



**TOWN OF WAYLAND**  
41 COCHITUATE ROAD  
WAYLAND, MASSACHUSETTS 01778  
**PLANNING DEPARTMENT**

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**MEETING MINUTES**

**December 20, 2011**

The Dudley Area Advisory Committee met **on Tuesday, December, 2011 at 7:00PM** in the Wayland Town Building, 41 Cochituate Road, Wayland, MA relative to the following agenda items:

*Agenda*

- 7:00 Meeting called to Order
- 7:05 Public Comment
  - Minutes approved
  - Discussion of Best Use Criteria
  - Review of combined Plan that incorporates the similarities of each member's Charrette.
  - Review of T/B answers to questions
  - Review of T/B billing
  - Begin Discussion on Criteria of Best Use
  - Pat Cantor Kopelman and Paige Legal letter
  - Confirmation of Scheduled Meetings
  - On Going Process Discussion
  - Other Business not reasonably anticipated by Chair
- 9:00 Meeting Adjourned

Attendance:

Patricia Reinhardt (Chairperson)-Board of Selectman, Rush Ashton-Housing Authority, Mike Lowery-Surface Water Quality, Brud Wright Recreation Commission, Bob Goldsmith Conservation Commission, Steve Garone, Dudley Pond Association, Alan Palevsky-Wayland Neighbors 4 Responsible Land Use, Rachel Bratt, Housing Partnership, Kent Greenawalt, Planning Board.

Also present was Sarkis Sarkisian, Town Planner  
Minutes taken by S. Sarkisian

**7:05 P.M. OPEN MEETING:**

P. Reinhardt opened the meeting and reviewed the agenda.

**7:05 P.M. PUBLIC COMMENT:      NONE**

P. Reinhardt asked the committee what were everyone's general thoughts about our next steps and whether we would be ready to file an article for Town Meeting.

K.Grenawalt stated that the land needs improvement.

**Subject:** Wayland -- Procedures for Disposing of Town Owned Properties -- Dudley Pond area

**Pat Cantor Kopelman and Paige Legal letter**

Dear Pat:

I am following up on the telephone conference with you, Board of Selectmen Chairman Tom Fay, Committee member Mike Lowry and Town Administrator Fred Turkington on December 1 at which we discussed the procedures applicable to the transfer and disposition of certain Town owned land. You requested that I provide you with a summary of our discussion and my advice.

It is my understanding that the Town owns approximately 7 acres consisting of numerous small parcels of land in the Dudley Pond area and that those parcels were acquired over time for different specific purposes (such as tax title, recreation, and septic reserve, but not for park or conservation purposes). The parcels are held by various Town boards and commissions. It is also my understanding that the Town is involved in a planning process to determine future use of the properties and potential transfer of the properties to other Town boards or commissions or to otherwise dispose of them. In a letter dated June 30, 2011 from Town Counsel Mark Lanza to Fred, Mark summarized the status of the parcels and stated regarding disposition of the land: "the town board having custody of the land must determine by a majority vote that the land is no longer needed for the purpose for which it was acquired." He also stated: "the municipal use restrictions placed on the parcels so restricted may be changed by a two-thirds vote of a town meeting."

In my opinion, Mark was referring to the procedures set forth in G.L. c.40, §15A pertaining to change of use and disposition of municipally owned land; and, as I stated to you when we talked, I agree that these procedures are applicable to the circumstances you have described. In other words, it is my opinion that under G.L. c.40, §15A, there is a two-step process for disposing of this land. First, the board having care, custody and control of each parcel must vote by a majority that the property is no longer needed for the purpose for which it is held and that the property should be transferred from its current use to the proposed use; and second, the town meeting must similarly vote to transfer the land. In my further opinion, under the statute, the town meeting may not dispose of the property without the pre-condition of the board or officer having custody and control of the property first voting that the land is

no longer need for such purpose. Thus, in my opinion, a town meeting vote alone would not be legally sufficient to effectuate the change of use and disposition of the property in question.

General Laws, c.40, §15A provides:

Whenever a board or officer having charge of land, including land acquired for playground purposes pursuant to the provisions of section fourteen of chapter forty-five, but excluding land acquired for park purposes, constituting the whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the city council of the city or the board of selectmen of the town. At any time after the receipt of such notice, the city council of the city by a two thirds vote of all its members, in the case of a city having a city manager, with the approval of said city manager, and in the case of other cities, with the approval of the mayor, or the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the city or town to such land. [Emphasis added].

As stated above and when we talked, it is my opinion that these procedures are applicable here. I also note that the requirements of c.40, §15A are addressed and applied in Harris v. Wayland, 392 Mass. 237 (1984), In that case, the Supreme Judicial Court held that land acquired by the Town for a specific purpose and held by a board or officer for that purpose could not be used for another purpose without complying with c.40A, §15A.

As we further discussed, it is my opinion, based on the information I have been provided that none of the land in question is subject to Article 97 of the Massachusetts Constitution because the land was not acquired for park, open space, conservation or similar purposes covered by Article 97. Therefore, the additional procedures required under Article 97 to change the use or transfer land would not be applicable here.

Finally, in my opinion, the vote by a board or officer having charge of land that the land is no longer need for the purpose for which it is held can be a contingent vote. That is, it is my opinion that the board or officer may condition the vote on other events occurring. In that way, should the contingent events not occur, the purpose for which the land is held would not change.

If you have any further questions regarding this matter, I would be glad to assist you.

Very truly yours,

Pat

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M.Lowery stressed the need to improve water quality and raised a questions regarding funding. He also warned the committee of the Town's latest budget message and Town Meeting action and that someone may have as an idea to sell the property to generate revenue.

M.Upton stated that the Committee should consider wastewater as a high priority. We should try and sewer as many homes as we can and reminded the Committee all within a zone II.

R.Bratt asked if we would be possible to get incentives so that a developer would be willing to pay for some of these improvements.

J.Ducharme stated that we as a neighborhood need to protect our open space.

G.Rubin questioned the two plans and where they were derived from and asked when we were going to develop a best use process and develop criteria.

The Committee discussed preliminary plan A & B a straw vote was taken

P.Reinhardt asked who would vote for Plan B vote 6-3 B.Wright, S.Garone and A. Palevsky no

P.Reinhardt asked who would vote for Plan A vote 7-2 R.Bratt and R. Ashton no.

Motion by B.Wright to allow A. Palevsky to call from a remote location at our meeting on January 5, 2012.

Seconded by R. Bratt. All in favor.

M. Lowery motioned and A. Palevsky seconded to ADJOURN. All in favor.

Respectfully submitted,

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Sarkis Sarkisian, Town Planner

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Date