



Town of Wayland Massachusetts

Finance Committee

Nancy Funkhouser (Vice Chair)
Thomas Greenaway (Chair)
David J. Gutschenritter
Cherry C. Karlson
Carol Martin
Bill Steinberg
Gil Wolin

Finance Committee Meeting Minutes, September 23, 2013

Attendance: N. Funkhouser, T. Greenaway, D. Gutschenritter, C. Karlson (7:15), C. Martin, B. Steinberg, G. Wolin, and Finance Director Brian Keveny.

I. Call to Order

The meeting was called to order at 7:01 PM in the Senior Center of the Wayland Town building.

II. Public Comment

None

III. Meeting Minutes (taken out of order due to start time for Article hearing of 7:15 PM)

The meeting minutes of 9/16/23, submitted by C. Karlson, were approved by a vote of 6 – 0. (motion by C. Martin, 2nd by D. Gutschenritter). C. Karlson not in attendance at that time.

The meeting minutes of 9/9/23, submitted by C. Karlson, were approved by a vote of 6 – 0. (motion by C. Martin, 2nd by B. Steinberg). C. Karlson not in attendance at that time.

IV. Committee Members' Reports, Concerns and Topics for Future Meetings

C. Martin reported that the Town Clerk has concerns about a potential FinCom meeting on 10/15/13 due to the primary election to be held on that date, although due to only a single election on that date, she would not be opposed to such a meeting. D. Gutschenritter suggested that holding a meeting on such a date would set a precedent that could be negative; therefore it was decided that should the FinCom meet that week, it would be on Wednesday, 10/16 (Monday the 14th is Columbus Day).

V. Chairman's Update

The Chair informed members that he had sent a letter to the Attorney General's office in response to the ruling by that office on a fall 2013 complaint filed by Wayland resident George Harris. Members had received a copy of that letter via email from the Chair.

The Chair set dates for future meetings as September 30, 2013 (later rescinded – see below) and October 7, 2013.

VI. Finance Director's Report

Mr. Keveny reported that he was working in conjunction with others on the finalization of the cost of completing the high school project. He reported to members that the project appears to have been completed under the budget set forth at the outset of the project and approved by Town Meeting, with almost all the savings benefitting the MSBA. Cash from the General Fund has been used to pay expenses from that project in advance of the final bond offering, and the additional borrowing capacity of approximately \$1.4mm is likely to be used in order to reimburse the General Fund for these expenses. He will need to discuss with the State how this will impact the calculation of free cash as of fiscal year end 2013.

Mr. Keveny reported that the revolving fund for the Recreation Department contains approximately \$449,000 as of the end of fiscal year 2013. According to Chapter 44, Section 53D of the MA Code, a revolving fund from recreation may not contain more than \$10,000 as of the end of a fiscal year. The Town's auditor, Melanson & Heath, noted this item for the first time. In past years the town's auditors did not bring this item to the town's attention. Mr. Keveny is in the process of investigating the appropriate disposition of such funds, with the two probable uses for all funds in excess of \$10,000 to be that they either be transferred to the General Fund, or that they be used to create a reserve fund that would be used for the sole purpose of providing funding for future synthetic fields to be constructed by the Town (Winchester did this when Mr. Keveny worked there). Mr. Keveny will report back to the Committee on this matter at a future meeting.

VII. Special Town Meeting Article Hearing (7:15 PM)

The Chair noted that the Finance Committee must submit article write-ups by October 18, 2013. He then asked for representatives or sponsors of the articles to come forward to provide an explanation of each article.

Article 1 – Department of Public Works Facility Construction Funding: Presented by Tom Abdella (Chair, Board of Public Works (BoPW) and Member of the Permanent Municipal Building Committee (PMBC), John Mishara (Member of BoPW and PMBC) and John Moynihan (Town Facilities Director).

They reported that the proposed article is fundamentally similar to the article presented to Town Meeting in the Spring of 2013. The most significant change is that the projected cost of the facility has increased from \$11.4mm to \$12.9mm. Cost increases are due to the following: methane mitigation (\$250k); Conservation Commission Order of Conditions (\$200k); Mitigation of archaeological and landscaping conditions (\$100k); owner's representative cost (2% of construction); and a general escalation factor due to increasing construction costs (4% of construction).

The sponsors were asked the results of studies undertaken since June 2013 with funds from the Finance Committee reserve funds, and the following was reported: they are working with the Conservation Commission with regard to conservations matters; they are in the process of designing processes for methane mitigation; field work is underway to deal with archaeological studies and reports are in process. An independent cost estimate for the overall project has not yet been done, but it is planned prior to Special Town Meeting.

Questions from resident Anette Lewis were the following: 1) The Article does not state where the building will be located (response was that there is not change from the Article presented at Annual Town Meeting and all following work, which provide for the project to be along River Road; 2) Cost of the road (response was that it has not yet been bid); 3) Does the zoning bylaw allow what the use claims (response was that they believe it does); and 4) Where the funding will come from is not defined in the

Article (FinCom has discussed sources including borrowing and reserve funds and it will be defined in the warrant).

Article 2 – Mixed Use Overlay District – Redistribution of Retail square footage to office square footage: no member of the Planning Board or Planning staff was available. Comment from resident Anette Lewis was that she encourages that the process involved in presenting this article will allow the public to understand traffic, waste water and other impacts, including financial items. She asked why this change is being requested at this time.

Article 3 – Set aside Community Preservation Funds for Administrative Expenses: Presented by CPC Member Maureen Cavanaugh. This provides for the CPC to be provided with the authority to set aside from its funds the amount of \$25,000 for the payment of administrative expenses, including \$2,500/annum for coalition dues and for property appraisals costing less than \$5,000. This authority has been provided in the past and it is a replenishment of this fund. Resident Anette Lewis asked: 1) will all funds be spent in a single fiscal year (response was probably not); 2) She wanted clarification regarding whether these would be new taxpayer monies (response was that they are monies already contained within the CPA); and 3) the Finance Director was asked if these funds can carry over from one year to the next and he responded that they can.

Article 4 – Appropriate Funds to Purchase Conservation Restriction on Lincoln Road Land: Presented by CPC Member Maureen Cavanaugh. This is 22.6 acres of land along Lincoln Road and Hazelbrook Road. The land will continue to be privately owned and undeveloped. Allowable uses will include conservation, agricultural uses and limited private access. The CPC plans to use \$2mm of funds specified for the retention of open space and \$400k of uncommitted funds from the CPA. The stated benefit of this is to provide open space, per the Town's Master Plan. The property would remain on the tax roll. The cost to the Town was determined via an appraisal process whereby the Town hired an appraiser and the property owner hired an appraiser and the price was negotiated based upon their work. This would be a permanent change to the land into conservation status.

Resident Susan Weinstein, a Member of the CPC, noted that there is Sudbury Valley Trustee land and MA Audubon land, which will create a larger contiguous conservation area.

A request was made by FinCom members that a fuller explanation be provided of how the \$2.4mm price was determined, including if possible to release the appraisals prepared for the town and the property owner. The CPC voted unanimously to approve support this proposed article.

Resident Betty Salzburg spoke in favor of this Article, indicating that it would provide significant beautiful open space, consistent with the goals of the Town. Resident Anette Lewis wanted to know the following: 1) Is the land in agricultural use today (response was yes); 2) If the land were developed to its full single family development potential, what would be the revenue to the Town; and 3) she wants it to be clear who maintains the land once it goes into conservation status.

Article 5 – Revise Sources of Funding the Fiscal Year 2014 Operating Budget: Presented by FinCom Chair Tom Greenaway. The purpose is to use monies from the General Fund to pay for FY'14 operating expenses to offset funds that would otherwise be raised by taxation such that the free cash projected for FY2014 will be within the range voted by residents at Spring 2013 Annual Town Meeting. The drivers that will determine the recommended amount to be used from the general fund include the following: 1) encumbrances from one year to the next which have been reduced by the Finance Director in the amount of approximately \$1mm; 2) the assessors' announced release of \$350k from the overlay account; and 3) the possibility that the certified free cash may be significantly reduced in the short term due to the use of general funds to pay for costs associated with the construction of the new high school (such funds to be offset through borrowing that has already been approved, but which may not occur

prior to the certification of free cash that does not show the replenishment of the general fund from such borrowing. Overall, it appears that free cash will be approximately \$900k in excess of the free cash projection from ATM in the Spring of 2013. Resident Anette Lewis noted that bringing free cash within the range approved at ATM is appropriate.

FinCom discussion of the Articles – D. Gutschenritter and G. Wolin would like to understand the value of the land that is subject to Article 4 if that land is privately developed.

Assignments of Articles: Article 1, C. Karlson; Article 2, B. Steinberg; Article 3, G. Wolin; Article 4, N. Funkhouser; and Article 5 – T. Greenaway.

The Chair reminded Members not to share any opinions on their draft comments prior to our meeting on October 7th.

VI. cont. Finance Director's Report

Continuation of prior discussion: The Finance Director finalized his discussion with regard to the final funding of the high school construction and the issues pertaining to the Recreation Department's revolving fund.

With regard to funds being returned to the general fund from previously encumbered funds, C. Karlson requested that the Finance Director provide a breakdown of which of those funds are from the Town side of the budget and which from the school side. Mr. Keveny believes that the breakdown is probably along the lines of 95% town side and 5% school side.

VIII. FY15 Operating Budget Guideline Discussion and Vote

There was a brief review of the budget guidelines for fiscal years 2011 – 2014. In past years there has been a general guideline of level funding, except in 2014, when the recommendation was for level services and a budget with a 10% reduction, with the exception of settled contracts (including steps and lanes) and utilities. Any new hires would be subject to review through the personnel board.

Members commented that departments should report on the status of current capital projects in conjunction with their request for new capital projects. Members would like for departments to provide more detail and explanation on the CIP forms, including the estimated completion date on new requests.

There was a discussion of computer purchases and whether there is coordination between the Town and the schools in order to maximize efficiencies. It was stated that Leisha Simon, who works on the school side, has been assisting on the school and Town side over the past year or two. G. Wolin will follow-up with John Senchyshyn on this item.

The Budget Guideline will be based largely on the FY 2013 letter, requesting level funded budgets. Detailed reports will be requested for departments with budgets in excess of \$500k (includes 7 budgets). Departments will be encouraged to include detail regarding potential revenues and projections regarding revolving funds. Mr. Keveny will discuss with departments that have revolving funds the possibility that they may be requested to use some of those monies to fund their current and past share of OPEB obligations. Departments will be requested to look for efficiencies in their budget process.

There was a request that the Finance Director might provide departments reports showing expenditures for the past fiscal years plus year to date actuals for the current year. Rich Stack had provided Crystal Reports two years ago that provided this information.

A motion was made by D. Gutschenritter and seconded by B. Steinberg to approve the budget guideline letter with the following: 1) level funding (subject to settled contracts, after steps & lanes and utility items); 2) deadlines set by the Finance Director; 3) any changes to full time employees to be coordinated with the personnel board; 4) CIP forms with the directions as noted above; 5) Identify and present potential efficiencies; and 6) detailed budget reports from departments with budgets in excess of \$500k. The motion passed by a vote of 7 – 0.

It was noted that FinCom had departments undertake a significant review of potential efficiencies in 2006, which included consideration of efficiencies across town departments.

The Wayland Cares Advisory Committee is looking for a FinCom liaison. N. Funkhouser will reach out to them.

At 9:27 PM the Members voted unanimously to adjourn.

XI. Adjourn

The meeting was adjourned at 9:27 PM.

Respectfully submitted,

William Steinberg

Documents:



Town of Wayland Massachusetts

Finance Committee

Nancy E. Funkhouser
Thomas Greenaway (Chair)
David J. Gutschenritter
Cherry C. Karlson
Carol Martin
Bill Steinberg
Gil Wolin

BY ELECTRONIC MAIL ONLY

September 13, 2013

Mr. Jonathan Sclarsic
Assistant Attorney General
Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

RE: Open Meeting Law Determination 2013 – 127

Dear Mr. Sclarsic:

We write in response to your determination dated August 26, 2013 with respect to an open meeting law complaint filed by George Harris on or about October 28, 2012.

As an initial matter, we were disappointed to discover that we had not received your letter dated November 6, 2012 granting us an extension to respond to Mr. Harris's complaint. The members of the Wayland Finance Committee take our obligations under the Open Meeting Law seriously, and we would never intentionally fail to respond to a complaint lodged with your office. In November 2012, the Wayland Finance Director position was vacant; the letter may have been misdirected within Town Hall. The new Finance Director could not find a copy of your letter. In any event, we did not get your extension letter until after you issued your determination, when Mr. Harris forwarded me his copy last week.

Therefore, until you issued your determination, we understood—incorrectly—that our request for an extension was still pending with your office, along with the more general October 15, 2012 email request by then-Town Administrator Fred Turkington for an advisory opinion on the draft minutes question that was directly relevant to Mr. Harris' complaint filed against the Finance Committee. To our knowledge, your office has not ruled on Mr. Turkington's October 15 informal request for an advisory opinion.

At our meeting on September 9, 2013, we discussed your determination. We were pleased to note that you found no violation on the question of distributing draft minutes of prior meetings to members of the committee by email. As you ordered, we publicly released the emails you concluded were sent in

violation of the Open Meeting Law. Those emails will be attached to the minutes of the September 9, 2013 meeting. We do not plan to seek judicial review of your action under 940 CMR § 29.07(b)(4).

On the other hand, our Committee was troubled by the potential implications of several other elements of your determination. We take this opportunity to respond out of time in order to clarify the record and respectfully request that you reconsider elements of your determination, if the competing demands on your office's schedule allow for it.

In our view, our failure to timely respond is excusable under the circumstances since we never received your November 6 extension letter, and we reasonably concluded in the interim that you were considering Mr. Turkington's request for an advisory opinion as a way to resolve several related complaints filed by Mr. Harris (including ours) in a more efficient manner than on a case-by-case basis. Mr. Harris would not be prejudiced by reconsideration of your determination. The length of the delay has little impact on the merits of the proceeding, since we already released the emails in question. The reason for the delay—the fact that we did not get your extension letter—was out of our control, and finally we acted in good faith for the reasons noted above. *See* Mass. Civ. Proc. R. 6(b), *Pioneer Inv. Servs. v. Brunswick Associates Ltd.*, 507 U.S. 380, 395 (1993). Especially when a failure to respond leads to an adverse final determination on the merits, an adjudicatory body should be flexible in enlarging the time to respond. *See generally* 4B Wright & Miller, *Federal Practice & Procedure* §1165 n. 11&12 (3d Ed. 2013) (collecting federal and state cases).

In your determination, you found several violations of the Open Meeting Law. We acknowledge one of the violations. An email sent on September 9, 2012 by one Committee member to all other Committee members contained language welcoming comments and suggestions from Committee members. While the purpose of the email was administrative in nature (distributing a document for discussion at an open session meeting), we agree that “comments and suggestions” should only occur in open meetings, and we acknowledge that a member's inadvertent solicitation of “comments and suggestions” over email without asking members to hold those comments and suggestions until an open meeting constitutes deliberation under the Open Meeting Law.

We respectfully disagree with your remaining findings of violations of the Open Meeting Law. As we explain below, the emails at issue were used to distribute documents as an administrative task, and no deliberation occurred, since neither the emails nor the documents attached included opinions of members that had not previously been discussed in open session.

Under the Wayland Town Bylaws, the Finance Committee drafts comments for warrant articles presented at upcoming town meetings. We do not hire staff to prepare these comments. We discuss each warrant article in open meeting, and we then assign responsibility to draft article comments to one or more members of the Finance Committee for each article. Each member then circulates his or her draft comments before we reconvene in open session to discuss, deliberate over, and finalize the comments for publication in the warrant. Our comments typically offer some background information, the proposed purpose and effect of the article, and list pro-and-con arguments discussed in open session (or gathered from nonmembers). Sometimes we offer short-form article comments, less than 30 words. You may view examples of our comments in the town meeting warrants, which are posted on the Town's website.¹

¹ *E.g.* Warrant for 2013 Annual Town Meeting, *available at* http://www.wayland.ma.us/Pages/WaylandMA_Selectmen/WarrantATM2013.pdf

The first email you found violated the Open Meeting Law was sent on September 10, 2012 at 5:25PM by Committee member Cherry Karlson to all other Finance Committee members, titled “draft for discussion.” The entire text of the email reads:

Bill asked me to forward this along to you for discussion tonight.

The document attached to the email is a draft prepared by Bill Steinberg of the Finance Committee’s comments on a warrant article for the upcoming Special Town Meeting. The Committee had previously discussed the article in open session on September 5th and assigned member Bill Steinberg to draft comments for review by the Committee.²

A second email sent on September 10, 2012 at 11:48AM by Committee member Cherry Karlson to all Committee members, titled “draft comment for discussion.” The entire text of the email reads:

Attached are draft comments (with the word count) for the non-financial articles for discussion tonight. I have sent the comments out to the three petitioners ([the Planning Board], Steve Hakar and Scott Machanic) and have asked for any feedback before our meeting.

As a matter of grammar, context, and the common understanding of the members of the Committee as a result of our past practice, the last sentence of the email reports that Ms. Karlson requested information from the individual sponsors of the assigned articles. The final clause of the sentence does not solicit feedback from members of the Committee. Any feedback on the comments would have been directed solely to Ms. Karlson by the (non-Committee member) petitioners for reporting back to the Finance Committee.

The document attached to the email is a draft by Cherry Karlson of the Finance Committee’s comments on five warrant articles for the upcoming Special Town Meeting. The Committee had previously discussed the articles and proposed comments in open session on September 5, 2012 and assigned Cherry Karlson and Tom Greenaway to draft 30 word-or-less comments on each of five warrant articles for discussion in open session on September 10, 2012.³

The two September 10, 2012 emails do not violate the open meeting law because they contain no opinions of members. They are purely administrative: to distribute documents to Committee members just hours before the meeting. This situation is indistinguishable from the situation presented in OML 2013-4. Ms. Karlson’s emails did no more than distribute documents to be discussed at the Committee’s meeting that night. The emails did not contain any advocacy by Ms. Karlson, and they did not invite comment from other Committee members, nor was any comment provided. Moreover, the fact that Mr. Steinberg, Ms. Karlson, and Mr. Greenaway were going to be drafting the comments for their respective articles had been discussed in a prior open session, and the draft comments were considered and discussed in open session later that same day. The documents attached to the emails—the draft comments—are not deliberative either, since they either do not contain any opinions of a member at all, or if they do, the

² See Minutes of September 5, 2012, available at http://www.wayland.ma.us/pages/WaylandMA_FinanceMin/Finance%20Committee%20Minutes%202012/FinComMinutes09052012.pdf and see WayCam videotape at minute 1:47.39 for discussion of having comments ready for Sept 10th meeting and minute 1:57.00 for assignment of ‘Article G’ to Mr. Steinberg, available at <http://waycamtv.pegcentral.com/player.php?video=5a989bca61d558d9273247c1b187b200>.

³ See the WayCam video starting at minute 1:40.00, available at <http://waycamtv.pegcentral.com/player.php?video=5a989bca61d558d9273247c1b187b200>

Mr. Jonathan Sclarsic
September 13, 2013
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comments merely summarize the opinions of members that were stated in a prior open session. In fact, this situation compares favorably to the draft Opinion piece considered in OML 2013-4, since the draft article comments did not contain “the opinion of a member” in any event, whereas the draft Opinion piece at issue in OML 2013-4 was explicitly drafted to set out the opinions of the members of the Board of Selectmen.

In OML 2013-4 you said: “[O]ur best advice continues to be that public bodies not communicate over email at all except for distributing meeting agendas, scheduling meetings and distributing documents created by non-members to be discussed at meetings.” While we understand the challenge presented by determining whether a document distributed to a quorum of a town committee constitutes deliberation under the Open Meeting Law, our long and strong Wayland tradition of volunteerism, Town Bylaws, and the press of the Town Meeting preparation calendar simply do not allow us to follow the advice you offered in OML 2013-4 in all cases. Your advice—if adopted—may make the Open Meeting Law analysis more straightforward, but it would make our Committee work much, much harder.

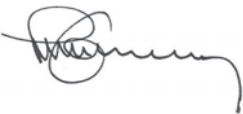
The work of our Committee is document-intensive. Each volunteer member of our Committee spends dozens, if not hundreds, of hours outside of our regular meetings preparing for our meetings each year. We prepare for our meetings by reviewing documents prepared by, among others, members of our Committee. We take special care to keep our opinions to ourselves and out of our documents until we convene in open meeting. We cannot—nor do we want to—hire staff to do the important work of opining on articles that come before Town Meeting. Town Meeting would not stand for that, and neither would we. And the press of Town business—let alone the demands of our other responsibilities—does not allow us to call meetings solely to distribute draft documents, only then to reconvene another meeting after we have had a chance to review the drafts on our own.

In closing, we assure you that our Committee strives to comply with the Open Meeting Law in all cases,⁴ as we did in respect of the September 10, 2012 emails. Subject to the competing demands on your resources and time, we respectfully request that you reconsider your adverse determinations on the September 10, 2012 emails in light of the facts and analysis set out above. Furthermore, we respectfully request that even if you maintain that an Open Meeting Law violation occurred, that you resolve this matter by taking informal action under 940 CFR § 29.07.

We look forward to receiving your response to this letter. Please feel free to call me at 617-988-1221 if you have any questions or if you need more information.

Very Truly Yours,

Wayland Finance Committee



Thomas Greenaway, Chair

cc: George Harris
Mark Lanza

⁴ The Town of Wayland is holding an Open Meeting Law Training Seminar on September 19th and a number of Finance Committee members plan to attend the training.