

WAYLAND BOARD OF PUBLIC WORKS

Wayland Town Building

September 10, 2014

9:00 PM

EXECUTIVE SESSION MINUTES

M. Lowery (Chair), C. Brown, J. Mishara, M. Wegerbauer, S. Kadlik (Director)

NOT IN ATTENDANCE: Mark Lanza – Town Counsel

Executive Session: Enter Executive Session to Review Landfill Access Road Appeal WET-2014-012

Lowery made motion that the Board of Public Works enter into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) for the purpose of reviewing the Landfill Access Road Appeal WET-2014-012.

Brown 2nd.

Wegerbauer – aye, Brown – aye, Lowery – aye, Mishara – aye.

Lowery invited attendance by Steven Kadlik, DPW Director, and Dan Cabral, DPW.

Wegerbauer 2nd.

Wegerbauer – aye, Brown – aye, Lowery – aye, Mishara – aye.

Lowery noted that the Board will reconvene in open session in approximately 30 minutes.

Lowery discussed a conversation he had with Town Counsel Mark Lanza regarding a meeting Counsel had with the Conservation Commission.

Lowery noted that prior to the Conservation Commission meeting; he had raised with Counsel the possibility that the Board of Public Works and the Conservation Commission may have divergent interests regarding the appeal.

Lowery had asked Counsel who the parties to this dispute are.

Counsel had replied to Lowery that both the Conservation Commission and the Board of Public Works are parties representing the Town of Wayland.

Counsel had noted to Lowery that if interests were divergent he could not represent both parties, but at this time the parties' interests on record are not divergent.

Lowery noted that in order for the settlement proposal to be accepted – a notice of intent to use the road for access to DPW Facility would have to be filed.

Lowery noted that the Board of Public Works and the Conservation Commission affirmed that they both wanted the superseding order of conditions be accepted.

Lowery discussed item #2 in the proposal, and noted that in order for that to be considered, the petitioners would need to have expert testimony, of which none have been filed.

Mishara noted that item #2 does not appear to be a viable claim.

Lowery confirmed that in the opinion of Town Counsel that is the case.

Mishara asked if there is any indication that the Conservation Commission wants to accept this proposal.

Lowery noted that there is no indication, but it is his belief that the Conservation Commission would agree to the settlement.

Counsel had described to Lowery his conversation with the DEP regarding this settlement and what they thought of it.

Counsel had noted that the DEP felt this is a local matter that they would rather see settled locally.

In the opinion of Counsel and Lowery, the DEP felt there is no basis in the Wetland Protection Act to require an NOI for a change of use.

Wegerbauer noted they are requesting a restriction of use, which would constitute a change.

Lowery had asked Counsel what he has to do next.

Counsel had replied to Lowery that if the Board of Public Works decides it is not in their interest to accept the settlement, there would be no conflict of interest. If another settlement offer were to come along, a conflict of interest could arise.

Lowery believes that if the Board does not accept the settlement, Counsel can continue to represent the Town's interests.

Lowery noted that there is no downside to the Board's continuing with the case.

Wegerbauer asked who the proposal was coming from.

Lowery replied that it is a ruling from the administrative law judge as a settlement offer from the petitioners.

Lowery noted that he had invited Counsel to the Board of Public Works meeting for the purpose of advising the Board, without Counsel having to reveal any privileged communication.

Counsel had replied to Lowery that he had consulted with the office of Bar Counsel and was told the town is one legal entity and it would have been acceptable for him to attend the meeting and advise the Board.

Lowery's assertion was that Counsel chose not to attend over concerns for his professional relationship with the town.

Lowery had asked Counsel if he had discussed the situation with the Board of Selectmen; Counsel noted that he would speak to the Board of Selectmen.

Lowery added that the ruling has already been made that the road will not be removed.

Lowery and Counsel believe that this would be decided favorably by the administrative law judge – affirming the superseding order. The Board concurred with this belief.

Lowery noted that the Board needs to vote whether they would be willing to accept the settlement offer contained in the matter of the Town of Wayland OADR Docket #WET-2014-012, dated August 19, 2014.

Mishara made a motion that the August 19, 2014 ruling by the administrative law judge, to the extent that it contains a settlement offer, be rejected.

Lowery 2nd.

Wegerbauer – aye, Brown – aye, Lowery – aye, Mishara – aye.

The Board conducted an initial review of the minutes of the 9/10/2014 Executive Session.

Lowery made a motion that an initial review of the minutes was conducted and that they may be sent to Town Counsel.

Mishara 2nd.

Wegerbauer – aye, Brown – aye, Lowery – aye, Mishara – aye.

Brown made motion to exit executive session.

Wegerbauer 2nd.

Wegerbauer – aye, Brown – aye, Lowery – aye, Mishara – aye.