

BOARD OF SELECTMEN
SELECTMEN MEETING
WEDNESDAY, JUNE 16, 2010 - 6:00 P.M.
SELECTMEN MEETING ROOM

Meeting came to order at 6:00 p.m. with Selectmen Troy E. Garron, Kim R. Roy and Michael J. Schleiff present.

The following business was discussed:

The Board interviewed four legal firms. Each firm had submitted an RFP proposal which had been reviewed by each of the Selectman individually prior to the interviews. Following is a summary of discussion:

ATTORNEY LAWRENCE P. MAYO, P.C.

The Board met with attorneys Lawrence Mayo and Stephen Cox.

(ALL RESPONSES TO QUESTIONS ARE MADE BY MAYO UNLESS OTHERWISE NOTED)

Following are questions asked by Selectman Troy Garron (in italics); responses immediately follow:

What is your availability? We have town meetings and may need to meet with you at other times.

My office is fourteen miles away in Norwell. I am available during the day, evening, whenever my availability is required. Given the opportunity to represent Halifax, I would make it my priority to be available.

One of our concerns is cost. Does your cost include using paralegals or would it be you all the time.

The rate is \$125 per hour for the principal attorney (Mayo); paralegal services are \$55 per hour. To the extent that the work can be done by a paralegal, I am not going to bill the Town at the attorney rate.

Town meeting may one or two nights. We have an annual and special town meeting in May and, depending upon final state aid, may have a special town meeting in August. Are you available on those terms?

Certainly.

Can you give me one instance or issue when you have dealt with a town? What type of experience have you had with paper streets, 40B projects, property line disputes, etc.?

My experience with streets and ways is broad, depending on the issue.

To be more specific, we have had issues with paper streets where fences are put up because the person felt it was their property. We have had hearings in the past and have had to determine what the town's responsibility is. Have you dealt with those issues?

Not right on point but my experience is broad and deep enough to resolve those issues.

We have developers who come in and do not finish streets. Have you had experience in resolving those kinds of issues?

On point - none. But, again, my broad range of experience with regard to streets and ways and public works would let me address issues from subdivision control to construction and planning.

The Town has had a town counsel that lived in town and knew the town and the Board is looking for someone as close as possible to that availability. The Board is looking for someone who will fit that bill. The big issue right now is 40B which by-passes local zoning. A 40B may or may not be good for the Town. We would have to increase police, fire, etc.

40B is within my realm of expertise. I have relatives that live in Halifax and I am familiar with the Silver Lake School system and the general area. I know Halifax was a cranberry community that is becoming a suburb. I have a certain level of familiarity of where the Town was twenty years ago, where it is now, and where it may be going.

We have a situation involving a resident removing earth without a permit, leaving the property in deplorable condition and trying to determine how the situation can be resolved.

The Town has to take its strongest position at the outset and has to be straight forward on rights and obligations. At the end of the day, you are talking about take some type of litigation action.

We need someone that understands we are not a big city and we have citizens groups, etc. We are looking for someone who is sensitive and can understand that part of it.

It is a firm and gratuitous position to point people in the right direction.

Following are questions asked by Selectman Kim Roy (in italics); responses immediately follow:

Give me an overview of your experience with towns and what is your favorite thing to deal with.

Day to day municipal operations; giving good solid advice to Town Administrators to resolve any pressing problem that arises - whether large or small. My favorite thing to do is to involve myself in the zoning code and by-laws of the town and represent the town in zoning litigation and subdivision litigation. I am equally interested in working out and negotiating contracts - whether it be for telecommunications, procurement, etc.

Are you more experienced with cities?

Yes. I was Assistant Corporation Counsel for the City of Boston Law Department for five years. In 2001, I established my own practice. I still represent the City of Lawrence and the Lawrence Redevelopment Authority. I strive to embed myself in the organization I represent and to work hand and glove with individuals running the municipality, both from a litigation and operational standpoint.

Besides Lawrence, have you represented any other towns?

Nothing comparable to Halifax, but the issues are similar.

Your rate is \$125 per hour, back-up counsel is \$110, paralegal is \$55; there is no charge for in-house photocopies; and there is a charge for travel. You did not submit a retainer proposal - why?

I did not know you were looking for one.

It was noted the Town does not operate on a retainer basis now.

At this point, Roy stated that Mayo had been the closing attorney for Rockland Trust for her commercial loan. Mayo confirmed he still does closings for Rockland Trust. Although Rockland Trust maintains a branch in Halifax, the Board did not feel his involvement in commercial closings for the bank would be in conflict with his being Town Counsel for Halifax.

Following are questions asked by Selectman Michael Schleiff (in italics); responses immediately follow:

With regard to availability, do you take time off for a month or two?

No. I run my own practice. It is difficult to be away for blocks of time. If you are away too long, you feel you are missing something. Availability and

communication are big when you have a town that needs answers right away and is subject to third party forces. I strive to keep an open line of communication and be available to the upmost capacity. Anyone who knows me can attest to that.

Steve is your back-up guy. On average, would you be handling our needs 75% of the time?

I would be responding 90-95% of the time.

Stephen Cox stated: Mayo's experience is day to day operations. My experience with the City of Boston involved claims or potential claims against the city relative to liability issues. I have handled cases involving property damage, accidents, discrimination, claims against police officers, civil rights, etc. I complement Mayo. My experience is the breadth of litigation - i.e. research the law and its application, advise on liability exposure, recommend settlement amounts, and litigate in court when a matter cannot be settled. Should those incidents arise with Halifax, I would play a larger role than generally assisting Mayo. I am centered in Boston but would be available. I manage my practice very carefully and provide extremely prompt responses.

The Board is proactive, not reactionary. If there is something in existence or being proposed that may affect the Town, the Board needs to be aware of it and advised to keep abreast of the issue.

Absolutely.

Garron said the Board has established a trust because it has been open and up front with people. The Board needs to have the same feeling about the people representing them and the information they provide.

Roy liked that Mayo wanted to be imbedded in the community, noting that Spinale had been Town Counsel for the last thirty years and was "family."

Garron asked why the Board should choose Mayo's firm. Mayo responded:

I know the area - what the community is about, where it was and where it is going. I am the principal in this group. When you call my firm, you will be talking with me. It is my reputation on the line. I am not someone who has or will hand off the call to an associate who has no interest in the town. I have the broad experience to represent your organization from an operational and litigation standpoint. I am ready, willing and able to do the work myself. The work I produce is top quality - succinct and accurate advice that is to the point and is practical. I am not going to build a bridge when a walk around the pond will do.

DEUTSCH WILLIAMS

The Board met with attorneys Paul DeRensis, Richard Hucksam and Kim Sallant.

(ALL RESPONSES TO QUESTIONS ARE MADE BY DERENSIS UNLESS OTHERWISE NOTED)

Following are questions asked by Selectman Troy Garron (in italics); responses immediately follow:

What is your availability?

Availability is 24/7 by email and telephone. Simple questions would get immediate answers; others may take a little longer.

I see on your resume you deal with other towns. We have town meetings and may need to meet with you at other times. Town meeting may one or two nights. We have an annual and special town meeting in May and, depending upon final state aid, may have a special town meeting in August. We would definitely need you available.

We will be there, even in August.

Will we have one individual assigned to us and who would that be?

I have been working for the town for twelve years. We are committed to the town and are loyal to the town. I would like to do it.

Sallant stated: I joined the firm in 1997. Since that time, I have handled eleven matters for Halifax. Only one case is still pending; the others were all settled amicably. I have represented the ZBA, Building Inspector and Planning Board. Fortunately for Halifax, they were short, sweet and discreet. I get dismissals. Stop and Shop is the only case still pending.

Hucksam stated: I have advised many of the same parties before they get to litigation and hopefully the Town's case is in a stronger position if it gets to litigation.

Garron noted that Deutsch Williams dealt with the Town in a different capacity. When the Board lost Spinale, it lost a family member.

Following are questions asked by Selectman Kim Roy (in italics); responses immediately follow:

Paul, you would be our Town Counsel?

I would do all the town meetings, warrant preparation, assist in ethics issues, etc. That does not mean I would not rely on other people for parts of what

might have to be done. I am committed to the town and want to be there for the Selectmen. I do the Town Counsel business - open meeting law, review contracts, etc. If you get sued, that is when Sallant would step in.

Your rate is \$190 per hour and \$95-\$105 for paralegals; \$1.00 per page for copies and faxes and \$0.23 a minute for telecommunications. The wage is a little higher than others we have seen. Is there any flexibility in that?

That is the rate the Town is paying us now for special counsel. We are offering a flat rate for Town Counsel at \$33,500 per year.

So the \$33,500 is excluding tax, labor, real estate or litigation?

That is right. The \$33,500 will cover between 300 to 350 hours of time which equates to about \$100 or less an hour. There is no charge for travel portal to portal. Sometimes it is good to not have Town Counsel living in the town. The best practice is having someone who is somewhat removed so that you get a non-political answer.

You would be our direct counsel. How many other towns are you direct counsel for?

Foxboro, Cohasset, Nantucket and Canton.

Following are questions asked by Selectman Troy Garron (in italics); responses immediately follow:

One of our biggest concerns is 40B.

We are involved in 40B's for Halifax right now.

We have had issues with paper street, property lines disputes, unfinished streets, etc.

Hucksam stated: We have a great deal of experience with all of those issues.

Garron stated that, on another 40B proposal not yet before the Town, the Town had submitted its concerns to the State, the State gave the go-ahead, and did not explain why they approved the project as submitted. Recently, the developer was given a year's extension on the application without the Town being given the opportunity to comment on it. Sallant asked if the Town had an appeal hearing before the Department of Community Housing and Development. Garron said it did not. Sallant was surprised.

Schleiff noted that recently someone met with the Board to explore a “friendly” 40B project which would give the Board a great deal of input into the application.

Sallant noted that, while 40B’s are never friendly, she concurred with Schleiff that a Local Initiative Petition does give the Town a greater role in shaping the project before it goes to the State.

Discussion ensued on whether or not departments would go through the Selectmen to use town counsel services. DeRensis said the services would be covered under the retainer so the Town would not incur additional costs based on the number of requests. However, the firm would be wary about giving advice about internal operations without such questions first going through the Selectmen. He is happy to take calls from anyone. If he felt a question or request was inappropriate, he would refer it back to the Selectmen. It would be up to the Selectmen to set policy on direct contact with counsel without first going through the Board.

Following are questions asked by Selectman Michael Schleiff (in italics); responses immediately follow:

How does that (retainer) work on zoning issues?

That is all retainer. Right now you are paying an hourly rate of \$190. Under what we are proposing, you will not pay that hourly rate any more. That would be part of the retainer. All of the advice given on land use issues is part of the retainer. Any lawsuits will be separate from that. In addition, anything to do with processing deeds is outside the retainer. The cost of preparing deeds for the sale of town property can be included by the Town in the selling price.

In other towns you deal with, do they have you do part or all of the legal services?

In the towns in which I am Town Counsel, I do everything. Sometimes issues lead to warrant articles which lead to zoning changes. I got into this because someone asked me to not only pick up the pieces after the fact but to prevent litigation at the beginning.

Are you up to speed on things coming down the road?

We have newsletters that come out all the time (copies were shown to the Board and were included in the RFP packet). Right now, there is a bill coming up to extend all 40B permits for three years. MMA is opposing it. There is also a ballot question in November to repeal 40B.

Garron asked why the Board should choose Deutsch Wiliamss. DeRensis responded:

We are a known commodity. We have worked for the town a long time. We are recognized as one of the top municipal law firms. I have been designated a "super lawyer" five times. I have been a Selectman. We are good at covering your back and will cover your back. I will never give you advice that leaves you out on a limb.

KOPELMAN AND PAIGE

The Board met with attorney Leonard Kopelman, Joseph Fair, and Mark Reich.

Following are questions asked by Selectman Troy Garron (in italics); responses immediately follow:

We have town meetings and may need to meet with you at other times. Town meeting may be one or two nights. We have an annual and special town meeting in May and, depending upon final state aid, may have a special town meeting in August. We want someone we can trust and who will be available.

Kopelman stated: I wanted to make sure the person picked from our firm was capable and extremely knowledgeable. Mark has over twenty years in municipal law and has the availability. As a Managing Partner, I assure you he will be available. He knows trial work well and has a team of trial lawyers who are in court so he can be available.

Reich stated: I have been with Kopelman and Paige for twelve years. I was the Assistant Solicitor for Everett before that. I have seen all forms of government from city to town and I do dozens of town meetings. I do not do trial work any more. My focus is on the towns I serve as Town Counsel. I get to know the towns and I take the phone calls. Town meeting is the big show and it has to be right. You do not want the wrong motion, etc. I encourage having a pre town meeting with your Town Clerk and Moderator. It is the opportunity to run through the issues before town meeting. You can count on me for town meeting.

Mark would be our representative?

Kopelman stated: Yes, but you can have anyone you want.

Mark, where do you live?

Reich stated: I live in North Andover but I travel everywhere. I am originally from New York City. I came to Boston for law school and stayed. I drive everywhere and do not mind; I love driving.

What significant problems have you dealt with that fit our community?

Reich stated: I do a lot of procurement, construction contracts, road work, Chapter 90 projects (I have negotiated several situations on cost overruns), - Board of Health enforcements, unsafe property issues, etc.

Fair stated that, while the Town will primarily deal with Reich, the firm has other segments to offer - i.e. cable licensing issues, labor negotiations, land use. Reich said Kopelman and Paige has an attorney that is expert in land use. Fair said that, although it is a larger firm, we try to project the feel of a smaller firm. We make it a point to be available 24/7 by phone or email and can bring people in for an issue requiring more specialized expertise. You have the benefit of all the attorneys within the firm but only call one or two to access that expertise.

Reich said you deal with us and we deal with the others in the firm. You contact me and I draw on their expertise. When it comes to town meeting or a Selectmen meeting, we will not send someone else. I will be here. We review town audits had have to sign off on the audits for the towns we represent. We work with the Finance Committee.

Kopelman said they also get insurance companies to pay up.

Following are questions asked by Selectman Kim Roy (in italics); responses immediately follow:

How many towns do you represent?

Reich stated: I am the personal contact for ten towns; none in the surrounding area to Halifax.

Your rate is \$165 per hour, \$85 for paralegal, no charge for in-house photocopies and no mileage charges. There is an alternative retainer rate of \$33,500 and each litigation case is included in the retainer up to \$5,000. Is that an overall total of \$5,000?

Kopelman stated: Each year you have a lot of small cases (for example, ZBA). We provide advice, etc. and that is included. If the issue becomes involved and costs exceed \$5,000, the hourly fee would be charged once the \$5,000 mark is reached. The \$5,000 applies to each case individually. The initial coverage excludes those fees that can be reimbursed by developers.

Reich stated: People ask me, if I have ten towns, how do you have time for me. I do not rank my towns. Everyone is equal. I have scheduled my life around being available to the towns. I generally return calls within an hour. I have structured my practice around my clients which is why I no longer do trial law. I enjoy

working with boards and love the municipal area. I can usually answer most questions myself but have the benefit of other expertise if I cannot.

Fair stated: We pride ourselves on the ability to juggle things internally. It is no good to you if we do not meet your needs. The time frame you are on is the time frame we are on.

Reich stated: If you say “when you get a chance,” I will make it a priority but not immediately. If you say it is urgent, your request goes to the top.

Kopelman stated: On one hand, we have a cookie cutting operation. We have every type of construction contract that can be fitted to Halifax and send it to you within six minutes. On the other hand, there are unusual matters that come up and we have a clipping service to see what would happen under various scenarios. We can deal with a wide myriad of issues from a movie studio in Plymouth to radioactive material in Lowell.

Reich stated: I have negotiated everything from credits on a movie screen to financial rewards. We have various supplement templates to contracts which can be added quickly to a contractor’s specifications. I do not have to take an hour to review them because they have already been reviewed at the firm and are ready to be added as needed. In towns represented by Kopelman and Paige, we have introduced new documents we have developed that uniquely protect the town. Contractors familiar with those towns know our work and will use our form because they know that is what will be required.

Following are questions asked by Selectman Michael Schleiff (in italics); responses immediately follow:

We are going from one single attorney for thirty years that lived in town. We have to figure out how to take a leap to a firm with fifty attorneys.

Kopelman stated: I was that person many years ago. Those days are over; things are more complicated. We work in small teams and you have one contact. If you have any problems, you can call me.

You are saying we will still be dealing with an individual that has a large firm behind them?

Reich stated: Yes. You will deal with me or Fair; we deal with the rest of the team.

Kopelman stated: We serve at the will and pleasure of the Board.

What services does your retainer not include?

Kopelman stated: It does not include the school because they have their own attorney and it does not include tax title. It does not include the cost of litigation for any given case over \$5,000. The only way to control your cost is to keep a lid on court cases. Our firm gets involved early to prevent issues from becoming litigation.

MURPHY HESSE TOOMEY & LEHANE LLP

The Board met with attorneys James Toomey and Brandon Moss.

Following are questions asked by Selectman Troy Garron (in italics); responses immediately follow:

We have town meetings and may need to meet with you at other times. Town meeting may be one or two nights. We have an annual and special town meeting in May and, depending upon final state aid, may have a special town meeting in August. What is your availability?

Toomey stated: We are a thirty attorney firm, half of them are in public sector. There are fourteen towns we represent as Town Counsel. We respond to the client promptly. We understand what it is like to work in the public sector and work on a board as an elected official. We have a rule that everyone must return a call within a twenty-four hour period.

We take a team approach. Moss and I would be the attorneys assigned to Halifax. It is not a revolving door. It is important to establish a relationship, to get to know who you are and how you operate. Moss would be more of a contact than I would. I would be the back-up. I am involved in Hingham, Hanover and Scituate. Moss would be your day to day contact. Moss has had a lot of experience with towns. He is more knowledgeable about municipal law issues. I would back him up and would be the responsible person as the partner in charge.

Moss stated: I have been practicing for several years, mostly with municipal law litigation. I am Town Counsel for about twelve communities and the City Solicitor for Attleboro. I have covered town meetings.

What about other boards?

Moss stated: I have worked with zoning boards, conservation and town planners and have handled court litigation for those boards.

What issues have you handled that relate to Halifax?

Moss stated: I have handled litigation involving 61A in Dartmouth. While the Town has first refusal under 61A, sometimes people try to get around that.

What about 40B?

Moss stated: I am dealing with litigation for Hingham on a 40B. I worked with Toomey on motions; it is now with the DCHD appeals committee.

Toomey stated: We have experience with friendly and unfriendly 40B's. We have several cases pending before the 40B appeals committee.

40B has a major impact on our fire, police, schools, etc. This Board is very proactive in looking down the road. Our biggest concern is lawsuits and 40B which could impact us financially.

Toomey stated: We try to be proactive and get out front in preventing mistakes. That is all about service and knowing what the answer is and giving good advice. It is not unusual to get a call the day of a hearing and we have to respond. Moss stated:

Part of being proactive is keeping towns advised of changes in the law. We send out client advisories, etc.

Following are questions asked by Selectman Kim Roy (in italics); responses immediately follow:

Your rate is \$175 per hour, \$85 for paralegal, 20-cents for photocopies, and 42-cents for mileage. Did you make a proposal for a retainer?

Toomey stated: No. We have not had good experience with retainers. It ends up being unfair to some towns. From a cost standpoint, you can control your costs with an hourly fee. We generally work with the Board of Selectmen through which all requests for Town Counsel services must be processed. This allows cost control and allows the Board to know what their attorney is working on. You can set that up any way you want.

What percent of your business is municipal?

Toomey stated: 50%. We represent about fourteen towns. We have represented them for a long time and have developed good relationships. I would also suggest you get a list of people Moss has worked with. He has tried cases on his own on land use and wetland cases. You would get consistently good reports.

Following are questions asked by Selectman Michael Schleiff (in italics); responses immediately follow:

Where have you worked?

Moss stated: When I first started practicing I represented the Town of Dartmouth. I have been with the firm for three years and I have worked with all the towns.

We are going from one single attorney for thirty years that lived in town. This is a major change in terms of contact and cost.

Toomey stated: I think we can give you that kind of fit. You are not just a number and each town is different. It is important to establish a relationship so you will have the confidence in who the people are and that they will be there.

There are no surprises on what we are looking for?

Toomey stated: No. We know the players and state agencies. Your adversaries are sophisticated and you have to be up to the challenge. For us, it is about a long term relationship.

Selectmen Garron asked why the Board should choose Murphy, Jesse, Toomey & Lehan. Toomey responded:

You are getting superior service, personalized service. It will not be a revolving door. These are the components you need in a town counsel. You can check with Spinale who is very familiar with our firm. We respect that you are elected and must be responsive. We will never push something one way or the other. We provide legal advice, not policy advice.

At this point, the interviews concluded and the Selectmen briefly discussed their first impressions.

Garron felt it was a toss up between Kopelman and Paige and Mayo. Mayo is a small firm. While a larger firm says one person will be available, that may not happen.

Roy was impressed with the first three firms but not with the last firm. While she initially thought she would lean toward Mayo, she liked the presentation by Deutsch Williams particularly if the Board decided to go with the retainer option. If money were no object, she liked what Deutsch Williams said and liked Kopelman and Paige for their experience. Mayo was the least expensive but does not have as much expertise at his fingertips as does the other two.

Schleiff wanted to process the information and think about the advantages and disadvantages of each firm. He wanted to think about a statement by the last firm that retainers do not work. Roy noted the Board has the hourly rate option with all four firms.

SELECTMEN ASSISTANT HOURS

Moved by Garron and seconded by Schleiff, Board unanimously authorized the Selectmen Assistant to work overtime as needed through the end of the fiscal year, contingent upon available funds.

Selectmen Assistant Beverly Smith is retiring on June 30th. Because the office will not be at full staff at that time, moved by Roy and seconded by Schleiff, Board unanimously voted to ask Beverly Smith to continue to work two days a week beginning July 1st until such time as the office is at full staff.

There being no further business, moved by Roy and seconded by Schleiff, Board unanimously voted to adjourn the meeting at 8:50 p.m.

Kim R. Roy
Clerk

/bfs