

Town Counsel Search Committee Minutes
Monday, January 6, 2014
7:30 pm
Flynn Building, 278 Old Sudbury Road

PRESENT: Myron Fox, Liam Vesely, Leonard Simon, John Drobinski, Scott Nix, Jim Kelly, Andrea Terkelsen, Jody Kablack, Maryanne Bilodeau

Meeting called to order at 7:30 pm.

Interviews

Miyares & Harrington, LLP (Search Committee Interview #1)

Ray Miyares and Tom Harrington in attendance

Mr. Miyares stated that municipal law is a specialty. Should use a specialized firm. The days of local counsel are waning. His advice to the Committee:

1. Need to know the attorneys you will be working with and how many there are in the firm. They only do municipal law. 7 lawyers devoted to clients - 4 towns currently. 7:4 ratio.
2. Who represents abutting towns? Can be issues if same attorney/firm. Conflict of interest issues, special counsel needs.
3. How will billing work? (1) Hourly rate. Beware of blended rates. Usually results in using rookies predominantly, but blended rate will be higher than that person normally bills. (2) Retainers - vary and depends on what is included in proposal. They will discuss with the Town if chosen.
4. Talk to clients to find out about the firm. Will find out they are easy to work with, constructive team players and always go above and beyond what the town's think they will be getting.

Questions from the Committee

What percentage of their work is town plaintiff/defendant in litigation? More frequently town is defendant - appeals of decisions (2/3). In more technical matters (environmental issues, etc.), percentage is more evenly split.

What percentage of time is litigation/non-litigation matters? Not overwhelmingly litigators, primarily advice (85-90%). Chris Heep does more litigation. Avoid litigation by making sound decisions - process is fair, seems to be fair and participants understand the process.

When there is an appeal of a permit, do they let the developer's attorney take the lead? Yes, they do not duplicate the work, but need to be involved to make sure conditions do not get removed by the court.

Do you support on-going hearings with boards when there are large or controversial decisions? Yes, they try to ascertain (in cooperation with boards and Town Manager) if they are needed. If they don't attend, they try to prepare the boards outside of the hearing and are available for advice at night in the middle of the hearing. Take a recess and call. They represent Littleton and have 40B experience.

Trying to determine availability for on-site office hours? Are they considering this for Sudbury? They don't currently do it for their Town Counsel clients, but can and have done in the past. Have created sign up schedule. May not be effective, calling is better.

Without office hours, dialogue might suffer. What is typical conversation with a building inspector? Email isn't very effective for legal services. Sometimes the question asked isn't what is necessary. Face to face or phone is better, especially when reviewing plans.

Retainer - day to day advice, licenses, contract review, town meeting, capital projects billed separately to enterprise funds (legal budget in all capital projects) Stockbridge has open access for all dept. heads and chairmen. Smaller town than Sudbury. Hopkinton is a very busy town and legal budgets for many large projects.

Retainer agreement can be modified if services are more than anticipated. What would be the typical fee of a retainer if they included all typical town services noted in the RFP? Highest they charge is Hopkinton at \$6000/month (although that doesn't jive with their budgets submitted). Sudbury would be less. Lowest is Stockbridge at \$3000. Likely \$12-13,000/month.

Total billing minus litigation. Hopkinton spent time opposing casino proposal in Milford in 2013, and reviewed Legacy Farms in 2009. They are interested in what budget is currently. We should be able to figure out Paul's billing and have an estimate for how much service we will get.

What areas do you have less experience in? Want to have several lawyers in the firm because not everyone is an expert at everything. They don't do labor work.

If they are chosen, what is their expansion plan in order to cover Sudbury's work? They are at an adequate staff level. Did not hire anyone for the casino work in Hopkinton, they just worked harder. Recently hired another associate. Have the capacity to serve Sudbury's needs right now.

What happened with other towns - why aren't they representing them anymore? Mostly special counsel work in land use and environmental fields. Either more expertise, or a conflict with Town Counsel. Only work on a specific issue. Example - Gloucester: Tax Increment Financing (TIF) agreement with developer and prepared Host Agreement.

Will they commit to being in Sudbury 5-6 hours per week? Yes

How will they transition - 40 years of work and personnel? Overlap will be useful, 2 month period. They did transition in Hopkinton. 30 year prior history but Town Counsel passed away. Tried to get info from dept. heads who knew some history. Will need a transition team.

How will they advise the town boards if they think something is being done incorrectly? They are not shy. They interact collaboratively. Will offer suggestions for improvements.

Who would hold office hours in Sudbury? Ray Miyares most of the time (lead counsel). If agenda is focused on a specific issue, other attorneys will come.

Wrap up: Please call references. Sudbury appears to be a well-run town and government. Hope to serve us.

Kopelman and Paige, PC (Search Committee Interview #2)

Lauren Goldberg - Managing Attorney for firm; Jonathan Silverstein – Lead Attorney; and Brian Riley – Back-up Attorney were in attendance.

Represent 130 cities and towns

50 attorneys
All general municipal attorneys
Do not take any cases against a municipality

Questions from the Committee

Do they advise private clients?

Many have areas of specialty - helps control costs by using specialized attorneys for particular matters.

They compose a legal team for each town – for Sudbury it will include Sudbury resident Vicky Marsh (real estate), and David Doneski (contracts) who previously served Sudbury as Assistant Town Counsel.

Reviewed Sudbury issues - rail trail, land purchases, citizen participation, Community Preservation Committee, police station, MGL c.61A, police station - all similar issues that they deal with on a daily basis.

Attorney Silverstein works on land use, land use litigation, other litigation. Other matters he will refer to his colleagues. He will be the point person.

Envisions an active transition period from contract award until after Town Meeting. Will attend Town Meeting, and meet with dept. heads prior at no charge.

Brian Riley - been with Kopelman & Paige for 27 years. Informed about charter change. Experience with Inter-Municipal Agreements. Has read the Sudbury Town Manager Newsletter.

Questions - what would you do if you also represent a neighboring town and there was a conflict? If just for a contract, would split cost. If opposing a development, would recommend different firm. They have many contacts. May refuse representation in both towns, but not necessarily. Do generally recuse both. Few unresolvable conflicts.

What towns they represent are similar to Sudbury? Manchester by the Sea. Largely residential, light commercial. Land use, green energy, municipal finance, c.61 properties.

What is Manchester's legal budget, excluding litigation and labor? \$50-60,000/year. 21E issues. Straight hourly rate.

Have looked on line at Sudbury documents and their fee schedule/proposals reflect that research. Hourly rate works well for many communities.

They do not require a contract for Town Counsel services. Can terminate services at any time. Will provide all services noted in section III of the RFP, including litigation (up to \$110,000 per year). Also do client letters, webinars, seminars for boards and staff.

Response time - their goal is to respond as quickly as possible. If time sensitive, articulate this and they will try to respond in time.

How many towns is Jonathan lead counsel for? 3 for town counsel (Brimfield, Middlefield, and Boxborough); back up for Westford, Nantucket and 4-6 others; 12-16 for land use counsel. They manage this in order to be responsive to their clients.

Attorney Riley is lead attorney for 6 towns (Stoughton, Westminster, Townsend, North Brookfield, Charlemont, and Rowe); back up for 6 more. Specialty is conflict of interest. Handles those inquiries.

How much of your time is litigation vs. advice? 60:40 on either side.

Office hours? Coordinate a schedule. Would be either Attorney Silverstein and Attorney Riley, or possibly Vicky Marsh. Cities usually want them. Sometimes this shifts. Could also use the hours to provide services to a Zoning Board meeting or other meeting. Trying to meet Sudbury's identified needs.

Conflicts with Town Meetings with other towns? Knows our schedule in early May and doesn't represent other towns with similar schedules.

Wrap up: Enjoy municipal law. Many came from public sector.

Committee Discussion

Kopelman & Paige - impressive, did their homework, tried to win our confidence in their abilities, price is good, depth and breadth of expertise; cons - sales team, Attorney Silverstein is heavy on litigation, leery about rate and providing office hours, not sure Sudbury is prepared for such a large change in Town Counsel services, has to be conflicts between town representation

Miyares & Harrington – the Committee thought Attorney Harrington might be the better fit for Sudbury. Need to see other proposers to compare.

Minutes from 12/16/13 were briefly discussed. Members need more time to review. Will be put on a future agenda.

The Town Manager, based on advice from Labor Counsel, has requested that Mr. Kenny's proposal might be amended to be an independent contractor. Ms. Bilodeau will notify him and ask if he needs more time to prepare the proposal. Interview scheduled for 1/13/14.

Search Committee members indicated that this is a big change, and may not be fair to Mr. Kenny. Mr. Drobinski noted that the Selectmen did not think this through, and wasn't aware of the difference when the RFP was developed.

Can we give an opinion to the Board of Selectmen that we recommend 1 finalist, and then give our opinion as to how that firm compares to Mr. Kenny? Ms. Bilodeau will inquire with Labor Counsel about this.

Meeting adjourned 11 pm.