



JOHN SENCHYSHYN
ACTING TOWN ADMINISTRATOR
TEL. (508) 358-7755
www.wayland.ma.us

TOWN OF WAYLAND

41 COCHITUATE ROAD
WAYLAND, MASSACHUSETTS 01778

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

Board of Selectmen Meeting Minutes Executive Session September 9, 2013

Attendance: Anthony V. Boschetto, Edward J. Collins, Steven J. Correia, Douglas J. Leard, Joseph F. Nolan
Also Present: Acting Town Administrator John Senchyshyn, Wastewater Management District Commission member Sam Potter, Town Counsel Mark J. Lanza, and Executive Secretary MaryAnn DiNapoli

Purpose: The session was called at 6:32 p.m. in the Large Hearing Room, Wayland Town Building, by a roll call vote of 3-2 (YEA: T. Boschetto, E. Collins, D. Leard. NAY: S. Correia, J. Nolan. ABSENT: none ABSTAIN: none) of the Board of Selectmen in open session as permitted by Massachusetts General Laws Chapter 30A, Section 21(a)(3) to (1) discuss the strategies with respect to pending litigation between the Twenty Wayland, LLC, and the Town and its Wastewater Management District Commission and the matter of the appeal of the groundwater discharge permit issued by the Massachusetts Department of Environmental Protection for the Town Building Field Site; and (2) discuss the Open Meeting Law complaint filed against the Board of Selectmen on September 3, 2013. The Chair declared that an open meeting may have a detrimental effect on the litigating position of the Town.

Discussion: M. Lanza said the post trial motions in the case of Twenty Wayland LLC were filed on August 28, 2013, and have been sent to opposing counsel. He thanked Special Counsel John Mirick for his input into preparing the motions. [REDACTED]

[REDACTED] S. Potter said that Twenty Wayland is trying to build a case for damages against the town, and he discussed his conversation with the potential buyer of the residential portion of the development, Kevin Giblin of Brendon Homes. S. Potter said that Twenty Wayland has set up the purchase and sales agreement with the sole contingency being a wastewater provision, thereby creating damages in the event of the termination of the contract. He said that according to K. Giblin, if he doesn't get the necessary capacity, he will waive his deposit and go to court. [REDACTED]

[REDACTED] S. Potter said the DEP is willing to work with the town towards a November 1 date, and warned that a request for a hearing will take a long time and require significant technical information. He said that in the original negotiation, the town elected to have the developer build a septic system for the municipal pad so the town wouldn't take any capacity; however, building a septic system is impossible. T. Boschetto asked how much flow is needed for the residential portion; S. Potter said 9,300 gallons. He said the municipal pad should be counted as 3,000 gallons, and if it was turned over to the developer it would be a net gain to them of 6,000 gallons. T. Boschetto also suggested releasing the flow from the town building as a sign of good faith. J. Nolan said it would be difficult for the Board to release the municipal pad. S. Potter said it would only be a temporary measure until the town

receives DEP approval. He said the flow would be released to the residential portion, which is the basis for further negotiation. T. Boschetto said it provides a solution. J. Nolan asked if the DEP will be more accommodating when the evidence shows that the town's needs are less than the flow required; S. Potter said no.



Wastewater Management District Commission member Sam Potter left the meeting at 7:20 p.m.

T. Boschetto said he would like to engage Special Town Counsel, because the relationship between the Open Meeting Law complaint of Kim Reichelt and the personnel issues involved must be guided properly. J. Nolan said the Board has had numerous open meeting law complaints without hiring special counsel. S. Correia suggested that the Board might be able to come to an agreement with K. Reichelt without expending legal funds. M. Lanza explained the timeline and procedure for answering the complaint. He said there was no requirement that the Board meet with K. Reichelt, but the Board decision must be made in open session. T. Boschetto said his concern was that in open session, the public could make comments that would adversely affect the litigating position of the town. J. Nolan suggested that the Board concede the agenda item was misleading without discussing the reasons for the termination of the Town Administrator. T. Boschetto said he would object, as the agenda item was sufficient. He said he did not know what his intentions would be before he made the motion, and it was not discussed before the meeting. S. Correia questioned why the agenda item began with a motion to terminate the Town Administrator. T. Boschetto said the conversation could have been initiated by any element of the contract. He said he had formulated several options and was prepared to move in any direction. J. Nolan noted that there needs to be a conversation about the "without cause" stipulation. M. Lanza said the Acting Town Administrator has the authority to appoint Special Town Counsel; he recommended Attorney Robert Ritchie and reviewed his background and experience. S. Correia questioned his fee; M. Lanza said it is \$250 per hour. S. Correia asked if it was the opinion of Town Counsel that the Board should appoint Special Town Counsel; M. Lanza said no, but may be considered in regard to the inquiry of the Attorney General. T. Boschetto said Special Town Counsel could handle any future actions, and he said he would prefer an attorney who had a history with the town, such as Attorney John Foskett. D. Leard also expressed his concern about the legal ramifications of a public discussion of the former Town Administrator. E. Collins said it would make sense to delay the interviews with the Attorney General until after the meeting with Special Town Counsel. J. Nolan said the Attorney General had responded to an email of E. Collins and not the full Board; he said the email of E. Collins was a violation of the Open Meeting Law. J. Nolan noted for the record that the Board violated the Open Meeting Law twice during the session by discussing the inquiry of the Attorney General. M. Lanza suggested the appointment of Attorney John Foskett for Special Labor Counsel. T. Boschetto said the Special Town Counsel should work with Special Labor Counsel in regard to conversations about a former employee. J. Nolan agreed; he said the Board needs to understand the ramifications. Due to time constraints, M. Lanza suggested that the Board request an extension to answer the Open Meeting Law complaint. T. Boschetto asked how the members should correspond with Special Town Counsel. J. Nolan repeated that the Attorney General inquiry was not allowed to be discussed in executive session. S. Correia noted that the complaint is against the entire Board, and meetings with the Special Town Counsel should include the whole board. M. Lanza said the Board needs to separate the issues. T. Boschetto asked that Special Labor Counsel be copied on all correspondence. J. Senchshyn said he will make a motion in open session to appoint Special Town Counsel.

By motion of E. Collins, seconded by S. Correia, by roll call vote, it was unanimously voted to exit executive session at 7:52 p.m. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: S. Correia, D. Leard. ABSTAIN: none. Adopted 5-0.

Items Distributed for Information and Use by the Board of Selectmen at the September 9, 2013, Meeting

1. None