



# Town of Wayland Massachusetts

## **OPEB Advisory Committee**

Kent George  
David Gutschenritter  
Cliff Lewis (Chair)  
Maryanne Peabody  
Jay Sherry

## **Minutes of July 15, 2015 Committee Meeting**

In Attendance were: Cliff Lewis, Kent George, Jay Sherry, Maryanne Peabody and Dave Gutschenritter. Also invited and attending was Nan Balmer, Wayland Town Administrator

The meeting was called to order at 7:05 pm at the Town Building in the Selectmen's Meeting Room.

This meeting was recorded and is currently available on WayCAM at:  
<http://www.waycam.tv/government-and-sd-on-demand.html>

The following Agenda topics were addressed:

### **1. Public Comment**

No public comments were made.

### **2. Discussion of Legal Structure of an OPEB Trust.**

Cliff asked Jay to present in summary form the discussion he and Jay had with Brian Fox of Murphy, Hesse and Toomey, the law firm the Committee has chosen as a result of issuing the RFQ to help us understand the need for, or not for, a new Trust Fund for OPEB.

Jay covered the discussion and first noted that despite the appointment of this Advisory OPEB Committee and its work on OPEB, Brian made it clear that under the Special Act of November 2010 under Section 32b of Massachusetts law there are only two responsible parties that can and should be acting as OPEB trustees and they are the Town of Wayland Town Administrator and the Town of Wayland Finance Director.

As the Special Act was written and voted by the Mass legislature, they are the only individuals who can and should be handling all OPEB responsibilities other than the Wayland Town Treasurer who is appointed under the Act as the Custodian of the Trust Funds. The Custodian implements the policies determined by the two Trustees and is the day-to-day manager of the funds and the person who makes sure that the money is transferred from the General Fund to the

outside investment managers and implements the Trustees instructions to the outside investment managers hired by the Trustees. The Custodian also is responsible for reporting the results of the investment activity to the Trustees, and hence to the Town, and keeping them advised of all transactions concerned with the funds.

This Committee in all its deliberations to date has recommended that other than the Custodian duties with which we concur, that a distinctly new set of governance policies be implemented as to give the taxpayers and Town employees more flexibility and comfort that the OPEB fund can grow to the extent needed by virtue of significantly better investment management policies that may not be available under the current trust.

Further, Brian told Cliff and Jay that effective July 1, 2011 the Mass Legislature voted in a new provision under Chapter 32b, a new Section 20 that cities and towns of the Commonwealth can adopt to manage OPEB funds. If this provision is to be implemented Town Meeting must vote to adopt this new provision and in so doing would give the Town the ability to create a new trust with more flexibility and governing provisions than are covered under the current legislation and trust.

As a result of this finding, Brian has indicated that in order to implement a new Trust as discussed by this Committee it will require two separate actions by the Mass State Legislature after adoption by Town Meeting. The first would be to vote to undo the current Special Act and then vote to allow the Town to implement the new Section 20.

As a practical matter, Jay noted, once Town Meeting approves the adoption of Section 20 there will likely be a significant period of time until the Mass Legislature acts on the Town requests. However, Brian has told him that he can create one new simple Trust agreement that would allow the current Trustees to vote to amend the current trust to conform to the new Trust governance rules so as to be able to conform to the new provisions under Section 20.

Brian also noted that under common practice now, at least one Trustee under the new configuration should probably be a Town employee in order for the Town to be able to conform to IRS regulations covering municipal law.

Further, Jay noted that Brian suggested that if a majority of the new Trustees of the OPEB Trust had the requisite background as qualified investment managers, the Town could possibly avoid the cost of hiring an investment advisor to the Trustees. However, in this position, the new Trustees with appropriate investment expertise would have to be named as “provisional Town employees” for the purposes of that person’s involvement as a Trustee. Additionally, Brian would recommend under these circumstances that the Town carry insurance to cover all the Trustees from breaches of fiduciary duty.

David raised an issue at this point wondering how and why a fiduciary would be insured against his acts as a fiduciary. That seemed to him to be a contradiction in terms. Kent and Cliff and Maryanne noted that the insurance is to prevent false incrimination by disgruntled or unhappy taxpayers or others. It is a form of Directors and Officers Liability Insurance in which one would not be protected from truly harmful acts of a fiduciary but by legal help with potentially false accusations.

Cliff then asked that we consider voting to proceed with Brian's suggestions but wanted anyone who feels that s/he want to object or ask for more information that it was time now.

David spoke to his disinclination to go ahead with a new Trust as we are proposing. His thinking is that it does not significantly improve on the Special Act. Kent pointed out that his basic concern about the current trust is that the two Trustees have been just jammed into the position, despite the fact that neither was around when it was first put in place. It seems to him that they need some support in some fashion whether this is the way or not. Jay pointed out that he is not a big fan of 32b but that we do not have a lot of options, and Wayland is out in front of this problem and possibly leading the way only because we are being diligent about our responsibilities. Cliff pointed out that if we adopt Section 20 then at least we will be in the mainstream wherein when questioned about what we are doing it will be easier to say we are doing what the legislature has recommended.

Jay then went on to delineate the issues that we face as a Town within the special act. His view is that we need to be able to appoint trustees with a diverse range of experiences; that we cannot have one of the trustees an employee who reports to the other trustee; that we should not have only trustees who are Town employees who are also beneficiaries of the trust themselves; having no taxpayers represented on the board of trustee, which he thinks is mandatory; and that the Custodian is also a Town employee who reports to one of the trustees. Jay said the he thinks having a three, or at most a five member board of trustees, one of which is the Town Administrator and the other two are citizens who have requisite investment experience could allow the Town to have prudent decisions and proper oversight of the trust and possibly prevent the inherent delay in the current model to make investments adjustments, which has happened.

Cliff concurred with what Jay said and pointed out that the current Special Act has the faults that Jay has noted.

Nan Balmer, Town Administrator spoke up and said that she had spoken to Brian Fox herself and she was contemplating putting out an RFQ seeking an investment advisor as she and the Finance Director have no relevant investment experience at all and as the currently responsible trustees they would need some expertise to give them direction and advice. She also pointed out that the prudent solution, with that consultants help, could or might be to put all the money into PRIT, the Mass Pension Reserve Investment Trust. The Wayland OPEB fund would be dwarfed by the overall size of the PRIT investments and would be just taken as a small piece of the fund and take all the investment decisions out of the hands of the Wayland OPEB Trustees, other than the single one to put the money in PRIT.

### **3. Further discussion ensued as to the:**

- possibility of keeping the current investment managers, Bartholomew and Rockland Trust;
- the decision by the Town Administrator to put out an RFQ for an investment advisor (absolutely necessary regardless of any other actions due to the lack of investment qualifications of the two current trustees);
- the dwarfing of our OPEB fund of approximately \$12 million by the huge investment fund of PRIT if the fund were invested there, hence the risk of not meeting the 7% expected return;

- the ultimate authority of the trustees in removing money from the trust when it is fully funded to pay then current OPEB costs roughly 25 years from now;
- the current insurance provisions that might cover the current trustees, which is being investigated by a Town staff member;
- the suboptimal returns and high risk profile of the PRIT investments (Kent and Cliff both view some PRIT investments as highly risky) and the problem that ensues as a result of the OPEB benefit as being a defined benefit which is ultimately fully guaranteed by the taxpayers, regardless of investment results;
- the fact that if the investment returns from PRIT or any other investment vehicle do not meet the planned 7% return by 1%, or a total of 6% instead of 7%, then the taxpayer portion of the guarantee practically doubles over the long term;
- Jay pointed out the lost opportunity cost of investment decisions over the last year have already cost the Town a substantial amount of return because Bartholomew and Rockland have not been told to increase their equity portion of the fund up to 75% as this Committee has recommended. This could be the problem going forward if investment advisors are not part of the board of trustees.

Finally, Cliff opened the discussion as to whether the Committee would want to recommend to the Board of Selectman that they include a warrant article in the warrant for the Special Town Meeting scheduled to be held sometime in the fall of this year. In doing so we would need to draft a warrant article including the recommendations of our attorney, Brian Fox. Further discussion ensued as to whether it would be appropriate for this Committee to ask Brian Fox to draft the prospective trust as we understand the proposition now.

Kent made a motion to have the Committee approve having attorney Brian Fox draft an amendable trust agreement as was his recommendation. Cliff seconded the motion and it was: VOTED: That the Committee authorize attorney Brian Fox to draft the amendable new trust agreement that we will review at our next meeting. The vote carried 5-0 in favor of the motion.

Discussion then went to the possibility of asking the Board of Selectmen whether they would consider accepting a warrant article for the Fall 2015 Special Town Meeting to adopt a new OPEB trust agreement. Cliff will speak to our BoS liaison, Tony Boschetto and Nan will get a sense of the BoS at its next meeting as to their potential reception to this article.

A further discussion took place around the potential use of an investment advisor to assist the trustees of the OPEB trust and what the characteristics of assistance would entail.

Then the Committee discussed the planning of writing a warrant article should the BoS agree to put it on the warrant and the planning of that at the next meeting.

Finally, the Committee agreed to set the next meeting for August 27 at 6:30 PM and the Committee unanimously voted to adjourn.

Respectfully submitted,

Kent E. George