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Establishment of WWMD and Plant Acquisition

1955-1996 Raytheon leased the Route 20 property at 400-440 Boston Post Road, Wayland, for an electronics research facility.

May 4, 1995 Town Meeting votes to petition State Legislature to establish a “growth neutral” Wayland Wastewater Management District Commission (WWMD) to service existing buildings with failing septic systems.

Nov. 30, 1995 Raytheon treatment plant was shut down & discharge of sanitary wastewater was ceased.

May 6, 1996 Town Meeting votes to establish Wastewater Enterprise Fund.

Oct. 25, 1996 Raytheon informs EPA that all operations have ceased & that they no longer require an NPDES permit.

Jan. 6, 1997 State Legislature enacts Special Act Ch. 461 of the Acts of 1996 establishing the WWMD.

Feb. 26, 1997 EPA issues a public notice of Proposed Termination of Raytheon’s NPDES Permit.

April 1997 EPA terminates Raytheon’s NPDES permit.

Dec. 15, 1997 Wayland Business Center (WBC) purchases the property formerly occupied by Raytheon.

June 4, 1998 Special Town Meeting votes to acquire from WBC the then existing wastewater management system and the land on which it was situated – the vote included a \$250,000 appropriation for the acquisition and legal expenses, as well as authorization to borrow those funds.

Sept. 4, 1998 EPA issues a new NPDES permit to WBC with the understanding that the permit would be transferred to the WWMD; discharge limitations for flow were 52,000 gpd average monthly, with a daily maximum flow of 65,000 gpd; NPDES Permit Part II Standard Condition A.2. states “This permit may be modified, revoked and reissued, or terminated for cause” and Condition A.6. states “The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.”

Nov. 17, 1998 Letter from Town Counsel Mark Lanza to WBC’s attorney Adam Weisenberg commenting on Memorandum of Agreement drafted by Weisenberg – Lanza states, among other things: a) Town would take the wastewater system and land by eminent domain; b) Town would be willing to state its intent concerning the method it would use to calculate WBC’s sewer usage charges and any betterment assessments but would not agree to be bound contractually to waive its statutory rights concerning those things; c) Town would not acknowledge that the residentially zoned portion of the adjoining property owned by Wayland Meadows has any rights to connect buildings to the wastewater management system; d) the 1998 NPDES permit restricts new connections to the plant to “existing, failing septic systems in the Watershed”.

Nov. 24, 1998 Letter from Town Counsel Mark Lanza to Wayland Meadows’ attorney Joel Reck explaining the practical and legal reasons why Wayland Meadows property will not be able to connect to the wastewater system, among them: a) the Sept. 4, 1998 NPDES permit prohibits the connection of any

yet to be constructed buildings; b) Special Act Ch. 461 of the Acts of 1996 establishing the WWMDC speaks only of remedying failing or inadequate wastewater systems and does not provide for wastewater disposal needs of yet to be constructed buildings; c) the wastewater system will not have sufficient physical capacity to meet the wastewater disposal needs of any yet-to-be-constructed buildings because all available capacity is spoken for.

Aug. 30, 1999 Selectmen, WWMDC & WBC sign Memorandum of Agreement (“MOA”) for acquisition of the wastewater treatment plant and appurtenant easements by eminent domain.

Sept. 24, 1999 Selectmen, WWMDC & WBC sign Supplemental Agreement to enable the NPDES permit to be transferred to the WWMDC/Town.

Nov. 5, 1999 NPDES permit transferred to the Town of Wayland

Town Center and Wayland Commons Projects Proposed

Aug. 2002 tenant Polaroid terminates lease with WBC at former Raytheon facility. Little commercial activity left so flow to wastewater plant decreased dramatically.

March 17, 2004 Letter from WWMDC to Selectmen stating that the wastewater system is “substantially underutilized” and discussing ways to provide Wayland Meadows with plant capacity for future construction. WWMDC articulates the idea of imputing wastewater input to the system of just 60% of Title 5 Guideline (a formula not approved by DEP).

April 5, 2005 Public forum: Town Center Project concept presented to Planning Board

April 2005 Wayland Commons 40B housing project (formerly Wayland Meadows) begins ZBA permitting process

May 23, 2005 Selectmen hold meeting with several boards that would be sending comments to the ZBA on the Wayland Commons 40B housing project. WWMDC reports there is sufficient capacity to allocate 7,200 gpd to Wayland Commons & that the Selectmen had negotiated a \$600,000 connection fee from the condo developer.

June 7, 2005 WWMDC chairman Gene Roberts reports to the ZBA hearing that the commission enthusiastically supports the Wayland Commons proposal and welcomes its effluent into its grossly underutilized treatment facility. The developer confirms that he will contribute \$600,000 to help defray the cost of bringing the hookup to the border of the development.

Aug. 1, 2005 Memo from Board of Health to Selectmen alerting them to issue of possible over subscription of WWMDC wastewater capacity (due to flow limits in the NPDES Permit) and urging Selectmen to engage DEP early in the planning process for the proposed Town Center Project.

Aug. 23, 2005 WWMDC Memo refers to its allocation of 7,200 gpd of “sewer capacity” to Wayland Commons.

[Sept. 19, 2005 Fred Turkington begins employment as Wayland Town Administrator]

Sept. 23, 2005 Letter from Town Counsel Mark Lanza to WWMDC providing his legal opinion with regard to questions raised by the Commission concerning statutory interpretation and legal requirements all in the context of supplying wastewater capacity to Wayland Commons -- of note, he states that there is no prohibition in the currently effective 1998 NPDES Permit that would prohibit new construction from

connecting to the WWMD system despite the fact that he quotes the permit language which calls for flow to the eventual surface water discharge to come from “tie-ins of existing, failing or inadequate systems”.

Oct. 19, 2005 Letter from attorney Adam Weisenberg to his client WBC/Congress Group/Twenty Wayland concerning his opinion that the MOA is assignable and that the 45,000 gpd of capacity can be used for other than the existing uses.

Nov.1, 2005 Special Town Meeting – proposed zoning bylaw to enable Town Center Mixed-Use Project fails to win approval

Nov. 4, 2005 Letter from Twenty Wayland to Town Administrator Turkington requesting an opportunity to bid on purchasing the “excess wastewater capacity” that is being discussed for sale to Wayland Commons.

Jan. 4, 2006 Letter from Board of Health to WWMD states that Wayland Commons conceptual plan for age-restricted housing meets BoH requirements for an on-site disposal system.

Jan. 27, 2006 ZBA approves Wayland Commons 40B comprehensive permit with the understanding that all wastewater capacity (7,200 gpd) would be provided by the WWMD’s existing facility.

March 28, 2006 Selectmen enter into Development Agreement with Twenty Wayland LLC providing for, among other things, eventual payment to town of \$3 million gift; Town Meeting never authorized, approved or ratified that agreement and the matter was never put before Town Meeting for a vote.

May 3, 2006 Special Town Meeting approves proposed zoning bylaw (“MUOD”) to enable Town Center Mixed-Use Project (Planning Board minority report in Warrant noted incomplete information about the proposed project, no market study, rushed process with Development Agreement & questioned if that agreement will protect the Town).

Town Center Permitting Begins and Stalls, Wastewater Issues Emerge

June 2006 Twenty Wayland begins MEPA review process.

Aug. 10, 2006 WWMD enters into an Agreement with Wayland Meadows Development to provide 7,200 gpd of Title V capacity to the Wayland Commons 40B Project in exchange for payment of a \$600,000 privilege fee.

Nov. 8, 2006 Planning Board approves Twenty Wayland Concept Plan despite missing traffic info

Jan. 16, 2007 Town Center developers stopped permitting process, blamed town boards

Feb. 26, 2007 Letter from Town Administrator Frederic Turkington “on behalf of the Town of Wayland” to Twenty Wayland’s attorney Adam Weisenberg that “confirms and reaffirms the Town’s and the WWMD’s contractual obligation to provide Twenty Wayland, LLC, as successor to Wayland Business Center, LLC (“WBC”), 45,000 GPD of wastewater capacity at the Plant in accordance with the Memorandum of Agreement among WBC, the Town and the WWMD dated August 30, 1999. The Town and the WWMD have met, and will continue to meet their obligation to provide the agreed amount of capacity.”

July 2, 2007 Letter from Town Administrator Frederic Turkington “on behalf of the Town of Wayland” to Twenty Wayland’s attorney Adam Weisenberg stating that, on June 28, 2007, the WWMD voted to

“confirm and reaffirm the Town’s and the WWMDC’s contractual obligation to provide Twenty Wayland, LLC, as successor to Wayland Business Center, LLC (“WBC”), 45,000 GPD of wastewater capacity at the Town’s sewage treatment plant in accordance with the Memorandum of Agreement among WBC, the Town and the WWMDC dated August 30, 1999.” The letter also states “[T]he Town and the WWMDC have met, and will continue to meet their obligation to provide the agreed amount of capacity.”(Note: the 6/28/07 meeting was held in Executive Session)

Nov. 19, 2007 Letter from DEP to Twenty Wayland informing them that they are required to file for a DEP sewer connection permit.

Dec. 12, 2007 Weston & Sampson peer review report prepared for the WWMDC to evaluate the adequacy of the wastewater treatment facility – the treatment plant is almost 50 years old, needs to be replaced to meet proposed new NPDES permit requirements, estimated cost from \$2.5 - 3.5 million. (based on a flow of 50,000 to 75,000 gpd).

Jan 17, 2008 Planning Board approves Town Center Master Special Permit [appealed by Town of Sudbury and residents of Glezen Lane, Wayland]

March 28, 2008 Twenty Wayland receives MEPA FEIR Certificate

New Plant Funded, Disputes Escalate

2008 Annual Town Meeting approves borrowing of \$5.2 million for new wastewater treatment plant

Sept 8, 2008 EPA issues new NPDES permit [appealed by U.S. Department of Interior & a Sudbury resident]

Feb. 2009 KGI Properties announces plans to buy out Dean Stratouly’s (WBC/Congress Group) interest in Town Center Project

April 10, 2009 DEP letter to Twenty Wayland – a) confirming need for a DEP sewer connection permit and advising the developer to consider phasing of the Town Center Project or reuse of treated wastewater to reduce wastewater discharge volume; b) exhorting developer to work collaboratively with WWMDC, the Town and DEP in order to advance its development project.

April 2009 Annual Town Meeting approves borrowing an additional \$400,000 for the new wastewater treatment plant

May 12, 2009 Board of Road Commissioners issue a Changing of Public Ways Permit #2008-813 for Town Center Project roadway improvements along Routes 20, 27 and 126.

May 29, 2009 Conservation Commission issues Order of Conditions for Town Center Project.

June 12, 2009 Twenty Wayland appeals Conservation Commission’s Order of Conditions to DEP

July 29, 2009 Twenty Wayland appeals Wayland Historic District Commission’s conditions in Certificate of Hardship

Sept. 18, 2009 Town Administrator Frederic Turkington confirms in his affidavit filed with the court on behalf of Twenty Wayland that he has refused to appoint counsel and does not intend to appoint counsel for the Historic District Commission to mount a defense to Twenty Wayland’s appeal.

Oct. 9, 2009 NPDES permit appeals settled, with modifications and conditions.

Oct. 20, 2009 Selectmen amend Development Agreement -- developer's gift reduced with complex formula tied to project's Phase II and sale of condo units.

Nov. 2, 2009 Public announcement that Wayland developer Chuck Irving has stepped away from Town Center project, replaced by KGI principals.

Nov. 19, 2009 Town Meeting votes to amend MUOD zoning bylaw -- reduces required 25% affordable housing to just 12 rental units.

Jan. 14, 2010 DEP issues Wetlands Superseding Order of Conditions (ConCom) basically upholding the ConCom's original order

May 17, 2010 ConCom approves revised Chapter 194 local wetlands Permit for Town Center Project

Sept. 2010 Twenty Wayland resolves lawsuit with Historic District Commission after losing several motions before the Superior Court & Appeals Court – both courts supported Historic District Commission's right to be represented by *pro bono* counsel.

Nov. 9, 2010 Letter from DEP to Town Administrator Frederic Turkington summarizing outcome of three-party meeting between DEP, the Town, and Twenty Wayland during which the Town (presumably Mr. Turkington) represented that by early January 2011, the Town of Wayland would be acquiring the decommissioned Wayland-Sudbury septage facility on Route 20 and would be looking at its existing leaching field as an additional wastewater disposal site for treatment plant effluent.

Nov. 16, 2010 Special Town Meeting declined to appropriate funds to acquire the decommissioned Wayland-Sudbury septage facility on Route 20. There had been no public discussion of the acquisition prior to Town Meeting; the warrant gave no indication of a contemplated leaching field use; and Town Meeting voted to pass over the warrant article. (Note: The leaching field is located in Sudbury and would not have been available to Wayland in any case.)

Nov. 18, 2010 Twenty Wayland submits application to DEP for a phased sewer connection permit.

May 19, 2011 DEP holds hearing to receive public comment on a proposed phased DEP Sewer Connection Permit for Twenty Wayland; later that evening, Twenty Wayland threatens suit with a detailed presentation by its attorney to the WWMDC.

June 7, 2011 DEP issues a phased Sewer Connection Permit to Twenty Wayland for 28,000 gpd with the possibility of 17,000 gpd more in the future, depending on actual project flows.

Twenty Wayland, LLC v. Town of Wayland & WWMDC

Nov. 16, 2011 Twenty Wayland sues WWMDC and Town of Wayland for breach of contract & excessive wastewater fees. WWMDC submits a Scope of Work to evaluate alternative discharge at town building ball field.

Dec. 21, 2011 Twenty Wayland files Activity and Use Limitation, a deed restriction that identifies allowed uses as well as obligations and conditions associated with construction and other activities on the affected portions of the property; Raytheon has been conducting its cleanup of hazardous waste at 400-440 Boston Post Road pursuant to DEP Public Involvement Plan regulations since 2000.

Jan. 23, 2012 DEP approves Scope of Work to evaluate alternative discharge at town building ballfield.

April 11, 2012 Twenty Wayland & Town agree to facts in the instant litigation, including contractual obligation to provide the wastewater capacity.

April 13, 2012 Twenty Wayland, LLC applies for disposal works permit for an on-site 9990 gpd septic system.

April 20, 2012 KGI Properties holds Wayland Town Center groundbreaking ceremony.

Aug. 27, 2012 Board of Health votes approval of a 9990 gpd Modular Fast septic system for Phase II of the town center project with leachfield to be located under the parking lot east of the former wastewater treatment plant; reserve septic leachfield is under the “town green.”

Oct. 4, 2012 Health department issues disposal works construction permit for the Modular Fast system.

Oct. 26, 2012 DEP approves hydrogeological report for alternative groundwater discharge facility at town building ball field, and authorizing the town to apply for an Individual Discharge Permit.

Nov. 7, 2012 WWMDC begins operational use of new “overdesigned” \$5.4 million wastewater plant

Nov. 15, 2012 Stop & Shop grocery store opens at Town Center.

Nov. 19, 2012 Twenty Wayland’s attorney Daniel Dain deposes Town Administrator Frederic Turkington with Town Counsel Mark Lanza present. In response to questions posed by Dain, Turkington states, among other things, his understanding that: a) the 1999 MOA was ratified by Town Meeting; and b) Raytheon Company transferred the treatment plant to the town. Based on readily available public documents, Town Meeting never authorized, approved or ratified the 1999 MOA, and the Town acquired the treatment plant directly from its then owner WBC. Turkington also states that the Town does not contest the validity of the 1999 MOA.

Jan. 15, 2013 DEP issues Administrative Consent Order, signed by Frederic Turkington for the Town & Fred Knight for the WWMDC, agreeing to a plan to construct a groundwater discharge to gain additional capacity.

Jan. 17, 2013 WWMDC applies to DEP for a General Permit (rather than an Individual Permit) for groundwater discharge at Town Building ballfield.

March 2013 DEP denies residents’ requests for public hearing on draft General Permit.

April 1, 2013 WWMDC holds public hearing for FY14 operational fees; betterment charges handout also distributed. No voted decisions about FY14 customer charges.

April 2, 2013 DEP issues General Permit to WWMDC for the groundwater discharge.

May 28, 2013 Ten Wayland residents appeal issuance of DEP General Permit.

June 2, 2013 WWMDC applies to renew NPDES permit, seeking increased capacity (up from 52,000 to 80,000 gpd)

June 6, 2013 DEP General Counsel agrees with residents that an Individual Groundwater Discharge Permit is required because the WWMDC proposal does not satisfy the criteria for a General Permit.

June 11, 2013 Middlesex Superior Court jury finds unanimously in favor of Twenty Wayland; Town Center Project developer awarded \$989,774 in damages.

June 24, 2013 Final Judgment entered by Superior Court Judge Curran increases damages to \$1.2 million plus requires specific performance of 1999 MOA to provide Twenty Wayland with 45,000 gpd of capacity.

July 16, 2013 Selectmen vote to hire special legal counsel Mirick O'Connell to assist with this matter.

August 2, 2013 Date by which WWMDC & Town of Wayland have leave to file any materials on why the final judgment should be amended and to request a new trial.