

IN BOARD OF SELECTMEN
WEDNESDAY, SEPTEMBER 24, 1997

Present: Chairman Lawrence L. Blacker, and Selectmen John C. Drobinski and Maryann K. Clark.

The statutory requirements as to notice having been complied with, the special meeting was called to order at 3:30 p.m. at the Fire Headquarters, 77 Hudson Road, by Chairman Blacker.

Town Counsel Interview - Collins & Weinberg

Present: Stanley L. Weinberg, Attorney, Collins & Weinberg.

Atty. Stanley L. Weinberg, an associate of the firm of Collins & Weinberg, 47 Memorial Drive, Shrewsbury, MA 01545-4028, appeared for interview for the position of Town Counsel.

Town Manager Steven Ledoux introduced the Board and provided a background of the Town's solicitation for Town Counsel services. He then invited Mr. Weinberg to tell the Board about himself, his firm and his offer of services.

Atty. Weinberg responded, in part, as follows: He has practiced law for twenty years, 80-90% in the fields of municipal law and labor law. Municipal law is what he likes most. His is a small firm and services to Sudbury would be performed by one person, himself. He opined that not having a large firm is not a detriment, as he has lawyers' associations, etc. available to him. It would be an advantage and provide a closer association to have the same person interacting with the staff and handling matters on a daily basis. He will provide a quality product in a non-political manner. When he is not available, there is someone in the office who can assist.

Some of Atty. Weinberg's answers to questions asked alternately by Board members and Town Manager follow.

He would control requests for opinions by developing a policy of channeling requests through the Selectmen's Office, with the exception of perhaps certain boards, unless there is an emergency.

As to risk management, having a presence in Town (conducting office hours is a great idea) goes a long way toward anticipating and heading off problems. Otherwise, it is difficult to catch problems other than recurring ones.

He has never spent time in Town Hall and would need to explore how this would work best in regard to dividing his time between meetings and work.

He deals with all judicial proceedings. Most of his hearings are of an administrative nature. Noteworthy cases mentioned: A Blackstone case in Appeals Court which upheld a phased development bylaw, a Newton police officer light duty situation, a Monson age discrimination case, and, currently, a case in East Bridgewater where a fire chief terminated a firefighter for criminal conduct.

He has been involved with Sutton school construction/litigation matters and mentioned a current case concerning the Sterling Library. He always changes AIA contract documents. In summary, he estimated less than 10% of his work is construction-related. He does not personally like arbitration clauses in public construction contracts, as the resultant costs can be enormous.

Atty. Weinberg cited the Rule of Necessity as a final remedy in the conflict of interest question posed by Selectman Clark, after determining actual conflict exists.

As to foreclosure experience, he does not do title work or foreclosures, as it is not economical to do so. It is better to give them to outside counsel.

Responding to question, he stated that during the redemption period surpluses received from sale of a house could be given to the owner; once foreclosed, the money belongs to the town.

Office staffing: one part-time law clerk, secretarial staff and a bookkeeper. Using computers with statutes on CD ROM minimizes reliance on secretarial services.

Changes in law are kept up on by reading cases and statutes, advance sheets, seminars, Town Counsel Association, etc. If an issue comes up he would put out a handout, but to control costs of legal services, he would not prepare material unless requested.

In preparing witnesses, he would sit down with them, discuss in detail, give guidelines on how to answer questions, hold practice session as necessary, and advise them on the theory of the case and what to expect.

He should be hired because he will provide excellent services and give good value. He would work well with the staff and on Town Meeting floor be a valuable asset. At \$95 per hour fee, the Town would get its money's worth. His Shrewsbury office overhead is low.

Atty. Weinberg stated he would call a state agency to bounce something off; seldom would ask for a written opinion. He would not hesitate to request information when appropriate. If disagreement occurs, he would stick with his opinion if he believed it to be right. However, he would not hesitate to change an opinion if information presented itself that it was wrong.

He said he believed he had not had any failures in court - he has a high success rate.

Atty. Weinberg advised he would have no problem figuring a retainer fee, but prefers the hourly fee basis.

He indicated he applied to Sudbury as he is looking for new opportunities, growth in his practice, and a different level of experience he would have in a Town such as Sudbury.

As to environmental experience, now and then there have been conservation issues, but no significant problems.

Mr. Weinberg recommended, if the Town is satisfied with its current Town Counsel, it should stay with him.

He also informed that his firm was not a partnership, but an association.

The Board thanked Attorney Weinberg for his application and attendance this afternoon.

Town Counsel Interview - Burns & Levinson

Present: David M. Thomas, Attorney, Burns & Levinson LLP.

Appearing for interview for the position of Town Counsel was David M. Thomas, attorney from the firm of Burns & Levinson, 125 Summer Street, Boston, MA 02110-1624.

Town Manager Steven Ledoux introduced the Board and provided a background of the Town's solicitation for Town Counsel services. He then invited Mr. Thomas to tell the Board about himself, his firm and his offer of services.

Attorney Thomas responded, in part, as follows: Mr. Thomas is in charge of the Government Relations Department for Burns & Levinson, a firm of 135 lawyers with offices in Boston, Wellesley, and Hingham. He would be the lead counsel, personally handle the assignment of attorneys, billing and be responsible for all client matters in relation to Sudbury. They are divided into departments but work interchangeably, and often many lawyers from different departments might work together on a given case. He worked for state government from 1977 to 1991 and is still affiliated as special counsel to the Commissioner on Industrial Accidents, but perceives no conflict. He, himself, can be a major resource in that he worked on the committee which drafted M.G.L Chapter 30B, and helped to write Chapters 579 and 30-39, and feels himself to be an expert in the area of public bidding procedures and construction contracts. He deals with all clients concerning construction contracts. The firm also represents construction companies, architects, engineers and designers including putting together their proposals. In addition, Mr. Thomas said he had a good understanding of public finance. He has full support to bind the firm in anything he does. Attorney Thomas stated he has been an attorney for 20 years. The firm also works heavily in the conservation and housing areas. All attorneys and paralegals are available to serve Sudbury as needed. In Ashland, generally, he works closely with the Town Manager who takes his direction from the Board of Selectmen. For the last two and one-half years he has been in Ashland 5-6 hours per week (or someone else has covered for him), attended every Selectmen's meeting having to do with litigation or when asked, and attended as required Board of Appeals, Planning Board, Conservation Commission, and other meetings together with appropriate attorneys from the firm. He represents private clients appearing before local boards, as well. He elaborated on past experience with the Towns of Ashland and Norton.

Highlights of responses to questions from the Board and Town Manager follow.

If more than one attorney appears at a hearing, the Town would only be charged for one attorney, if fees are on an hourly basis. Paralegal work is billed at the paralegal rate; if more than one attorney appears in court, that would be worked out with the Town. The retainer alternative was discussed, and Atty. Thomas stated that the \$2500/month retainer in their proposal, which would cover "3-4 hours per week at Town Hall as requested", appearance at Town Meetings, Selectmen and other board meetings as required, telephone calls, town meeting pre-work, etc., is not firm, but a maximum they would commit to; it could be re-evaluated if it appears it should be lower. The Town would not be billed for secretarial services. All lawyers are billed at the same flat rate of \$130/hour. He explained how they keep a case log and provide monthly detailed bills.

He opined that time spent in town is useful for the most part--people generally get a lot out of it. A retainer could be less if hours are not kept in Sudbury. It might not be necessary every week. He would usually spend most of his time with the Manager, and the Planning, Building, and Health departments.

He enjoys most advising boards in the government setting.

Their government team is made up of 5-7 lawyers, all of whom are networked, and they have a paging system.

As to risk management, they will do training with department heads, stress their review of decisions before issuance, and try to settle matters whenever possible.

He reiterated his experience with construction contracts and does not advise inclusion of arbitration clauses.

Concerning any failures, he described losing the Town of Norton as a failure; they thought they would be successful. He said he had not lost a case in a town in litigation. If a case gets off track, he would re-evaluate with the client.

Changes in law are followed and they spend much time at the State House, although they are not lobbyists. They would send memos and hold training sessions as appropriate. He noted having experience with land bank legislation.

Witnesses would be prepared through direct meetings. He would ask the witness to explain the case. If he appeared nervous or unfamiliar with trials, he would train him accordingly.

Yes, they do tax foreclosures. It takes about one year. They have one partner and two paralegals who work on these and they charge a flat fee per case.

Burns and Levinson is interested in becoming Counsel for Sudbury because it likes the community; Sudbury has a strong Town Manager, is close to Ashland, has a budget that is in line, and keeps litigation down (and they believe they can keep it down further); and they would have no business alliances or conflicts here.

In closing Attorney Thomas stated they would structure their proposal to meet the needs of Sudbury and are flexible on how it is done.

The Board thanked Mr. Thomas for his time and presentation and advised the status of the interview process.

There being no further business to come before the Board, the meeting was adjourned at 5:40 p.m.

Attest: _____
Steven L. Ledoux
Town Manager