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# TOWN OF WAYLAND

41 COCHITUATE ROAD  
WAYLAND, MASSACHUSETTS 01778

## BOARD OF SELECTMEN

THOMAS J. FAY  
ADAM G. GUTBEZAH  
CHERRY C. KARLSON  
CAROL B. MARTIN  
DAVID V. WATKINS

## Meeting Minutes BOARD OF SELECTMEN Wednesday, February 16, 2022 7:00 p.m.

**Wayland Town Building: Council on Aging Room  
41 Cochituate Road, Wayland, MA**

**Present:** Thomas J. Fay, Cherry C. Karlson, Carol B. Martin, David V. Watkins

**Absent:** Adam G. Gutbezahl

**Also Present:** Acting Town Administrator Stephen Crane, Assistant Town Administrator John Bugbee

**A1. Call to Order, Review the Agenda for Public:** At 7:00 p.m., T. Fay called the meeting of the Board of Selectmen to order when a quorum was present and reviewed the agenda for the public. T. Fay noted the meeting would be recorded for re-broadcast and the ways in which the public could view and participate. T. Fay announced each member by full name and that A. Gutbezahl would be absent.

**A2. Announcements and Public Comment:** There were no announcements from the Board.

**A8. Correspondence:** The Board reviewed the correspondence in the packet. S. Crane informed the Board there would soon be an update from the Health Department regarding the Town Building mask mandate.

**A3. Open Meeting Law Complaint: discussion of complaint received on February 2, 2022, from resident George Harris, and potential vote on next steps and a potential response:** T. Fay welcomed Brian Riley, counsel from K-P Law P.C, who attended the meeting in person, to discuss a recently filed Open Meeting Law (OML) complaint. The complaint was related to the Boards' circulation of a composite performance evaluation of the previous Town Administrator. B. Riley reviewed the allegation that the Board intentionally violated OML. There was a question if the complaint was filed in a timely manner, as complaints should be filed within 30 days of the violation and the violations occurred one and three years ago. B. Riley offered to prepare a response to the complaint by the next meeting, the Board agreed and made suggested arguments to include as well as a policy revision.

B. Riley discussed the details of the complaint. He said that Mr. Harris alleged that on two occasions in 2021 and 2019, the Board allowed for a composite Town Administrator evaluation to circulate by email to the members before their meeting. He also alleged that it was an intentional violation, partly because of the Boelter versus Wayland Board of Selectmen, which is a state Supreme Judicial Court (SJC) decision from 2018.

B. Riley addressed the intentional allegation. B. Riley said that the Attorney General has said that circulating something which has the opinions of board members to the whole board, or to a quorum of the board, is a violation.

B. Riley commented on the question as to whether this complaint was timely. He communicated that the law said that a complaint should be filed with the board within 30 days of when the violation became knowable.

B. Riley said, for example, that in the event a complaint was filed where the complainant alleged a violation because an agenda from last June did not have enough information on what was going to be discussed; Because the violation was eight months in the past and the agenda was posted in June the Board would technically not be required to respond to the complaint. Accordingly, he indicated that the Attorney General would say that the complaint was not filed in a timely manner.

He advised that the Selectmen should acknowledge what happened and indicate what they are going to do going forward. He discussed the Boelter case because it involved the same issue back in 2012. Residents filed a complaint and then in 2018, the Superior Court found that there was a violation by the Board of Selectmen.

He discussed what was slightly different about the case was that the composite review had various comments that each board member had made in evaluating the Town Administrator. He said that even though an email was distributed and did not have any opinions, the composite evaluations are actually the individual ones as well, and it contained opinions of the board members as to the job the Town Administrator was doing. As a result they ruled that there was a violation, and the board can use these composite evaluations, but it has to happen in a way where the public can gain access to them. What the SJC suggested was to hand the composite document out at the public meeting and make it available to the public simultaneously with the Board.

B. Riley concluded that the Board needed to update its policies and procedures and that he would finalize a response to Mr. Harris. He offered to make a response for the next meeting and the Board concurred.

#### **A2. Announcements and Public Comment: (revisited):**

Steve Myerow, Red Barn Road, joined by teleconference to comment on Annual Town Meeting Article JJ: 27 Sherman's Bridge Road Acquisition and recommended the Board pursue alternative sites for affordable housing due to its value as conservation land.

**A4. Select Board Town Manager Act Update: Discussion and potential vote relative to language within the proposed amendments to H4315, An Act Creating Select Board/Town Manager form of Government in the Town of Wayland:** T. Fay reported that Massachusetts Senate Representatives had provided comments and revisions to the House Bill H4315. The Board reviewed the documents in the packet regarding the proposed revisions to the Act which included comments from Lea Anderson, former Board member and Carolyn Murray, counsel from K-P Law, P.C.

C. Martin moved, seconded by D. Watkins, that the Board accept the proposed changes except for the proposed change on page 11 of 13 at or about line 210. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

**A5. Town Administrator update a. Budget update:** S. Crane recommended, after review of the needs of the Town, that a full-time sustainability position be nested in the Facilities Department. S. Crane added that the role would include responsibilities for sustainability initiatives for the Town's public buildings and also include community education component. S. Crane reported that the Finance Committee, School Department and Finance Director had a productive meeting to work on the Finance Committee's request to reduce the FY2023 budget by \$1.2 million. S. Crane also reported that the Governor's letter recently reported about \$763,000 more than was assumed for state aid. S. Crane reported that the Town then made \$393,000 in additional reductions: \$189,000 from classified and \$204,000 from unclassified; and the Finance Committee requested that the School Department make an additional \$150,000 in reductions. C. Martin recommended that the Board discuss the budget at a future meeting. S. Crane reported that the Finance Director would provide more detail after meeting with the Finance Committee.

**A6. 2022 Annual Town Meeting a. Identify articles for potential Abbreviated Presentation Procedure b. Discuss Potential Debt Exclusion Ballot Questions c. Discuss and Potential Vote to Insert and take a Position on Warrant Articles; refer to the list of articles in the Board's packet:**

**A6.a. Identify articles for potential Abbreviated Presentation Procedure:** T. Fay reported that the warrant articles which were proposed to be presented under the abbreviated presentation procedure at 2022 Annual Town Meeting would be updated on the Warrant Article List in the Board's packet. [Articles marked with an \* are proposed to be presented under the Abbreviated Presentation Procedure]

**A6.b. Discuss Potential Debt Exclusion Ballot Questions:** T. Fay reviewed the Board's previous discussion to consider debt exclusion ballot questions related to the Article S: Loker Field and Article R: COA/CC. C. Karlson noted that the Board had requested the Finance Committee make a recommendation to the Board. C. Martin reported that there was also a letter from the Library in the packet.

**A6.c. Discuss and Potential Vote to Insert and take a Position on Warrant Articles; refer to the list of articles in the Board's packet:** D. Watkins reviewed the intent of Article EE. Capital Improvement Committee, which would establish a committee to manage a long-range capital plan. The Board discussed if the committee would be established by petitioning the state legislature or approval of a bylaw at Annual Town Meeting. C. Karlson noted that the Board should be aware that the Town Manager Act would place the responsibility of the capital plan with the Town Manager. D. Watkins communicated that the purpose of the committee was to research study and advise the town of requests for short and long range capital purchases for the town and how to fit them into an overall plan. He communicated that the committee would facilitate the coordination between community objectives, capital needs and fiscal capacity. And that the committee will help the town to understand the tax impact of capital expenditures, and would consider the relative need timing and cost of each capital expenditure. He indicated that the committee would fit within the current organizational structure and the majority of Towns had a similar committee. He also said that the Town Manager Act does not assign responsibility for a long term capital plan to the Town Administrator and that the members of the committee would be five residents with relative experience and ex-officio members consisting of Town staff and related parties. T. Fay recommended the Board consult with other boards and committees because it would make a significant change to town government.

C. Karlson moved, seconded by C. Martin, to insert and approve Article B: Pay Previous Fiscal Year Unpaid Bills\* with the understanding that more bills could be added before ATM. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

C. Karlson moved, seconded by D. Watkins, to insert and support Article G. Compensation for Town Clerk\*. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

C. Karlson moved, seconded by D. Watkins, to insert and support Article H. Personnel Bylaws and Wage & Classification Plan\*. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

C. Karlson moved, seconded by D. Watkins, to insert and support Article U2. Wastewater Capital Budget Request\*. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

C. Karlson moved, seconded by C. Martin, to insert, co-sponsor and support Article BB. Amend Chapter 77. Municipal Affordable Housing Trust Fund (MAHT)\*. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

C. Karlson moved, seconded by D. Watkins, to insert and support Article F. Fiscal Year 2023 Revolving Fund Expenditure Limits\*. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

**A7. Twenty Wayland Settlement a. Discuss next steps, including potential separation of parcel 16 per Settlement Agreement, and potential vote:** T. Fay reminded the Board that the Town had reached a settlement agreement with Twenty Wayland LLC relative to the municipal parcels at Town Center. T. Fay reported that there was initially a suggestion to divide parcel #16. T. Fay reviewed the proposed parcel boundaries with Town Counsel, a land surveyor, the Town Planner, and S. Crane. The review resulted in the determination to not divide the parcel, but to request the Board act to permit the Conservation Commission, if they so voted, to accept Parcel #16 for conservation purposes.

C. Karlson moved, seconded by D. Watkins, to affirm the decision that Parcel #16 in Town Center on Boston Post Road, shown in the packet, be conveyed to the Conservation Commission in its entirety. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

**A9. Selectmen's Reports and Concerns:** C. Martin recommended that the Board move the meetings back to the Selectmen's Meeting Room. There was a discussion about holding virtual, hybrid and in-person meetings.

**A10. Topics Not Reasonably Anticipated by the Chair 48 Hours In Advance, If Any:** There were none.

**A11. Executive Session: I. Pursuant to Massachusetts General Laws, Chapter 30A, Section 21 (a) (3) to discuss strategy with respect to litigation related to Trustees of the Residences of Oxbow v. Town of Wayland II. Pursuant to Massachusetts General Laws, Chapter 30A, Section 21 (a) (2), (3), and (6) to review and approve the executive session minutes of February 7, 2022 and February 9, 2022. Approve and Hold: Executive Session minutes of February 7, 2022 and February 9, 2022**

At 10:22 p.m., Chair T. Fay moved, seconded by D. Watkins, that the Board of Selectmen enter into Executive Session: Pursuant to Massachusetts General Laws, Chapter 30A, Section 21 (a) (3) to discuss strategy with respect to litigation related to Trustees of the Residences of Oxbow v. Town of Wayland II. Pursuant to Massachusetts General Laws, Chapter 30A, Section 21 (a) (2), (3), and (6) to review and approve the executive session minutes of February 7, 2022 and February 9, 2022. with the intent to approve and hold said executive session minutes.

T. Fay declared that a public discussion of these matters may have a detrimental effect on the litigating, negotiating, or bargaining position of the Town. Roll Call Vote: YEA: T. Fay, C. Karlson, C. Martin, D. Watkins. NAY: None. ABSENT: A. Gutbezahl. ABSTAIN: None. Adopted 4-0.

Chair, T. Fay invited attendance by Acting Town Administrator Stephen Crane ND Assistant Town Administrator, John Bugbee. The Board would adjourn from the executive session with no other public business to be held in open session.

**A12. Adjourn:** The Board adjourned from Executive Session at 10:59 p.m.

**Items included in the packet and updated during the Board of Selectmen Meeting of February 16, 2022:**

1. Agenda for meeting of the Board of Selectmen, February 16, 2022 7:00 p.m.
2. Open Meeting Law Complaint and Complaint Form, submitted by G. Harris dated February 2, 2022 with exhibits.
3. Town Administrator Performance Evaluation Composite and related emails for review period September 1, 2019 - August 30, 2020
4. Email with Attachment: From: L. Anderson Sent: Saturday, February 12, 2022 7:15 PM To: Fay, Thomas Subject: H4315 comments; attached H4315 with questionsL.A.2-12.docx
5. Email with Attachment: Bill #H4315: From T. Fay Re: KP-#800044-v1-WAYL\_H4315\_with\_questions L\_A\_2-12\_and\_responses.docx; Refer to page 8, line 155
6. Draft: Bill #H4315 version 1.
7. Draft: Article B. Pay Previous Fiscal Years Unpaid Bills
8. Proposed Code Revisions: § 19-3 Finance Committee: Recommendations and Reports, revised 2/16/2022
9. Draft: Article D. OPEB Funding
10. Draft: Article T: Amend Chapter 19, Section 3 of Town Code
11. Slideshow: Odyssey Advisors: Town of Wayland Other Postemployment Benefits (OPEB) Plan GASB 74 & GASB 75 Actuarial Valuation With a Valuation Date of July 1, 2020 As of the Measurement Date: June 30, 2021 For the Reporting Date: June 30, 2021 Delivered August 17, 2021 (48 slides) with attached spreadsheets re: OPEB
12. Proposed Code Revisions: § 19-3 Finance Committee: Recommendations and Reports, revised 2/8/2022
13. Draft: Article F. Fiscal Year 2023 Revolving Fund Expenditure Limits
14. Settlement Agreement: Twenty Wayland, LLC. and Town of Wayland, dated January 20, 2022 with exhibits and executed
15. Letter: From: Weston & Sampson Engineers, Inc. Brian McCormack, PE, TPI To: Mark Fairbrother Solid Waste Section Chief - NERO Massachusetts Department of Environmental Protection (MassDEP) 205 Lowell Street Wilmington, MA 01887 Cc: T. Holder Director, DPW Re: Cap Assessment Report South Landfill (Facility #173053) Boston Post Road, Wayland Massachusetts, dated February 8, 2022, with figure 1: Assessment Location Plan, and test pit logs

**Supplemental Packet 2:**

1. Draft: Article List 2022 Annual Town Meeting, revised February 14, 2022
2. Draft: Article BB. Amend Chapter 77. MAHT Fund, dated February 13, 2022
3. Draft: Article D. OPEB Funding,
4. Draft: Article G. Compensation for Town Clerk,
5. Draft: Article H. Personnel Bylaws and Wage & Classification Plan, dated February 10, 2022
6. Draft: Article Q. Transfer of 212 Cochituate Rd
7. Draft: Article U. Wastewater FY2022 Budget Request, dated January 27, 2022

**Supplemental Packet 3:**

8. Finance Committee Comments: Automatic Water Meter Reading Project
9. Letter: To: T. Fay From: A. Gennis Chair of Board of Library Trustees: Re: Library capital project funding, dated February 15, 2022
10. 2020 Town Administrator Evaluation Policy & Procedure
11. Draft: Article P. Lease of Cell Tower Reeve's Hill

**Items Distributed For Information and Use By the Board during the Meeting of February 16, 2022  
Otherwise Not Included In The Packet (Handouts):**

12. Draft: Article EE. Establishment of a Capital Improvement Planning Committee
13. Draft: Article JJ. 27 Sherman Bridge Road – Open Space Acquisition

**Correspondence:**

1. Correspondence from Vertex Companies, Inc. to Town of Wayland dated February 10th, 2022 re:  
Availability of Draft Downgradient Property Status Opinion Report for Public Comment River's Edge