

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 0881CV00552

DAVID BERNSTEIN, KATHLEEN BERNSTEIN, JEFFREY PORTER, JILL PORTER, SUSAN REED, WILLIAM PETRI, ARLENE PETRI, TIMOTHY MARSTERS, L. HOWARD HARTLEY, MARCIA ANNE HARTLEY, RICHARD MIKELS, DEBORAH MIKELS, and MICHAEL BATE,
Plaintiffs

vs.

WAYLAND PLANNING BOARD, WILLIAM STEINBERG, ALBERT I. MONTAGUE, JR., DANIEL MESNICK, KEVIN MURPHY, and LYNNE DUNBACK, as members of the Wayland Planning Board, ANETTE LEWIS, as an associate member of the Wayland Planning Board, TOWN OF WAYLAND, WAYLAND BOARD OF SELECTMAN, and WAYLAND BOARD OF ROAD COMMISSIONERS, and TWENTY WAYLAND, LLC
Defendants

and

ELEANOR FARWELL AND WILDON FARWELL, MD
Intervenors

**MEMORANDUM OF DECISION AND ORDER ON TOWN OF WAYLAND'S
MOTION FOR PERMANENT RELIEF FROM JUDGMENT**

The present case arises from a 2008 dispute regarding an increase in through-traffic on Glezen Lane in Wayland, where the plaintiffs reside. The concern about increased traffic was generated by a proposed project, by which the Town of Wayland (the "Town") sought to develop a 56-acre parcel of land consisting of commercial, residential, and municipal building space (the "Town Center Project"). The plaintiffs are residents of Glezen Lane, a residential road that runs between Routes 27 and 126, and is a short distance north from the Town Center Project.¹

¹ The plaintiffs closest to the project site are approximately .7 miles away.

On February 6, 2008, the plaintiffs commenced their appeal pursuant to G.L. c. 40A, § 17 of the Wayland Planning Board's (the "Board"), January 17, 2008 decision granting special permits and site plan approvals for the Town Center Project. The plaintiffs amended their Complaint, adding the Town's Board of Selectmen and Board of Road Commissioners as parties. In this lawsuit, the plaintiffs challenged the Town's permitting of the Town Center Project and sought a declaratory judgment that the Town had a legal obligation to develop a traffic mitigation plan to safeguard the plaintiffs from project-related traffic impacting Glezen Lane.

On July 16, 2008, after extensive negotiations, the parties entered into a consent judgment (the "Consent Judgment") which required that the Town implement a variety of traffic mitigation measures over time. All of the traffic mitigation measures, except the final ones set forth in Section I (G)(4) of the Consent Judgment, have been implemented. The final traffic mitigation measures include permanent turn prohibitions and physical restrictions at the intersection of Glezen Lane and Route 27 (the "Final Measures"). In 20015, seeking a way to avoid having to comply with this final aspect of the Consent Judgment, the Town filed a Rule 60(b) motion for relief from judgment.² Only four of the original plaintiffs – David Bernstein, Kathleen Bernstein, Jeffrey Porter and Jill Porter – oppose this motion.³

On November 9, 2016, the court denied in part the Town of Wayland's Motion for Permanent Relief from Judgment. The court sought additional evidence on the issue of whether the Final Measures presented public safety concerns, constituting exceptional circumstances. An evidentiary hearing was held on December 1, 2016. After carefully considering all of the evidence submitted in connection with this issue, including the parties' stipulations, affidavits,

² In the alternative, the Town moved to dismiss the amended complaint. The court denied that motion.

³ The Court will refer to these four plaintiffs as the "plaintiffs" throughout this decision.

exhibits and testimony, the court ALLOWS the Town's Motion for Relief from Judgment as to Section I (G)(4) of the Consent Judgment.

I. FACTUAL FINDINGS

Kevin Dandrade, a civil engineer, credibly testified at the hearing for the Town. Mr. Dandrade has been working with the Town since the inception of the Town Center Project. He commenced the design work for the Final Measures by preparing preliminary designs or concept plans. These preliminary designs were based on his understanding that the intent was to have a raised hard surface to prohibit cars from turning left off of Glezen Lane onto Route 27, or right onto Glezen Lane from Route 27. According to Mr. Dandrade, the addition of hard surfaced curbs to permanently restrict turning would create "an acute geometry", or a "skewed angle" between Glezen Lane and Route 27.

Mr. Dandrade is of the opinion that the Final Measures create safety concerns for fire trucks and school buses attempting to make turns at that intersection. In order to negotiate the turn around the raised curbs, fire trucks and school buses would have to move into the oncoming traffic lane and swing wide. These maneuverability challenges would affect response times for large emergency vehicles, particularly if there are other cars waiting on Glezen Lane or traffic in the oncoming lane. Mr. Dandrade does not recommend that the Final Measures be implemented as he considers them to be contrary to industry guidance and guidance from the Massachusetts Department of Transportation ("MassDOT").

Mr. Dandrade was familiar with the alternative plans that the plaintiffs are proposing which would not involve a raised curb, but either flush pavement of a different color and texture, or a smaller 2 to 3 inch curb, both of which fire trucks and emergency vehicles could actually drive over. Mr. Dandrade agreed that this alternative plan would be easier to traverse, and thus,

safer, although there would still be some delays in travel time.⁴ However, Mr. Dandrade opined that such a design would be ineffective at preventing cars from making right turns onto Glezen Lane and left turns onto Route 27 from Glezen Lane, thus, not consistent with the intent of Section I (G)(4) of the Consent Judgment.

David Houghton, the Town Fire Chief testified that in addition to the physical turn restrictions described by Mr. Dandrade, the Final Measures require signs restricting vehicles from turning left onto Route 27 from Glezen Lane and right onto Glezen Lane from Route 27. Chief Houghton expressed credible safety concerns regarding both the physical restrictions and the signs. The physical restrictions create safety concerns for firefighters trying to negotiate the difficult turn, and the delay associated with having to negotiate the turn would impact response times, potentially affecting the Wayland Fire Department's ability to respond to fires.

Moreover, it is the policy of the Wayland Fire Department that emergency vehicles do NOT violate traffic regulations (i.e., they do not go down one-way streets the wrong way or turn in a direction that is otherwise prohibited). The reason for this is to insure the safety of everyone else on the road. Thus, in order to comply with the turn restrictions, emergency vehicles would have to take a longer route around to get to homes on Glezen Lane, resulting in delayed response times to those homes.⁵ Chief Houghton estimated that it would take minutes (not seconds) longer to respond to homes on Glezen Lane, and that these response times are significant in light of the fact that fires typically double every minute. With respect to other emergency vehicles, Chief Houghton noted that delayed response times could impact their ability to promptly get medical attention to residents in need.

⁴ A photograph and plan illustrating the traversable surface which currently exists at the intersection of E. Plain St., School St. and Route 30 in Wayland, MA, was introduced in evidence at the hearing.

⁵ The police and fire departments are located south of Glezen Lane.

Robert Irving, the Town's Chief of Police testified that he too was concerned about the delayed response times that would be associated with the implementation of the Final Measures.⁶ He also had concerns about school buses being able to safely make the turn with the restrictions in place. Chief Irving is also of the view that the Final Measures would place an undue burden on the Police Department to enforce compliance when they have needs throughout the Town.⁷ During the period of time that the turn restrictions were in place (although the physical restrictions were not installed)⁸, Chief Irving observed that since it was illegal to turn left onto Route 27 from Glezen Lane, motorists would turn right and then either make an illegal U-turn or turn around in one of the driveways along Route 27. These maneuvers are dangerous. With respect to school buses, Chief Irving explained that after the buses pick-up children on Glezen Lane, they need to head south to the schools. If they cannot turn left on Route 27, they have to turn around somewhere – either on Glezen Lane or on Route 27 – or they have to back-up on Glezen Lane. All of these options are unsafe. Regardless of whether there are any physical restrictions in place, Chief Irving believes that the turn restrictions in and of themselves present significant safety concerns for the Town.

The plaintiffs called Kim Hazarvartian, a civil engineer, currently working for TEPP, LLC. Ms. Hazarvartian has worked with the plaintiffs, to assist with the monitoring and mitigation measures that were required by the Consent Judgment. She testified regarding alternative configurations that would incorporate mountable curbs, rather than the 6 inch curbs depicted in Mr. Dandrade's preliminary design. Mountable curbs would permit authorized/emergency vehicles to make the turns on and off Glezen Lane that would otherwise

⁶ Like the Fire Department, the Wayland Police Department follows all traffic signals and restrictions.

⁷ Section F (8) imposes patrol requirements on the Police Department in order to enforce the turn restrictions.

⁸ The sign restrictions were in place for a period of time until this court allowed the Town's Motion for Temporary Relief from Judgment so that the Town could conduct further traffic studies.

be prohibited to the general public. It was Ms. Hazarvartian's opinion that this alternative design would not have a measurable impact on response times to residences on Glezen Lane.

Moreover, she disagreed with Mr. Dandrade that the wide swing necessary for large vehicles to turn onto Glezen Lane if non-traversable curbs were installed, was contrary to MassDOT guidelines.

II. ANALYSIS

A judgment may be vacated under Rule 60(b)(5) if it is no longer equitable, or under Rule 60(b)(6) if there are extraordinary circumstances. *See Owens v. Mukendi*, 448 Mass. 66, 71 (2006); *Doe v. Sex Offender Registry Bd.*, 82 Mass. App. Ct. 1116, 2012 WL 4856455, at *1 (2012) (1:28 decision); *see also Thibbitts v. Crowley*, 405 Mass. 222, 226 (1989) (relief from a judgment pursuant to Mass. R. Civ. P. 60(b)(5) is extraordinary and may be granted only upon a showing of exceptional circumstances). Courts have held that a consent decree which contains complex, ongoing injunctive relief may constitute exceptional circumstances warranting relief, where there are newly identified concerns which suggest the judgment is not accomplishing its intended purpose. *See Thibbitts*, 405 Mass. at 228-229 (citing *Philadelphia Welfare Rights Org. v. Shapp*, 602 F.2d 1114, 1120-1121 (3d Cir. 1979), and *King-Seeley Thermos Co. v. Aladdin Indus., Inc.*, 418 F.2d 31, 35 (2d Cir. 1969)).

The court finds that the implementation of the Final Measures raises significant safety concerns that were not fully considered at the time the parties entered into the Consent Judgment. In addition, certain observations relating to safety were made when the turn restrictions were temporarily in place. Finally, the purpose of the Consent Judgment was to address safety issues relating to increased traffic on Glezen Lane by permanently preventing vehicles from turning right onto Glezen Lane from Route 27, and left onto Route 27 from Glezen Lane. The

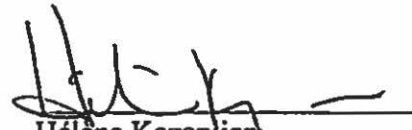
plaintiffs' proposed alternative designs that do not include a raised curb, would not achieve that purpose, and thus, would not be in compliance with Section I (G)(4). In any event, since the Town Fire and Police Department policies do not permit emergency vehicles from violating traffic restrictions, mountable curbs would not cure the safety problems, nor would they address Chief Irving's concerns about the turn restrictions generally or the safety issues associated with school buses.

In sum, the Court is satisfied that the Town has established that the implementation of the Final Measures would create significant safety risks that were unanticipated at the time the Consent Judgment was entered into, and that those safety risks constitute exceptional circumstances warranting relief from the judgment. Accordingly, the Town's Motion for Relief from Judgment as to Section I (G)(4) of the Consent Judgment is **ALLOWED**.

ORDER

For the reasons stated herein, the Town's Motion for Relief from Judgment is **ALLOWED** as to Section I (G)(4).

SO ORDERED.


Hélène Kazanjian
Justice of the Superior Court

DATE: March 27, 2017