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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 September 16, 2013

Attendance: Tony V. Boschetto, Edward J. Collins, Steven J. Correia, Douglas J. Leard, Joseph F. Nolan
Also Present: Acting Town Administrator John Senchyshyn, Secretary MaryAnn DiNapoli

A1. Executive Session to Discuss Pending Litigation Regarding an Open Meeting Law Complaint filed by Kim Reichelt on September 3, 2013 and to Discuss Pending Litigation in the Matter of Twenty Wayland, LLC v. Town of Wayland and Wayland Wastewater Management District Commission 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 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 go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(1) to 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.

J. Nolan moved, seconded by S. Correia, to amend the motion to have the discussion of the Open Meeting Law complaint in open session. He said the citizens deserve an open and transparent discussion of the matter. S. Correia said that while it is legal to discuss the matter in executive session, he believes the Board should exercise its option to have the discussion before the public. E. Collins noted that there is litigation involved. D. Leard said the public was allowed to comment at the last meeting, and it is on the current agenda during open meeting. S. Correia asked for assurance that the meetings with the Attorney General will not be discussed in executive session; T. Boschetto said absent any information to the contrary from Special Town Counsel, he will agree to that. YEA: S. Correia, J. Nolan. NAY: T. Boschetto, E. Collins, D. Leard. ABSENT: none. ABSTAIN: none. Voted 2-3, motion does not pass.

On the original motion to enter executive session: YEA: T. Boschetto, E. Collins, D. Leard. NAY: J. Nolan. ABSENT: none. ABSTAIN: none. S. Correia voted YEA to enter executive session for Twenty Wayland, LLC, and the Town and its Wastewater Management District Commission, and NAY to enter executive session for the Open Meeting Law complaint. Adopted 4-1 on the issue of Twenty Wayland, LLC, and the Town and its Wastewater Management District Commission. Adopted 3-2 on the issue of the Open Meeting Law complaint.

The Board invited the members of the Wastewater Management District Commission, the Acting Town Administrator John Senchyshyn, and the Executive Assistant MaryAnn DiNapoli to join the Board in its executive session regarding the wastewater and groundwater permit discussion.

The Board invited Special Counsel Robert Ritchie, the Acting Town Administrator John Senchyshyn, and the Executive Assistant MaryAnn DiNapoli to join the Board in its executive session regarding the Open Meeting Law complaint. The Board will reconvene in open session in approximately 45 minutes.

Sam Potter moved, seconded by Fred Knight, that the Wastewater Management District Commission go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss 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. The Chair declared that 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.

The Board returned to open session at 7:40 p.m.

A2. Call to Order by Chair Chair D. Leard called the meeting of the Board of Selectmen to order at 7:40 p.m. in the Selectmen's Meeting Room. He reviewed the agenda for the public and announced that the meeting will likely be broadcast and videotaped for later broadcast by WayCAM. J. Nolan objected to the agenda item, "Discussion regarding the Operational Ramifications of the Town Administrator Vacancy and the Compensation of the Acting Town Administrator." He said for the record that he requested such a discussion during the last two meetings, including the financial and legal ramifications, and this item only addresses the vacancy, not the termination. D. Leard said the Board did not have the full legal right to address the issues in open session, and would discuss it further in executive session.

A3. Public Comment Kent Greenawalt, 10 Reservoir Road, and Chair of the Planning Board, reported on negotiations with the residential developer at town center. He said they agreed to enter into their contract the minimal amount of affordable housing, but not the language related to the gift funds. Secondly, he said the developer has asked to shift a portion of the square footage amounts in the development agreement from retail to office. J. Nolan said the Board of Selectmen needs to vote a placeholder article. Fred Knight, 10 Trinity Place, said the termination of the Town Administrator without cause was ill-considered. He said it sends a bad message to future managers, hurts the staff, and leaves the Town without leadership; he said it could have been avoided by letting the current contract expire while searching for a new Town Administrator, thereby having a smooth transition. Jennifer Pearlman, 34 Pequot Road, said the Board deliberately planned the termination of the Town Administrator with a vague agenda item at the end of summer to hide its actions from the public. She said the Board did not use due diligence, and there will be financial and operational repercussions to the residents. J. Nolan moved, seconded by S. Correia, to extend public comment to the time necessary. D. Leard said public comment will be limited to two minutes per speaker to be consistent with the previous meetings. J. Nolan moved to amend the motion to three minutes per speaker. T. Boschetto said it should be consistent with previous weeks, and moved to amend the motion to limit public comment to a total of fifteen minutes. YEA: E. Collins, S. Correia, J. Nolan. NAY: D. Leard. ABSENT: none. ABSTAIN: T. Boschetto. Adopted 3-1-1. George Harris, 8 Holiday Road, provided his interpretation of the Town Administrator contract. He said the Board had to make a decision regarding the continued employment of F. Turkington by March 19, 2014, at which point the town would still have to pay six months salary, and it wouldn't have helped towards creating a structure to find a new Town Administrator. Kathy Cleaver, 17 Adams Lane, said the agenda item of August 26 to review the Town Administrator contract was misleading, and she believed the town would vote no confidence if it could. She said many people are outraged and will begin to monitor the Board, as there is no integrity and decency in the current government. Daniel Hill, 25 Bow Road, said the taxpayers have not received an explanation as to why they are paying a full year's salary for a terminated Town Administrator, and he said the assertion by Board members that they cannot discuss the matter because of termination without cause is incorrect as a matter of law. He said there has been no discussion or explanation of the \$1M judgment against the Town in regard to the wastewater facility, and that a municipality cannot indemnify its employees against an ethics violation. He asked the

Board to pledge that it would not cut the 2014 education budget. Tom Fay, 1 Happy Hollow Road, former member of the Board of Selectmen, said it appears the Board wants a structural change of government. He reviewed the 2001-2002 process to create the current structure and the Town Administrator position, and he said F. Turkington worked for eight years with positive reviews. He asked that any changes in the responsibilities of the Town Administrator be discussed in open session, and that no further management level employees are terminated without explanation. He said if Board members are serious about taking control, they should consider making Wayland a city and running for mayor. Jonathan Smith, 10 Old Farm Circle, said T. Boschetto ran a tough election and won, and a lot of people are surprised and upset by what he has done. He commended the civility of E. Collins. He said the arrogance of the Board is appalling, and residents who take the time to come to the meeting and address the Board should be treated with respect. John Flaherty, 21 Maguire Road, said the Board took brave action in the only manner possible. Afif Milka, 119 Lincoln Road, said he works in finance and was puzzled that a decision to terminate an eight-year employee was decided so lightly and with only a few minutes debate; he also noted that if there was prior discussion, that was not right. He said the Town will have a difficult time finding qualified people, and he suggested that if the change in direction was discussed with the employee, he may not have needed to be terminated. He said the Board made a bad business decision and now does not want to listen to anyone. Shirley Jacobson, 242A Old Connecticut Path, said she has lived in Wayland for 54 years, and has never spoken at a Board meeting before, but she felt blindsided by the termination of F. Turkington, and did not expect that the new direction would be like this. D. Leard read a letter into the record from Cynthia Lavenson, 40 Mitchell Street; she said Selectmen D. Leard, T. Boschetto, and E. Collins should resign due to their inaccurate assessment that the public would support the termination of the Town Administrator; their false assumption that the staff could manage in his absence; their wasteful spending on legal defense; and their absence of an explanation regarding their new direction.

A4. Input from Department Heads Regarding the Search Process for a New Town Administrator

Police Chief Robert Irving appeared before the Board to provide input into the search process. He said that first, the candidate should have some experience and background in public safety and municipal unions. Second, he urged the Board to hire an Interim Town Administrator expeditiously, because while he commended J. Senchyshyn for his able management of the situation, the Town will suffer without leadership. Finally, he urged the Board to dispel the tense political environment and work collaboratively to appoint a new Town Administrator with a unanimous vote. The Board discussed the value of having department heads on the search committee; R. Irving said it was a good idea, but only as part of a team of other professionals, members of the public, and members of boards. J. Senchyshyn distributed written feedback from Fire Chief Vincent Smith. D. Leard asked J. Senchyshyn to approach department heads about serving on the selection committee; J. Senchyshyn said he would prefer to wait until a plan was in place.

A5. Joint Meeting with the Personnel Board to Discuss Establishing the Search Process for a New Town Administrator

The Board was joined by the Personnel Board to discuss the search for a new Town Administrator. Nancy McCarthy, Chair, presented issues for consideration, such as ensuring a nonpolitical process, holding open forums, sponsoring website surveys, and hiring an outside consultant. The Board discussed the possible composition of the committee. N. McCarthy and J. Senchyshyn reviewed firms under consideration to provide consulting services. N. McCarthy noted the effect of the recent termination on the hiring process, and said that having the Board approve the criteria for selection is vital. She said the Board should review its objectives and make sure there is clarity. D. Leard suggested reviewing the goals and objectives as well. J. Nolan said if a change to the bylaw is contemplated, it would be a long process. T. Boschetto said there should be more citizen involvement and input from department heads. N. McCarthy expressed misgivings about putting staff on a committee to choose their supervisor. The Boards discussed

the timeline, and J. Nolan suggested that the consultant be chosen by the Board of Selectmen and the Personnel Board working collaboratively. E. Collins asked about a process for gathering public opinion, and noted that the process should be ongoing, as opinions can change. The Boards discussed possible engagement processes, such as surveys, forums, and an interactive website page. J. Senchyshyn asked if the search committee would review the résumés. Maryanne Peabody, Personnel Board, suggested forming a search committee and an interview committee, with the finalists appearing before the Board of Selectmen. The Board discussed creating a draft scope of services, and asked for a member of the Personnel Board to assist them. J. Senchyshyn asked for guidance in pursuing an Interim Town Administrator. Jessica Green, Personnel Board, asked J. Senchyshyn to contact interested candidates, and noted that the Board should begin to consider the salary implications. It was the consensus of the Board to create a structure for gathering public input, draft a charge for a selection committee, and draft a scope of services for a consultant.

E. Collins asked the Board to consider the termination provisions in Town contracts. He noted that the termination clause in the contract of the Assistant Town Administrator included consultation with the Personnel Board, but there was no such procedure in the Town Administrator contract. J. Senchyshyn said that his position has a unique dual reporting relationship. N. McCarthy said that to address this issue, the Personnel Board has decided to write a termination policy for the future.

A6. Meet with Kim Reichelt Regarding the Open Meeting Law Complaint filed on September 3, 2013

Kim Reichelt, 11 Coolidge Road, appeared before the Board to discuss the Open Meeting Law complaint she filed on September 3, 2013. D. Leard said that the deadline for response has been extended to September 27, and the Board will meet and take action on the complaint at its meeting on Monday, September 23, 2013. The Board advised K. Reichelt that it would listen to her comments but would not respond. K. Reichelt said the lack of transparency is a disturbing trend; she said the Board declined an offer to speak with her and went into executive session instead. She noted that there have been many Open Meeting Law complaints that dealt with minutiae, but this violation was egregious. She said that on the evening of August 26, the agenda item appeared as “Review Town Administrator Employment Agreement and Job Description,” but there was no discussion of the agreement or job description. Instead, she said there was an immediate motion, typed in advance, to terminate the Town Administrator. She said the agenda is to inform the public, and yet the agenda item was unclear to the public, the Town Administrator, S. Correia, and J. Nolan. She said the agenda item was discussed by D. Leard and T. Boschetto. T. Boschetto asked her if she had any facts to substantiate her allegations. She said the agenda item was added at the request of T. Boschetto. She quoted the Board in a response to an Open Meeting Law complaint filed by George Harris, 8 Holiday Road, in which the Board added language, upon the insistence of E. Collins, that Board members reaffirm its pledge to exercise diligence as they consider whether to engage in substantive discussion of any item not previously noted on the agenda. E. Collins said he was most likely quoting a prior determination of the Attorney General, and noted that Board members could have moved to table the motion made on August 26. K. Reichelt said J. Nolan made the motion and was told he was out of order. She said that if the Board cared about its fiduciary responsibility to the town, it would have carefully considered the consequences of its actions. She questioned if T. Boschetto had his motion vetted by an attorney, given the legal wording. She asked that the Board acknowledge the agenda item was willfully vague and intentional, and she is asking for the maximum fine as well as training. J. Nolan said he voted against hiring Special Counsel, and asked multiple times to discuss the issue in open session. S. Correia apologized that he could not respond to K. Reichelt on advice of counsel, and noted the Board has never hired Special Counsel for an Open Meeting Law violation. K. Reichelt thanked the Board for its time.

A7. Discussion regarding the Operational Ramifications of the Town Administrator Vacancy and the Compensation of the Acting Town Administrator The Board discussed the financial ramifications of the termination of the Town Administrator. Considerations included the payment of the former Town Administrator's salary, the cost of a consultant, the compensation for the Acting Town Administrator, the cost of an Interim Town Administrator, and the cost of Special Counsel. J. Nolan and S. Correia expressed frustration that the former Town Administrator was terminated without having this dialogue first. T. Boschetto said that any action of the Board would have had financial ramifications. He said the current Town Administrator contract was negotiated in executive session years ago, and the financial impact being experienced now is due to the members who signed the contract. J. Nolan asked where the funding will come from; T. Boschetto said there is \$750,000 in the Reserve For Salary Settlement account. The Board debated the merits of the immediate termination versus a longer term transition. S. Correia said the Board also needs to consider the operational impacts, noting the work involved in the upcoming Special Town Meeting. J. Nolan asked the Acting Town Administrator to get an assessment from each department of its major priorities, and to have Labor Counsel advise the Board as to the ramifications of the action against the Town Administrator. J. Nolan moved, seconded by E. Collins, to raise the salary of John Senchyshyn, Acting Town Administrator, to the salary of the former Town Administrator, to be pro-rated retroactively to August 27, 2013, the date of his appointment. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A8. Discussion on Preparation of Finance Committee Guidelines for FY15 Budget Tom Greenaway, Chair, Finance Committee, joined the Board to discuss guidelines for the FY15 budget. E. Collins confirmed that the Finance Committee would meet with the OPEB Advisory Committee. T. Greenaway reviewed the process for setting the guidelines; he said the only increases were in the collective bargaining agreements and utilities. He said historically, the Finance Committee has requested a 10% budget cut alternative, and T. Boschetto asked if there was any other mechanism to encourage departments to look at cost efficiencies. T. Greenaway discussed assessing and prioritizing the capital budget. He noted that earlier in the year, the Finance Director Brian Keveny returned \$800K-\$900K to free cash from turnbacks. The Board discussed the implications of budget cuts, the concern that several school departments and town departments are operated separately, the effectiveness of a zero-based budget process, increasing department efficiencies, and using free cash to reduce taxes. T. Boschetto said he would like to see more long-term planning, and T. Greenaway advised that there are unknowns, such as the bargaining agreements, the appreciation of town property, and state aid. T. Boschetto said there is unspent capital that can be returned to the budget, and T. Greenaway said there is a subcommittee of the Finance Committee working on that. T. Boschetto thanked B. Keveny and T. Greenaway for their efforts. S. Correia asked for an update on the reports that were being prepared by F. Turkington and B. Keveny; T. Greenaway said they are complete and are being prepared. E. Collins asked if the guidelines have been published; T. Greenaway said they were circulated to all departments.

A9. Review Closing for Habitat for Humanity Affordable Housing Project on Stonebridge Road Josh Rose, MetroWest Habitat for Humanity, appeared before the Board to review the agreement for the property at 89 Stonebridge Road for Board approval. Town Counsel Mark Lanza reviewed the agreement, noting that the easements benefit the town. J. Rose said the agreement was approved by the Zoning Board. T. Boschetto discussed the solvency of the project, the cost of the units, and the projected use of the proceeds. J. Rose said Habitat for Humanity is a nonprofit organization, and proceeds go towards future development. J. Nolan moved, seconded by E. Collins, to execute and deliver to Habitat for Humanity, MetroWest/Greater Worcester Inc., in consideration of one dollar (\$1.00), the property at 89 Stonebridge Road, Parcel A, Wayland, Massachusetts. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: ABSTAIN: none. Adopted 5-0.

A10. Discussion of Proposed Warrant Articles for the November 20, 2013, Special Town Meeting

J. Senchyshyn discussed warrant articles for the November Special Town Meeting. He said there are two potential petitioners' articles: funding of Wayland Cares and the repair of the stone pillars at the West Plain Street entrance to Castle Gate Road. Mike Lowery, Board of Public Works, reported that the DPW will have a mason take care of the stone pillars if it is a safety issue. J. Nolan moved, seconded by E. Collins, to include the article, "Department of Public Works Facility Construction Funding," in the November 20, 2013, Special Town Meeting, as per the draft provided by Town Counsel. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: ABSTAIN: none. Adopted 5-0. M. Lanza said if it is funded as a debt exclusion, and if it passes at the Special Town Meeting, then there will need to be a special ballot election within 90 days. S. Correia reported that the Economic Development Committee proposal for its Route 20 housing project, and the Minuteman Regional High School agreement, will be submitted for the spring 2014 meeting. Planning Board chairman Kent Greenawalt reported that his Board will meet on September 17 to consider the town center developer's request for a warrant article amending the MUOD zoning bylaw to allow for more square footage for office space.

A11. Review and Approve Consent Calendar (See Separate Sheet) T. Boschetto moved, seconded by E. Collins, to approve the consent calendar, with an edit to the minutes of August 26, 2013, to change Massachusetts Municipal Association to Massachusetts Municipal Managers Association. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: ABSTAIN: none. Adopted 5-0.

A12. Review Correspondence (See Separate Index Sheet) J. Nolan said he may attend the upcoming Fall Legislative Breakfast Meetings sponsored by the Massachusetts Municipal Association.

A13. Report of the Acting Town Administrator J. Senchyshyn reviewed upcoming agenda topics, including meeting with the Personnel Board for an update on the search for a new Town Administrator, 2014 Board goals, and an interview with candidates to fill the Board of Assessors vacancy. He asked the Board to submit agenda item requests no later than Wednesday before the meeting. J. Senchyshyn reported that no action has been taken yet on the Financial Analyst position, which is funded for six months. The memorandum announcing the November Special Town Meeting was amended to indicate the location will be the Wayland High School Field House.

A14. Selectmen's Reports and Concerns E. Collins discussed the progress of the Wayland Cares Review Committee. S. Correia indicated that the parent organization is looking at other possible funding sources. S. Correia announced his intention to resign from the Minuteman Building Committee because it meets on Monday nights, adding that the construction project is moving forward.

A15. 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 11:12 p.m. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

Items Included as Part of Agenda Packet for Discussion During the September 16, 2013 Board of Selectmen's Meeting

1. Open Meeting Law Complaint filed by Kim Reichelt on September 3, 2013
2. Position Descriptions, Town Administrator and Assistant Town Administrator/Human Resources Director
3. Input from Department Heads regarding the Search Process for a New Town Administrator

Items Distributed for Information and Use by the Board of Selectmen at the September 16, 2013 Meeting

1. Public Comment, Termination of Town Administrator
2. Public Comment, Budget Guidelines
3. Public Comment, Castle Gate Road Landmark Monuments
4. Letter of 9/16/13 from Amy L. Nable, Assistant Attorney General, to Robert W. Ritchie, Esq., re: Request for Extension to Respond to Complaint
5. Backup Information re: Funding for Habitat for Humanity project, 89 Stonebridge Road
6. Email of 9/13/13 from Town Planner Sarkis Sarkisian to Planning Board re: Town Center Proposed Zoning Modification