

MINUTES – WAYLAND SCHOOL COMMITTEE
Special Session – December 11, 2014

A Special Session of the Wayland School Committee was held on Thursday, December 11, 2014, at 7:00 P.M. in the School Committee Room of the Wayland Town Building.

Present were:

Ellen Grieco, Chair
Barb Fletcher, Vice Chair
Malcolm Astley
Donna Bouchard
Jeanne Downs

Also:

Paul Stein
Superintendent

Chair Ellen Grieco convened the Special Session at 7:00 p.m. Ellen announced that once public comments are made, there will be an open meeting and open discussion for the purposes of a dialogue between the Committee, the Superintendent, and the public.

1. **Comments and Written Statements from the Public:**

Gail Shapiro commented that she would like to clarify some of the comments she has heard in town regarding the fine imposed on the School Committee. She noted that the Volunteer Protection Act of 1997 does not apply in this case (she distributed a document) and noted two exceptions in the law. Gail stated that the fine is an ethical matter and not a legal matter, since it was imposed on the School Committee, not on volunteers. In her opinion, individual Committee members should pay the fine.

Diedre Maxted commented that since more than \$14,000 has been spent on attorneys' fees regarding the Open Meeting Law, she is not in favor of paying the fine from any source of town funding. In her opinion, the taxpayers have been let down because of lack of transparency in matters such as Food Service, Children's Way obligations, and METCO. She feels that the Committee should accept the responsibility and pay the fine.

Alice Boelter commented that children learn by example and teachers are expected to be fair, thoughtful and reliable. The School Committee should follow this example and set a model for the children by demonstrating accountability, and, because the law was violated twice, the taxpayers should not be expected to pay the fine. Alice also urged the School Committee to follow Donna Bouchard's example of paying her share of the fine.

Lisa Valone commended the School Committee for their hard work over the years. She went on to say that they are volunteers in town who do the best job they can with informed consent from legal counsel and others, and believes that the Committee did not intentionally try to deceive anyone. She urged members of the audience to stop the "gotcha" mentality, as the atmosphere in Wayland is not good for the town or the children. Lisa also referred to paid staff time and costs associated with all public records requests and Open Meeting Law complaints.

Gil Wolin, as a member of the Finance Committee, was required to take Open Meeting Law training, and, in his opinion, asking taxpayers to pay the fine for those who presumably had the same training as he did is not a good idea. He told the Committee to pay the fine, follow the rules, and move forward, as then, and only then, will the conflict stop.

Kim Reichelt commented that the Open Meeting Law is complicated, as the rules are not always clear and requires interpretation by some. Further, because something was done twice, does not mean the second time was intentional, which is only a technicality.

Sharon Burke noted that she contacted the Attorney General's office when she heard of the second violation, and since other towns have not been found in violation of an intentional Open Meeting Law violation and assessed a fine, she finds it hard to believe that they are all doing things right. She commented that this conflict

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is not productive, doesn't allow for a good environment, and affects the town in terms of people not wanting to volunteer. She urged the public to end the "watch dogging" and let the School Committee do their jobs, as they have the town's best interests at heart.

Peggy Patton has been a resident since 1972 and, in the past, followed the School Committee as a reporter for the Wayland Town Crier. She believes that there is an arrogance on this Board, and the members should think about what they are doing to the taxpayers. She does not want to pay the fine.

Tom Fay recently viewed a movie at the high school regarding the history of Wayland, with a focus on the originality of the high school and the education in this town before the school was replaced. Although he agreed that the Open Meeting Law is important and the public should be informed, Tom believes there is too much focus on issues that don't concern policy. He encouraged those who are dedicated to the Open Meeting Law to use it as a tool for transparency and not for political purposes.

Kent George agreed with some of Tom Fay's comments and further stated that the Open Meeting Law is a complicated law. However, the law can't be violated if mistakes are not made. Kent further commented that there is a feeling that this Committee is above everyone and he is concerned about that.

John Flaherty read a statement and displayed several boards with 25 pages of Executive Minutes that were redacted by the School Committee. John commented that two mistakes don't negate the consequences, and the School Committee could set a precedent with other Boards, as well as taking money away from the students, if the fine is not paid by the individual members. He proceeded to read agenda topics from other communities as examples of how to post agendas. John would like the School Committee to discuss how to bring the school district back to a Level 1 status.

As a former School Committee member, Jeff Dieffenbach recalled that in 2004, the Committee tried to interpret the Open Meeting Law and the public meeting law in respect to the Superintendent's evaluation. He noted that in that instance, the Committee got four different opinions to show the complexities of the law.

David Hill commented that when elected to the Board of Assessors, he attended Open Meeting Law training. From that he wrote a set of guidelines, which are in place when going into Executive Session. He welcomes the scrutiny to remain as transparent as possible, and would pay the fine if one were imposed on the Board of Assessors.

Ken Isaacson referred to page 30 of the Open Meeting Law Guide that describes in an easy to follow manner how to enter Executive Session. He also noted the comments made by Jeff Dieffenbach could have been a different situation altogether. Ken commented that it is the responsibility of the Superintendent to manage the district, as opposed to setting policy. He also referred to The Children's Way, Food Service and other school services that are using town facilities and town services to support their activities, which is all being paid by the taxpayers. Finally, he feels that since the taxpayers are paying to support the children, there should be a fair proportion for all taxpayers.

George Harris commented that since all Open Meeting Law complaints had to do with Executive Sessions, there could be more mistakes of which the public is not aware. He noted that Executive Session minutes have not been released for the past twenty years and they must be released. However, given the time element related to the release of minutes, the information in those minutes could be useless. George further commented that the only mandatory purpose for Executive Session would be Purpose 1, and, in all other cases, it is a discretionary decision. George pointed out that the law changed July 1, 2010 and all town boards should be cognizant of their responsibilities through an educational process related to the Open Meeting Law on a regular basis.

Rick Green commented on the situation related to METCO. He is concerned and frustrated with the lack of information brought forward. He asked the School Committee to be open about the status and the findings.

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An open discussion resulted between Ellen Grieco, Donna Bouchard, Malcolm Astley, Kent George and John Flaherty regarding the METCO situation. The public wants answers, but the School Committee members commented that there are reasons why more information is not available at this time. When the Committee can, it will update the public.

As a citizen, Donna Bouchard believes there is more to tell about this situation but is not at liberty to do so as a member of the School Committee. Further, the majority of the Committee has decided not to disclose any more information beyond what has already been disclosed.

Ellen noted that she believes the Open Meeting Law would be violated if the METCO issue were discussed, as this meeting was solely for the purpose of discussing the Open Meeting Law.

Malcolm commented on governmental agencies in Massachusetts, including the School Committee, and the matter of transparency. He noted that there are a limited number of areas that would be inappropriate to disclose, but the Committee is doing its best to be transparent. However, this is one of those situations that harm could be done to the parties involved, as the Committee is following advice and cooperating with other governmental agencies. Finally, Malcolm commented that when and if the School Committee can inform the public on this matter, it will do so.

As a matter not anticipated by the Chair, Ellen made further comments on the transparency and disclosure of information regarding the METCO matter. She believes that it is in the best interest of the town of Wayland to not disclose the information until certain circumstances transpire.

Malcolm added that in regard to the Open Meeting Law, there have been 150 determinations this year statewide, which suggests that this is not a simple law. He noted that he has had three OML trainings, the Committee is constantly checking with each other, and he is eager to reach solutions and is excited about the possibility of providing more education to board members.

2. **Public Open Meeting Law Discussion:**

Ellen noted that this discussion will be limited to the Open Meeting Law. She also commented that the reason for this open dialogue is to address the negative public opinion of the School Committee that is growing in the community. As an attorney for the past 20 years, Ellen noted that the Open Meeting Law is complicated, and the interaction between the requirements of the Open Meeting Law and the issue of privacy can result in mistakes; thus, sometimes resulting in compromise.

Ellen commented that the \$500 fine imposed on the School Committee is a settlement amount handed down by the Attorney General and agreed to by the Committee. However, that decision does not have to be the last word, as the Attorney General is in the executive branch, not the judicial branch, and makes decisions in terms of enforcing the law. Given that an appeal was an option in this case, the School Committee decided to settle, due to the costs associated with an appeal process. Ellen spoke to the settlement amount and why the majority of the Committee members feel so strongly that the fine should not be paid by individual members.

Ellen also noted that Open Meeting Law matters fall into two separate categories: 1) past actions from mistakes made that continue forward, and 2) matters that involve legal questions, i.e. not divulging information because of privacy matters or negotiations. In her view, the margin of error cannot be changed due to unforeseen circumstances.

Malcolm commented that the School Committee has and will continue to admit its mistakes and are working very hard towards a positive direction.

Barb agreed with Ellen's and Malcolm's comments and stated her strong desire to follow the Open Meeting Law. Barb noted everything that the Committee has done to work towards a better understanding of the law. She also expressed a concern about the hostility going on, resulting in non-productivity and money being spent to deal with this issue. Barb wants to work together in such a way whereby the Committee and residents can help each other.

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A resident suggested that the Committee members pay their share of the fine as a way to put an end to what is going on and to allow the Committee to move forward. She did acknowledge that the School Committee does work and try very hard, and it should set an example by showing Wayland's kids that the Committee is doing the right thing.

Jeanne responded and disagreed with the previous comment. She commented that the majority of the Committee didn't agree with the Attorney General's decision to fine the Committee, and settled anyway, which showed that there is a legal system in which an appeal can be made. However, the Committee felt it was in the town's best interest not to appeal.

A dialogue continued in terms of the \$500 fine, the process of the settlement and who paid it. One resident pointed out that by not following the appeal process, a lot of money was saved for the taxpayers. Ellen addressed a question regarding the legal fees over the past 18 months related to Open Meeting Law complaints.

Annette Lewis noted that there are 3 things to remember in terms of the Open Meeting Law: 1) posting the agenda, 2) listing all topics of discussion with specificity to inform the public, and 3) entering Executive Session. Further, she noted that for most boards, there are only 3 exemptions: 1) anything that will damage the Committee during litigation and the possibility of harming a negotiating position, 2) union negotiations, and 3) a discussion about an employee's reputation, as long as the employee has been notified of the discussion, and has been invited to attend the meeting with legal counsel. Annette commented that the community is behind the schools and education.

Lea Anderson commented as a former School Committee and High School Building Committee member. She commented on the dedication and time spent by board members and boards should not be asked to pay any fine. Lea feels the taxpayers should support and stand by all boards.

Rick Green commented that he hasn't heard the Committee admit to its mistakes and has not held itself accountable, as should all town boards. In his opinion, the School Committee should pay the fine. Barb acknowledged and explained her mistake in terms of the agenda in question. A discussion followed in terms of the "intentional" violation.

Donna commented that the School Committee needs to move on from this. As her share of the fine, she gave the Superintendent a check in the amount of \$100. She further commented that she believes there was no malicious intent in putting the agenda together, and, in her opinion, the Committee should pay the fine.

Margo Melnicove felt that the Committee members should pay the fine and take the taxpayers' burden into consideration. She also commented on the Open Meeting Law and the violation itself.

As a member of the Finance Committee, Bill Steinberg disagreed with those who believe that the Committee should pay the fine. He believes that board members act as employees of the town, and, although volunteers, work and serve the town together. In his opinion, the community should support the volunteers who spend hundreds of hours working for the town. Bill noted that the Open Meeting Law can be complex, depending on which board an individual serves. It also depends on how much scrutiny a board or committee endures, as violations can occur, but a complaint may not be filed. He related his experience on town boards in terms of the Open Meeting Law.

Kent George commented on financial issues and the lack of transparency. He thanked the Committee for having this open forum and encouraged more open forums.

A discussion ensued regarding the OML complaint filed by George Harris and Donna Bouchard relative to the termination of a school employee, the issue of privacy, and the meeting's purpose and discussions. Ellen commented on the animosity by some present at the meeting regarding the issue of whether the individual Committee members or the town should pay the \$500 fine.

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As a former School Committee member, Louis Jurist commented that too much time has been spent on the issue of the fine and is unrepresentative of the overwhelming efforts of the School Committee to follow the Open Meeting Law. He noted that he understands the principle behind the members' decision, but he advised the Committee to pay the fine and move forward with more important issues.

Ellen read a public comment from Cynthia Lavenson regarding the number of Open Meeting Law complaints that, in her view, result in bullying and harassment. Cynthia also noted the number of public records requests over the years, which have amounted in countless employee hours and expenses. She requested that the Committee focus on education going forward.

As a member of the Board of Assessors, David Hill commented that he would like to move on and correct the mistakes of the past. He related his experience as a board member in terms of available guidelines and training regarding the Open Meeting Law.

A discussion ensued about the intent to educate town boards regarding the Open Meeting Law and the need for more transparency by the School Committee. George Harris made suggestions in this regard, as well as noting that it is the overall Committee's responsibility to work together when putting the agenda together.

Lea Anderson asked George Harris to work with committees in an effort to avoid the step of filing an OML complaint. George explained the steps involved when filing a complaint in terms of the statute of limitations.

Alexia Obar praised the School Committee's effort to have this open discussion. Alexia's opinion is that too much time is being spent on these issues, when more time should be directed toward the educational needs of the students. She advocated for a more "open door" policy when decisions are made and to break free of the adversarial atmosphere that exists.

In response to prior comments, John Flaherty commented that he would like to reach a point where everyone supports the entire School Committee and asked the Committee to work together as a five member board. John also thanked the School Committee for their hard work and appreciated the opportunity to discuss issues in an open forum.

Also discussed was the possibility of political motivation in filing OML complaints. Donna noted that in terms of transparency, it is the duty of the Committee to allow the public to understand how decisions are reached. Ellen explained the need to discuss certain matters in Executive Session. Barb agreed that the Committee wants to be as transparent as possible.

Ken Isaacson commented that a different look at things could be helpful in terms of the finances of the town.

A Wastewater Commission member commented on his experience in terms of transparency, as the public wants to know how and why decisions were reached.

Mary Ann Borkowski thanked all those who serve on boards and her concern that residents will not run to serve on boards and committees given the climate in town. She also commented on the transparency issue and noted that it is important to respect each other's opinions, especially when there are disagreements.

Margo Melnicove thanked the School Committee for its service, as well as those who file the Open Meeting Law complaints and public records requests. She believes that the public is not provided easy access to public information.

Ellen thanked all those who attended the meeting and for sharing their thoughts.

3. **Discussion of Future Open Meeting Law Forum with Other Town Boards:**

The School Committee agreed that Ellen should pursue the possibility of joining with other town boards for the purpose of an Open Meeting Law Forum.

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Barb agreed with George's suggestions that the training sessions should be interactive and the facilitator should be completely independent. She also suggested that a member from each board should be represented in small group role-playing situations.

4. **Adjournment:**

Upon a motion duly made by Barb Fletcher, seconded by Ellen Grieco, the School Committee voted unanimously (5-0) to adjourn the Regular Session at 9:33 p.m.

Respectfully submitted,

Paul Stein, Clerk
Wayland School Committee

Observers:

Gail Shapiro
Diedre Maxted
Alice G.
Lisa Valone
Gil Wolin
Kim Reichelt
Sharon Burke
Peggy Patton
Tom Fay
John Flaherty
Jeff Dieffenbach
Louis Jurist
David Hill
Ken Isaacson
George Harris
Rick Green
Kent George
Lea Anderson
Mary Ann Borkowski
Alexia Obar
Annette Lewis
Bill Steinberg

Corresponding Documentation:

1. Agenda
2. Status of OML Complaints - Chart