



TOWN OF WAYLAND

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BOARD OF SELECTMEN

JOHN BLADON
STEVEN J. CORREIA
THOMAS J. FAY
JOSEPH F. NOLAN
SUSAN W. POPE

Board of Selectmen Meeting Minutes August 16, 2010

Attendance: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope

Also Present: Town Administrator F. Turkington, Town Counsel Mark Lanza, Secretary M. DiNapoli

Chair S. Correia called the meeting of the Board of Selectmen to order at 7:34 p.m. in the Selectmen's Meeting Room, reviewed the agenda for the viewing audience, and explained the purpose of the meeting.

A2. Discussion of complaint alleging violation of the Open Meeting Law by the Board of Selectmen filed on August 5, 2010 by George Harris concerning executive sessions held by the Board of Selectmen to discuss pending litigation in the matter of Twenty Wayland, LLC v. Wayland Historic District Commission M. Lanza reviewed the alleged violation of the Open Meeting Law filed by Wayland Historic District Commission Chair Gretchen Schuler earlier in the year with the Middlesex County District Attorney. The allegation concerns the right of the Board of Selectmen to enter into executive session to discuss litigation regarding the Historic District Commission. G. Harris believed that the Board had to be a party to the lawsuit in order to enter executive session. M. Lanza said the district attorney rejected that complaint. However, with the new Open Meeting Law that went into effect July 1, 2010, G. Harris has filed the same complaint again with the Attorney General. M. Lanza said the law governing the reason the Board of Selectmen went into executive session has not changed; he said it is verbatim between the old law and the new law. He also noted the Attorney General has not issued any new guidelines or interpretations that suggest the District Attorney was incorrect, nor has there been any court decision that would change the effect of the law, so it is the opinion of Town Counsel that the Board should continue to operate as it has. He said that, in his opinion, there was no violation of the Open Meeting Law, nor is there any reason or need for remedial action. F. Turkington distributed a letter to the Attorney General on behalf of the Board that articulates the information that M. Lanza conveyed to the Board. J. Nolan moved, seconded by J. Bladon, to authorize the Chair to sign and send the letter to the Attorney General regarding the allegations of George Harris. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0.

A3. Discussion of complaint alleging violations of the Open Meeting Law by the Board of Selectmen filed on August 5, 2010 by Linda Segal concerning discussion of public business prior to posted meeting of the Board of Selectmen on July 8, 2010 M. Lanza reviewed the complaint filed by Linda Segal alleging a violation of the open meeting law by the Board of Selectmen due to a conversation that took place prior to the posted meeting of July 8, 2010. He said he saw the video recording of the event, and he observed four selectmen discussing potential appointees to the Historic District Commission. He said there is enough doubt as to whether a quorum existed that he recommends the Board take remedial action to alleviate any issues that may arise. He said the Board interviewed the appointees in public session, there was a discussion and a vote in public session, and résumés were

previously distributed and reviewed. He suggested that, in the interest of transparency, the conversation alleged on July 8 be repeated now in a public session, with minutes taken in a properly posted public meeting. He said the Board should then submit a notice to the Attorney General that remedial action was taken, with a request that the Attorney General take no further action. The Board recreated the conversation, prior to the opening of the meeting of July 8, 2010, by reading a copy of the full transcript which is attached and made part of this record.

S. Correia said, concerning the Open Meeting Law Complaint filed by Linda Segal, it is clear that the four Board members were mistaken in referring to some of the candidates who were being considered for appointment that evening. The comments made during a less than five minute period prior to the formal opening of the July 8th Board of Selectmen meeting should not have occurred until the start of the meeting.

He said the Board's offhand references to the appointments to be considered on the evening's agenda, just minutes prior to the formal start of our July 8th meeting, preceded a formal meeting that included a 25 minute deliberation of several candidates for town committees. That deliberation included careful consideration of each applicant and repeated the substance of the recapped discussion that occurred just before the start of the meeting. He said it is the Board's prerogative to choose which candidates would best serve the town at this time, given each person's background. The extent of comments, and who the Board comments on, is also the Board's prerogative.

While the Board was mistaken in referring to some of the candidates that evening, the public can be assured that it gave careful consideration of all the candidates over many weeks and several meetings. As always, the Board's ultimate decisions were made with the best interests of the town in mind.

The Open Meeting Law establishes a very high bar for all committee and Board members to do the public's work in public. That bar is set high on purpose, and appropriately so. He said the Board is committed to the Open Meeting Law and committed to make certain that this type of conduct will not occur again.

The Board then reviewed the draft response to the Attorney General prepared by the Town Counsel. M. Lanza said the dates of the meeting should be clearly identified. F. Turkington also noted that during the meeting of July 8, a reference was made to distributed materials, which were a two-page summary of the appointments to be made with the names left blank, and a list of the candidates that were eligible to be appointed. S. Correia said that is consistent with the procedure that has been used in the past. T. Fay moved, seconded by J. Bladon, that the Board adopt the response (with enclosures) prepared by Town Counsel to the Attorney General as presented, with revisions as noted, and that the Chair be authorized to sign and send the document. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0.

F. Turkington said he would include a copy of the video DVD prepared by Linda Segal to the Attorney General. M. Lanza noted that the complainants have the option to pursue an appeal within thirty days.

J. Bladon moved, seconded by T. Fay, to adjourn the meeting of the Board of Selectmen at 7:53 p.m. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0.

Transcript of conversation among members of the Board of Selectmen on July 8, 2010 that is subject of complaint of August 5, 2010 filed by Linda Segal

TF: Roger. .. Roger. .. Conservation

SP: Who is? Chris

TF:No

SC: Fred, said to

SP: So who is the other?

TF: Well

SP: Kathie

JB: Yes

TF: Kathie Steinberg, Kevin, Marge

SP: Marge?

TF: Yeah

SC: I talked to Fred today

SP: What did he say? Is Boelter off?

TF: Yep, Boelter's off. She is

SP: Oh yeah

TF: In the end ... in the end ...

SP: I think you

TF: In the end Chris was saying ..

SC: So we have ..

SP: I need my glasses

SC: Margery, Chris, Kevin Kathie. So taking her off and her off.. . So you're saying you don't want this

TF: No, I am sorry I thought Chris had to be off. We had to make a choice with

SP: No

TF: Right

SC: But no, we didn't get. .. No, originally you're right we had her person

SP: Yeah

SC: To take off. George originally right. George said no

SP: He's going to do economic development