



# TOWN OF WAYLAND

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## Board of Selectmen Meeting Minutes Executive Session September 16, 2013

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

**Purpose:** The session was called at 6:31 p.m. in the Selectmen's Meeting Room, Wayland Town Building, by a unanimous roll call vote (5-0) on item 1 and a roll call vote of 3-2 on item 2 (YEA: T. Boschetto, E. Collins, D. Leard. NAY: S. Correia, J. Nolan. ABSENT: none ABSTAIN: none) as permitted by Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss (1) 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) the Open Meeting Law complaint filed against the Board of Selectmen on September 3, 2013, as a discussion of these matters in an open meeting may have a detrimental effect on the litigating position of the Town.

**Discussion:** Attorney Robert Ritchie introduced himself to the Board and provided his background in municipal law. He reviewed the Open Meeting Law complaint of K. Reichelt, noting her assertion regarding the lack of specificity in agenda item 4 of the August 26, 2013, Board of Selectmen meeting. He reviewed possible future actions: he said the complainant has the right to notify the Attorney General if not remediated in 14 days; the Attorney General can initiate its own investigation, and the Attorney General can join with citizens in bringing the matter to court. As to whether the agenda item was accurate or sufficient, he said the law requires that the subject matter be reasonably anticipated by the Chair. He said the Chair has acknowledged that he was not aware of the subject matter of the agenda item. However, the Chair can take action to alleviate the problem, and re-doing the measure is generally considered a cure for a technical deficiency. He noted that does not address whether there was an intentional violation. He also advised the Board to consult with Labor Counsel if the motion must be made again. He said the Board has three options to respond: (1) agree that there was an Open Meeting Law violation and the Board will re-do, (2) deny the Open Meeting Law violation, or (3) deny there was an Open Meeting Law violation but for the sake of closure, agree to a re-do. R. Ritchie said the technical violation will be resolved, but question of intentional violation will remain. S. Correia asked if the Attorney General would consider the agenda item specific enough for the public to anticipate the discussion. R. Ritchie said it was specific enough, if the only person who knew what the discussion would be was T. Boschetto. He said the Open Meeting Law does not violate the jurisdiction of the Board and does not negate what the Board has the right to do. The Board discussed whether K. Reichelt would be compelled to accept their response, and R. Ritchie said she can tell the Attorney General that she does not agree with the response. J. Nolan said he did not believe the agenda item was sufficient, and he welcomed the chance for the public to address the termination. The Board asked about the possible remedies available to the Attorney General. R. Ritchie said remedies range from a

reprimand to training, with the ultimate step being a court hearing and fines, along with the authority to void the action. R. Ritchie said it is important that Labor Counsel address the issue correctly. T. Boschetto asked if the town could be at risk by discussing cause; R. Ritchie said that Special Labor Counsel John Foskett should address that. D. Leard asked about the timeline; R. Ritchie said the answer must be done by September 26. E. Collins noted that once the response is filed, the office of the Attorney General will take its time and will not be disposed to take control of a body that is resolving the issue itself. He noted the Attorney General is investigating, concurrent with the complaint, and Board members should agree to talk to her. T. Boschetto asked if it could be discussed in executive session, and R. Ritchie said no. He said that K. Reichelt must be notified of the request for an extension. D. Leard asked if the response should be drafted in executive session. R. Ritchie said that is an elective choice. J. Nolan asked how the do-over would be done. R. Ritchie said the issue should be included on an upcoming agenda with the content of the motion that was made on August 26, 2013. He said the Board can vote as it did, or change their votes. The Board asked how to engage K. Reichelt in open session. T. Boschetto expressed concern that a dialogue with K. Reichelt would create labor implications. R. Ritchie said the Board can listen to her concerns without responding. T. Boschetto said he was amenable to admitting no wrong-doing but agreeing to re-do the vote, and asked R. Ritchie to draft an appropriate response. R. Ritchie said he would craft language reflecting the will of the Board and send it to the members; they cannot deliberate, but they can see it. He said the actual meeting with the revised agenda item should then be scheduled. The Board agreed that the September 30 meeting would be acceptable. S. Correia asked if the Board could review the response in executive session on September 23; R. Ritchie said yes, but the response must be announced in open session. E. Collins moved, seconded by T. Boschetto, to authorize Attorney Robert Ritchie to consult with Special Labor Counsel John Foskett and prepare a response to the Open Meeting Law complaint of Kim Reichelt for approval at the meeting of September 23, 2013. YEA: T. Boschetto, E. Collins, D. Leard. NAY: S. Correia. ABSENT: none. ABSTAIN: J. Nolan. Adopted 3-1-1.

R. Ritchie left the meeting at 7:24 p.m. F. Knight, S. Potter, and M. Lanza joined the meeting 7:24 p.m.

M. Lanza said there has been no decision from the court. [REDACTED] F. Knight asked if the ruling is expected shortly; M. Lanza said it benefits the town for the ruling to take as long as possible. F. Knight asked if new facts can be presented; M. Lanza said only if it warrants attention. M. Lanza said there has been no action with the Department of Environmental Protection (DEP) regarding the groundwater discharge permit. He said a motion has been filed to dismiss the appeal filed by Anette Lewis, 33 Claypit Hill Road. The order to vacate the appeal has to be approved by the DEP Commissioners. S. Potter said if they are not published for the November 1, 2013, date, Brendan Homes (the residential developer at Town Center) will not have flow, and the purchase and sales agreement will be terminated, solely due to wastewater issues. S. Potter updated the Board on flow issues; he said there was a possibility of taking private users off the system for a savings of 1,785 gallons. He said the Town Counsel could draft a reversionary right so the 3,000 gallons for the municipal pad would come back to the town. [REDACTED] It was the consensus of the Board to contact Twenty Wayland and revoke the election of a septic system for the municipal pad and release to the town the 3,000 gallons of flow. M. Lanza said he will write a motion for such a vote at the next meeting.

By motion of J. Nolan, seconded by E. Collins, by roll call vote, it was unanimously voted to exit executive session at 7:40 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 September 9, 2013,  
Meeting**

1. None