



TOWN OF WAYLAND

41 COCHITUATE ROAD
WAYLAND, MASSACHUSETTS 01778

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

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 September 23, 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, Special Labor Counsel John Foskett, 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 roll call vote of 3-2 (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)(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 as a discussion of these matters in an open meeting may have a detrimental effect on the litigating position of the Town.

Discussion: R. Ritchie presented a draft response to the Open Meeting Law complaints of Kim Reichelt dated September 3, 2013, and September 18, 2013. He said that the Board needs to make a statement as a Board, and not as individuals. He advised that if no violation is admitted, the Board should agree to endorse and subscribe to the law, and avert such language in the future. S. Correia asked if R. Ritchie had consulted individually with T. Boschetto, E. Collins and D. Leard regarding the second complaint. R. Ritchie said he listened and did not speak, and abstracted the story as he understood it. T. Boschetto said the response was well crafted, and asked for clarification regarding the proposal to craft a policy. The Board discussed the use of Robert's Rules, or best practices. J. Nolan noted the suggestion that a motion to table will take precedence. T. Boschetto said the meaning of the "without cause" termination clause should be codified. D. Leard said he would welcome all opinions about the language in the contract, including the opinions of the Personnel Board and Labor Counsel. J. Nolan said he believes there was a clear violation of the Open Meeting Law. R. Ritchie acknowledged that the Board is coping with different viewpoints, but individual viewpoints are subordinate to majority rule. R. Ritchie said the Attorney General needs to know that such actions will be avoided in the future, and that while everyone wants transparency, some discussions need to be in executive session. J. Nolan said he was not questioning the legality of going into executive session, he was questioning the necessity. J. Nolan asked what happened during the Attorney General interviews. R. Ritchie said he was present in case there was a need to speak privately, but the need did not arise. The Board debated the transparency of its actions; R. Ritchie said if there can be no resolution, and the rule of the majority stands. T. Boschetto said there was a public open session with the complainant, which is more than

any other Board offered. J. Nolan noted that the Board spoke many times with George Harris, who had submitted several Open Meeting Law complaints. J. Nolan moved, seconded by S. Correia, that the Board of Selectmen violated the Open Meeting Law at the meeting of August 26, 2013. D. Leard said he is opposed to admitting any guilt. T. Boschetto said there was no violation of the Open Meeting Law and there are no facts to back up the assertion. E. Collins agreed. S. Correia said, "We did violate the Open Meeting Law and there was deliberation before that motion was made." T. Boschetto said, "I would be careful about making declarative statements as to fact." S. Correia said, "In your brief description on that agenda item, what did you discuss?" T. Boschetto said, "There was no discussion." S. Correia said, "You absolutely had a discussion with Doug." T. Boschetto said, "I had no discussion with Doug Leard about that agenda item." S. Correia said, "I have a text message that I sent to the Attorney General from Doug saying you did have a brief discussion." D. Leard said, "It was only a brief discussion. We have a vote." YEA: S. Correia, J. Nolan. NAY: T. Boschetto, E. Collins, D. Leard. ABSENT: none. ABSTAIN: none. Motion fails, 2-3. T. Boschetto advised that the Personnel Board should contact Special Labor Counsel as to the proper procedure for termination without cause. D. Leard noted that the contract language must be correct before the town hires a new Town Administrator. E. Collins said the Chair of the Personnel Board is working on a draft. J. Nolan said for the record, this is the first time since the termination of the Town Administrator that the Board has had discussion with Labor Counsel regarding the exposure to the town of the termination. J. Foskett said there are two issues, contracts and employees at will, and they need to be considered separately. He said outside of union contracts, the Board decides what it wants in a contract. R. Ritchie said the expertise of J. Foskett regarding labor interests may be needed in the Board's response to the Attorney General. J. Nolan asked about the legal ramifications of the termination without cause. R. Ritchie said it cannot be discussed in this executive session. T. Boschetto said he would welcome the discussion in open session. E. Collins moved, seconded by T. Boschetto, to accept the response of the Board of Selectmen to two complaints of Kimberly Reichelt dated September 3, 2013, and September 18, 2013, as presented by Attorney Robert Ritchie. S. Correia asked that the motion be divided into option one, the do-over, and option two, the admission of guilt. J. Nolan agreed; he said he was in favor of the public discussion, but felt the Board should admit violation of open meeting law. T. Boschetto said it is unclear how to bifurcate the motion. YEA: T. Boschetto, E. Collins, D. Leard. NAY: S. Correia, J. Nolan. ABSENT: none. ABSTAIN: none. Adopted 3-2. J. Nolan asked if the response is now available to the public. R. Ritchie said he would be inclined to make it public tonight. T. Boschetto suggested it be read in open session without discussion. S. Correia asked that K. Reichelt be aware that the vote was 3-2; R. Ritchie said it is apparent. The Board discussed the ramifications of the re-vote. J. Senchyshyn asked if the do-over would affect the termination date of Fred Turkington. J. Foskett said no, and advised that the agenda item would be to "confirm and ratify" the vote of August 26 so the effective date remains the same. T. Boschetto moved, seconded by E. Collins, that an item be written into the September 30 agenda of the Board of Selectmen to confirm and ratify the termination of the Town Administrator. J. Nolan moved to table the motion and moved to make the motion in open session. There was no second. 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 discussed whether members could meet individually with Labor Counsel. J. Foskett said he preferred to give advice in executive session, and expressed concern about attorney-client privilege. J. Foskett asked Board members to send their questions to him individually prior to the next meeting, and not to engage in any discussion as a group. T. Boschetto said he would be in favor of having Labor Counsel present during executive session. E. Collins said the hiring of Special Counsel has proven to be very worthwhile.

R. Ritchie and J. Foskett left the meeting at 7:32 p.m. Town Counsel Mark Lanza and Wastewater Management District Commission members F. Knight and S. Potter joined the meeting at 7:35 p.m.

M. Lanza advised the Board that the Department of Environmental Protection had allowed a motion to dismiss the appeal of the permit. S. Potter said the Wastewater Management District Commission will advertise a hearing on the draft permit, and the 30-day appeal period will begin. [REDACTED]

[REDACTED] S. Potter asked that the Board also confirm that the Board will temporarily allow Twenty Wayland use the 3,000 gallons of flow. J. Nolan asked if the town was in danger of losing its position in the long-term to build municipal building on the pad. [REDACTED] It was the consensus of the Board to authorize Mark Lanza to contact Twenty Wayland to revoke the election of a septic system for the municipal pad and release the 3,000 gallons of flow.

By motion of E. Collins, seconded by S. Correia, by roll call vote, it was unanimously voted to exit executive session at 7:51 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 23, 2013, Meeting

1. Draft response to the Open Meeting Law complaints of Kim Reichelt dated September 3, 2013, and September 18, 2013