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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 23, 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 Two Open Meeting Law Complaints filed by Kim Reichelt on September 3, 2013 and September 18, 2013, and Pending Litigation in the Matter of Twenty Wayland, LLC, v. Town of Wayland and Wayland Wastewater Management District Commission and the Matter of the Appeal of the Groundwater Discharge Permit Issued by Department of Environmental Protection for the Town Building Field Site At 6:31 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)(1) to discuss the two Open Meeting Law Complaints filed by Kimberly Reichelt against the Board of Selectmen on September 3, 2013, and September 18, 2013; and (2) Massachusetts General Laws Chapter 30A, Section 21 (a) (3) to 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. 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 strike item one and amend the motion as follows: that the Board of Selectmen go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21 (a) (3) to 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 that the discussion of the Open Meeting Law complaints be held in open session.

T. Boschetto noted that in January 2011, the Board of Selectmen went into executive session to discuss an Open Meeting Law complaint that involved current Selectman Ed Collins. He also noted that the School Committee has entered executive session to discuss Open Meeting Law complaints. S. Correia said the Board only entered executive session if the Open Meeting Law complaint involved litigation. On the amended motion: YEA: S. Correia, J. Nolan. NAY: T. Boschetto, E. Collins, D. Leard. ABSENT: none. ABSTAIN: none. Motion failed, 2-3. On the original motion: YEA: T. Boschetto, E. Collins, D. Leard. NAY: S. Correia, J. Nolan. ABSENT: none. ABSTAIN: none. Adopted 3-2.

The Board invited Special Counsel Robert Ritchie, Labor Counsel John Foskett, Acting Town Administrator John Senchyshyn, and Executive Assistant MaryAnn DiNapoli to join the Board in its executive session discussion relative to Kimberly Reichelt's Open Meeting Law Complaints, and invited members of the Wastewater Management District Commission, Town Counsel Mark Lanza, Acting Town Administrator John Senchyshyn, and Executive Assistant MaryAnn DiNapoli to join the Board in its executive session discussion relative to said wastewater matters. The Board will reconvene in open session in approximately 50 minutes.

The Board returned to open session at 7:52 p.m.

A2. Call to Order by Chair Chair D. Leard called the open session of the meeting of the Board of Selectmen to order at 7:52 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 announced the groundbreaking ceremony for the new MetroWest Regional Transportation Authority Maintenance and Operation Center will be held on October 10, 2013, in Framingham.

A3. Public Comment D. Leard advised the audience that according to the Open Meeting Law, the Board is not obligated to offer public comment, but will do so. He asked that public comment be limited due to time constraints. John Frangioni, 34 Wayland Hills Road, offered suggestions to the Board to cut taxes, including not filling the Town Administrator position, rescinding the hiring of a police officer, and merging the financial administration of the school and town. Tom Fay, 1 Happy Hollow Road, asked for clarification as to whether public comment was restricted to subject matter outside of the Open Meeting Law complaints. D. Leard said he was restricting the time, as public comment was limited to five minutes on the agenda. J. Nolan moved to extend public comment to twenty minutes. D. Leard ruled the motion out of order. Marie Campbell, 40 York Road, noted that the Chair restricted comment, but gave a resident who agreed with him all the time he wanted. D. Leard said it was a fair point, and allowed for one person to speak to the Open Meeting Law complaint. Fred Knight, 10 Trinity Place, asked the Board to formulate a list of Town Administrator characteristics before selecting a nominating committee. D. Leard said the conversation is in its initial phase, and there are many issues to address. Kim Reichelt, 11 Coolidge Road, noted that an article at the 2006 Annual Town Meeting to require public comment was defeated because the public wanted the boards to maintain flexibility. She said the Chair is hostile and discourages the public from having their say. Linda Segal, 9 Aqueduct Road, said the 2006 article was withdrawn. She said she is dispelling a myth by S. Correia and J. Nolan that the Board always invites Open Meeting Law complainants to have a discussion with the Board. She cited her Open Meeting Law complaint in June 2010, in which four members of the Board were on camera deliberating an issue before the meeting had begun. She said that former Town Administrator Fred Turkington told her his job was to protect the Board, and S. Correia accused her of borderline harassment. She said she was never invited to discuss her complaint, and the current disrespect has no place in town government. Bruce Cummings, 6 Eden Road, noted that the 2006 Town Meeting article to mandate public comment was withdrawn because there is a statutory right of the Chair to sole discretion regarding public comment. However, he said the Chair should not respond to public comment by contradicting the speaker, and then denying the speaker a right to respond. He said it behooves the town to have transparency. He questioned the actions of the Chair regarding the agenda of August 26, and said he doubted that an agenda item would be approved without knowledge of its content. He thanked the Board for allowing him to speak.

D. Leard read the following response of the Board of Selectmen to Kim Reichelt regarding the two Open Meeting Law Complaints into the record. He noted there will be no discussion, and the matter will be on the September 30 agenda:

"This Response is given to comply with the provisions of the Open Meeting law, G.L. c. 30A, Section 23(b), following the two Open Meeting Law Complaints referenced above. Under an extension of time approved by the Attorney General, the Board's response to Complaint #1 must be given on or before September 27th, while a response to Complaint #2 must be given on or before October 2, 2013. Because both complaints focus on the actions of the Board and three of its members relating to the matter taken up by the Board

under Item 4 of the OML Notice for its meeting of August 26th, this will serve as the Board's response to both complaints.

In response to Complaint #1's challenge to the sufficiency of the Open Meeting law Notice for the Board's meeting of August 26th, specifically with respect to Item 4 in light of the motion made and action taken under Item 4 ("Review of Town Administrator Employment Agreement and Job Description"), although the Board does not believe there was a violation of the open meeting law, in light of some public concern, the most practical response and one that would best serve the public purposes, is the following:

1-Forthwith upon the delivery of this Response, the Board will post notice of another Board meeting, to be held at the earliest possible date, stating as one of the topics to be discussed at that meeting:

"Review Town Administrator Employment Agreement and Job Description, and/or discuss all possible action as allowable under the terms of the agreement including whether to exercise the authority of the Board to confirm and ratify termination of the employment contract of the Town Administrator under the 'without cause' provisions of that contract."

2 -At that meeting the Chair will invite a motion under the foregoing topic, and will then open the matter for deliberation and vote by the Board.

In Complaint #2 you say that the Board's deliberations on August 26th "strongly suggest" that three members of the Board (Leard, Boschetto, and Collins) "conducted prior deliberation" about the matter in violation of the OML. You claim in one place "to have evidence" of these unlawful deliberations, and elsewhere that "[t]here is no currently available direct proof of collusion." You say that they "appear[ed] to have intentionally violated" the OML and that "it is difficult to escape" that conclusion - a conclusion whose only alternative you think could be "incompetence" or "extreme rashness." That there even are alternatives of this sort is a concession that conclusions other than that the OML was violated exist. Even if your speculation about these alternatives were accurate, neither "incompetence" nor "extreme rashness" is an Open Meeting Law violation. Of course, another, more plausible, conclusion is simply that there were no violations, and that what was said and done by the three members accused occurred simply because they harbored similar views and attitudes toward the action taken at the meeting of August 26th, the motion made by Mr. Boschetto being an unanticipated occasion for them to express those views.

The three members having expressly denied that there had been any deliberations by or among them of the sort you claim, the only response that can be made to Complaint #2 is one of denial that OML violations have occurred and that there is nothing to remediate.

When asked at the meeting of September 16th what you would propose as the Board's response to Complaint #1, you proposed that the Chair admit to having violated the OML by having posted Item 4 with words you say that fell short of what he ought to have "reasonably anticipated," and that he did this intentionally with the purpose of disguising a known purpose of considering the termination of the Town Administrator. These steps amount to a concession that the claims of the Complaint are valid. Because they are not, the proposed response is unacceptable.

But in an effort to include a positive note to this response, the Board proposes to fashion and adopt a policy that would adequately address the circumstances complained of here, that is, where the Board is moved to take an action not readily inferable from the general language of the posted item or where the measure moved lies within the Board's jurisdiction but is taken up as a matter that the Chair had not "reasonably anticipated"

when the notice was posted. One possible policy might be that a motion to table any such measure to the next meeting of the Board will always be considered “in order” and will have priority over any other motion pending. The Board is willing to acknowledge that even if not required by the OML itself but rather as a “best practice,” a policy of the sort suggested above or some functionally equivalent alternative should be adopted to assure that major decisions of the Board are accompanied by sufficient notice and opportunity for public deliberation of town business. Further, as no specified detailed procedure for a “without cause” termination presently exists in the Town Code, the Board proposes to consider the adoption of such a procedure, consistent with employment contract provisions, perhaps along the lines now being considered by the Personnel Board.

Finally, while this serves as the voted response of the Board, it is acknowledged that not all members of the Board may have expressed their concurrence.”

A4. Rescind Election to Require Twenty Wayland, LLC, to Construct a Septic System to Serve a Building on the Municipal Pad in the Town Center Project Site T. Boschetto moved, seconded by E. Collins, that the town, acting by and through the Board of Selectmen, rescind (i) its January 31, 2012 notice and election under Section K(3)(b) of the Memorandum of Agreement between the Town and Twenty Wayland, LLC dated March 28, 2006, directing Twenty Wayland LLC to proceed with the design, permitting and construction of an on-site septic system with a design flow capacity of 3,000 gallons per day for the Town Center Project Municipal Parcel; and (ii) its January 30, 2013, disclaimer of the transfer, ownership and possession of 3,000 gallons per day of Twenty Wayland, LLC’s existing 45,000 gallons per day of design flow capacity at the Town-owned wastewater treatment plant and does hereby elect to accept transfer, ownership and possession of said capacity, which shall be held in the care, custody, management and control of the Wayland Wastewater Management District Commission. The Board directs the Acting Town Administrator, with the approval of Town Counsel as to form, to send notice of the Board’s foregoing decision to Twenty Wayland, LLC. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A5. Conduct Joint Meeting with Board of Assessors to Interview Candidates and to Make an Appointment to Fill a Vacancy created by the Resignation of Bruce Cummings (to fill a seat until April 2014 Town Election) Susan Rufo, Chair, Board of Assessors, announced that Kristopher Aleksov withdrew his application to serve on the Board of Assessors. David Hill appeared before the Board to interview for appointment to the Board of Assessors. He reviewed his background and interest in serving on the Board, and said he will run for the position in the April Town Meeting. He said he attended the Open Meeting Law training and will attend the Department of Revenue Course 101 when it is offered. The Board discussed the recent efforts of the town to improve the assessing function, and E. Collins noted the charitable work of D. Hill and his wife, Cynthia, in the relief effort they organized to Breezy Point. S. Rufo thanked D. Hill for offering to serve. T. Boschetto moved, seconded by E. Collins, to appoint David M. Hill to the Board of Assessors for a term to expire at the 2014 Town Election. YEA: T. Boschetto, J. Brodie, E. Collins, S. Correia, D. Leard, J. Nolan, S. Rufo, M. Upton, Z. Ventress. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 9-0.

A6. Interview Candidate and Potentially Make Appointment to Fill a Vacancy on the Council on Aging Nancy Leifer appeared before the Board to interview for an appointment to the Council on Aging. She discussed her background and interest in serving on the Council. E. Collins moved, seconded by S. Correia, to appoint Nancy Leifer to the Council on Aging for a term to expire on June 30, 2016 YEA:

T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A10. Review and Approve Consent Calendar (See Separate Sheet) E. Collins moved, seconded by S. Correia, to approve consent calendar items 1 through 6. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0. T. Boschetto moved, seconded by E. Collins, to approve consent calendar item 7, the minutes of August 12, 2013. YEA: T. Boschetto, E. Collins, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: S. Correia, D. Leard. Adopted 3-0-2.

A11. Review Correspondence (See Separate Index Sheet) D. Leard asked for an update on Stone's Bridge cleanup and safety. J. Nolan noted the Fire Chief asked for a strong, effective, full-time town administrator to work with town officials. D. Leard also thanked E. Brideau for her input. S. Correia and E. Collins said they were sorry to see that the Board was not at the Finance Committee Special Town Meeting warrant hearing. E. Collins said the OPEB Advisory Committee is a very impressive committee; D. Leard and T. Boschetto said the Board collaborates very well and provides detailed minutes.

A7. Joint Meeting with the Personnel Board to Continue Discussion on Establishing the Search Process for a New Town Administrator The Board was joined by the Personnel Board to continue its discussion regarding a search process for a new Town Administrator. J. Senchyshyn said he had one letter of interest in the Interim Town Administrator position. He described the services available from the Edward J. Collins, Jr. Center for Public Management at the University of Massachusetts in Boston. He said that they will send a notice to their list of retired managers regarding the interim position, and they are not subject to 30B procurement laws, so no RFP is necessary. The Board discussed the advantage of timely action, the experience of the Collins Center, and the number of towns that are currently conducting searches. J. Nolan said the Board should begin by defining its new direction and coming to an agreement as to the job description; he said he supports the current job description. T. Boschetto said the Collins Center could facilitate preparing a description of an effective town administrator. J. Nolan said that if the position changes substantially, it must be brought to a town meeting vote. S. Correia said there are two separate issues: the hiring of an interim administrator, and the strategy for the hiring of the permanent position. He expressed concern about the impact on the cost. Nancy McCarthy, Chair, Personnel Board, suggested strategies for the Board to consider in evaluating and refining the current job description. D. Leard said he would be interested in clarifying the evaluation process. T. Boschetto said that the Town Administrator job description was not adopted as part of the bylaw, but is set by the Board of Selectmen. As for the job description for the Interim Town Administrator, T. Boschetto said the position should include a limited subset of duties of the Acting Town Administrator, and asked J. Senchyshyn to work with the Personnel Board to define those duties. As for the Town Administrator job description, T. Boschetto suggested getting a breadth of feedback from residents and analyzing the information. The Board also considered getting professional input into the process, and discussed the timing. N. McCarthy distributed suggestions from the Personnel Board. She said it's been noted that the Board has a difference of opinion regarding the Town Administrator position, and the Board needs to come together at some point in the process, as it is unlikely someone would accept the job with uncertainty. The Board questioned the process for creating the current job description. Maryanne Peabody, Personnel Board, said it was the result of a year-long process involving all boards and committees as well as public forums. T. Boschetto said the town has changed, the economics have changed, and the environment has changed, so the job description needs to be revisited. J. Nolan suggested that the current job description be reviewed in detail by the Board. S. Correia added that a consultant be included to listen and advise; J. Nolan suggesting having Labor Counsel present to assure any changes are consistent with the current bylaw. D. Leard asked each Board member to review the Town Administrator job description for the

meeting next week. Board members then reviewed and discussed methods of soliciting public input. N. McCarthy distributed a draft charge for a selection committee. S. Correia suggested including a town administrator from a local town, and T. Boschetto suggested that department heads be involved in the process. He also suggested seeking input from the School Department regarding the recent search for a School Superintendent. J. Senchyshyn suggested that department heads be set up as a separate panel. J. Senchyshyn distributed a draft RFP. D. Leard said the next step is to interview a consultant before both the Board of Selectmen and the Personnel Board. N. McCarthy agreed to contact the Collins Center, arrange consultant interviews, and prepare the RFP. M. Peabody suggested that the consultant have experience in soliciting public input. D. Leard said the Board will review the Town Administrator job description at the next meeting, and define the role of the Interim Town Administrator.

A8. Review and Continued Discussion of Proposed Town Administrator Goals and Priorities for FY 2014

The Board discussed the proposed Town Administrator goals in light of the current situation. E. Collins questioned if the purpose of the goals and priorities was to provide a framework for the evaluation of the Town Administrator. T. Boschetto asked the goals are for the Board or the Town Administrator. S. Correia said the goals apply to both; the Town Administrator should be pursuing the goals of the Board, and J. Nolan said a measurement of the Town Administrator's performance is the completion of the goals. T. Boschetto suggested that the discussion be included in the discussion of the job description at the next meeting; he said it is more important at the present time to clarify for job description. S. Correia suggested discussed portions of the goals document each week; he also suggested postponing the discussion until an Interim Town Administrator is hired. D. Leard asked the members to send their comments to J. Senchyshyn to incorporate into a draft for further review.

A9. Discussion on Financial Condition and Review of Reports in Preparation for Operating and Capital Budgets for FY 2015

The Board reviewed the financial reports regarding the operating and capital budgets for FY 2015. S. Correia said he is looking for operating expenses net of salaries. T. Boschetto asked if the capital budget update was the most recent. E. Collins asked where the Twenty Wayland wastewater judgment would be recorded; T. Boschetto said it could be recorded as a possible liability in the next fiscal year. The Board discussed the possibility of using a debt exclusion to fund the proposed DPW facility. J. Nolan said the article contains standard funding language. E. Collins said he wanted to know how the Finance Committee would handle it, and T. Boschetto asked to get an update on the levy capacity. S. Correia asked that Finance Director Brian Keveny prepare a one-page summary of the major variances and the items of most importance to the Board. J. Nolan asked that B. Keveny and the Finance Committee be invited to a future meeting for further discussion.

A12. Report of the Acting Town Administrator J. Senchyshyn reviewed the agenda topics for September 30 and October 14. S. Correia asked for an explanation of the square footage numbers in the Planning Board MUOD article for Special Town Meeting. T. Boschetto said he would like to consider the article in the context of all other items from a negotiating standpoint. J. Senchyshyn distributed a draft schedule for the Spring 2014 Annual Town Meeting. J. Nolan said the cost of electronic voting needs to be taken into consideration when determining dates. S. Correia asked that the Finance Committee be consulted in regard to any potential conflicts and timing considerations.

A13. Selectmen's Reports and Concerns T. Boschetto asked for an update on the plans to repair or remove the playground from the Loker School. Secondly, he said there were many parents complaining that they had received parking tickets during a parent's event at the Claypit School, and he asked if the Police Chief could work with the school principals in the future so this does not happen again. S. Correia noted that

resident J. Frangioni had offered suggestions to the town to save money during public comment. He said J. Frangioni had expressed similar views previously in a letter to the Board of Selectmen, and was invited to meet with the Finance Committee, to which he declined. In regard to the comments of L. Segal, S. Correia said the Board has always offered to meet with those who had filed Open Meeting Law complaints, and sometimes the complainants chose not to do so. He said he was bothered by her allegation of rudeness by Board members, and noted that there were many meetings in which her friends were vocal and disrespectful to the Board. J. Nolan said that if L. Segal was not invited to speak in 2010, he apologizes, but noted that the Board has invited complainants in the recent past, and he stands by his disagreement to hire outside counsel. He also questioned the use of the Reserve for Salary Settlement funds; he said it was put in the budget for salary negotiations and was not to be used for interim salaries. T. Boschetto said it has been used in the past to pay incentives and lump sums. J. Nolan said the Board should not create the false pretense that the town has extra money, and a portion of that money will be used to meet the town's contractual goals. E. Collins said he cannot remember a time when L. Segal has been less than appropriate, whether attending meetings or addressing the Board.

A14. Topics Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting, If Any
D. Leard said, "I know of none."

A15. Adjourn There being no further business before the Board, E. Collins moved, seconded by T. Boschetto, to adjourn the meeting of the Board of Selectmen at 10:38 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 23, 2013 Board of Selectmen's Meeting

1. Open Meeting Law Complaints filed by Kim Reichelt on September 3, 2013, and September 18, 2013
2. Position Descriptions, Town Administrator and Assistant Town Administrator/Human Resources Director
3. Résumés of David Hill, Kristopher Aleksov, and Nancy Leifer
4. Proposals re: Town Administrator Recruitment from Edward J. Collins Jr. Center for Public Management and Municipal Resources
5. Reports Prepared by Finance Director Brian Keveny in Preparation for Operating and Capital Budgets for FY 2015
6. Policy Goals and Priorities for Town Administrator for October 2013 through September 2014 with Revisions

Items Distributed for Information and Use by the Board of Selectmen at the September 23, 2013 Meeting

1. Public Comment, Termination of Town Administrator
2. Email of 9/22/2013 from Steven Correia to Ford Spalding re: Resignation from the Minuteman Regional High School Building Committee