



TOWN OF WAYLAND

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WAYLAND, MASSACHUSETTS 01778

AFR
12/21/09

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BOARD OF SELECTMEN
STEVEN J. CORREIA
THOMAS J. FAY
JOSEPH F. NOLAN
SUSAN W. POPE
MICHAEL L. TICHNOR

Board of Selectmen Meeting Minutes December 7, 2009

Attendance: S. Correia, T. Fay, J. Nolan, S. Pope, M. Tichnor
Also Present: Town Administrator F. Turkington

Chair J. Nolan called the meeting of the Board of Selectmen to order at 7:04 p.m. in the Large Hearing Room and reviewed the agenda for the viewing audience. F. Turkington read the announcement of funeral arrangements for former Wayland police officer Ted Meyer. J. Nolan announced the drop-off locations for toy drive. M. Tichnor reminded citizens to vote in the U.S. Senate primary on Tuesday, December 8, 2009, at regular polling places between 7:00 a.m. and 8:00 p.m.

A2. Public Comment George Harris, 8 Holiday Road, read a letter of complaint he intends to file with the Middlesex District Attorney alleging the Board of Selectmen violated the Open Meeting Law when it held a reception and site visit to Town Center that included quorum of the Board and School Committee, as well as members of certain boards and staff, on November 24, 2009. He criticized the Town Administrator for failing to provide a complete set of facts to Special Counsel Patricia Cantor on which she based an opinion that the gathering was not a meeting under the Open Meeting Law. He believes the press release circulated by Rep. Tsongas' office describes the anticipated substance of a meeting under the Open Meeting Law, including discussion of topics under the jurisdiction of the Board of Selectmen.

A3. Firefighter Recognition Ceremony Fire Chief Robert Loomer introduced retiring Deputy Fire Chief Ken Hart. Vice-Chair Steve Correia read a certificate of commendation and appreciation from the Board of Selectmen congratulating K. Hart on 39 years of service. Chief Loomer introduced promoted firefighters and new probationary firefighter. The Town Clerk administered the oath of office and family members pinned badges on newly promoted and appointed firefighters.

A4. Review of Proposed Police and Fire/EMS Budgets for FY11 Fire Chief Robert Loomer and Police Chief Robert Irving reviewed their proposed FY11 budgets. Chief Irving noted the continued need for a 23rd officer, but did not formally include the request based on the Finance Committee's budget guidelines. He explained the loss of \$18,024 in community policing grant funds from the state that had been used for the Memorial Day parade and other initiatives. The remainder of the budget is level-funded. The total request is \$2,460,850. Chief Loomer presented his \$2,262,792 budget which is also level-funded per guidelines (except salary step increases and 5% increase in cost of fuel). He noted that 18% of his budget is returned through the collection of ambulance fees for service. A capital request to replace the "Jaws of Life" device is included. He reviewed pending grant applications and regional cooperation efforts. S. Pope asked about the collection process for ambulance fees. Chief Loomer explained that he will present to the Board on December 21st a recommendation on market rate changes for ambulance and ALS fees. M. Tichnor asked about opportunities for regional purchasing of capital equipment.

A5. Board of Assessor's Tax Classification Hearing Susan Rufo, on behalf of the Board of Assessors, reviewed the three decisions available to the Board of Selectmen, including split rate for commercial, industrial and personal property, open space exemptions, and small business exemptions. Because commercial property represents less than 5% of the assessed value, a split rate would shift about \$1.3M in tax burden onto approximately 120 commercial property owners. J. Nolan opened the public hearing. No one wished to speak at the hearing. M. Tichnor asked Sam Peper, chair of the Finance Committee, whether the Finance Committee had a recommendation. S. Pope explained that the committee had not specifically discussed a split rate for FY11, but noted the committee's consistent message that the town should move toward a split rate as a tool to relieve some of the residential tax burden and a statement in the long range plan advocating for a split rate once fair and equitable assessments are achieved by the full list and measure. J. Nolan asked whether the small business exemption could be paired with a split rate to lessen the impact of the split rate on small businesses. Ellen Brideau, Administrative Assessor, explained this was possible, but would only shift the burden from the exempt status for small businesses onto the remaining commercial property owners. Susan Rufo explained that the Board of Assessors made no recommendation, but rather took the position of providing all pertinent information as to the impact of the Board decision by voting each of the three items. Linda Segal, 9 Aqueduct Road, questioned whether the Board would vote next week as originally planned and whether presentation handed out by the Board of Assessors would be made available on the Town website so residents could comment prior to next Monday. Susan Rufo explained the benefits of the Board of Selectmen making a decision this evening, citing a backlog at the state Department of Revenue to approve new growth figures and certifying tax rates. A delay might cause a delay in tax bills. F. Turkington explained that the presentation was completed the previous Friday for the packet, and commended the Assessors for doing so as recent practice had been to distribute it at the Board of Selectmen meeting. The presentation will be placed on the Assessors page of the website for public information. M. Tichnor asked about new growth. Susan Rufo responded that it was approximately \$550,000, down from \$660,000 the prior year. New growth is building permit activity, sub-dividing land, and making use of abandoned property. J. Nolan closed the public hearing. M. Tichnor moved, seconded by S. Pope, to adopt a uniform tax rate for FY2010. YEA: S. Correia, T. Fay, J. Nolan, S. Pope, M. Tichnor. NAY: none. ABSTAIN: none. Adopted 5-0.

A6. Decision on Liquor License Application for P&P Liquors, 302 Commonwealth Road F. Turkington reviewed input from Town Counsel Mark Lanza requested during the discussion last week by the Board. T. Fay indicated his support for the application based on the material presented, but expressed distaste for the process which results in the "selling" of licenses with business assets. M. Tichnor concurred with the comments of T. Fay. S. Correia suggested that the Board consider revocation of licenses when businesses cease operations so new applicants have a level playing field with regard to acquiring a license. S. Pope moved, seconded by M. Tichnor, that the Board approve the liquor license application of P & P Liquors at 302 Commonwealth Road, contingent upon and effective at such time as the license application is approved by the Alcoholic Beverage Control Commission. F. Turkington explained the timing of the review and its impact on the license application of William Roberts, Main Street and East Plain Street, proceedings suspended in August pending resolution of the Grape Ideas transfer of license to future owner (now determined to be P & P Liquors). YEA: S. Correia, T. Fay, J. Nolan, S. Pope, M. Tichnor. NAY: none. ABSTAIN: none. Adopted 5-0.

A7. Consent Calendar M. Tichnor moved, seconded by S. Pope, to approve the consent calendar (warrants TA120709 and SA120709). YEA: S. Correia, T. Fay, J. Nolan, S. Pope, M. Tichnor. NAY: none. ABSTAIN: none. Adopted 5-0.

A8. Correspondence S. Correia, referencing items #1 and #2, encouraged a public meeting to be held to allow all residents to comment on Town Meeting rules, procedures, and logistics, and that the Town Moderator and representatives of WayCAM participate. M. Tichnor noted the differences between procedural and logistic issues, such as proposals to expedite voting and changes to room layout and sound quality, and changes to town meeting form of government, such as debate at town meeting and voting by ballot or representative town meeting. He also cautioned against Board of Selectmen involvement based on the Moderator's primary role governing town meeting. It was the consensus of the Board that such a public forum be held, ideally organized and moderated by the Town Moderator. S. Correia also inquired about the legal opinion given to a member of the Historical Commission seeking to ban metal detectors from town land.

A9. Report of the Town Administrator F. Turkington reviewed follow-up actions taken since Special Town Meeting, including implementation of the meals tax and the Attorney General review of the Town Center zoning change. He noted a letter from Marty Nichols to the Attorney General challenging approval of Article 3 based on alleged inconsistencies between amendment and original zoning bylaw. M. Tichnor asked whether the legislature had acted on two requests for special acts – property tax circuit breaker limits and terms of office holders extending through the end of Annual Town Meeting. It was the consensus of the Board to send a letter to Rep. Conroy and Sen. Brown requesting that these matters be resolved quickly. F. Turkington reviewed an Annual Town Meeting and election schedule. J. Nolan asked about the possibility of scheduling the first session of Town Meeting on a Sunday. F. Turkington explained that the proposed schedule, if amended as such, would result in Town Meeting starting on Mother's Day (May 9, 2010).

A10. Selectmen's Reports and Concerns T. Fay defended the work of volunteers and staff in preparing the Special Town Meeting Warrant, and cautioned those who accused them of intentionally including information known to be false or misleading. M. Tichnor concurred and added that speakers at public comment and in print media should be careful not to present allegations as facts without supporting documentation. S. Pope said it was distasteful to listen to citizens alleging intentional use of inaccurate information, and sadly such irresponsible statements are part of serving in office.

A11. Discuss and Vote on Evaluation of Town Administrator J. Nolan indicated that he had completed the task of blending the comments of each Selectman into a consensus evaluation of the performance of the Town Administrator. He planned to distribute the draft document to the Board for review, with the understanding that the Board would make any modifications after discussion, together with the Town Administrator, and approve the evaluation on December 14, 2009. M. Tichnor noted that completion of the process should have been done by mid-October, but had been delayed due to negotiation of the Town Center development agreement amendment and Special Town Meeting. He encouraged the Board to be prepared to complete the process next week.

A12. Executive Session At 9:30 p.m., the Board of Selectmen, by roll call vote, unanimously (5-0) approved a motion brought by M. Tichnor and seconded by S. Pope, to go into executive session pursuant to Massachusetts General Laws Chapter 39, Section 23B(3) to discuss strategies with respect to pending litigation between the Town and Finegold Alexander Architects and others relative to the Public Safety Building and between the Historic District Commission and Twenty Wayland, LLC relative to the appeal of the certificate of appropriateness because a public discussion of these matters will have a detrimental effect on the litigating position of the Town. The Board will return to open session in

approximately ten minutes for the sole purpose of adjourning the meeting. J. Nolan announced that the Board would convene the executive session in the Selectmen's Meeting Room to allow WayCAM to end the live broadcast.

The Board returned to open session at 9:47 p.m.

S. Pope moved, seconded by S. Correia, to adjourn the meeting of the Board of Selectmen at 9:48 p.m.
YEA: S. Correia, T. Fay, J. Nolan, S. Pope, M. Tichnor. NAY: none. ABSTAIN: none. Adopted 5-0.



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CONFIDENTIAL

Board of Selectmen Executive Session Minutes December 7, 2009

Attendance: S. Correia, T. Fay, J. Nolan, S. Pope, M. Tichnor

Also Present: Town Administrator F. Turkington

Purpose: The session was called at 9:33 p.m. in the Selectmen's Meeting Room, Wayland Town Building, by unanimous roll call vote (5-0) in open session as permitted by M.G.L. Chapter 39, Section 23B, paragraph three, to discuss strategies with respect to pending litigation between the Town and Finegold Alexander Architects and others relative to the Public Safety Building and between the Historic District Commission and Twenty Wayland, LLC relative to the appeal of the certificate of appropriateness because a public discussion of these matters will have a detrimental effect on the litigating position of the Town.

Discussion: T. Fay and F. Turkington advised that counsel for Finegold Alexander was working toward a court date to approve the proposed settlement and the terms of the set-off portion of the settlement against potential claims by consulting engineer BSC. Counsel for BSC has written with a threat to challenge the set-off provisions. The consensus of counsel, F. Turkington and T. Fay is that this threat will not be honored by the judge considering the settlement with Finegold Alexander.

T. Fay and F. Turkington reviewed his discussion with Special Counsel Pat Cantor with regard to the appeal motion to be filed by Twenty Wayland of the Superior Court ruling regarding appointment of counsel to represent the Historic District Commission. F. Turkington said he is hopeful that the Massachusetts Municipal Association will file an amicus curiae brief prepared by P. Cantor. T. Fay and F. Turkington reviewed the possibility of the Town filing a letter of support with the intent of avoiding intervenor or party status that could bring the Town into other litigated issues with the Historic District Commission. It was the consensus of the Board to do so if Special Counsel felt comfortable with that strategy.

Adjourn: By motion of S. Pope, seconded by S. Correia, the Board, by roll call vote, unanimously voted to exit executive session at 9:47 p.m.