

**BOARD OF SELECTMEN
MINUTES
High School Collaborative Room
1025 Massachusetts Avenue
February 28, 2017**

The Board of Selectmen met as scheduled with Jamie Toale, Chairman; Robert Ebersole, Vice Chairman; Tom Alonzo, Clerk; Paula Bertram, Member; Phyllis Luck, Member and Town Manager Heather Lemieux
Others attending: Adam Burney, Land Use Director

The meeting commenced at 6:00 p.m.

APPOINTMENT- Reserve Police Officer- Erin K. Considine

Police Chief Jim Marino presented Erin Considine and stated he was recommending her appointment as reserve police officer. Ms. Considine has completed the Municipal Police Training Committee, 315 hour Reserve Intermittent Police Academy in West Boylston, Massachusetts. She has served with Townsend, Lunenburg and Fitchburg police departments as an intern. She is currently employed full-time in Townsend as a dispatcher.

Motion: R. Ebersole

2nd: T. Alonzo

To ratify the Town Manager appointment of Erin Considine to Reserve Police Officer

Vote: All in Favor

The Board congratulated Ms. Considine and all present applauded.

Request for Proposals for Town Counsel Services Interviews

Chairman Toale announced they would be interviewing legal firms for legal services. Nine firms are scheduled in twenty minute time slots with ten minutes for a brief presentation and the other ten for follow up questions.

1) Miyares & Harrington LLP-Tom Harrington & Christopher Heep

Attorney Heep stated they are a nine attorney firm located in Wellesley. The firm is almost entirely devoted to municipal law practice. They serve as special town counsel, primarily in land use, environmental or regulatory matters. Mr. Heep and Mr. Harrington stated their firm is large enough to handle all the town's needs, yet small enough to get to know everyone in the firm over time. They pride themselves on their accessibility to clients. They are a collaborative firm, frequently discussing cases for input and are familiar with the issues associated with changing town counsel. Mr. Heep would be the lead attorney and Mr. Harrington would be the backup attorney.

Mr. Ebersole asked if they would talk about their experience with boards that are pushing for a particular opinion other than yours and a board that is looking for guidance without an opinion and is looking for advice that may be both legal and business related. Mr. Heep stated he frequently works with boards, particularly concerning land use, that have a different position. The key is to get involved early in the case. Mr. Harrington stated he works for the Board of Selectmen; so we work for you and are usually referred to another board. We need to let that board do their work and our job is to show them where things begin and end. Rather than be an additional board member, it's our job to give you the facts and let you make your own decision.

Mr. Alonzo asked what the firm's goals are. Mr. Harrington stated they are interviewing to get a tenth attorney but that will be their limit. He added they would never get where they have more towns than available attorneys; they are interested in adding just one or two more towns.

Ms. Bertram asked about on-site time; to expand on their three annual training. She asked how often do you have town counsel attend meetings and could you expand on your experience with host agreements? Mr. Heep

and Mr. Harrington stated they are happy to do a handful of training workshops for the town annually at no additional cost. The subject matter lately tends to be the new public records law, the open meeting law, Chapter 61A, as well as specific trainings when there are many new members on a board. Host community agreements are done in different contexts depending on the need. Mr. Heep stated they would not come to meetings unless requested to do so. They encouraged contacting their clients for feedback on their performance. The Board thanked them as they exited the meeting.

2) Murphy Hess Toomey & Lehane LLP- Brandon Moss, Dave Deluca

Mr. Moss stated their firm has thirty attorneys; approximately ten practice municipal law. The firm has been in business for over thirty years. Public sector is the bread and butter of their practice. They represent ten towns. They try to take a proactive approach through trainings, client alerts etc. They tend to take a personal approach, will do office hours if necessary. Attorney Deluca stated it's who you feel comfortable with, so we want to make sure you have a close relationship with your attorneys. Your matter will be the most important thing we do that day. They are proficient with land use. He personally does licensing work. Mr. Alonzo asked if you were interviewing firms and you had 20 minutes, what you would ask them. Mr. Deluca stated he would want to know for certain if we called you, who is it that we would expect to get a call back from? What is the chain of command in your office? In this case it would be either Mr. Moss or me.

Mr. Ebersole asked if they would talk about their experience with boards that are pushing for a particular opinion other than yours and a board that doesn't have an opinion and is looking for advice that may be both legal and business related. Mr. DeLuca stated he works with town officials who really have no interest rather than wanting to do the right thing. If I can give advice that's right down the middle to keep a board on the rails with respect to hearing everyone out, making sure that everyone's rights are protected and at the same time fashioning a decision, that is right on the law. We are accustomed to managing that and being able to provide advice in the long term that is of benefit to the town. The real value is avoiding litigation. Ms. Bertram asked about the amount of time they spend onsite. In the RFP you stated you would provide two trainings per year and you would provide transition time. Please expand on that and how often you are on site to deal with an entire board. Mr. Moss said trainings are as agreed. Otherwise office hours and being present is open for discussion. Mr. DeLuca stated in general we try to spend one afternoon or morning a month with office hours.

Mr. Alonzo asked what kind of towns work best for you- what makes the difficult ones and what makes the easy ones? Mr. Moss stated picking up the phone makes it easier; knowing questions/issues in advance is good. Ms. Luck stated you had another backup attorney, what areas of expertise is this person's? Mr. DeLuca stated she has experience in general law, handling everything from land use, ethics, etc. Mr. DeLuca invited the Board to review their written material and thanked them for inviting them in tonight.

3) Kopelman and Associates- Leonard Kopelman, Brian Winner

Attorney Kopelman presented a fee schedule to the Board and gave a brief history on his former firm, Kopelman & Paige. He stated his approach is to be part of the team, to meet with department heads to find out what their concerns are, do a risk analysis and try to get ahead of the problems. There is a lot to be done in a proactive manner; and as an example he spoke about working with the Assessor's office on unknown owner properties. He stated he and Mr. Winner work closely together and they only charge for one lawyer's time. Mr. Winner stated it is the best of both worlds; you get the relationship and access to an experienced lawyer.

Mr. Ebersole asked if they would talk about their experience with boards that are pushing for a particular opinion other than yours and a board that doesn't have an opinion and is looking for advice that may be both legal and business related. Mr. Kopelman stated usually there is a phone call with a question like, "can we do this?" and we ask what is it you want to accomplish. Because the answer may be yes, but that is not the best way to do it; or it may be no and we have to figure how to some way to get around it. As a practical matter we are not going to substitute our judgment but we'll give you our opinion. Mr. Alonzo asked what are both of your areas of expertise and what do you do when an issue comes up outside of those areas. Mr. Kopelman stated we have in experience in 90% of general law. Mr. Winner specializes in land use and environmental issues.

Assuming you had something we don't know, we can do contracts; someone we know who is top notch. They would agree to keep our firm's rate. We know all the experts in various fields. One area we don't practice in is cable television but we know lawyers who do. We also have access to a labor lawyer. Mr. Kopelman stated they

serve at the whim and pleasure of any board. He added no one has ever terminated his services. Mr. Winner stated as all of you know, I have done a lot of work here in the past; he enjoyed it very much although there were some rocky times. He looks forward to reconnecting. They thanked the Board for inviting them tonight.

4) KP Law PC-Lauren Goldberg, Michele Randazzo, Vicki Marsh

Attorney Goldberg stated she was the lead attorney and introduced Ms. Marsh and Ms. Randazzo. Attorney Joel Bard has served as Lunenburg town counsel for many years and he had hoped to be here tonight to meet with you. He did send a brief statement that he asked Ms. Goldberg to read aloud on his behalf.

Ms. Goldberg stated obviously Attorney Bard is familiar with the town and board. Ms. Goldberg stated the firm's intention is to have the town interact with a small group of individuals on a regular basis and that would be Mr. Bard, Ms. Randazzo and Ms. Marsh. Ms. Randazzo will serve as a backup attorney. Our goal is to be responsive to any requests you send to us in a short period of time. There really hasn't been a formal backup attorney for the past few years and we feel having Ms. Randazzo as backup gives the town more access.

We looked at past years' billings. In general municipal law work, we stop billing at \$36,000. The average amount the town has spent over the past five years for general legal work is \$23,000. Those areas of expertise are exposure to what's going on the statewide basis; we don't have to start from scratch because we have the attorneys who are staying up to date on current issues.

Ms. Randazzo has been at KP Law for most of her career. She has worked with many communities in Worcester County. She has experience in every type of general law area with a strong litigation background. Ms. Marsh has been with KP Law for 17 years and her specialty is real estate law. She has handled a multitude of transactions for the town; easements, license agreements for utility companies, property acquisition, preservation restrictions, etc. She has experience working with state agencies involved in conservation and environmental issues.

Mr. Ebersole asked if they would talk about their experience with boards that are pushing for a particular legal opinion other than yours and a board that is looking for guidance without an opinion and is looking for advice that may be both legal and business related. Ms. Goldberg stated the firm takes its role as councilor very seriously, in that we want to bring to you all of your options; the legal options and discuss the potential legal ramifications and implications that each of those options might bring. At the same time if there is a particular outcome that you wish to pursue, once you know what those options are, we will be your advocate for that. If we believe that there is great risk in proceeding down one path versus another, we will tell you that. That's our job and responsibility.

Mr. Alonzo asked how many attorneys work for the firm and how many municipalities do they represent? Ms. Goldberg stated they have forty-three attorneys and we represent around one hundred and twenty-five municipalities. Mr. Alonzo asked since you are our current legal firm, what would you be doing differently than you have been doing? Ms. Goldberg stated that is why Ms. Randazzo is specifically listed as the backup attorney in the proposal. We would like to revisit our approach to town counsel services. Our internal controls got a little lax and in looking at who would be a good match, we came up with her. We would like to have a more formal relationship with the board and meet periodically to update on cases and continue to build the relationship with the board and the firm. The Board thanked them for coming in tonight.

5) Mirick and O'Connell-Marc Terry, Brian Falk

Mr. Terry thanked the Board for the opportunity to work with their firm so far and to be considered for expansion of that relationship. He introduced Brian Falk as the attorney they are proposing be the town counsel for Lunenburg. Attorney Falk has been practicing municipal law for over ten years. He also serves on the Milford ZBA and has been recognized as a rising star in Massachusetts by Super Lawyers Magazine since 2014. Mr. Falk stated the bulk of his practice is municipal law and land use. We are town counsel in eight communities; seven of which are in Worcester County. There are sixty-five attorneys working in our firm. Four attorneys handle the bulk of the municipal work with a few others who provide backup in specialty areas. We pride ourselves on our accessibility and responsiveness; also on having consistent points of contact. If selected, he would be the primary source of contact for all non-labor matters for the town and would probably be doing the majority of the legal work. When he would have to seek a specialty opinion he would be in the

loop. We are cognizant that we are on your schedule not ours. We are here to work for you. He also finds it very helpful to get a time frame from the client on a particular matter.

Mr. Ebersole asked if they would talk about their experience with boards that are pushing for a particular legal opinion other than yours and about a board that might be looking for guidance other than a legal opinion and is looking for advice that may be both legal and business related. Mr. Falk stated if he gives the answer and it's a gray area, I'll let you know where I think it's going to go. I am open and honest and not there to serve an opinion. Mr. Alonzo stated we have been working with your firm on the labor side. What are the pros and cons of having you handle all the legal issues? Mr. Falk stated in the towns where we are town counsel, we also are labor counsel, so we are used to this. The pros are Mr. Terry and I would be on the phone every day checking in on any number of matters. You would get the benefit of that collaboration. I can't think of a down side.

Mr. Toale stated he was very pleased with the labor work that this firm has handled for the town. Ms. Luck asked if the backup attorney would still be available. Mr. Falk stated yes. In the rare instance when I am unavailable he would be well informed on any matter. Mr. Alonzo asked if there anything we should know about you that separates you from the other eight firms we are interviewing. Mr. Falk stated the scope of our municipal group; it is a tightknit group. You are getting the benefits of the resources of a larger firm but you will have me as town counsel. Mr. Terry stated we have no idea what other groups have said to you, we have a culture about responsiveness. That is something we are very proud of. We as a firm commit to this. The Board thanked them for coming in this evening.

6) Law Office of John B. Barrett- John Barrett

Attorney Barrett thanked the Board and stated his office was based in Townsend. He stated that he has thirty years of experience in municipal law. The majority of that he was the assistant city solicitor for Fitchburg for eighteen years and when the city solicitor retired, he was appointed to that position by Mayor Wong. When she decided to step down he retired. He also served as the city solicitor for Gardner for two years, three years for Petersham and as an interim solicitor for Athol. He has represented planning boards, zoning boards of appeal and conservation commissions, so he is familiar with land use issues. He served as the 2010-2011 president for Massachusetts Municipal Lawyers Association. One thing he could provide the town is accessibility. He stated communication is important. His backup counsel would be Mike Ciotta who was his predecessor in Fitchburg. Mr. Ebersole asked how he would handle a situation where a board that is pushing for a particular position which is contrary to your legal opinion and where a board has no opinion and is looking for advice that may be both legal and business related. Mr. Barrett stated his approach is to make sure the Board has as much information that he can provide to them and his legal opinion of what the law says. As town counsel he would be representing the town and the Board of Selectmen and if you had a position that he thought that was wrong, he would tell you. If you still felt it was against his advice, with any client as long as how you proceed legally, that is your right. If the Board had no opinion, he would give you his legal opinion and lay out all the options and possible consequences. In the end it is your decision.

Mr. Alonzo asked what the difference is between city solicitor and town counsel and as a sole practitioner there might be things that come up beyond your expertise, how you would handle those issues and legal questions. Mr. Barrett stated there is quite a bit of difference but the main one is in a town, the executive officer is the Board of Selectmen. In a city you usually have one mayor that is basically the person you deal with. Another difference is there is a city council which is the legislative body versus the town meeting process. He stated one resource he could call on is the Mass Municipal Lawyers Association. They have a list serve that people post issues on. You can usually find someone who has dealt with a particular matter. If it was something that is unique, he would recommend contacting special counsel. He would also recommend the Board devote some funding towards this. Mr. Toale stated you mentioned you kind of retired upon leaving Fitchburg. What percent of your time would be devoted towards Lunenburg? Mr. Barrett stated there would be some limitations on the amount of money he could earn working for the town. There would be a limitation of no more than nineteen hours per week on the average; probably around 25% of his time. Part of what he was proposing is using Mike Ciotta as backup. Mr. Alonzo asked if Mr. Ciotta has the same retirement restriction as him. Mr. Barrett stated he did. Mr. Toale thanked Attorney Barrett for coming in this evening.

7) Deutsch Williams-Paul DeRensis, Rich Hucksom

Attorney DeRensis stated the one thing you should remember about us above all the people you are seeing is "practical and loyal." He stated he has been a town counsel for more than thirty years but he has also been a selectman for more than twenty-one years. He has served on a finance committee and a planning board. We have a team of lawyers that we are going to bring to you; all of them are experienced in municipal service in their home towns. We have been in your shoes. We know what it takes to run a municipality from both sides of the table. That's what I mean about loyalty. We understand what public service is and know our public responsibility. Mr. DeRensis stated he was a former president of the Massachusetts Selectmen's Association and he is also currently a board member. He is board member of the Massachusetts Municipal Association, now a senior member. He has been appointed by the Governor to advise him on local government affairs. He added he is also a Super lawyer; one of twelve in the New England area in the category of municipal law.

We understand you want to get things done. That's what we do, we get it done. Attorney Hucksom has a background in appellate tax board, open meeting law, public records to name a few. Attorney Hucksom has been practicing law for over thirty years concentrating in municipal law and land use permitting law. We try to be proactive to prevent problems. He also attends public hearings on more contentious or complex applications to avoid problems from occurring in the final decision. I often draft decisions for various boards. We have an excellent record of having those decisions upheld when appealed. He has served as Chairman on the Conservation Commission and serves on the Open Space Committee in the town he lives in. He has seen the issues from all different perspectives.

Mr. Ebersole asked how you would handle a board that takes a particular position other than your legal opinion and on the other side, a board that doesn't know what they want to do and would be looking to you for a legal and possibly business related opinion. Attorney DeRensis stated our job is to be advisors; our job is not to tell a board what it has to do. Our job is to figure out how to do it legally. So if a board wants to do something against our advice we'll still help them get it done with one caveat. If they are going to do something illegal or criminal, we will not do that and we will bring that to the attention of the Board of Selectmen, the appointing authority or whoever has to be notified. We have zero tolerance for corruption. Attorney Hucksom added the first part of your question is a situation I have encountered many times. One thing that he tries to do is to make them sensitive to the issue of how the advice is received by the board and how they use it. Mr. Alonzo asked how many municipalities you represent and how many attorneys are in your firm. Mr. DeRensis stated he tries to limit it to four or five municipalities because he believes he is going to be involved. You will have a very active town counsel that is there for you. There are twenty-four attorneys in this firm. Mr. Alonzo asked him to expand on loyalty and practicality. Attorney DeRensis stated we will be there for you; we will cover your back and carry you through whatever struggle you are in. Mr. DeRensis affirmed he would be the lead attorney and would be available twenty-four hours, seven days a week. Mr. Toale thanked them for coming in tonight.

8) Urbelis and Fieldsteel, LLP-Tom Urbelis, Carol McGravey

Attorney Urbelis stated for the last twenty five years he has been town counsel for Andover, with a population of thirty-three thousand. For the last eighteen years he has been town counsel for North Andover with a population of thirty-one thousand. He has also served as special counsel for the City of Cambridge representing police officers in civil rights cases. I would be the lead attorney with Ms. McGravey as the backup attorney. Attorney McGravey stated she started her career working in municipal law for the City of Lawrence and served for fifteen years as a city attorney before she began working for this firm in 2002. She also was special counsel to the city of Somerville, particularly in economic development. She is now working in land use, contracts, affordable housing, etc. in addition to working with the other attorneys at the firm. Attorney Urbelis stated they also have an environmental lawyer on staff. He added he and Ms. McGravey are former presidents of the Massachusetts City Councillors Association which is now the Massachusetts Municipal Lawyers Association. He also cited awards he has received.

Mr. Ebersole asked how you would handle a board that takes a particular position other than your legal opinion and on the other side, a board that doesn't know what they want to do and would be looking to you for a legal and possibly a business related opinion. Attorney Urbelis stated we call them as we see them, sometimes our clients don't like that. But we have been successful for so long for the towns we represented because they know they are not going to get the political answer. We understand every town has political considerations but what

you are going to get from us is our best legal advice. We are also proud of the fact that we are not only attorneys but advisors. We kick things around with our clients. We reserve time free of charge to the town several hours a month and come out here and meet with any department heads or committee members just to kick stuff around. Ms. McGravey stated we are not policymakers, we give legal advice but we also think of ourselves as counselors with regard to you as the policy makers for your town. We realize we are not the final operatives of that issue but we hope to give you good legal advice to guide you with respect to those policies.

Currently, the firm is legal counsel to Andover. Mr. Alonzo asked if they were going to expand to more municipalities. Attorney Urbelis stated they are not looking to grow the firm beyond their size. We can do the work that you have. The question was asked, have you ever had to go to a specialty attorney for their services? Attorney Urbelis stated sure, for labor and school work. He does all the land use litigation, a lot of those have been appellate decisions. Mr. Alonzo stated if had to choose from all the firms we are interviewing tonight, how would you separate your firm from other firms? Attorney Urbelis stated first we are capable but I guarantee we will call you back the same day or within twenty-four hours. That is one of the reasons we have been successful; attention to detail and to attentiveness to our towns. Ms. McGravey stated that is why we want to stay small, to give that attention to our towns and be responsive. Our references will confirm that, call them. The Board thanked them for coming in tonight.

9) Mead, Talerman & Costa, LLC: Lisa Mead and Adam Costa

Attorney Mead stated when they submitted their proposal, the firm was Blateman, Bobrowski, Mead and Talerman and they were in the midst of transition but they couldn't submit the new firm name at that time. The split was due to two of the firm's lawyers moving toward retirement and private practice. All of our towns and eight of our attorneys came with us. Our goal is to create a municipal law firm providing counsel from the senior attorneys in the firm. Attorney Costa stated his roots are in land use, planning and zoning law. He began practicing with the former firm in 2004. He has also worked on 40B projects across the state as well as 40R smart growth initiatives. They have also assisted with zoning rewrites as well as codification projects. Our firm has eight attorneys and we pride ourselves on all of them being partner level attorneys. We hire experienced attorneys who have practiced municipal law. We have an experienced litigator. We take a proactive role in the communities we represent. We also hold office hours as part of putting the counsel back in legal counsel. This is an opportunity for facetime with the municipalities' public officials. This provides the opportunity to get ahead of problems. We represent the Town of Maynard and Hanson both around the same population-wise to Lunenburg. We also represent Deerfield, on a land use kind of scale similar to Lunenburg. We have represented Lancaster. Mr. Ebersole asked how you would handle a board that takes a particular position other than your legal opinion and on the other side, a board that doesn't know what they want to do and would be looking to you for a legal and possibly business related opinion. Ms. Mead stated where the board is taking a legally untenable position, I would advise the board what the risks are one way or the other. But when they decide how to proceed, we will represent them to the best of our ability. Ultimately you are going to make that decision yourself. On the other hand, a board that doesn't know, is unsure, I would politely suggest or find a way to work into the conversation about what their rights are. One of the reasons our office hours are so important is you get this relationship with folks and they want to ask questions in advance of any future problems. We have eight attorneys and are general counsel to thirteen communities. We represent different sized communities and are not always doing legal work for them. We don't believe we are over taxed because of that. Ms. Mead stated we are also not afraid to hire to fulfill that need. We want our clients to call us and get answers right away. We are really cognizant of what that balance is. Mr. Alonzo asked them what differentiates their firm from the others. Ms. Mead stated it would be the team member aspect of the firm, the counsel aspect and the fact that all of our attorneys are very experienced. We are responsive. Mr. Costa hoped they would reach out to their references. They are pleased with our availability. We pride ourselves on that. Ms. Bertram asked if they would relate their experiences in regard to marijuana facilities and host community agreements. Mr. Costa stated they take guidance from the community. He has worked with boards who have a desire to attract and want to move quickly and don't want to lose that opportunity. He has also represented communities that are unsure, they want to be protected and getting the best deal possible. Mr. Costa stated he has drafted host agreements that have provided payment in lieu of taxes, with an initial payment up front and annual payments based on revenue from the previous year. Other communities have negotiated flat fees.

Locations can be negotiated. We don't know what the future holds for recreational marijuana. Ms. Mead added if you want a level of control after the license is issued, you can have the Board of Health or the Board of Selectmen adopt a local licensing procedure. Ms. Bertram asked if they have done host agreements other than marijuana. Ms. Mead stated they have drafted development agreements for large projects; also for solar agreements. Another example is hazardous waste site cleanup. We had to find the primary responsible party. After a significant period of time we had a three way agreement. Answering Ms. Luck's question, Mr. Costa would be the lead counsel and Ms. Mead would be the back up. The Board thanked them for coming in tonight.

Mr. Toale stated their objective was to choose finalists using the RFP ranking criteria. The Board invited feedback on the interviews from Town Manager Lemieux and Land Use Director Burney. They discussed the various firms. Firms that will be called back for a second round will be Miyares and Harrington, Deutsch Williams, Murphy, Hess, Toomey and Lehane, and Mead, Talerman and Costa. References will be checked before they come back.

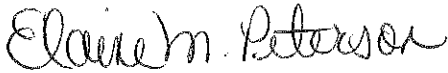
The Board signed the 3rd Quarter Water Commitment. They also signed minutes of February 7 and February 14, 2017.

Motion: P. Bertram

2nd:R. Ebersole

To adjourn the meeting at 10:30 p.m.

Respectfully submitted,



Elaine M. Peterson

Executive Assistant to the Town Manager