



TOWN OF WAYLAND

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BOARD OF SELECTMEN

JOHN BLADON
EDWARD J. COLLINS
STEVEN J. CORREIA
DOUGLAS J. LEARD
JOSEPH F. NOLAN

Board of Selectmen Meeting Minutes August 27, 2012

Attendance: John Bladon, Edward Collins, Steven Correia, Douglas Leard, Joseph Nolan

Also Present: Town Administrator Fred Turkington, Secretary MaryAnn DiNapoli

Chair J. Bladon called the meeting of the Board of Selectmen to order at 6:00 p.m. in the Selectmen's Meeting Room and reviewed the agenda for the public. He announced that the meeting is being broadcast and videotaped for later broadcast by WayCAM.

A2. Public Comment There was no public comment.

A3. Review Petition for Special Town Meeting and Vote to Open the Warrant from Tuesday, August 28, 2012, at 8:30 a.m. through Tuesday, September 4, 2012, at 4:30 p.m., and to tentatively schedule the Special Town Meeting for Wednesday, October 3, 2012, at 7:30 p.m. at the Wayland High School

F. Turkington advised the Board that Framingham resident Steven Haker had gotten the necessary signatures to call a Special Town Meeting for the following two articles: (1) to see if the Towns of Framingham, Sudbury and Wayland will vote to request that their Federal and State Representatives and Senators file legislation that will require anyone including the Utilities to: only place on theirs and/or anyone else's property chemicals approved by the Board of Health and/or the Towns Health Officer, but only after a public hearing and written approval from said authority to use such chemical. If any chemicals have been used in the past then the Utility or whoever placed said chemicals on any real estate property must clean up said site to the approval of the Board of Health and/or the Towns Health Officer; and (2) to see if the Towns of Framingham, Sudbury and Wayland will vote to request that their Federal and State Representatives and Senators file legislation that will eliminate all unfunded State & Federal mandates. Further, the Town Meeting instructs the Moderator to notify all Massachusetts communities of Wayland's action.

D. Leard said he was frustrated that the Board had not been contacted by S. Haker before he proceeded to call a Special Town Meeting, and he noted the irony of an article to eliminate unfunded mandates that was itself an unfunded mandate. S. Correia suggested that residents contact S. Haker to express their opinion. J. Nolan said that while he had concerns about the use of chemicals by NStar, he also had reservations that the wording of the proposed resolution was overly broad and could apply to private homeowners as well. F. Turkington noted the state would be reluctant to have individual towns adopting different rules. He also said that the articles are resolution without the force of law, and that he will be in touch with Sudbury and Framingham to see if the articles are modified at their meetings. E. Collins said the call for a Special Town Meeting is a burden to all the towns concerned, and that the more serious issue is the clear cutting of trees by NStar. He said there is a possibility that there will be an alternate bylaw provided. D. Leard asked about the possibility of not reaching a quorum. Town Moderator Dennis Berry said the meeting would then adjourn with no action taken. The Board requested that the Town Moderator consult with his committee regarding the use of electronic voting. J. Nolan moved, seconded by E. Collins, to hold a Special Town Meeting on Wednesday, October 3, 2012, at 7:30 p.m. in the Wayland High School Auditorium, and the warrant for said Special Town Meeting will be open from Tuesday, August 28, 2012, at 8:30 a.m. through Tuesday, September 4, 2012, at 4:30 p.m. In accordance with Chapter 36, Section 36-3 of the Code of the Town of Wayland, all

articles for consideration and inclusion in said warrant shall be submitted to the Selectmen's Office in the Wayland Town Building at 41 Cochituate Road, Wayland, Massachusetts by 4:30 p.m. on Tuesday, September 4, 2012. YEA: J. Bladon, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A4. Selectmen's Reports and Concerns The Board discussed alternative language for the charge of the Audit Committee and the request by the School Committee to provide committee consultation regarding the independent school account audit/review. F. Turkington proposed the following motion:

To assign to the Audit Committee the following specific tasks related to the request of the School Committee for technical assistance in its evaluation of an independent review of certain school accounts to be conducted by a professional auditing or consulting firm:

- (a) Conduct a review of and provide input to the School Committee on the submitted proposals received by the School Committee in response to a letter dated July 27, 2012, to invited audit/consulting firms, with specific attention given to advising the School Committee on the project scope and tasks to be completed by the audit/consulting firms;
- (b) Rank order the responding firms and provide a recommendation to the School Committee; and
- (c) Support and assist the selected audit/consulting firm in responding to questions and gathering documents necessary to complete their review of certain school accounts as outlined in the scope of services.

S. Correia said he accepted the need to revise the original charge, but he urged the Board to keep the original scope in mind; he said the Audit Committee was meant to be an advisory committee to the Board of Selectmen. J. Nolan said he was comfortable with the initial motion, but was open to further discussion. D. Leard said he didn't want to restrict the activities of the Audit Committee. He asked for assurances that the public would be allowed to participate in the process. E. Collins submitted his own version of the motion that included the language of the School Committee in its letter of July 27, 2012. F. Turkington noted that the letter of the School Committee was a request to the auditors, not the Audit Committee; he said the Board should not lose sight of the distinction. J. Bladon said that in conversation with the Chair of the School Committee, it was their expectation that the Audit Committee would be independent of any other committee. He expressed concern that the Board was directing the Audit Committee too specifically. E. Collins said that items a, b and c in the proposed motion are too restrictive; D. Leard agreed. J. Bladon said the charge is written to instruct the Audit Committee. J. Nolan moved, seconded by S. Correia, to accept the motion as presented, with the addition of the language "as informed by the request of the letter received from the School Committee on July 27, 2012." YEA: J. Bladon, S. Correia, J. Nolan. NAY: E. Collins, D. Leard. ABSENT: none. ABSTAIN: none. Adopted 3-2. F. Turkington said he would like to have the Board reach consensus, and he suggested further discussion and another vote at a later meeting.

J. Bladon left the meeting at 7:01 p.m.

A5. Review and Approve Proposed Letter to Minuteman Regional School Committee regarding School Building Feasibility Study D. Leard moved, seconded by E. Collins, to approve the letter as prepared by the Town Administrator to the Minuteman Regional School Committee regarding the School Building Feasibility Study. YEA: E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: J. Bladon. ABSTAIN: none. Adopted 4-0.

A6. Discussion and Response to Open Meeting Law Complaint of August 22, 2012, filed by George Harris regarding Specificity of Meeting Agendas and Consideration of a Matter that should have Reasonably been Anticipated by the Chair prior to the Beginning of the Meeting of August 1, 2012

F. Turkington opened the discussion of the Open Meeting Law by stating that it is required by law that the Board discuss the complaint with the complainant in open session. The complainant, George Harris, was not present. E. Collins said that the Board did violate the open meeting law by discussing a matter not on the agenda and failing to post a detailed consent calendar. The Board agreed to resume the discussion when the Town Administrator returned from seeing if G. Harris was still in Town Building at another meeting.

A7. Vote the Question of Approving the Invoice for Special Town Counsel Deutsch Williams Brooks DeRensis & Holland PC for Legal Services Rendered through July 31, 2012, Invoice 130, Account 5673-01M: \$2,044.78

E. Collins asked the purpose of the legal work, and expressed concern that the work was done for NStar. D. Leard said he would like to see the detail. S. Correia said the detail includes ongoing lawsuits and should not be made public. The Board delayed action on this item until the Town Administrator returned and could be included in the discussion.

A6. Discussion and Response to Open Meeting Law Complaint of August 22, 2012, filed by George Harris regarding Specificity of Meeting Agendas and Consideration of a Matter that should have Reasonably been Anticipated by the Chair prior to the Beginning of the Meeting of August 1, 2012 (continued)

F. Turkington returned and advised that he invited G. Harris to participate in the discussion. G. Harris told him that he preferred to attend another public meeting in the Wayland Town Building, and he advised that the Board could proceed with its discussion in his absence, and to ask him to rejoin the meeting only if the Board had questions on his complaint. Discussion ensued on the merits of the complaint. J. Nolan said that he is willing to resolve the issue by including the entire consent calendar and the entire correspondence list in every future posting of the agenda with the town clerk. S. Correia noted that the agenda includes an item, "review and approve consent calendar," but a separate cover sheet detailing such items, which customarily includes approval of minutes, approval of weekly payroll and expenditure warrants, and approval of invoices for legal services of town and special counsel, is prepared and posted on the Town's website by Friday afternoon. F. Turkington explained that since the Attorney General does not consider the website as an alternative posting method in compliance with the law, G. Harris is correct that either the details from the consent calendar should be added to the agenda for the separate sheet posted as part of the meeting agenda with the Town Clerk and in the 24-hour accessible notebook of public meetings agendas in the foyer of Town Building. F. Turkington said to avoid a subsequent complaint, it would be wise to do the same with the correspondence index since members discuss random items which appear in the packet and which are not detailed on the agenda.

As for the second issue raised by G. Harris in his complaint, S. Correia stated that it was not productive for the Board to parse the timing of when the chair reasonably knew about the issue raised by A. Boschetto with regard to the Town Administrator's participation in the meeting of the Audit Committee, and whether he should have anticipated the Town Administrator would ask the Board to affirm with a vote the practice of allowing the Town Administrator to speak on the Board's behalf at meetings of other town boards and committees during the "Report of the Town Administrator" item on the agenda. F. Turkington noted that he felt the action necessary because A. Boschetto was not accepting his answer that the matter was practice of the Board, distinctive from the special permission required for non-resident staff to speak at town meeting. S. Correia noted that three items raised during "Review of Correspondence" and "Selectmen's Reports and Concerns" at the same meeting (review of dog regulations on public lands, discussion of \$500,000 designation of fund balance, and request of School Committee for committee oversight of a special audit) arguably could

have been included in this complaint as items that might have been reasonably anticipated by the chair and therefore included on the agenda or an amended version reflecting the time in which he became aware. D. Leard speculated that the Board vote may be distinguished from the issue included in the complaint from the other three issues not included, and each of the three were listed on and discussed at the subsequent agenda and meeting on the August 20. E. Collins questioned why the Board was explaining and rationalizing the behavior, calling it a yes or no matter as whether the OML had been violated, and felt the Board had the wrong attitude about the violation and the complainants. S. Correia and J. Nolan took exception to that characterization, noting the frequency of the complaints, the political motivation of the timing and topics, and the failure to view the issues as matters requiring interpretation rather than clear violations. F. Turkington noted his earlier comments regarding the practice of the Attorney General's office to issue pronouncements through complaint determinations rather than advisory opinions, and the impact on the number and types of complaints.

J. Nolan moved, seconded by D. Leard, to accept the proposed remedies requested by G. Harris in the complaint. F. Turkington recommended that the Board modify the practice relative to posting the consent calendar and correspondence index sheets with the Town Clerk as discussed. YEA: S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: J. Bladon. ABSTAIN: E. Collins. Adopted 3-0-1. J. Nolan asked E. Collins why he didn't support the motion, given his position taken during discussion. He itemized and restated his motion in asking for a re-vote as follows and asked to resubmit the vote:

- That the Board acknowledge the error in failing to include detailed items to be considered on the consent calendar;
- That the Board declare that it will amend the draft minutes of the minutes of the August 1, 2012, meeting to include the verbatim motion vote on the request of the Town Administrator
- That the Board reaffirm its commitment to comply with all aspects of the Open Meeting Law and all members pledged to exercise diligence as they consider whether to engage in substantive discussion of any item raised for discussion that was not previously noticed on the agenda when posted or properly amended prior to the start of the meeting; and,
- That the Board will request the Attorney General's Division of Open Government to conduct a training session on the Open Meeting Law to be held on a weekday evening in Wayland for members of all town boards and committees and interested citizens that includes an opportunity for questions and answers.

YEA: E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: J. Bladon. ABSTAIN: none. Adopted 4-0.

A7. Vote the Question of Approving the Invoice for Special Town Counsel Deutsch Williams Brooks DeRensis & Holland PC for Legal Services Rendered through July 31, 2012, Invoice 130, Account 5673-01M: \$2,044.78 F. Turkington explained that the invoice was for labor relations counsel services. D. Leard moved, seconded by J. Nolan, that the invoice be approved. YEA: E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: J. Bladon. ABSTAIN: none. Adopted 4-0.

A8. Topics Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting, If Any S. Correia said "I know of none."

A9. Adjourn There being no further business before the Board, D. Leard moved, seconded by J. Nolan, to adjourn the meeting of the Board of Selectmen at 7:44 p.m. YEA: E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: J. Bladon. ABSTAIN: none. Adopted 4-0.

Items Distributed For Use by the Board of Selectmen at the August 27, 2012 Meeting

1. Email dated August 27, 2012 from Town Administrator to Selectmen with proposed motion regarding request of School Committee for committee support for independent audit of certain school accounts.
2. REVISED schedule of activities and events culminating with Special Town Meeting on Wednesday, October 3, 2012.
3. Letter dated July 27, 2012 from School Committee to invited auditing/consulting firms regarding proposals to provide independent review of certain school accounts (distributed by Mr. Collins).

Items Included as Part of Agenda Packet for Discussion During the August 27, 2012 Board of Selectmen's Meeting

1. Petition for Special Town Meeting submitted by Steven Hakar, 10 Foley Drive, Framingham, containing sufficient signatures of Wayland voters calling for a special town meeting on resolutions seeking legislation to ban unfunded mandates and to provide for local regulation of application of chemicals on any property.
2. DRAFT call for a Special Town Meeting to be held on Wednesday, October 3, 2012 and public notice regarding opening of Warrant for said Special Town Meeting.
3. Email dated August 22, 2012 from Town Administrator to Selectmen, Moderator, Town Clerk and others regarding logistics for Special Town Meeting, together with proposed schedule of key dates.
4. DRAFT letter to Minuteman Regional Vocational-Technical High School leadership from Selectmen regarding concerns related prerequisites for proceeding with a school building feasibility study.
5. Open Meeting Law complaint dated August 22, 2012 from George Harris, 8 Holiday Road, alleging the Board of Selectmen violate the OML by failing to post with the Town Clerk the detailed correspondence packet and the chair of the Board of Selectmen failed to cause the August 1, 2012 agenda to be amended to reflect discussion of Town Administrator's participation in the August 6, 2012 meeting of the Audit Committee.
6. Invoice for legal services rendered through July 31, 2012 by Deutsch Williams.