

**BOROUGH OF FENWICK
BOARD OF WARDEN AND BURGESSES
SPECIAL MEETING
TUESDAY, AUGUST 23, 2016 at 4 PM**

APPROVED

Present: Warden Fran Adams, Valerie Bulkeley, Frank Keeney, Pam Christensen, Arthur Wright, Jonathan Gengras, ZEO Marilyn Ozols, Attorney Michael Zizka.

Ethel Davis was present but not sitting as a Burgess.

Members of the Public: David Savin.

The Warden called the meeting to order at 5 PM. He opened the floor for Public Comment for the single item on the Agenda but no one was present to speak.

The Burgesses requested Attorney Michael Zizka to come to the meeting to address questions concerning the Agenda item "the Proposal that the Borough accept a Scenic Easement at 8 Neponset Avenue with details to be agreed upon by the Grantor and the Warden with advice from Counsel".

Prior to the meeting, questions were forwarded to Attorney Zizka to which he answered. What are the benefits to the Borough if the easement is accepted? What are the future responsibilities to the Borough in terms of maintaining and enforcing the Scenic View easements? Would the Borough have to provide public access to the view if Neponset Avenue were to become a private road?

Attorney Zizka stated that there was minuscule benefit to the Borough to take on the Scenic View Easement. Zoning regulations already provide the benefits. In addition, other property owners may also be interested in the same type of easement. He was concerned that this would be precedent setting and the Borough would have to justify how this specific view is unique. Also, the property value is reduced whereby the Borough would lose tax dollars and there might be further tax implications if other property owners sought similar easements. Attorney Zizka explained that easements create a "public trust" which means that the Borough becomes the Trustee. As Trustee, if the Borough would want to change the easement in any way, the State Attorney General would have to be consulted and would have a role in deciding the outcome. Finally, if the landowner were to violate the easement in any way the Borough would most likely have to go to court for any remedy and the Borough would not be guaranteed a remedy.

Ethel Davis reiterated to the Burgesses that this property was a building lot and she wished to preserve open space in the Borough. She was unsuccessful with the Lynde Point Land Trust as they were unable to make a decision regarding this issue. In addressing the issue of a garden on the easement, she stated that the lot was slanting so it would not impinge on the scenic view. Lastly, she stated that she was asking the Borough to have the Warden negotiate the easement as to details.

A Motion was made by Frank Keeney for the Borough to accept the Proposal for a Scenic Easement on 8 Neponset Avenue with details to be agreed upon by the Grantor and the Warden with advice from Counsel. There was no second therefore the motion is no longer on the Floor.

Valerie Bulkeley attempted to amend the above Motion to include Burgesses along with the Warden but was not allowed.

A Motion was made by Pam Christensen seconded by Jonathan Gengras to deny accepting the Scenic Easement on 8 Neponset Avenue because there is not enough benefit and drawbacks to the Borough could be numerous.

Discussion:

Pam Christensen stated that there are many beautiful views in Fenwick and that it would be difficult to cite 8 Neponset as unique to differentiate from other potential view easements. In addition, it would prove to be difficult to privatize the road with the easement in effect and if future issues arose concerning enforcement it would mean mandatory legal fees and expense to the Borough. Frank Keeney would need further understanding of the potential landowners who could request future scenic easements and how it would impact future tax rolls. These potential easements could impact the tax base and he felt that a precedent would be set. He also agreed that there was no bad view in Fenwick; therefore to argue that this view was special or unique would be difficult. The Burgesses felt that there were too many concerns identified by Attorney Zizka and future implications could be many.

PASSED UNANIMOUSLY.

PROPOSAL DENIED.

**Being no further business, a Motion was made by Arthur Wright seconded by Valerie Bulkeley to adjourn the meeting at 5:42 PM.
Passed Unanimously.**

Respectfully Submitted,

Julie G. LeBlanc, Clerk