

Date: December 4, 2012

Date Minutes Approved: January 28, 2013

BOARD OF SELECTMEN MINUTES

Present: Theodore J. Flynn, Chair; Shawn Dahlen, Vice Chair; and David J. Madigan, Clerk

Absent: None

Staff: Richard MacDonald, Town Manager; Susan Kelley, Executive Assistant; and C. Anne Murray, Administrative Assistant.

CONVENED IN OPEN SESSION

The meeting was called to order at 9:00 AM in the Mural Room.

OPEN FORUM - None

As the purpose of this meeting was to interview the finalists for the position of town counsel, there was no open forum. The Selectmen interviewed the 3 finalists chosen by the Town Counsel Search Committee. They asked similar questions of all 3 candidates.

Mr. Flynn's questions were related to the services included in the flat fee structures proposed by all 3 firms, formal training sessions the firms would offer and whether they had challenged their clients' decisions in cases where the decisions were not prudent.

Mr. Dahlen's questions touched on the plan for a smooth transition from current special counsel, if there were specific service exclusions in their proposed flat fee structure, if the firms would suggest we use insurance counsel for certain cases, the type of relationship or level of involvement they foresaw with the management team, and the role they could play in the re-write of the Zoning Bylaws.

Finally, Mr. Madigan's questions included whether the firms would transition litigation cases currently assigned to Anderson & Kreiger, would the firms be able to handle the labor law requirements of the Town, if they had any experience with coastal issues, and if they felt they could be proactive and protect the Town's interests before issues arose.

The following is a summary of each interview session:

9:00 AM – PETRINI & ASSOCIATES, Framingham, MA Christopher Petrini, Barbara Saint Andre (lead)

Mr. Christopher Petrini, founder and partner at the firm, began the interview with a summary of the firm's history. Mr. Petrini founded the firm in 2004 after practicing for 11 years with Conn Kavanaugh in Boston. Petrini & Associates is located in Framingham, consists of 5 attorneys, and provides full Town Counsel services including Town meeting, licensing, land use, planning, environmental, public construction, litigation, contracts, conflict of interest, elections, finance, public sector law, employment, Open Meeting Law and general municipal law. He opined that given the size of the firm, their commitment to customer service, price certainty and professionalism, they would be a wise choice to serve as Town Counsel.

Barbara Saint Andre introduced herself as the candidate for lead Town Counsel. Barbara joined Petrini in 2006 after practicing municipal law, with an emphasis on land use law, for 21 years at Kopelman and Paige. Barbara is currently serving as Town Counsel for Medway, Sherborn and

West Brookfield and has served in a volunteer capacity on town boards including her current service on the Finance Committee in Canton. Barbara stated that she concentrates her practice in land use while offering a full range of municipal services. She indicated that she does not handle public construction cases but Chris would be available to service those needs.

With respect to a smooth transition from current counsel to their firm, Petrini and Saint Andre indicated that they would meet with the Town Manager, Selectmen and Anderson Kreiger to get up to speed on current cases and needs. There would be no additional charge for the transition services. They indicated that if Duxbury's current litigation cases were in advanced stages, they would defer to Anderson & Kreiger. If the cases were relatively new, they would take over those issues.

Discussion of the "flat fee" option for services was centered around which services would be included in that retainer option. (*see attached Exhibit A for fee breakdown*)

Petrini's flat fee included:

- Day to day questions
- Annual Town Meeting, including warrants, motions and meeting attendance
- Attending Board of Selectmen meetings when requested
- Opinions
- *There is no hourly limit to this fee structure*

Excluded from this fee structure:

- Litigation
- Large Real Estate purchases or sales
- Public building/construction
- Collective bargaining, labor hearings

Mr. MacDonald inquired as to the type and term of an agreement for services. Mr. Petrini indicated that a written agreement would be executed for a term of 1-3 years, the term to be determined by the Selectmen. He also indicated that rates are reviewed annually and typically would not change for the second year with potential adjustments reflected in year three.

Regarding their anticipated involvement with the management team in Duxbury, the firm indicated that they would be as involved with the team as the Town Manager and Board wished. Ms. Saint Andre stated that she has worked well with both elected officials and department heads. She indicated that she felt it important to keep people up to date on legal issues and would visit Duxbury for formal trainings and remain connected through email update and newsletter-type announcements. She also opined that it is Petrini & Associate's job to help advance the town's policies and at the same time protect the town.

The interview concluded at 9:50 AM and the Selectmen thanked Mr. Petrini and Ms. Saint Andre for their presentation. The attorneys left the room.

**9:54 AM – BLATMAN, BOBROWSKI & MEAD, Concord, Millis, Newburyport, MA
Mark Bobrowski, Lisa Mead (lead) and Jason Talerman**

Lisa Mead introduced herself to the Selectmen and gave a brief history of the firm. Blatman, Bobrowski & Mead was formed in 2004 and concentrates in general municipal and land use law; labor law services are not offered. Ms. Mead continued by summarizing her qualifications including serving as a City Solicitor in Somerville, former three-term Mayor of Newburyport and former two-term City Councilor for Newburyport and attorney specializing in real estate, banking, securities and corporate law. She opined that this varied experience uniquely qualified her to assist municipalities as they address a variety of issues including procurements, finances, licensing, zoning, affordable housing development, permitting, public construction, renewable energy, litigation, and public construction.

Mark Bobrowski, a founding partner and attorney with over 20 years of experience in land use and related municipal matters, is also the author of “The Handbook of Massachusetts Land Use and Planning Law” He is a professor of Administrative Law, Land Use, Local Government and Property at New England School of Law in Boston. Mr. Bobrowski was also a member of the Massachusetts task force examining affordable housing Law.

Jason Talerman has more than 10 years of experience in municipal law. He was a partner at Kopelman & Paige prior to joining Blatman, Bobrowski & Mead and is experienced in municipal law with specific expertise in environmental law, land use and affordable housing.

The firm currently serves as Town Counsel for Ashland, Bellingham, Berkeley, Deerfield, Douglas, Easton, Kingston, Maynard, Rehoboth, Southbridge, and Chatham. In addition, the firm provides substantial legal counsel services to the town of Marblehead. With offices located in Concord, Millis, Newburyport, they are able to service the entire state of Massachusetts. Currently there are 3 attorneys in the municipal practice, 3 Associates and Ms. Blatman, who processes all real estate conveyance transactions.

When asked about the transition of legal services from current interim town counsel to their firm, Ms. Mead indicated that they would review the cases and discuss the issues with management and the Selectmen. There would be no charge for services related to the transition.

When asked about the fee structure, Ms. Mead indicated that there were three options they could offer with a contract term of 1 year.

1. The first is a “flat fee” structure excluding litigation. She felt that this encouraged contact with town officials which would, in turn, reduce the amount of litigation. ***This fee structure includes:***
 - a. All representation and legal opinions for general and land use matters
 - b. Annual Town Meeting
 - c. One Board hearing or other meeting per month. Additional meeting attendance billed at hourly rate.
 - d. Services relating to review of contracts and procurement issues
 - e. Licensing, including liquor licensing
 - f. Monthly office hours
 - g. Two training seminars annually

This fee structure excludes:

- a) Litigation
 - b) Routine tax-title matters
 - c) Negotiation of cable services agreements (specialized items generally handled by outside special counsel)
 - d) Matters for which fees are required to be paid by permit applicants under GL chapter 44, section 53G.
2. The second option is a “flat fee” structure including litigation. **This option would include, in addition to the above, substantially all legal work performed including:**
- a. Land use litigation related to zoning, planning, board of health and conservation
 - b. enforcement of zoning and general by-laws
- This fee structure excludes**, in addition to the above, labor-related matters.
3. The final option is an hourly rate

(see attached Exhibit A for fee breakdown)

When questioned whether a re-write of the zoning by-law was included in the flat fee structures, Mr. Bobrowski indicated that it would not. He estimated, based on work he has done with other communities, that the cost for a full re-write would be approximately \$30,000 or more.

When asked about their anticipated involvement with the management team, Ms. Mead indicated that their relationships vary depending on the wishes of each individual community’s management team. The firm believes in maintaining an open line of communication with the Town Manager and Selectmen, building a relationship and becoming part of the team structure.

The interview concluded at 10:48 AM and the Selectmen thanked Ms. Mead, Mr. Bobrowski and Mr. Talerman for their presentation. The attorneys left the room.

At 10:50 AM, Mr. Flynn made a motion for a brief recess. Second by Mr. Dahlen. Vote 3:0:0

The meeting reconvened at 10:56 AM

**10:56 AM – ANDERSON & KREIGER LLP, Cambridge, MA
Arthur Kreiger (lead), George Hall and Kevin Batt**

Arthur Kreiger, founding partner, began with a brief history of the firm. He indicated that the practice has specialized in municipal and land use law since its founding 25 years ago. With the addition of several lawyers over the past few years, the firm has increased its expertise in municipal, land use, and environmental law as well as litigation and real estate practices. Anderson Kreiger is counsel to 8 towns and serves as special counsel to others including Acton, Attleboro, Barr, Carlisle, Concord, Newton, Swampscott, Swansea, Belmont, Ipswich, Norfolk, Wrentham, Beverly, Dover, Lexington, Barnstable, Cambridge, Gloucester, Revere and Sudbury. Mr. Kreiger continued that in addition to the attorneys present, there was a deep bench of qualified individuals and matters would be assigned to the associate best qualified to resolve the issue in hopes of avoiding litigation.

As Anderson & Kreiger has been interim Town Counsel in Duxbury since May 2012, Mr. Kreiger summarized their service to the town over the last 7 months. He indicated that the firm has

brought a good number of cases to closure, including a case that had been outstanding for 10 years. He also mentioned that most of the non-litigation cases were resolved quickly and those cases that were not resolved are complicated by other issues.

Mr. Kreiger introduced George Hall, the designated backup for Duxbury. Mr. Hall's strengths are in environmental and land use law. Mr. Hall joined Anderson & Kreiger in 1989, and since that time, has represented several towns in all areas of law with a special concentration in zoning and subdivision control, open space planning, conservation restrictions, comprehensive permits, and licensing. He has also taken part in a comprehensive redraft of the Walpole Zoning Bylaws.

Also present was Kevin Batt. Kevin will be the backup if Art and George are not available. Kevin will also be available to advise on construction issues, RFP processes and renewable energy projects.

While Anderson & Kreiger had not initially submitted a proposal for a flat fee structure, Mr. Kreiger brought a supplement to the RFP response proposing a flat fee option. The firm utilized a monthly average of fees for general services and provided a 20% discount resulting in a proposed \$8,000/month flat fee with some exclusions. **The flat fee would include:**

1. One Annual Town Meeting, with a Special Town Meeting contained therein
2. All non-litigation matters except complex transactional, complex real estate and other complex matters
3. Office hours in Duxbury once per month
4. Three training sessions annually

The flat fee excludes litigation.

(see attached Exhibit A for fee breakdown)

The flat fee structure is new to the firm with only the Town of Ipswich using that pricing structure. If Duxbury selected the flat fee pricing, the fee would be reviewed annually.

Mr. Kreiger considered communication with the Management Team important. The firm was interested in building the knowledge of the team and department heads with the hope of preventing and/or resolving issues before they escalated to litigation. Both Art and George have had formal mediation training. They felt that early intervention was important and would like to help the Management Team be effective, successful and achieve their objectives.

Mr. MacDonald took this opportunity to thank Art Kreiger and the firm. He commended them for the job they have done for the town to date. Mr. Flynn agreed.

The interview concluded at 11:50 AM.

ADJOURNMENT

Mr. Madigan moved that the Board adjourn. Second by Mr. Dahlen. VOTE: 3:0:0.

Minutes prepared by: Susan Kelley

LIST OF DOCUMENTS FOR OPEN SESSION MEETING

1. *“RFP” Response/Proposal from Petrini & Associates*
2. *“RFP” Response/Proposal from Blatman, Bobrowski & Mead*
3. *“RFP” Response/Proposal from Anderson & Kreiger LLP*
4. *Exhibit A attached*

Exhibit A

Firm	Flat Fee / month	Hourly Rate (for hourly fee structure or for excluded services with flat fee option)		
Anderson & Kreiger	\$8,000	\$350	hr - Partner for complex litigatgion, transactional, real estate work	
		\$295	hr - Partner	
		\$240-295	hr - Associates	
		\$120-150	hr - Paralegal	
Blatman, Bobrowski & Mead	\$9,000 \$6,000	\$175	hr for excluded litigation	Option 1
		\$175	does not include litigation	Option 2
		\$175	hourly rate	Option 3
Petrini & Associates	\$50,000/annual	\$175 - \$210	hr - for litigation, real estate, comprehensive permits, labor and construction	