

IN BOARD OF SUDBURY SELECTMEN
TUESDAY, MAY 5, 2009

Present: Sudbury Board of Selectman Chairman Lawrence W. O'Brien, Sudbury Vice-Chairman William J. Keller, Jr., Sudbury Selectman John C. Drobinski, and Sudbury Town Manager Maureen G. Valente

Present: Wayland Board of Selectmen Chairman Michael L. Tichnor, Wayland Selectmen Vice - Chairman Joseph F. Nolan, and Wayland Selectmen Thomas J. Fay and Steven J. Correia and Wayland Selectwoman Susan Pope; Wayland Town Counsel Mark Lanza; and Wayland Town Administrator Frederic E. Turkington, Jr.

Present: Wayland-Sudbury Septage Committee Chairman Thomas Abdella and Committee members Robert K. Coe, James F. Occhialini, Robert A. Gottberg, John C. Dyer, Werner Gossels, and Recording Secretary Gail O'Neill; Counsel for the Committee attorney Susan Crane; Camp Dresser & McKee, Inc. Vice President James L. Taylor, PE; Septage Facility Plant Manager James F. Minieri and financial consultant for the Committee Mark Abrahams

The statutory requirements as to notice having been complied with, the meeting was convened at 7:34 p.m. in the Silva Conference Room, Flynn Building.

Opening Remarks

At 7:34 p.m., Chairman O'Brien called the meeting to order. He welcomed the Wayland Board of Selectmen to a joint meeting with Sudbury's Board and the Wayland-Sudbury Septage Facility Committee to discuss matters of mutual concern.

Joint Meeting with the Wayland Board of Selectmen and Wayland Sudbury Septage Committee and Discussion of Committee Recommendations

Chairman O'Brien asked the Committee's Chairman Thomas Abdella to highlight the issues before the Boards of Selectmen tonight regarding the Facility.

Mr. Abdella briefly reviewed the recent history of the Wayland-Sudbury Septage Facility in relation to the Massachusetts Department of Environmental Protection (DEP), since the execution of the August 1, 2007 Administrative Consent Orders between MassDEP and the towns of Wayland and Sudbury. He also referenced the DEP's enforcement letter to both towns and the Septage Committee dated March 10, 2009. Mr. Abdella explained that Committee members and officials from both towns met with the DEP in February 2009 to discuss compliance status of the Facility. He noted that, in its the enforcement letter, MassDEP stated it had long-standing concerns regarding the adequacy of the treatment systems and de-nitrification equipment to meet existing effluent limits. It was also noted that recommendations for capital improvements suggested by the Facility's engineering consultant, Camp Dresser & McKee, Inc., were never fully implemented. In its letter, DEP mandated that by June 1, 2009, either a written plan and schedule to construct the full upgrades to the Facility within an 18-month timeframe be submitted, or a written plan and schedule to decommission the Facility prior to December 31, 2009 be submitted.

Mr. Abdella further explained that a limited de-nitrification upgrade was constructed and completed in April 2008. Since the limited upgrade was completed, the Facility achieved compliance during three of twelve months. The Septage Committee has reviewed available data and information. The Committee also sought input from Camp Dresser & McKee, Inc., and its plant operators, United Water. It was noted that conflicting conclusions have been reached by different parties regarding reasons for the Facility's inability to be in compliance and for the potential for success if all required upgrades are implemented.

Mr. Abdella fielded a few questions regarding variances in monthly flow totals. Wayland Town Administrator Turkington noted that the volume of flow is affected by seasonal variances, and that the facility is busiest and most profitable in the summer.

Mr. Abdella reported that a majority of the Committee (four members) has reached the conclusion that risks to both towns from continued operations outweigh the potential benefits. The majority believes that, if all upgrades are implemented, the Facility will require additional technical personnel to be hired to oversee a more complicated operation. It was noted that the Facility has functioned for some time without a Director, resulting in cost savings. Mr. Abdella further stated that the Facility's customer base has been shrinking, and that one vendor, Wind River, accounts for 60% of the Facility's revenue. The Committee's Majority Report stated it does not believe that relying so heavily on one customer is an effective business plan. Mr. Abdella further stated that MassDEP has been historically skeptical, and it views this facility as repeatedly violating compliance standards. The Committee's Majority Report also states concern that, even if the expenditures were made to implement all recommended upgrades, MassDEP could still choose to deny an increase to the discharge permit or order a shutdown of the Facility.

Wayland Board of Selectmen Chairman Tichnor asked what percent of the Facility's septage is from Sudbury and Wayland. It was suggested that approximately 30-40% of the homes in Sudbury and Wayland have septage treated at this Facility. Committee member Robert Coe opined that, even if it were 100% of the homes, it would not have altered the conclusions reached in the Committee's Majority Report.

Speaking on behalf of the Committee's minority position, Committee member Werner Gossels stated that he believes the Facility has the capability to meet required standards, and that investment should be made in upgrades. He opined that closing the Facility could result in an added cost to residential homeowners, since the septage would need to be transported farther. Mr. Turkington opined that he believes the cost difference would be negligible, since the Facility has consistently balanced the cost of disposal and transportation in its pricing. Mr. Gossels further stated that, if operations were to continue, he believes technical assistance would only be needed occasionally, on an as-needed basis, because the current operators are skilled.

Septage Committee member John Dyer opined that he believes the Facility could operate at 33,000 gallons daily, that there is the potential for a larger market, and that the demand exists to allow the Facility to be price-competitive. He stated that the two towns need to determine what risks they are willing to take to justify a \$300,000 loan for the upgrades. He further stated that he does not believe it is a foregone conclusion that the MassDEP will close the Facility or be punitive in its decisions. Sudbury Selectman Drobinski asked if expending \$300,000 will ensure the Facility's compliance with required standards. Mr. Dyer responded that the best possible plan should be designed towards that goal versus being fearful to submit any proposal at all.

Chairman Tichnor asked how the debt would be paid if the plant was eventually closed. Mr. Turkington responded that it would be an additional cost borne by Wayland and Sudbury taxpayers.

Mr. Dyer stated that the last two years have been profitable for the Facility. Vice-Chairman Keller later asked for more of a financial update on the Facility. Septage Facility Plant Manager James F. Minieri distributed copies of the audited net asset balances and revenues and expenses as of June 30, 2008. He also provided FY09 financial data as of March 31, 2009, indicating a septage cash balance of \$332,512. Mr. Minieri noted that, per the requests of the Selectmen of Wayland and Sudbury, the Committee has not spent retained earnings since June 2007. Hauler receivables totaled \$98,753, of which approximately 40% are greater than 60 days. FY09 data also reflects a 9.3% increase in hauler flows over FY2008 for the same time

period. Mr. Turkington opined that insufficient revenue is produced from 25,000 gallons per day to support additional debt of \$300,000.

Committee member Robert Gottberg stated that DEP views the facility as not in compliance since November 2008. Mr. Gossels briefly reviewed recent monthly Facility testing results in relation to the established DEP parameter limits. Mr. Abdella emphasized that MassDEP requires six consecutive months of compliance for all four required parameters. Chairman O'Brien questioned the risks if the improvements are made and the Facility is still not in compliance. Mr. Abdella responded that the Facility could be shut down by DEP.

Committee member Robert Coe opined that it is unlikely the cost of the needed sand filter could be intertwined with an alternative use for the Facility. He also stated that making a decision as to whether the facility should continue to operate should consider many factors and not solely whether revenues are being produced.

Chairman Tichnor asked what the estimated cost will be to decommission the facility. The cost was estimated to be \$60,000-\$80,000 to minimally maintain the Facility with an alarm system, appropriate water and heat, and to cover the legacy costs for 3.5 employees. Wayland Selectman Thomas Fay asked if the Facility could be torn down to save the minimum maintenance expenses each year.

Sudbury Town Manager Valente reported that she asked Sudbury Town Counsel Paul Kenny for his opinion regarding legal requirements and options if the Facility closes, and whether it could be leased as a transfer station. Town Counsel Kenny stated that it could be leased as such by the Committee under the current Agreement, although Town Counsel Kenny further referenced an opinion provided by Attorney Susan Crane as to the difficulty in doing so. Mr. Coe stated that the Committee did not consider leasing options, since that was beyond the scope of its mission. Mr. Coe opined that leasing the Facility as a transfer station could result in new concerns regarding spillage and traffic control issues.

Mr. Turkington cautioned those in attendance that the leasing discussion was possibly veering in the direction of Executive Session dialogue and was not within the purview of the Committee. Ms. Valente concurred, stating that the initial question before the Boards tonight is whether Sudbury and Wayland want to commit to the investment of additional funds for the Facility. Chairman Tichnor opined that leasing could generate revenue, which would help defray the Facility's maintenance and legacy costs if closed, and thus the discussion is germane to the decision of whether or not to close the facility.

Ms. Valente asked if Wayland had considered other uses for the building. Wayland Selectmen stated that, to date, they had not. Chairman O'Brien asked that, if the Facility were torn down, could the site be used for a sewer treatment plant. Sudbury resident and attorney Susan Crane responded that permit approval would be difficult, given the proximity of the site to the Wild and Scenic River area. Camp Dresser & McKee, Inc. Vice President James L. Taylor, PE opined that permit compliance could potentially be achieved. However, the type of industrial waste on the site would need to be selectively chosen.

Selectman Drobinski emphasized that a decision needs to be made soon, if proper notification is to be submitted to MassDEP prior to June 1, 2009.

Ms. Crane stated she had reviewed the current Septage Disposal Agreement. She does not see a clear provision for both Towns terminating the agreement prior to its natural 20-year expiration date in 2017 without possibly going before town meetings in both Sudbury and Wayland. She suggested that Town Counsels review this issue.

Town Counsel Lanza stated that he believes an amendment can be added to the current Agreement without authorization from town meetings. Vice-Chairman Keller noted the provision had not been anticipated that Sudbury and Wayland might want to jointly terminate the agreement.

Wayland Vice-Chairman Nolan expressed concern that one customer provides such a high percentage of the Facility's revenue. Thus, from a customer-base standpoint, he understands the conclusions reached in the Committee's Majority Report.

Chairman O'Brien asked if the two Boards have been provided with enough information to be able to vote on this matter. Wayland Selectman Fay stated he would prefer more information regarding the financial impact on Wayland taxpayers if a decision is made to not proceed with the upgrades. The general consensus was that such a decision would not result in a significant cost differential for homeowners. Mr. Gossels disagreed, reiterating that the cost for transportation to a facility farther away will be passed on to the consumer.

In response to a question regarding the Facility's chance for technical success if the upgrades are made, Mr. Taylor stated that, if all things went perfectly and were implemented properly, he believes there could be a 95% probability for meeting compliance standards. In response to a question from Vice-Chairman Keller, Mr. Taylor stated that if the Facility is closed, a very small percentage of the State's capacity would be removed from the marketplace.

Chairman Tichnor stated that the Committee's Majority Report indicates that benefits are likely to be minimal from further investment in Facility upgrades. He urged the Boards to vote this evening on the matters before them, since to not do so would merely delay an inevitable decision which is time-sensitive. Chairman Tichnor asked the opinion of his Board members. Vice-Chairman Nolan stated he is inclined to vote that the Facility be decommissioned. Selectman Fay concurred.

Chairman O'Brien and Vice-Chairman Keller stated they also are inclined to vote for decommission. Selectman Drobinski concurred, stating that meeting MassDEP compliance standards appears to be too risky; and he believes that spending \$300,000 towards upgrades will be insufficient to meet requirements. Selectman Drobinski commended the Committee on the excellent job it has done with a difficult situation. Chairman Tichnor added his Board's commendations to the Committee, noting that the conclusion he has reached this evening is not a reflection on the work of the Committee. Wayland Selectwoman Pope stated she does not believe the MassDEP is inclined to permit this Facility to further operate.

It was on motion unanimously

VOTED: By the Sudbury Board of Selectmen to not implement the upgrades as specified by the Massachusetts Department of Environmental Protection in its letter dated March 10, 2009.

It was on motion unanimously

VOTED: By the Wayland Board of Selectmen to not implement the upgrades as specified by the Massachusetts Department of Environmental Protection in its letter dated March 10, 2009.

Town Administrator Turkington recommended that a timeline and list of actions for the decommission process be drafted incorporating the suggestions, as presented by Mr. Abdella, to continue Facility operations through the busy summer season to maximize revenues. It was suggested that Town Administrator Turkington and Town Manager Valente oversee the draft response to MassDEP and discuss the content with Eric Worrall, MassDEP's Deputy Regional Director.

It was on motion unanimously

VOTED: By the Wayland Board of Selectmen to authorize the Town Administrator and Town Counsel to work with Sudbury's Town Manager and Sudbury's Town Counsel to prepare an appropriate amendment to the current Septage Disposal Agreement dated June 4, 1997.

Town Manager Valente stated that Town Counsels from Sudbury and Wayland will need to reach consensus on their differing views as to whether this issue will need to be brought to respective town meetings. Town Counsel Lanza said he will pursue that discussion with Town Counsel Kenny.

It was on motion unanimously

VOTED: By the Sudbury Board of Selectmen to authorize the Town Manager and Town Counsel to work with Wayland's Town Administrator and Wayland's Town Counsel to prepare an appropriate amendment to the current Septage Disposal Agreement dated June 4, 1997.

It was further on motion unanimously

VOTED: By the Sudbury Board of Selectmen to authorize the Town Manager and Town Counsel to work with Wayland's Town Administrator and Wayland's Town Counsel to prepare a decommission plan for the Wayland-Sudbury Septage Facility.

It was also on motion unanimously

VOTED: By the Wayland Board of Selectmen to authorize the Town Administrator and Town Counsel to work with Sudbury's Town Manager and Sudbury's Town Counsel to prepare a decommission plan for the Wayland-Sudbury Septage Facility.

Septage Facility Financial Proposal and Impact on Intermunicipal Agreement

Town Manager Valente recommended, and all concurred, that she and Town Administrator Turkington review how, and by whom, the Facility's financials will be handled for the remainder of its operation and then make recommendations to their respective Boards of Selectmen.

Chairman Tichnor again thanked Committee members for their report and input.

At 9:40 p.m., Chairman O'Brien announced a five-minute recess.

Collaborative Efforts - Update

At 9:45 p.m., Chairman O'Brien resumed the meeting. He mentioned that a few possibilities for collaborative efforts had been mentioned when the two Boards previously met in December 2008. Chairman O'Brien asked if there had been any feedback regarding the idea of merging the towns' two high schools. Chairman Tichnor responded that from Wayland's perspective, there is currently no interest, since there appears to be no apparent benefit for Wayland to do so.

Chairman O'Brien briefly summarized his Board's intention to decommission its Budget Review Task Force and then ask members to work within smaller groups to concentrate efforts on specific

recommendations. He mentioned that Sudbury will soon establish a Green Ribbon Committee to address environmentally-based cost savings, and he asked if Wayland would be interested in joining those discussions. Chairman Tichnor responded that Wayland already has a Citizens' Energy Committee. Town Administrator Turkington reported that the Energy Committee has met three times and has focused on solar and methane-related options. He also noted that Sudbury's Director of Public Works and a few Solid Waste Management Options Committee members attended one of the Wayland meetings. Town Manager Valente stated that it could be beneficial for both towns to work collaboratively on grant submissions.

Chairman O'Brien asked if there is an interest in joining efforts regarding trash discussions, with the eventual possibility of combining Sudbury's and Wayland's transfer stations. Town Manager Valente noted that Sudbury's Solid Waste Management Options Committee will be submitting a final report within the next 60 days, which could be useful in future discussions. Chairman Tichnor suggested, and all concurred, that a few Committee members from each town be asked if they want to work within a small joint group on relevant "green" issues and on grant opportunities.

Selectman Drobinski urged Town Manager Valente and Town Administrator Turkington to continue the excellent dialogues they have established in the best interests of both towns and to call upon the support of the two Boards of Selectmen as appropriate and needed.

Town Manager Valente reported that the newly-hired Parks and Recreation Director by the two towns has started work and has already begun inventorying equipment.

Chairman Tichnor reported that Wayland will have a new Department of Public Works Director starting in a few months. He suggested that soon after July 1, 2009, the new Director should meet with their Sudbury counterpart to discuss opportunities for sharing capital equipment.

It was noted that both towns have great interest in a comprehensive senior center, which could be located in the Route 20 vicinity.

Town Administrator Turkington stated that it will be important to both towns to have their Library Directors and Library Boards meet to discuss consolidation options. Vice-Chairman Nolan noted that the libraries have independently-elected boards, and thus, the Selectmen can only suggest, and not mandate, options. Chairman Tichnor stated that, due to the budget constraints facing both towns, it is imperative that the Selectmen cautiously provide the leadership to enable the two library groups to engage in collaborative dialogue. He suggested that a joint discussion be facilitated prior to September 1, 2009. Chairman Tichnor also endorsed collaborative discussions commence between the Councils on Aging of both towns. Vice-Chairman Nolan noted that the Wayland and Sudbury Councils on Aging have worked well together recently on regional transportation issues.

Town Administrator Turkington stated that he will coordinate a joint meeting of the two library groups, including one Selectmen from both Sudbury and Wayland.

Town Manger Valente stated that Sudbury would like to pursue collaborative discussions regarding shared police dispatch and lock-up facilities. She noted that the result of such discussions could impact the future design plans for a new Sudbury Police Station. Chairman Tichnor stated that Wayland has also been approached by Weston to pursue similar shared functions.

Town Manager Valente questioned whether the Septage Facility could be used as a municipally-operated crematorium. She reports that other towns have done so profitably. Town Manager Valente also reported

that Sudbury is pursuing a Metrowest Health Foundation grant to study options for shared public health services.

Vice-Chairman Nolan asked whether Sudbury participates in the Community Preservation Act (CPA) funding program and how it uses those funds. Selectman Drobinski responded that Sudbury has participated in the program for several years, having funded several completed projects, while setting aside \$6 million for future projects. He emphasized that the funds are monitored closely by the Community Preservation Committee (CPC). Town Manager Valente stated that, in recent years, the CPA projects and funds have been overseen by the Director for Planning and Community Development, who has established a cohesive structure for the submission and review of project proposals and funds management. Chairman O'Brien briefly described some of Sudbury's open space, historic preservation, affordable housing and recreation projects which have utilized CPA funds.

There being no further business, the meeting adjourned at 10:21 p.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk