



TOWN OF WAYLAND

41 COCHITUATE ROAD
WAYLAND, MASSACHUSETTS 01778

FREDERIC E. TURKINGTON JR.
TOWN ADMINISTRATOR
TEL. (508) 358-7755
www.wayland.ma.us

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

Board of Selectmen Meeting Minutes July 16, 2013

Attendance: Tony V. Boschetto, Edward J. Collins, Douglas J. Leard, Joseph F. Nolan
Also Present: Town Counsel Mark J. Lanza, Executive Assistant MaryAnn DiNapoli

Chair D. Leard called the meeting of the Board of Selectmen to order at 7:04 p.m. in the Selectmen's Meeting Room and reviewed the agenda for the public.

A2. Public Comment Anette Lewis, 33 Claypit Hill Road, said it has been unclear from the beginning as to who has been handling the lawsuit, *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission*, and said it is the Board of Selectmen who is responsible. She said the Board needs to be involved and should not rely on anyone else to protect the town. She advised members to read every document and have Town Counsel report directly to the Board, whether or not counsel is appointed by the Town Administrator. She said that in her review of the case, Town Counsel raised no counter arguments or defense, and numerous documents were never considered. She said the agreements with Twenty Wayland on behalf of the town were not contracts, and in meetings of the Wastewater Management District Commission, the discussions were about rate changes and not the capacity provisions. She noted that discharge amounts cannot be granted in perpetuity. She offered to work with the newly appointed Special Counsel, and said the town should never again enter into legal agreements without consulting the residents of the town. E. Collins asked her to clarify which agreement the Board did not have the power to execute. A. Lewis said the 1999 Memorandum of Agreement with Twenty Wayland; she said it was not a contract, and it only authorized the purchase of the facility. She said she didn't want to speak any further in the matter, as it could harm the town's case, but noted that she was opposed to the agreement from the beginning. Linda Segal, 9 Aqueduct Road, speaking on behalf of herself, suggested that all the stakeholders in the proposed new DPW facility and the Rivers Edge project meet in one room to coordinate their efforts before the next town meeting. On a second issue, she said she reviewed the depositions of F. Turkington and F. Knight in the matter of *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission*, and said that she highlighted the text that was entered into evidence. She said the judge in the case understood that the town had ratified the 1999 agreement at Town Meeting, and the town had not. She said the use of the word "Town" means the people of the town and not the elected officials. She said the public needs to fully understand the history of the case and how it came to be in this position. She noted a Board of Health permit issued for a 9,900 gpd Title V septic system at the town center project that has never been used. Finally, she said that she had made corrections to her public comment in the Board of Selectmen meeting of June 13, and asked that the minutes be corrected to reflect her changes.

A3. Executive Session to Discuss Strategy and Negotiations with Respect to Pending Litigation with Twenty Wayland At 7:16 p.m., T. Boschetto moved, seconded by E. Collins, that the Board of Selectmen go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss strategy with respect to litigation with respect to *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission* as a discussion of these matters in an open meeting may have a

detrimental effect on the bargaining or litigating position of the Town. The Chair declared that an open meeting discussion of strategy with respect to *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission* may have a detrimental effect on the litigating position of the town. YEA: T. Boschetto, E. Collins, D. Leard, J. Nolan. NAY: none. ABSENT: S. Correia. ABSTAIN: none. Adopted 4-0. Chair D. Leard stated that the Board invites Town Counsel Mark Lanza, Wastewater Management District Commission Chair Fred Knight, and Wastewater Management District Commission member Sam Potter to attend and participate in the executive session. The Board also invites Executive Assistant MaryAnn DiNapoli to attend and record minutes of the executive session. The Board will return to open session in approximately thirty minutes.

L. Segal asked if the Wastewater Management District Commission had convened and entered executive session.

At 7:17 p.m., S. Potter moved, seconded by F. Knight, that the Wastewater Management District Commission enter into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss strategy with respect to litigation between *Twenty Wayland, LLC and the Commission and/or the Town of Wayland* over sewer use charges, if an open meeting may have a detrimental effect on the bargaining or litigating position of the Town. The Chair declared that discussion of strategy with respect to litigation between *Twenty Wayland, LLC and the Commission and/or the Town of Wayland* over sewer use charges as stated in open session for the Commission on May 19, 2011, in an open meeting may have a detrimental effect on the litigating position of the Town. YEA: F. Knight, S. Potter. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 2-0.

A. Lewis said the motion made by the Wastewater Management District Commission was insufficient in that it limited the discussion to the issue of sewer use charges. M. Lanza said the motion is sufficient in that it includes a discussion of the litigation, but was amendable to revising the motion to include everything involved in the lawsuit.

S. Potter amended the motion: S. Potter moved, seconded by F. Knight, that the Wastewater Management District Commission enter into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss strategy with respect to litigation between *Twenty Wayland, LLC and the Commission and/or the Town of Wayland*, to include everything involved in the lawsuit, if an open meeting may have a detrimental effect on the bargaining or litigating position of the Town. YEA: F. Knight, S. Potter. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 2-0. Chair F. Knight stated that the Commission will return to open session in approximately thirty minutes.

The Board returned to open session at 8:16 p.m.

A4. Discussion and Vote to Endorse the Recommendation for Special Counsel and Authorize the Town Administrator to Appoint Special Counsel to Assist with Post-Trial Litigation in the Matter of *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission* J. Nolan moved, seconded by T. Boschetto, to ratify the appointment of Attorney John Mirick, of Mirick, O'Connell, DeMallie & Lougee LLP, as Special Counsel to assist with post-trial litigation in the matter of *Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission*. YEA: T. Boschetto, E. Collins, D. Leard, J. Nolan. NAY: none. ABSENT: S. Correia. ABSTAIN: none. Adopted 4-0.

A5. Topics Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting, If Any

D. Leard said, "I know of none."

There being no further business before the Board, J. Nolan moved, seconded by T. Boschetto, to adjourn the meeting of the Board of Selectmen at 8:19 p.m. YEA: T. Boschetto, E. Collins, D. Leard, J. Nolan. NAY: none. ABSENT: S. Correia. ABSTAIN: none. Adopted 4-0.

Items Distributed For Information and Use by the Board of Selectmen at the July 16, 2013 Meeting

1. Motion to Enter Executive Session
2. Email correspondence re: Scope of Legal Services
3. Proposal from Foley Hoag LLP
4. Proposal from Posternak, Blankstein & Lund LLP
5. Proposal from Mirick, O'Connell, DeMallie & Lougee LLP
6. Proposal from Pierce, Davis & Perritano, LLP