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APPROVED
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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 July 16, 2013

Attendance: Anthony V. Boschetto, Edward J. Collins, Douglas J. Leard, Joseph F. Nolan

Also Present: Town Counsel Mark J. Lanza, Executive Assistant MaryAnn DiNapoli, Wastewater Management District Commission Chair Fred Knight, Wastewater Management District Commission member Sam Potter


Via Telephone: Assistant Town Administrator/Human Resources Director John Senchyshyn (8:10 p.m.)

Purpose: The session was called at 7:16 p.m. in the Selectmen's Meeting Room, Wayland Town Building, by unanimous roll call vote (YEA: T. Boschetto, E. Collins, D. Leard, J. Nolan. NAY: none. ABSENT: S. Correia. ABSTAIN: none. Adopted 4-0) of the Board of Selectmen in open session as permitted by Massachusetts General Laws Chapter 30A, Section 21(a)(3) for the purpose of discussing strategy 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.

Discussion: The Board reviewed the proposals of four law firms to serve 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*: (1) Foley Hoag LLP, (2) Posternak, Blankstein & Lund LLP, (3) Mirick, O'Connell, DeMallie & Lougee LLP, and (4) Pierce, Davis & Perritano, LLP [REDACTED]

J. Nolan expressed concern that executive session legal matters were discussed in public comment. He then asked for clarification of the argument regarding the validity of the 1999 Memorandum of Agreement with Twenty Wayland [REDACTED]. T. Boschetto said that even if the MoA was legal, it should have been approved by Town Meeting, so the public would be informed. J. Nolan said there is a value to having an elected board that can make decisions on behalf of the town. He also noted that the full agreement was printed in the warrant, mailed to every household, and discussed extensively at town meeting.

The Board discussed whether the deposition of the Town Administrator, in which he states the 1999 agreement was approved by town meeting vote, had tainted the jury. [REDACTED]



The Board discussed the scope of services, and agreed that the scope provided by Posternak was a good beginning draft. Board members reviewed suggestions for inclusion, such as a cause of action against the Department of Environmental Protection, the need for Twenty Wayland LLC to exhaust its remedies, the impossibility of town performance due to a third party (DEP), and the instructions to the Wastewater Management District Commission from the DEP for the wrong permit. M. Lanza said the scope should be written very broadly.

Assistant Town Administrator/Human Resources Director John Senchyshyn was contacted by telephone. J. Senchyshyn, acting as Assistant Town Administrator in the absence of the Town Administrator, appointed Attorney John Mirick of the law firm of Mirick, O'Connell, DeMallie & Lougee LLP, to serve 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*.

The Board requested that Attorney John Mirick be invited to meet with the Board at a meeting on Tuesday, July 23, 2013.

By motion of E. Collins, seconded by J. Nolan, by roll call vote, it was unanimously voted to exit executive session at 8:16 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. Proposals to serve 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* from Foley Hoag LLP, Posternak, Blankstein & Lund LLP, Mirick, O'Connell, DeMallie & Lougee LLP, and Pierce, Davis & Perritano, LLP