



TOWN OF WAYLAND

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WAYLAND, MASSACHUSETTS 01778

AFR
10/28/2010

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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 October 4, 2010

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

Chair S. Correia called the meeting of the Board of Selectmen to order at 7:03 p.m. in the Selectmen's Meeting Room and reviewed the agenda for the viewing audience. The Board signed the warrant for the November state election. F. Turkington distributed a revised Consent Calendar to include an invoice from Beacon Consulting, and additional information received since October 1, 2010. He said the Town Building will be closed on Monday for the holiday.

A2. Public Comment Gretchen Schuler, 126 Old Connecticut Path, and Chair of the Historic District Commission, said she had two comments about the public hearing held by the Historic District Commission on September 30 for the Town Center project. She said she was greatly disturbed by the Wayland enews online discussion in which a Selectman described the past week as a crucial week. She said she was disgusted by the conduct of the public, and also town officials, at the public hearing, which included applause.

A3. Public Hearing Regarding Temporary Storage of Propane During Construction of Wayland High School Stan Shaevitz of Ferrellgas and Fire Chief Robert Loomer appeared before the Board to review an application for a license to temporarily store propane at the High School construction site. R. Loomer explained that storage exceeding 2,000 gallons must be approved by the Board of Selectmen; he said that if the Board issues approval, the oversight will then come under the jurisdiction of the Fire Chief. He said he is satisfied with the plan that was submitted. S. Shaevitz explained the purpose of the propane was to allow the contractors to do masonry work over the winter in order to enclose the building. He provided the return receipts of the notifications sent to abutters. S. Correia opened the public hearing at 7:15 p.m. Ralph Bryant, 252 Old Connecticut Path, asked why the propane was necessary, and where it will be located. S. Shaevitz explained the purpose of the propane and provided a map of the proposed locations of the tanks. S. Correia closed the hearing at 7:17 p.m. J. Nolan moved, seconded by S. Pope, to approve the application of Ferrellgas for a license, pursuant to Massachusetts General Laws Chapter 148, Section 13, to store 4,500 gallons of propane gas at 264 Old Connecticut Path. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0.

A4. Order Special Town Meeting Warrant Articles The Board reviewed and approved the revised order of the Special Town Meeting warrant articles.

A6. Consider and Approve Consent Calendar T. Fay moved, seconded by J. Bladon, to approve the revised consent calendar items 1 through 7, with amendments to the minutes of September 20, 2010. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0.

T. Fay said the fundraising experience of Frank Fuller was an asset to the town. S. Correia also noted the importance of his financial background to the operation of WayCAM.

A7. Review Correspondence The Board discussed the week's correspondence. S. Pope said she was pleased to see the favorable decision of the Attorney General in regard to the alleged Open Meeting Law violation brought by George Harris. S. Correia said that budget meetings with the Finance Committee will be held on Monday evenings in January of 2011. F. Turkington highlighted the FY11 State 911 Regional Development Grant. He also noted the decision of the Attorney General supporting the right of the Board to meet in executive session in regard to the Historic District Commission lawsuit. He reviewed the budget guidelines and the upcoming Finance Committee hearings.

The Board reviewed the draft charge for the proposed Dudley Area Advisory Committee. The Board discussed the need to bring all points of view to the committee, in order to review all the facts and make recommendations that will have a broad base of support. F. Turkington said he will hold the formation of the committee in abeyance until the vote on the Dudley Area Land Study Funding article at Special Town Meeting. If it passes, he will then accept recommendations from each group in the charge and form a committee by mid-December. The Board discussed the role of the Mass Housing Partnership grant in the funding process. F. Turkington said the grant funds will be held aside to preserve funding for the housing advocates.

A5. Develop Comments on Draft Report of Master Plan Advisory Committee The Board reviewed the draft report of the Master Plan Advisory Committee. It was the consensus of the Board that they were in agreement with the comments of the Town Administrator. F. Turkington said the original charge of the committee was to determine whether the goals of the Master Plan were met, but the committee went beyond its charge to amend and re-prioritize the original plan. S. Correia asked if the Board had anything to add. J. Bladon suggested that the town's efforts to promote a green community be added to the housing component. T. Fay said it should be noted that the town approved anti-mansion zoning in 2004. J. Bladon said there was nothing in the economic development section about the potential for an expanded commercial zone; he said the inference is that it should remain the same, which he felt was not in the best long-term interests of the town. F. Turkington said there was no reference to reforming the rules that make it hard to do business in Wayland, and he noted how little land area is available for commercial development. In regard to transportation, J. Nolan said the expanded MWRTA service should be included. S. Correia said he would like to see more local traffic issues addressed. S. Pope said more thought should be given to the available land that can be utilized, and T. Fay noted there was land that could be used for the bike trail. T. Fay said the Master Plan recommendations for natural, cultural and historic resources have never been translated into action at town meeting. In regard to public facilities and services, J. Bladon said there was too much focus on current economic conditions and not enough long-term planning. F. Turkington said the report fails to recognize the demographic curve and the turnover of housing and resources. He said the general policies section goes into too much detail, and should more appropriately address the broad principals. S. Correia said the feasibility studies for a library and senior center should be included. S. Correia thanked the Master Plan Review Committee for its work. The Board authorized F. Turkington to codify the remarks of the Board for the committee.

A8. Report of the Town Administrator F. Turkington advised the Board of the appointment of several new committee chairs. He discussed plans to hold a public forum on the Athletic Fields Master Plan in October. In regard to the Historic District Commission meeting, he said the commission agreed on framework for modifying the Certificate of Appropriateness and referred it to the lawyers to codify for

the continued hearing on October 12, which will trigger the 20-day review. He said the Conservation Commission will close its hearing on October 21, and should issue a wetlands permit by early November. The Board discussed the report from the Nike Site Advisory Committee; the Board had no objections to the planned work, and recommended that if the aesthetics can be enhanced for a marginal cost, they should do so. F. Turkington said the next Selectmen hours will be October 22 with J. Bladon and S. Correia. The Board reviewed a draft schedule for the 2011 Annual Town Meeting and discussed the legal issues regarding the proposed electronic voting.

A9. Selectmen's Reports and Concerns The Board followed up on the Community Values Forum. S. Pope said there was a good cross-section of the population in attendance, and she suggested scheduling another forum during the day for more input from seniors. J. Nolan said it was a great opportunity for people to work out their differences. The Board discussed holding a similar forum early next year with two difference questions. S. Correia noted how many people said they felt safe living in Wayland. T. Fay said he heard positive comments about the accessibility of the Town Administrator. J. Bladon said the forum represented an important step in convincing the public of the transparency of the Board. S. Pope said she will attend the Senior Center Feasibility Forum this week. T. Fay congratulated the Historic District Commission and Twenty Wayland for working out a compromise. S. Pope agreed to represent the Board at the Town Meeting Advisory Committee meetings. S. Correia reminded board members to send in their performance reviews of the Town Administrator.

A10. Executive Session At 9:29 p.m., T. Fay moved, seconded by S. Pope, that the Board of Selectmen go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 23(a)(3) to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the Town. Chair S. Correia declares that consideration of the matter of *Town of Wayland v. BSC* (civil engineer for the architect of the Public Safety Building) in an open meeting may have a detrimental effect on the litigating position of the Town. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0. The Board invited Town Administrator Fred Turkington and Special Counsel John Perten to attend and participate in the executive session. The Board will return to open session in approximately forty minutes for the sole purpose of adjourning the meeting.

The Board returned to open session at 10:35 p.m.

T. Fay moved, seconded by S. Pope, to adjourn the meeting of the Board of Selectmen at 10:35 p.m. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0.

Handouts During Meeting:

1. Press release from Town Administrator dated October 3, 2010 regarding Attorney General ruling on OML complaint involving Selectmen's right to discuss in executive session pending litigation involving other boards and commissions.
2. Letter dated May 6, 2002 from the Middlesex District Attorney to former Executive Secretary Jeff Ritter responding to OML complaint filed by George Harris on June 13, 2001.
3. Email from Town Administrator to Selectmen dated October 4, 2010 regarding the status of Town Building septic system as it relates to proposed article rescinding authorized, but unissued debt.
4. Letter from Director of Public Health Steve Calichman to Town Administrator dated October 4, 2010 reporting on history and condition of Town Building septic system.

5. Excerpt of 1999 Annual Town Meeting Warrant (Article 40) and minutes of ATM vote on May 13, 1999 relative to an appropriation in the amount of \$40,000 for the design and construction of a sewer line connection for the Wayland Town Building.
6. Letter from George Harris to the Board of Selectmen dated October 4, 2010 requesting access to a listing of topic discussed and the minutes of all meetings of the BOS from September 20-30, 2010, inclusive.
7. Email from Liz Jones dated October 4, 2010 announcing filming of independent film on Dudley Pond on Wednesday, October 6, 2010.



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CONFIDENTIAL

Board of Selectmen Executive Session Minutes October 4, 2010

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

Also Present: Special Counsel John Perten (arrived 9:50 p.m.), Town Administrator F. Turkington, Secretary M. DiNapoli

Purpose: The session was called at 9:29 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 30A, Section 23(a)(3) to discuss strategy with respect to pending litigation because an open meeting may have a detrimental effect on the litigating position of the Town. The Chair declared that the subject matter of the meeting is *Town of Wayland v. BSC* (civil engineer for the architect of the Public Safety Building).

Discussion: The Board reviewed a press release prepared by the Town Administrator, announcing the verdict in the case of *Town of Wayland v. BSC*.

J. Perten arrived at 9:50 p.m., and reviewed with the Board the outcome of the case. He said that on the matter of whether the defendant was negligent in its design of the drainage system at the town's Public Safety Building, the jury voted yes. On the matter of whether the negligence was a substantial factor in the damage the town sustained, the jury voted no. He discussed the defense arguments that could have affected the verdict, including the contention that the town failed to take reasonable steps for its own protection, the prior settlement by Finegold Alexander, and the high groundwater table. The Board commended J. Perten for his work. T. Fay said the Board needed to address two issues tonight: the potential appeal of the verdict in the *Town of Wayland v. BSC* case, and the finalization of a press release announcing the verdict. J. Perten noted that an appeal would be difficult, as there was no substantial error on the part of the court. T. Fay moved, seconded by J. Nolan, that the Board decline to pursue an appeal of the verdict or any post trial motions. YEA: J. Bladon, S. Correia, T. Fay, J. Nolan, S. Pope. NAY: none. ABSTAIN: none. Adopted 5-0. The Board approved the press release prepared by the Town Administrator.

Adjourn: By motion of J. Nolan, seconded by S. Pope, the Board, by roll call vote, unanimously voted to exit executive session at 10:35 p.m.