable Accommodations

Even IF the detox patients (more appropriate than calling them residents) were a protected group, that alone does not provide a guarantee that any request is a reasonable accommodation. DOJ’s statement on reasonable accommodation is clear that not all requests are reasonable:

“Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government’s land use and zoning scheme, it is not a “reasonable” accommodation.”

Mr. Siracusa and Mr. Lepore were emphatically clear the reasons for their disapproval – that the building was not in harmony with the Zoning bylaw and the neighborhood. Their decision was not based on the proposed clients/use, but the impacts of the building to the area and neighbors. Mr. Siracusa went so far as to suggest that a different design to the structure may have altered his vote, which the proponent was adamantly against. Thus, there was no discriminatory intent on the part of Mr. Siracusa and Mr. Lepore that fueled their “no” vote.

The Town indeed made a very directed effort to create a special accommodation for this type of facility in their town meeting action to amend the Town of Wilmington Zoning Bylaw to allow medical facilities, including detox facilities, in industrial zones, which constitute a sizeable portion of the town, inclusive of land already owned by the project proponent.

⁵ <https://www.ncbi.nlm.nih.gov/books/NBK50618/>

⁶ <https://law.justia.com/cases/federal/appellate-courts/F2/955/914/448376/>

In a case that much more resembles Bettering than Oxford, *Thornton vs. City of Allegan*⁷, the Court construed a rezoning action to represent a reasonable accommodation, and affirmed the limitations of any request to waive zoning requirements:

"It is disingenuous for Plaintiffs to argue that Defendant's making of "reasonable accommodations" requires that Defendant grant Plaintiff's application for the special use permit. Such an interpretation would give handicapped persons carte blanche to determine where and how they would live regardless of zoning ordinances to the contrary. Certainly, this is not what Congress intended when it defined "discrimination" to include not making "reasonable accommodations."

Thus, the town, even though it was not required to, created a pathway for the proponent to construct a detox facility only a short distance away, in a land area more suitable for such a facility.

Lastly, the ZBA has no procedures established to define what information should be required for any reasonable accommodation request, no process or public participation elements in place, or procedures for required member votes. In another example of Mr. Bobrowski's brazen request, he takes the liberty of presumably deciding for the Board in the letter that he interprets the law requiring only a simple majority of the Board, in an exceeding self-serving directive. Many towns have procedures in place, and so should Wilmington.

Conclusions

The town counsel should be fully considering these issues and briefing the members of the Zoning Board (and Selectmen) on this upcoming vote for reasonable accommodation, and NOT just accepting Attorney Bobrowski's opinions on this matter. Based on the information outlined above:

- The patients at the proposed detox are not protected under the FHA, by virtue of them being current drug users, which cannot be refuted:
- The *Oxford House* and *Ernstson Road LLC case* Court decisions are not in any way "precisely" like the Bettering LLC matter before the ZBA for action, and other case law noted above must be considered:
- Even if the patients were identified as a disabled group under the FHA, the DOJ/HUD joint statement on reasonable accommodation is clear that NOT all requests are reasonable, as it clearly states... *"if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation."* Asking the ZBA to fully waive applicable zoning requirements, and to nullify a duly taken vote of the ZBA is NOT reasonable, especially since the Town has already made accommodations for siting of such facilities.

Those who come before the ZBA for an action should all have to play by the same rules. In the end, Mr. Kneeland has the capacity on his own for a reasonable accommodation of his

⁷ <https://www.leagle.com/decision/19931367863fsupp50411266>

interests – move the proposal to other parcels he owns, where town meeting zoning actions have opened the doors to siting facilities like the one he is proposing.

I ask that the ZBA do the right and legal thing to protect the town and neighborhood from the irreversible and negative impacts that this proposal presents to the neighborhood and business community in North Wilmington.

Sincerely,

Jenny Charbonnier
27 Shady Lane Drive
Wilmington, MA 01887
Jennycharb@gmail.com
978.604.8852

Cc: Jeff Hull, Town Manager
Members of the Board of Selectmen

WILMINGTON TOWN MANAGER

Board of Selectmen
Wilmington Town Hall
121 Glen Road
Wilmington, MA 01887

19 FEB -6 AM 8:56

TOWN OF
WILMINGTON, MASS

February 6, 2019

RE: Consideration for Recusal of Daniel Veerman at February 27, 2019 ZBOA Meeting

Dear Sirs,

Please find attached copies of a post Mr. Veerman wrote on his Facebook page on January 17, 2019, the day after the ZBOA voted to decline a special permit to Bettering, LLC/362 Middlesex Ave..

As you will read, Mr. Veerman lashes out and makes 'opinions' of citizens, who were exercising (respectfully) their rights to due process at Public Hearings. Although Mr. Veerman is certainly entitled to his opinions, as the Chair of the authorizing body, who will be hearing yet another request from this applicant on "reasonable accommodations" for this project on February 27, 2019, his remarks show clear and absolute bias towards this petition, and it is clearly apparent he's already made his decision in this matter without the consideration of Board discussion or how the Federal Laws actually applies in this request.

It is further evident in the fact that at the ZBOA public Hearing of January 16, 2019, after being explicit to the audience that the Board would only hear public testimony that pertained to "safety" concerns, Mr. Veerman allowed an audience member to continue to speak 'off topic', even though he had ruled them out of order at the beginning of their testimony. Up until this point and after this juncture, Mr. Veerman was consistent in his manner of only allowing the audience to speak specifically to the original topic. His partiality to this speaker was the cause for the rest of the audience to voice their displeasure collectively. No other audience member was afforded the same consideration that evening.

After reading this post, I strongly question Mr. Veerman's ability to be able to separate his personal opinions from the authority and specific criteria the ZBOA is required to base their decisions upon. One example of this can be seen in his statement where he says "I agree the location may not have been ideal, but it was the only one in the foreseeable future and the problem needs to be addressed now." This sentence clearly indicates he based his decision on things that were not up for consideration or under the purview of the ZBOA- the need for a detox facility in the community. In fact, this is a different debate entirely and not something the ZBA should or even be allowed to consider in any decision. And, yet Mr. Veerman did by his own omission.

As you are aware, it is not under the purview of the ZBOA to determine need, but only harmony, mitigate impacts, etc. It is about physical requirements. The "Purpose" of the by-

laws makes no reference to “need” for any “for profit” businesses. I’ve included it below for your convenience.

Purpose -The purpose of this Bylaw is to implement the zoning powers granted to the Town of Wilmington under the Constitution and Statutes of the Commonwealth and includes, but is not limited to, the following objectives: to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, supply, drainage, sewage disposal, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of all land and water resources throughout the Town including consideration of the recommendations of any special studies and master plans for the Town; to preserve and increase amenities; and to preserve and enhance the development of the natural, scenic and aesthetic qualities of the community.

In addition, below is an excerpt on “Special Permits” from the Rules and Regulations of the ZBOA. Again, there is no mention that “need” is a consideration in the issuance of special permits.

3.3.1 SPECIAL PERMITS - In the case of a Special Permit the following points, based on the Zoning Act, GLc 40A, §9, shall be identified and factually supported on the application form and verbally at the hearing:

1. 3.3.1.1 That the proposed use (conditions and character of operations) is in harmony with the general purpose and intent of the Wilmington Zoning Bylaw and
2. 3.3.1.2 That the use complies with all requirements of the Wilmington Zoning Bylaw.

Within this post, Mr. Veerman clearly states the reasons for his decision and his choice to approve the special permit. His reasoning behind his decision (The Opioid epidemic) is NOT based on ANY of the criteria for a special permit. In fact, he only mentions (1) element that was under his review to consider- the location, which he agrees was not ideal. That is the only aspect that was reviewed during the special permit. It’s through these comments, where it’s clearly evident he considered alternative topics that were not/could not be considered by any ZBOA member during the public hearing since antidotal testimony was NOT allowed during the public hearing process. This in itself shows absolute bias.

To be **very** clear, this request in no way stems from the fact that he “voted” for the proposed initial permit on January 9th. But, that willingly and knowingly, he wrote this diatribe with the knowledge this matter has not been put to bed, and shows that he is likely not to consider evidence at the upcoming meeting objectively. This is clearly seen within his remark: “...., I believe that there is a strong argument it (detox facility) will go in by way

of federal disability law..." Although I can appreciate and understand the necessity to ensure the Town is not burdened by sanctions and penalties under federal law by the actions of their Boards, it is apparent Mr. Veerman has already made his decision, preferring to mitigate the situation to the detriment of the residents, instead of considering the equally strong possibility that ADA and FHA does not apply in this situation as it relates to "Reasonable Accommodation" and this particular application. He has an obligation to the residents of this community uphold the decision of the Board that was voted on January 16, 2019, even if it goes against his personal opinions. His position on Bettering LLC/362 Middlesex Ave. lends itself to the appearance Mr. Veerman is unable to be objective in the upcoming meeting with this applicant and their application. It's through his own words that he creates this doubt.

I share Mr. Veerman's concern that the upcoming discussion before the ZBOA could 'expose the Town to legal repercussions'. It is for this additional reason it is imperative that Mr. Veerman recuses himself from this matter. His participation could potentially compromise and legally impact the decision of the Board, thus giving basis for the decision to be challenged simply by his participation.

Residents have a reasonable expectation that our officials will always act in the best interest of its residents and base their decisions lawfully and without bias. They are held to a high standard of ethics and decorum. As an appointed official and Chair of the ZBOA, Mr. Veerman is not absolved from these expectations, yet has no reservations on 'attacking' the residents he serves. It is solely through his actions and prejudicial statements on social media that he has created a public mistrust that he cannot be an impartial contributor at future meetings that involve Bettering LLC/362 Middlesex Ave. It is because of this that I ask the Board of Selectman to request that Daniel Veerman recuse himself immediately on any agenda items coming before the ZBOA, that pertain to Bettering LLC/362 Middlesex Ave. If Mr. Veerman won't recuse himself in this matter, then I respectfully ask the Board of Selectman to remove him instead.

Thank you in advance for your consideration,



Mary Jane Byrnes
9 Pinewood Road
Wilmington, MA



Daniel's Post



Daniel Veerman

The Wilmington zoning board of appeals finally had the vote on the detox application last night. The detox was voted down by a 3 to 2 vote. It needed a super majority of four votes out of five to pass. I have held my tongue on this issue for months so as not to prejudge the vote itself before it had been taken. Now I have a couple observations to make. First, I voted in favor of the detox center. On a personal level, I believe the opioid crisis is the worst public health emergency to strike America since AIDS. More people are dying from drug overdoses now than in car crashes. Think about that for a minute. Every day I see obituaries of people under the age of 50 who die unexpectedly and we all know what's going on. These are our children and our friends and our neighbors. People are worried about a detox center bringing drugs and needles into town. Open your eyes. Drugs and needles



Open your eyes. Drugs and needles are everywhere. We have needles in our children's parks, Suboxone wrappers in our front yard, and dead neighbors down the street being taken out of their homes on stretchers. The situation is totally out of control. I agree the location may not have been ideal, but it was the only one in the foreseeable future and the problem needs to be addressed now. Now on a professional level, and regardless of my personal opinions on the subject, not only is the property properly zoned for the location, I believe that there is a strong argument that it will go in by way of federal disability law and the town could then be exposed to significant sanctions, penalties and legal fees if it is found we violated civil rights law, and we would also have no chance to provide mitigation to the project if it goes in that way. As an attorney I appreciate the legal nuances at play here, and I have a fiduciary duty to the town to prevent it



from being harmed. I am cognizant of that role and take it very seriously. If I believe the detox is going to go in one way or another, I would prefer to be able to add some conditions to make it more palatable to the neighborhood and also to avoid the town from being sanctioned or penalized. One final observation: the opposition to this project by and large has presented itself as an ugly, crude, one-sided mob. At any moment the meeting could have gone totally sideways and made the town look terrible. The stuff I have seen through this experience is some of the ugliest parts of human nature I've ever encountered. The only person out of the hundreds that showed up last night that spoke in favor of the detox was a woman who lost a child to an opioid overdose (and who had interestingly trashed me to the Boston news media a year ago for using the word "junkies" on my private Facebook page). She had been a no-show for every meeting but decided to



Facebook page). She had been a no-show for every meeting but decided to "man up" for this last meeting. She only spoke for about a minute and was disgracefully heckled by her fellow residents. A mother whose kid died! I found myself having to defend the person who totally trashed me to the news media a year ago. People in this town should be ashamed of the ugliness this issue has brought out. After the vote a current selectman stood up and started waving his arms encouraging the crowd to get up and make a loud vocal demonstration. It was like he was at Foxboro and the other team had the ball on third down and he was trying to make noise. The political posturing he has displayed throughout this entire process in my opinion has been nothing less than smarmy and creepy. I told him to sit down that he had had enough face time. At the very end of the meeting a former selectman heard that there was still an application for a federal



time. At the very end of the meeting a former selectman heard that there was still an application for a federal exemption under the Americans for disabilities act pending, and walked out shouting at the board calling us a disgrace, apparently ignorant of the fact that a local zoning board has no control over preemption by federal law. Last night was Wilmington's lowest moment. I am told people believe I handled the meeting in a heavy-handed manner and was rude. If I had handled that meeting in any other way it would've turned into a terrible situation. One guy actually told the board they should be careful they don't vote for the detox because they are going to run into citizens around town. Well, I voted for the detox center Mr. Veiled Threat Man. I strongly suggest you leave me alone when you see me in town. To sum up, I really don't care what people think of me. I'm not running for anything. I speak my mind, I do what I think is right, and



Daniel's Post



my mind, I do what I think is right, and sleep very soundly at night. All I wanted to accomplish in this role was to be able to say with confidence that I ran a fair meeting, everyone had a chance to be fairly heard, and the process was transparent, open and above board. I accomplished those goals. The rest is meaningless. I don't want to be liked by these people. Enough said.

3h Like Reply



Chris Antley

They might have a point with 'rude.'

 Job well done, Dan.

3h Like Reply



Jason Brush

Good man!  1

2h Like Reply



John Patrick Mullan

If you are going to get it anyway better to maintain some control. Isn't it strange when you end up defending



Dear Selectman,

Minuteman Senior Services is once again excited to participate in the national **March for Meals** campaign, sponsored by Meals on Wheels America. This annual, month-long campaign is designed to generate public awareness about senior hunger and to celebrate the invaluable services provided by Senior Nutrition Programs across the country. It is further intended to support volunteer recruitment efforts, and promote increased fundraising for Senior Nutrition Programs. For additional information regarding March for Meals, please visit www.marchformeals.com.

The Meals on Wheels Program provides a valuable service each weekday to the seniors living in your community. Nutrition plays a critical role in promoting seniors' health, cognitive, and medical status, as well as opportunities for social connection. As a member of the Board of Selectmen in Wilmington, you are in an excellent position to assist us in this campaign given your visibility and strong voice in your town. **We would be honored if you would participate in the March for Meals campaign by selecting one day to help prepare and/or deliver meals to our homebound senior clients during the month of March.** This opportunity will enable you to help Meals on Wheels gain much needed visibility.

My staff will be contacting you shortly to determine your availability and find a day that works for you. If you or your staff has any questions, please contact Diane Taylor at 781-221-7093 or d.taylor@minutemansenior.org. Thank you for your serious consideration of our request, and for your support of our Senior Nutrition programs.

Sincerely,

Kelly Magee Wright
Executive Director

MEMO TOWN MANAGER

Edward P. Loud Sr.
4 Valyn Lane
Wilmington MA 01887

19 FEB -7 AM 11:57

TOWN OF
WILMINGTON MASS

Board of Selectmen
Town of Wilmington
Town Hall
121 Glen Rd
Wilmington MA 01887

February 7, 2019

Chairman Cairra,

Please accept this letter of my resignation from my selectman position.

My last day will be February 12th 2019.

As said previously, I have taken a job opportunity out of state, where I will be spending ninety percent of my time out of the Town of Wilmington. This is the reason for my resignation.

Thank you.