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# TOWN OF WAYLAND

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APPROVED  
FOR RELEASE  
3/5/2015

BOARD OF SELECTMEN  
ANTHONY V. BOSCHETTO  
EDWARD J. COLLINS  
STEVEN J. CORREIA  
DOUGLAS J. LEARD  
JOSEPH F. NOLAN

## Board of Selectmen Meeting Minutes Executive Session June 17, 2013

**Attendance:** Tony V. Boschetto, Edward J. Collins, Steven J. Correia, Douglas J. Leard, Joseph F. Nolan  
**Also Present:** Town Administrator Fred Turkington, Assistant Town Administrator/Human Resources Director John Senchyshyn, Wastewater Management District Commission members Fred Knight and Sam Potter, and Town Counsel Mark Lanza

**Purpose:** The session was called at 7:18 p.m. in the Selectmen's Meeting Room, Wayland Town Building, by unanimous roll call vote (YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0) of the Board of Selectmen in open session as permitted by Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss strategy and negotiations with respect to pending litigation *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission* because an open meeting discussion will have a detrimental effect on the negotiating position of the town.

**Discussion:** Town Counsel Mark Lanza reviewed a history of the case, elements of the jury verdict, open issues remaining on which the judge has not yet ruled, and the process for appealing the verdict and mitigating the damage award. T. Boschetto questioned whether there was an on-going breach and damage exposure, and suggested that the parties pursue a strategy to minimize future risk by lowering the commitment to Twenty Wayland. He suggested that a comparative economic analysis be developed for reducing the wastewater commitment to Town Center versus providing supplemental discharge capacity. J. Nolan questioned the practicality of that approach, given the likely deal for sale of the residential component to Brendan Properties, and noted that a strategy to reduce or eliminate residential features of Town Center would be opposed by the majority of the community. T. Boschetto responded that he believes his approach should be studied in parallel with the efforts to provide the 17K gpd to meet the contractual obligation to Twenty Wayland.

It was the consensus of the participants to allow Town Counsel to proceed with post-trial motions to perfect the damage award in addition to mitigate the award, to delay specific performance, and to delay declaratory relief. It was further agreed that the best mitigation strategy to achieve release of the 17K gpd from MassDEP was to provide data demonstrating actual water use well below Title V predicted flows, and ask DEP to deviate from Title V based on this information as was done in the Town of Harvard for a housing development. In addition, F. Turkington agreed to contact State Representatives Tom Conroy and Alice Peisch and State Senator Richard Ross in an effort to get a meeting with the Commissioner of the Department of Environmental Protection and/or the Secretary of Energy and Environmental Affairs to press for consideration given the reality of the court case. Town Counsel will pursue seeking a release of the permit based on the language in the ACO and companion letter from MassDEP. It was agreed to temporarily hold

expending funds to support an individual permit for the groundwater discharge at Town Building while these other avenues are explored. The Wastewater Management District Commission and the Board of Selectmen agreed to meet again in late July to reassess the situation and shape strategy accordingly.

Wastewater Management District Commission member Sam Potter reminded the Board that the Wastewater Management District Commission believes the costs and damages should be divided between the Town and the users. The negotiating leverage on Twenty Wayland of applying all costs to the Wastewater Management District Commission was discussed, as well as the practical and legal issues limiting the Town's ability to kick into a settlement because it is an enterprise fund.

**Adjourn:** By motion of J. Nolan, seconded by S. Correia, by roll call vote, it was unanimously voted to exit executive session at 8:53 p.m. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

**Items Distributed for Information and Use by the Board of Selectmen at the June 17, 2013, Meeting**

1. None