

Response of the Wayland Board of Selectmen
to two Complaints of Kimberly Reichelt
dated September 3, 2013 and September 18, 2013

September 23, 2013

Kimberly S. Reichelt
11 Coolidge Road
Wayland, MA 01778

Dear Ms. Reichelt:

This Response is given to comply with the provisions of the Open Meeting Law, G.L. c. 30A, Section 23(b), following the two Open Meeting Law Complaints referenced above. Under an extension of time approved by the Attorney General, the Board's response to Complaint #1 must be given on or before September 27th, while a response to Complaint #2 must be given on or before October 2, 2013. Because both complaints focus on the actions of the Board and three of its members relating to the matter taken up by the Board under Item 4 of the OML Notice for its meeting of August 26th, this will serve as the Board's response to both complaints.

In response to Complaint #1's challenge to the sufficiency of the Open Meeting Law Notice for the Board's meeting of August 26th, specifically with respect to Item 4 in light of the motion made and action taken under Item 4 ("Review of Town Administrator Employment Agreement and Job Description"), although the Board does not believe there was a violation of the open meeting law, in light of some public concern, the most practical response and one that would best serve the public purposes, is the following:

1 - Forthwith upon the delivery of this Response, the Board will post notice of another Board meeting, to be held at the earliest possible date, stating as one of the topics to be discussed at that meeting:

"Review Town Administrator Employment Agreement and Job Description, and/or discuss all possible action as allowable under the terms of the agreement including whether to exercise the authority of the Board to confirm and ratify termination of the employment contract of the Town Administrator under the 'without cause' provisions of that contract."

2 – At that meeting the Chair will invite a motion under the foregoing topic, and will then open the matter for deliberation and vote by the Board.

In Complaint #2 you say that the Board's deliberations on August 26th "strongly suggest" that three members of the Board (Leard, Boschetto, and Collins) "conducted prior deliberation" about the matter in violation of the OML. You claim in one place "to have evidence" of these unlawful deliberations, and elsewhere that "[t]here is no currently available direct proof of collusion." You say that they "appear[ed] to have intentionally violated" the OML, and that "it is difficult to escape" that conclusion – a conclusion whose only alternative you think could be "incompetence" or "extreme rashness." That there even are alternatives of this sort is a concession that conclusions other than that the OML was violated exist. Even if your speculation about these alternatives were accurate, neither "incompetence" nor "extreme rashness" is an OML violation. Of course, another, more plausible, conclusion is simply that there were no violations, and that what was said and done by the three members accused occurred simply because they harbored similar views and attitudes toward the action taken at the meeting of August 26th, the motion made by Mr. Boschetto being an unanticipated occasion for them to express those views.

The three members having expressly denied that there had been any deliberations by or among them of the sort you claim, the only response that can be made to Complaint #2 is one of denial that OML violations have occurred and that there is nothing to remediate.

When asked at the meeting of September 16th what you would propose as the Board's response to Complaint #1, you proposed that the Chair admit to having violated the OML by having posted Item 4 with words you say that fell short of what he ought to have "reasonably anticipated," and that he did this intentionally with the purpose of disguising a known purpose of considering the termination of the Town Administrator. These steps amount to a concession that the claims of the Complaint are valid. Because they are not, the proposed response is unacceptable.

But in an effort to include a positive note to this response, the Board proposes to fashion and adopt a policy that would adequately address the circumstances complained of here, that is, where the Board is moved to take an action not readily inferable from the general language of the posted item or where the measure moved lies within the Board's jurisdiction but is taken up as a matter that the Chair had not "reasonably anticipated" when the notice was posted. One possible policy might be that a motion to table any such measure to the next meeting of the Board will always be considered "in order" and will have priority over any other motion pending. The Board is willing to acknowledge that even if not required by the OML itself but rather as a "best practice," a policy of the sort suggested above or some functionally equivalent alternative should be adopted to assure that major decisions of the Board are accompanied by sufficient notice and opportunity for public deliberation of town business. Further, as no specified detailed procedure for a "without cause" termination presently exists in the Town Code, the Board proposes to consider the adoption of such a procedure, consistent with employment contract provisions, perhaps along the lines now being considered by the Personnel Board.

Finally, while this serves as the voted response of the Board, it is acknowledged that not all members of the Board may have expressed their concurrence.

BOARD OF SELECTMEN OF THE TOWN OF WAYLAND:

Douglas J. Leard, Chair
Anthony V. Boschetto, Vice-Chair
Edward J. Collins
Steven J. Correia
Joseph F. Nolan

By: 

Douglas J. Leard, Chair, duly authorized

CC: Office of the Attorney General, Division of Open Government