

IN BOARD OF SELECTMEN
TUESDAY, SEPTEMBER 30, 1997

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

The statutory requirements as to notice having been complied with, Chairman Blacker called to order a special meeting of the Board at 8:30 a.m. at the Fire Headquarters, 77 Hudson Road.

Town Counsel Interview - Murphy, Lamere & Murphy

Present: Richard W. Murphy, Michelle Allaire McNulty, and Robert J. Waddick, Attorneys, Murphy, Lamere & Murphy.

Appearing for interview for the position of Town Counsel were the above listed attorneys from the firm of Murphy, Lamere & Murphy, South Shore Executive Park, Ten Forbes Road West, P. O. Box 859003, Braintree, MA 02185-9003.

Following introductions, Town Manager Steven Ledoux provided a background of the Town's solicitation for Town Counsel services and invited the applicants to tell the Board about themselves, their firm and their proposal of services.

Atty. Richard Murphy explained the history of the firm which has been in business for over thirty years, a large amount of that time representing municipalities primarily in the labor area, but then expanding into more general municipal counsel, especially for schools. He noted, among its current clients, the firm represents all of the Worcester public schools and is Town Counsel for Whitman, as well as Acting Town Counsel and special counsel to other towns over the years. He continued, in part, as follows: The firm has eight attorneys and a part-time attorney/consultant in real estate, three paraprofessionals and several law students. They represent clients all over Massachusetts. They have been able to retain clients over the years because they provide prompt and effective service and he estimated they win 85% of their cases. Their forte is to prevent litigation with proper advice. They have ability to inter-relate and work harmoniously with clients, building relationships with department heads, etc. and have understanding of the politics of municipal work. Describing his own background, he has served as an Assistant District Attorney of Norfolk County and Assistant Attorney General. Attorney Bob Waddick specializes in land use, and Attorney Michelle McNulty handles the day-to-day Town Counsel work.

Atty. Michelle McNulty stated she has handled the Town Counsel work for Whitman since 1990, doing all labor and traditional work, except land use and tax abatements, which Atty. Waddick does. She is available for meetings and stressed they would design their work and representation to meet the needs of the Town. They keep clients apprised of changes in the law, help draft policies and handle everything that might come up.

Atty. Robert Waddick further explained that, in addition to providing back-up support to Michelle, he provides specialized assistance in real estate and land use. He generally covers such matters as Board of Appeals, Planning Board and environmental issues; disposition of land; and the defense and prosecution of zoning matters.

Attorney Murphy pointed out that they were late getting into the "town counsel business" because of a policy decision not to be a threat to local attorneys who generally served towns as counsel at that time. He opined that their experience as labor counsel and general counsel to school districts gave them similar exposure.

Responding the questions from the Board and Town Manager, the following answers were given:

Atty. McNulty informed they do not have regular office hours in Whitman, but are there often. They would definitely work out regular office hours for Sudbury if desired. As to the efficiency of doing so, it is not necessarily best, as long as they are accessible and responsive in answering requests quickly; but it really depends on the Town's needs. It was suggested it would be helpful to analyze the type of staff and see what would be most suitable.

As to efficiencies they can offer, their rates are competitive, they have thirty years of experience to draw from, they are members of the City Solicitor's and Town Counsel's Association, and they get to the heart of a matter to provide a quick response. It was suggested that at least some boards channel requests through the Board of Selectmen.

Concerning fees, Atty. Murphy stated his preference for an hourly rate so they are paid only when there is work, but he is amenable to either hourly fees or a retainer which might work out well with the office hour situation.

The firm has experience at all levels of the court system, doing a great deal of litigation in the administrative venue. They have a busy litigation schedule.

Yes, they have experience in all areas questioned concerning construction contracts--many school building projects, etc., from start to finish. In design service bids, they have drafted their own contract documents. They have been involved with bid appeals, contractor demands, enforcement remedies, etc. The AIA document is a pretty good base to work from and is amended according to needs, thereby providing a basic document people are familiar with. They eliminated the arbitration clause in the last document prepared, as it can be a costly provision.

Concerning the hypothetical question of a conflict of interest by two out of three members of a board, Atty. Waddick opined research would be needed but they would have to find a way to permit the abutter to sit on the case -- perhaps an opinion from the State Ethics Commission or a Special Act of the Legislature -- they would need to be creative. Atty. Murphy opined there was an emergency provision in the Conflict of Interest Law and noted the problem would be political as well as legal and, therefore, they would need to be sensitive to all the issues in finding a solution.

They have not been involved in foreclosures with the exception of some in their non-municipal practice. They have assisted in disposal of land taken by foreclosure, in an eviction and have chased delinquent taxpayers. They could provide this service if needed.

Regarding contact with state agencies, most Town Counsels have established a relationship with the Dept. of Revenue - usually questions are of a financial nature when contact with the State is required. They believe it a good practice to inquire when statutes are not clear. Atty. Murphy further continued that if an issue is tricky, he would call the state agency to get an opinion validated. At times they will disagree with the state agency's opinion, but it is good to know this in advance as others will contact the agency to check or dispute an opinion.

They have not negotiated a consent decree with the Dept. of Environmental Protection directly, but they have been involved with a subdivision on the border of a DEP site.

The chief contact for the Town would be either Michelle McNulty or Bob Waddick, depending on the issue; plus others who might be available. There would always be someone to talk to.

Examples of failure and how handled: A used car dealer was denied a license because the Town decided it had too many dealers in town. In a Superior Court appeal, the judge ruled against their client. The client did not appeal. Atty. Murphy also described a Winchester MCAD action where a woman was denied tenure. They did not understand the ruling party, whose answer went against all experience; therefore, they settled the matter.

Atty. Murphy opined that preparing a witness is probably the most important part of a case. It involves understanding the personality of the witness and how they will come across. Generally, he would come to the site of where the person is to speak with him.

In answer as to whether any of them has served as a town official, Attorney Murphy has served as a Selectman, and Attorney Waddick is now a City Solicitor.

Chairman Blacker thanked the applicants for coming and advised them of the projected schedule for completing the interview process.

National Fire Protection Week Banner

At the request of Anne E. Lynch, Health Educator/Coordinator, Noyes School, dated September 20, 1997, it was on motion unanimously

VOTED: To approve the hanging of a Sparky Banner on the Route 20 Fire Station during the week of October 5-11, 1997, in conjunction with the Noyes School's fire safety education program.

There being no further business to come before the Board, the meeting was adjourned at 9:35 a.m.

Attest: _____
Steven L. Ledoux
Town Manager-Clerk