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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 October 2, 2013

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

A1. Executive Session to Discuss Collective Bargaining Strategy Pertaining to Contract Negotiations with School Unions; to Discuss 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; and to Review Executive Session Minutes from September 9, 2013, September 16, 2013, and September 23, 2013 for Release At 6:52 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 (1) 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 pursuant to Massachusetts General Laws Chapter 30A, Section 21 (a)(3) to discuss strategy with respect to collective bargaining with the Wayland School unions. The discussion of the matter of Twenty Wayland LLC v. Town of Wayland and Wayland Wastewater Management District Commission was cancelled. J. Nolan said the motion did not allow for a discussion of the Open Meeting Law complaint. T. Boschetto said he is comfortable with postponing the Open Meeting Law discussion until the next meeting. E. Collins asked if it was appropriate to release the minutes; John Senchyshyn said Special Counsel Robert Ritchie has approved the release. E. Collins asked if the discussion regarding the Attorney General investigation would be deferred; D. Leard said yes. T. Boschetto moved, seconded by E. Collins, to amend the motion by adding that the purpose of the executive session is to discuss the executive session minutes of September 9, 2013, September 16, 2013, and September 23, 2013, for release. On the amendment to the motion: YEA: T. Boschetto, E. Collins, S. Correia, D. Leard. NAY: J. Nolan. ABSENT: none. ABSTAIN: none. Adopted 4-1. On the original motion: YEA: T. Boschetto, E. Collins, S. Correia, D. Leard. NAY: J. Nolan. ABSENT: none. ABSTAIN: none. Adopted 4-1.

The Board invited Acting Town Administrator John Senchyshyn, Executive Assistant MaryAnn DiNapoli, Assistant School Superintendent Brad Crozier, and School Committee members Ellen Grieco and Donna Bouchard, to join the Board in its executive session regarding collective bargaining strategy; and the Board invited Acting Town Administrator John Senchyshyn and Executive Assistant MaryAnn DiNapoli to join its executive session regarding the Open Meeting Law complaint.

The Board will reconvene in open session in approximately 35 minutes.

The Board returned to open session at 7:41 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 7:44 p.m. in the Large Hearing 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 said he had requested that the Chair extend public comment, and in response an additional public comment period was added to the agenda at 10:45 p.m. D. Leard said he supports the town schools and other services, and will not cut any town services in order to cut taxes. He said it is incumbent upon the Town to monitor its finances and hold vendors and contractors responsible for doing good work in a timely manner. He said everyone is working for the same cause: to make Wayland an even better place to live, to maintain its schools and police and fire protection, and to keep residents in their homes after their children have finished school.

A3. Public Comment George Harris, 8 Holiday Road, provided background to the Board on the cost of the termination of former Highway Director Toma Duhani in 2000 by the Board of Road Commissioners. J. Nolan asked if there was a time limit on speakers; D. Leard said there would be a total of ten minutes allowed for public comment. G. Harris advised that the cost of wrongful termination in 2000 was \$700,000, the equivalent today of \$1 million, and cited it as an example of what happens when a termination is done “with cause.” Jonathan Smith, 10 Old Farm Circle, thanked the Board for moving the meeting to October 2 to accommodate the residents who had a school meeting on September 30, and he thanked D. Leard for his comments regarding support for town services. He said it would be helpful to understand the new direction of the Board. D. Leard said the comments were his and do not reflect the views of the entire Board. E. Collins said he would associate himself with those comments. Patricia Berenson, 8 Rowan Field Road, expressed her displeasure at the lack of consistency and the limits placed on public comment, and said that she was especially disappointed because D. Leard had campaigned as a champion of transparency. D. Leard said public comment is the prerogative of the Chair. Kathie Steinberg, 49 Highland Circle, read the editorial by State Representative Tom Conroy, in which he criticizes the termination of the Town Administrator without a discussion of the consequences. Deborah Seidman, 44 Old Connecticut Path, said the residents were never given the chance to understand and discuss the financial ramifications of the termination of the Town Administrator. She said no one has yet been given the right to hear on what basis the decision was made or how it will affect residents for years to come. Cynthia Lavenson, 40 Mitchell Street, said she was glad to hear of D. Leard’s support for the schools. She said public confidence has been damaged, and funds were spent that were not budgeted. She noted that the re-vote of the termination will not change anything, and the Board needs to plan how to restore public confidence.

A4. 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 T. Boschetto opened the discussion item by thanking the residents for their opinions and concerns, and said the Board looks forward to building their trust. He provided background and context for the termination of the Town Administrator. He noted that the annual evaluation of Fred Turkington was approaching and, based on his observations during his election, and listening to the concerns of citizens, he was concerned about the Town Administrators’ style and determined the Town needed a new approach. Given the options provided by the contract, he believed it was the optimal time to sever the relationship. He said he did not share his thoughts with any other member, nor did he share the two motions he had prepared for the meeting. He said he expected a discussion would ensue following his motion, and he followed all the processes in accordance with the contract and the Open Meeting Law. In regard to the new direction of the Town, he said it will include carefully worded contracts, properly planned projects, calculating long-term obligations, and preparing sound budgeting policy that does not continue the policy of maintaining large surplus cash; he said the new direction will be based on sound accounting and nothing will be cut. S. Correia thanked T. Boschetto for sharing his new direction, but noted that decisions regarding the new direction are correctly prepared by the Board and

not by individual members. He said the Board should have reviewed and considered the termination of the Town Administrator, and the process for creating a new direction. J. Nolan said the Board should be deliberating why it was in the best interest of the Town to terminate its Town Administrator. D. Leard said the “without cause” language of the contract did not allow for discussion. He also noted it allowed F. Turkington to move forward without litigation or disagreement. J. Nolan said it was interesting that three members of the Board simultaneously came to the same legal conclusion regarding the ramifications of “without cause” language. T. Boschetto said E. Collins is an attorney and is familiar with the terminology. S. Correia asked how the three Board members came to the conclusion that “without cause” was the best option, as there is disagreement amongst many lawyers as to whether it is the best option. T. Boschetto said the Board cannot discuss the reasons. J. Nolan asked if any of the members consulted with the Personnel Board; they replied no. E. Collins noted the Personnel Board does not have a policy with respect to the termination of the Town Administrator, and suggested that they prepare a policy for the future. J. Nolan suggested the policy include a requirement that there be a performance evaluation that expresses displeasure and a public discussion. T. Boschetto referenced the termination of a previous employee that had substantial financial repercussions. The Board discussed the advisability of discussing a negative performance evaluation in open session. John Foskett, Labor Counsel, said every situation varies. J. Nolan asked if the Town Administrator could be re-hired; J. Foskett said nothing precludes that. T. Boschetto read the public statement of Fred Turkington acknowledging that the Town was taking a new direction. S. Correia said the Board must take the vote again because the agenda item was unclear and the members were not prepared for the discussion. T. Boschetto said there has been no admission of an Open Meeting Law violation, and E. Collins noted that it was a typical response to a complaint. S. Correia said there were eight years of positive performance evaluations for F. Turkington, which included reducing expenses, raising revenues, bringing town center to completion, avoiding overrides, and protecting services in a difficult economy by consolidating departments. J. Nolan noted the detrimental impact of the Board decision on the Town’s reputation and the ability to hire a new Town Administrator. T. Boschetto said he considered all the options and determined that this was the best. D. Leard noted that any other approach would have left the town open to litigation. The Board reviewed the job description and discussed whether there would be a need to change the Town Administrator bylaw. S. Correia questioned whether the request from Peggy Patton for Town Administrator contracts from other towns had any connection to E. Collins. E. Collins said he had received an email to that effect from F. Turkington, and had responded that P. Patton is a reporter and was acting independently. S. Correia asked if any other member of the Board had requested Town Administrator contracts from other towns; it was the consensus of the Board that they did not.

T. Boschetto moved, seconded by E. Collins, to confirm and ratify the termination of the employment contract of the Town Administrator under the “Without Cause” Provisions of that Contract. J. Nolan said the Board was wrong not to deliberate the matter. S. Correia said he does not support the termination of the Town Administrator and the Board should have worked with him to reach its goals. YEA: T. Boschetto, E. Collins, D. Leard. NAY: S. Correia, J. Nolan. ABSENT: none. ABSTAIN: none. Adopted 3-2.

A5. Joint Meeting with the Personnel Board to Review the Job Description of the Town

Administrator The Board was joined by the Personnel Board Chair Nancy McCarthy, members Phil Schneider, Maryanne Peabody, and Jessica Green, and Special Labor Counsel John Foskett. T. Boschetto distributed a revised job description of the Town Administrator, and it was reviewed by the participants. N. McCarthy said the lines of direction need to be clarified in regard to the elected boards. J. Foskett said the issue of ratification is separate from consultation. D. Leard said the evaluation process needs to be clarified. J. Nolan suggested that the Massachusetts Municipal Association provide documentation for review. E. Collins said the responsibility for establishing budget guidelines should be discussed. N. McCarthy suggested

that the Board also discuss its own interactions with the Town Administrator. D. Leard suggested that a member of the Personnel Board attend exit interviews; J. Foskett advised against it, and said there are complications to including a Board member. J. Senchyshyn noted that the purpose is mostly administrative, and it is rare that an employee provides feedback. D. Leard asked Board members to forward their input to J. Senchyshyn for compilation and further discussion.

A6. Joint Meeting with the Personnel Board to Continue Discussion on Establishing the Search Process for a New Town Administrator; Update on the Process by Acting Town Administrator

The Board was joined by members of the Personnel Board to discuss the search for a new Town Administrator. J. Senchyshyn said he sent a scope of services to the Collins Center, and they will meet with the Board on October 28. He said the RFP will be advertised on October 10, and the recommendation for a consultant should be ready to bring before the Board by November 25. He expects that a list of final candidates should be available to the Board by January 2014. As for the search for an Interim Town Administrator, J. Senchyshyn said he expects to have three candidates that will come before the Board over the next few weeks. J. Nolan suggested that the consultant be chosen by a joint meeting with the Personnel Board. T. Boschetto asked if there was a formal process to evaluate an RFP, and the Board discussed whether a committee should be appointed.

A7. Review of Status of Articles and Order the Articles for Insertion in the Warrant for the November 20, 2013 Special Town Meeting

The Board reviewed the articles for the warrant of the Special Town Meeting. E. Collins asked if the last sentence in the source of funding for the article, "Department of Public Works Facility Construction Funding," regarding tax exempt bonding, can be changed. J. Senchyshyn said he would consult Town Counsel. He advised that the warrant will go to print on October 22, 2013. J. Nolan moved, seconded by T. Boschetto, to accept the order of the articles as presented. 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 accept the article assignments as presented. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A8. Review and Approve Consent Calendar (See Separate Sheet) T. Boschetto moved, seconded by E. Collins, to approve the revised consent calendar. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A9. Release of Executive Session Minutes from September 9, 2013, September 16, 2013, and September 23, 2013

T. Boschetto moved, seconded by E. Collins, to pass over this agenda item until the next meeting. YEA: T. Boschetto, E. Collins, S. Correia, D. Leard, J. Nolan. NAY: none. ABSENT: none. ABSTAIN: none. Adopted 5-0.

A10. Review Correspondence (See Separate Index Sheet) E. Collins asked if the data had been received from the student survey by the Wayland Cares Review Committee; J. Senchyshyn said no. D. Leard noted the vacancy on the committee, and E. Collins asked about the term of the committee and the issuance of its final report.

A11. Report of the Acting Town Administrator J. Senchyshyn reviewed upcoming agenda items. D. Leard asked for information on the impact of the federal Affordable Care Act on town benefits. T. Boschetto questioned the allegation by the School Committee that the \$7,000 in funds necessary to repair the Loker playground were not available. The Board considered making a formal request to the School

Committee, but noted they did not have jurisdiction. J. Senchyshyn reviewed upcoming agenda items and preparations for Special Town Meeting.

A12. Selectmen's Reports and Concerns E. Collins asked that the Housing Trust issue be placed on an upcoming agenda. S. Correia said that the editorial distributed by T. Boschetto supporting neighborhood schools was his personal opinion and not the position of the Board. T. Boschetto noted a balance of \$175,000 in the DPW capital budget, and J. Senchyshyn said he would investigate why those funds were not used. J. Nolan said he attended the School Committee meeting regarding school redistricting. He said there is a substantial cost to returning to neighborhood schools, and he will work with the recommendations of the School Committee and the Board. D. Leard said he would like to schedule a discussion about creating procedures and guidelines for conducting Board meetings.

A13. Topics Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting, If Any
D. Leard said, "I know of none."

A14. Extended Public Comment There was no further public comment.

A15. Adjourn There being no further business before the Board, T. Boschetto moved, seconded by S. Correia, to adjourn the meeting of the Board of Selectmen at 11:20 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 October 2, 2013 Board of Selectmen's Meeting

1. Information on *Twenty Wayland LLC v. Town of Wayland et al*, Middlesex Superior Court Docket No. MICV2011-4095-F
2. Draft Release, Wayland's Community Preservation Committee Votes to Preserve Lincoln Road Farmland using CPA Funds
3. Regulatory Agreement and Declaration of Restrictive Covenants (Commonwealth Department of Housing and Community Development, Town of Wayland, and Habitat for Humanity regarding affordable housing development on Stonebridge Road.
4. Notice to Open Special Town Meeting and Schedule of dates related to Special Town Meeting on November 20, 2013
5. Proposed committee charge and composition for advisory Senior Property Tax Relief Committee
6. Information on state public works mutual aid agreement

Items Distributed for Information and Use by the Board of Selectmen at the October 2, 2013, Meeting

1. List of Articles and Assignees, 2013 Special Town Meeting, and Full Text of Articles
2. Email of 10/2/13 from Sarkis Sarkisian, Town Planner, re: Vote to Withdraw the Mixed Use Overlay District Zoning Article from Special Town Meeting 2013
3. Letter of 9/26/13 from Lawyers Collaborative to Board of Selectmen re: Memorandum of Agreement dated March 28, 2006, between the Town of Wayland and Twenty Wayland LLC
4. Email of 9/27/2013 from Massachusetts Municipal Managers Association re: MSA Conference October 5, 2013
5. Information regarding the 2010 Superintendent of Schools Search Conducted by the School Committee
6. Capital Projects, Statement of Revenues, Expenditures and Fund Balances, June 30, 2013
7. Draft Estimates of Town Administrator Contract Costs prepared by Selectman Tony Boschetto