

RECEIVED & FILED

MAY 17 2017

LUNENBURG TOWN
CLERK OFFICE

**BOARD OF SELECTMEN
MINUTES**

**Joseph F. Bilotta Meeting Room, Town Hall
April 18, 2017**

The Board of Selectmen met in the Bilotta Meeting Room, with Jamie Toale, Chairman; Robert Ebersole, Vice Chairman; Tom Alonzo, Clerk; Paula Bertram, Member; Phyllis Luck, Member and Town Manager Heather Lemieux. The meeting commenced at 6:00 p.m. with the Pledge of Allegiance.

There was no public comment from the Board or the public.

APPOINTMENTS

Legal Counsel Request For Proposal Interviews

Ms. Lemieux reported the four finalist firms were here for their second round of interviews and to address three categories: working with Sewer Commissions, on Tax Title sales and Host community agreements. They will give 10-15 minute presentations on their price proposals as well as any questions from the Board on those proposals.

Deutsch Williams

Attorneys Paul Derensis presented with Attorney Kimberly A. Saillant, a litigator with the firm. Attorney Derensis stated their firm proposed two options; an hourly rate or a flat retainer. Excluded from the retainer is litigation, real estate and labor counsel work. They represent a number of Sewer Commissions and authored the Cohasset Sewer Act and the Nantucket Sewer Act. These allow sewers to be constructed without automatically allowing people to tie into the sewer system. We recommend all communities adopt it to deal with various sewer issues. Deutsch Williams has performed numerous tax foreclosures in the past. We try to find shortcuts to save money. We got the Nantucket Foreclosure Act passed so that if the property was in tax title and the Order of Taking was more than five years old, it would be considered foreclosed without further proceedings. They have also contracted with third parties for all tax title sales and auctions. We have done a number of host community agreements, some for marijuana facilities and some for casinos. Mr. Toale asked him to expand on the steps getting the legislative acts passed and sharing the cost with the towns. Attorney Derensis stated he has a very good relationship with the legislature due to being an official of the Massachusetts Municipal Association and frequently lobbying for issues statewide that benefit all communities. It turns out not to be such a big deal to get legislation passed. Attorney Derensis stated as a Selectmen going into his eighth term he is on your side of the table. Attorney Saillant has been practicing municipal law for over twenty years. Prior to that she worked for the City of Boston as Assistant Corporation Counsel and prior to that she was in private practice. She presented firm brochures and municipal newsletters stating they liked to keep clients abreast of what is happening. She stated Derensis has more personal and professional experience than anyone else you are going to meet here tonight. In closing, Derensis stated he felt the flat retainer was the way to go for the Town.

Mead, Talerman & Costa, LLC

Attorneys Adam Costa & Jay Talerman appeared this evening. Talerman stated they formed this firm to do things slightly different. They wanted to do a preventative model, keeping costs down by preventing litigation. Their proposal has a full flat retainer fee; it's been incredibly effective in the towns that have employed it. They employ a partial flat fee that includes everything except litigation, or propose a basic hourly rate. Mr. Costa added we hold town office hours. Talerman stated he believed they have led the commonwealth on host agreements relative to large scale development projects that cover the gamut of issues. They have also done host agreements for casinos. Costa stated they work with Sewer Commissions in communities such as Marblehead, Chatham, Easton and Bellingham and have experience working with their issues. Talerman stated they

generally rely on the few firms that do tax title work. They get involved when there are issues around foreclosure, problems with titles or other types of claims, an eviction, or when things get messy. Costa added we have a conveyancer in our office; an attorney who strictly deals with titles and real estate conveyancing. When asked which option most towns use, Talerman replied new clients are going for the flat fee. There are a few towns that feel they can go with a non-litigation flat fee.

Murphy Hess Toomey & Lehane LLP

Attorney David Deluca thanked the Board for asking them back tonight. He has been with this firm for over 25 years and practicing as town counsel for the last ten years. He also acknowledged Attorneys Brandon Moss and Kerry Jenness present tonight. Ms. Jenness was not able to make the first interview. She is in the town counsel group. As to the price proposal, it is very straightforward. The hourly rate is a little higher than most but because of our experience and knowledge in our area, we would very efficient. They have an attorney rate and a paralegal rate. Deluca personally represents eight towns on tax title counsel. They have had a great deal of success as they have a very good system and will work closely with your Collector office. A lot of that work is paralegal work. Attorney Moss stated over the last few years they are seeing increase in host agreements. They wrote one for Longmeadow that resulted in \$5 million dollars for the town as a result of a casino going into Springfield. They are also working on marijuana host agreements and are very well versed in them. They have worked with Sewer Commissions on connection fees, takings, betterments and assessments. Ms. Jenness stated her experience was as Assistant City Solicitor in Lowell, City Solicitor in Methuen before joining this firm. Personally she finds working in a firm where she can bounce ideas off of other municipal attorneys to be very rewarding. Deluca stated we are a good blend with that personal contact and can provide the very best service. When asked about retainers, Deluca responded that sometimes doesn't necessarily work for the best for either side. Towns feel like they need to get their money's worth and some lawyers might tend to aim for litigation to get the higher rate.

Miyares & Harrington LLP

Attorneys Tom Harrington and Christopher Heep returned this evening. Attorney Heep addressed the price proposal first. The principal price proposal is a straight hourly rate of \$205 per hour for firm partners and their counsel and \$185 per hour for associates; \$90 per hour for paralegals and \$80 for travel time. They would expect under this proposal to be reimbursed for any out of pocket expenses that are incurred on the town's behalf but they do not charge for in-house or administrative costs. He stated they would be happy to discuss an alternative agreement with the town, a retainer or a partial flat fee. Those kinds of arrangements would cover town meetings, drafting bylaws, local regulations, all consultations with the Town Manager and Board of Selectmen, Selectmen individually, Board Chairs, Department Heads in Town Hall and preparation of ethics opinions, assistance with public records requests, zoning, other kinds of legal opinions, and day to day general services in Town Hall. Not included is litigation, major capital projects, non-routine undertakings of significant magnitude which tend to be projects that start out small but for whatever reason graduate into larger more labor intensive and time consuming projects. This would be something they could negotiate with the Town. What they did not include in the written response was a specific dollar amount for a retainer because that is the tricky part of a workable long-term retainer agreement. They would need to do some research on how you have used town counsel for previously, how you expect to use town counsel going forward, how much time town counsel has put in historically. What we think a retainer has to do in order to work over the long term is provide a monthly fee that is roughly approximate to our hourly rate that we would otherwise charge. We believe the hourly rate is a fair price for the work we provide for the town. Attorney Heep stated regarding host community agreements, they have done a great amount of them in the past couple of years. They use them in a number of different areas; with Chapter 61A, negotiating an agreement opting for the right of first refusal and negotiating with the future developer to commit to a development that the town can live with and donate portion of the property to the town as a gift. They also have created agreements with potential 40B developers, for TIF (tax increment financing) agreements and marijuana cultivation facilities. They have extensive experience working with sewer commissions in Shirley and Hopkinton. They do tax title work for some of our towns. Some opt to use specialized firms just for that.

Ms. Lemieux reviewed the estimated cost for legal services for each firm based on general legal services and litigation fees based on 217.6 hours. The Board, Ms. Lemieux and Mr. Burney discussed all the firms and their

preferred top choices. Deutsch Williams and Mead, Talerman and Costa were the two preferred out the four firms.

Motion: P. Bertram

2nd: R. Ebersole

To enter into negotiations with Mead, Talerman and Costa to serve as Town Counsel **Vote: All in Favor**

Further discussion ensued about the new firm taking on current litigation. Ms. Lemieux will conduct the negotiations and bring it back to the Board. Mr. Toale thanked everyone for the amount of work they have put into the process. Mr. Ebersole echoed that, stating everyone on the Board participated, did their homework and came prepared.

Complete Streets Policy Review and Possible Vote to Adopt (cont.)

Ms. Lemieux stated this is follow up to the last meeting's discussion. The Board had discussed the draft policy. She made a few changes that were noted that evening. At the bottom of page 1, under Scope of Applicability; a sentence structure correction was made. On page 3, under Implementation (1A), it would be the advisory group and how that would be an appointed board or group by the Board of Selectmen. Discussion ensued about working with the DPW Director each year on the upcoming year's road projects and making it part of their goal and review setting as a Board. The Planning Board when looking at subdivisions and developments should also incorporate the multimodal aspects into their design elements.

Motion: R.Ebersole

2nd:T. Alonzo

To adopt the Complete Streets Policy as submitted with the typographical corrections incorporated

Vote: All in Favor

Discussion on Cable License Renewal Hearing

Mr. Alonzo reported Cable Advisory Committee met with Town Counsel and determined Thursday, May 18th at 7:00 p.m. will be the public hearing for the cable license renewal. Comcast will need to be notified of the public hearing. It will be televised and Lunenburg Comcast subscribers are invited to attend with comments on their experiences with them concerning customer service, quality of broadcast, response time, etc. The hearing does not address rates or programming. Ms. Bertram reported PACC has developed a business plan for the next ten years, including an educational component, equipment needs and the studio component. Any comments made will be documented for the record at the hearing.

Motion: R. Ebersole

2nd:P. Luck

To approve the hearing date of May 18th at 7:00 p.m.at Town Hall

Vote: All in Favor

Minutes/ Warrants/Action File Issues

The Board signed an accounts payable warrant in the amount of \$160,317.85, a payroll warrant in the amount of \$730,649.79 and a payroll deductions warrant in the amount of \$159,760.77.

Action File: Mr. Alonzo inquired about the larger and thicker "Pay as You Throw" trash bags option and if any progress had been made on ordering them. Ms. Lemieux will look in to it. Mr. Ebersole suggested scheduling a Board goal-setting session following the election with a new Selectman.

Committee Reports:

Ms. Luck reported School Committee meets next week. The Storm Water Task Force met on April 13th. Drafts of four of seven minimum control measures were reviewed. This will be continued at their May 25th meeting. The Notice of Intent will be reviewed on June 22nd and on July 27th they will discuss which town boards and personnel will be responsible entities for best management practices. Questions arose that this Board needs to discuss.

When would the Board want to review the Notice of Intent; after being reviewed by the Task Force, after the town's board and personnel responsibilities have been ascertained or when it is ready for submittal?

How is the town going to ensure that these new best management practices will be followed by Town boards and personnel? Would the Selectmen want to receive copies of the control measures now in advance of the discussion? Who will sign off on the Notice of Intent?

Mr. Ebersole stated he would like to see something that is almost a complete product but not necessarily the final so we have time to provide feedback. He would like to see what the department's responses are as well. He would like to see this publicized as this is going to affect everyone in town. He was fine with the Town

Manager signing the Notice of Intent. He asked what the minimum is that we have to do to comply and what are the best practices?

Ms. Bertram agreed with Mr. Ebersole but wanted to see it beforehand. She wanted to know what needs to be done and who is going to do it. It's important to include the financial component, if any and what it is. We have talked about a stormwater utility fee; that's a big part of it when we move in that direction. That may be something that departments have to answer depending on what their responsibilities are.

Mr. Toale suggested the Storm Water Task Force schedule themselves on this Board agenda for whenever is more practicable. Mr. Alonzo stated there was some talk at the state level to transfer stormwater regulating from the federal EPA and place under the state. The task force may want to discuss if that happens.

Ms. Bertram reported Conservation Commission is continuing to work on and is making headway on their regulations. MPO meets tomorrow; her hope was they would be actually voting on the Transportation Improvement Plan. She also will be providing the update from Trish Domigan on Summer Street at that meeting.

Mr. Alonzo stated Cable Advisory met last week as stated above. The hearing will be advertised in the paper for the public. We are also requesting all pertinent reports from Comcast prior to the meeting. He again encouraged public comment at the hearing. School Building Committee meets next Wednesday; one item to be discussed is the remediation of the ice damage on the roof and how to prevent future damage.

Mr. Ebersole reported the Sewer Commission continues to work on infiltration and inflow; reducing extra water going into the system. It is a complicated and expensive issue. He noted the Architectural Preservation District Commission is getting close to finalizing their regulations. They will be presenting them to the Board of Selectmen in the near future.

Mr. Toale reported the Building Reuse Committee will hold their last meeting this week and their primary item is to put together the presentation for annual town meeting for their warrant articles.

Ms. Lemieux reported to date she has met with the Council on Aging, Personnel Committee, Sewer Commission, Conservation Commission, Green Community Task Force, Building Reuse Committee, Capital Planning, Finance Committee, Storm Water Task Force and Cable Advisory. This week she will be attending the Library Board of Trustees meeting.

INTERVIEWS/APPOINTMENTS/ RE-APPOINTMENTS/ RESIGNATIONS

Matthew Kehrer submitted his resignation from the Architectural Preservation District Commission as he is unable to attend meetings due to work commitments and a new baby in the family. Mr. Toale thanked him for his service. He encouraged anyone who is interested to submit a talent bank form.

Motion: R. Ebersole

To accept Mr.Kehrer's resignation

2nd: T. Alonzo

Vote: All in Favor

Mr. Toale read aloud the reason for entering Executive Session, under MGL c.30A, §21; to conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining session or contract negotiations with non-union personnel (Finance Director Contract)

Motion: T. Alonzo

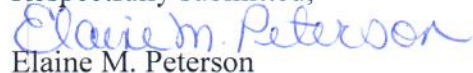
To enter Executive Session and adjourn immediately afterwards

2nd: P. Bertram

Vote: Ms. Luck-aye, Ms. Bertram- aye, Mr. Alonzo- aye, Mr. Ebersole-aye, Mr. Toale-aye

The meeting adjourned at 8:26 p.m.

Respectfully submitted,



Elaine M. Peterson

Executive Assistant to the Town Manager