

August 25, 2015

Present was James Lehan, Jeffrey Palumbo, Scott Bugbee, Jack Hathaway, Town Administrator, and Marian Harrington, Executive Assistant.

The meeting was held in Room 124, Town Hall. Jim Lehan opened the meeting at 6:00 p.m. Jim announced that the meeting was video and audio taped. Jack read the agenda contents.

**INTERVIEWS FOR TOWN COUNSEL
Murphy, Hesse, Toomey And Lehane**

Present was Brandon Moss, David DeLuca, Michael Maccaro of the firm.

Attorney David DeLuca did the speaking. Their firm has represented 4 towns for over 25 years; 8 towns for 10 years or more, and one town for 5 years. Their office experience consists of 7 attorneys who practice exclusively in town counsel work. Three of the attorneys have 30 years or more. The rest have 10 years or more. There is nothing that they have not seen or done. At least 3 towns are very represented, and demographics and maybe geographic to Norfolk. Maybe approximately 1,000 difference in population – 12,000.

David mentioned our pricing is kind of high. They will not shy away from those figures. They are efficient and their numbers compete favorably with other firms. They have experience with retainer arrangements. They found a straight hourly rate works. They are open to negotiation with litigation. They are well suited to remain within a budget. David said they are very sensitive and supportive with all the gatekeeping with moving the process forward to be sure legal representation is done for need. They do not use special counsel. They have seen it all.

David does land use and litigation. They do tax title. Brandon does ethics, open meeting and public records. Michael does Labor. They presented the Board with written information.

David said with gatekeeping, he likes to do monthly office hours. It is a set time each month and can line up topics, questions, etc. They will meet once a month for a couple hours.

David said with respect to procurement and bid process. They have an attorney who only focuses on this subject. He can walk you through the process.

Scott asked about staying within budget, and said give us an idea of budget figures. David said Holbrook is less than \$50,000. They can operate in the range they are given.

Jeff asked how often would it be you, as opposed to members of your team. What is the response time to answer, etc? David said he thinks the stock and trade of their legal representation is within 24 hours or they haven't done their job. They let the client know you got the matter, you understand the matter and we will ask questions. David said he would be the town counsel for our town. He would refer a matter to the attorney he feels is experienced in and they will contact us.

Jeff asked about landscape. You have several offices. Who are we working with, and where are they? David said most are in Quincy; they have a Boston and Springfield office but they are satellite offices. They are open daily, and Saturdays until 3.

Jim thanked them. Jim said he always asks if we are on solid legal ground. If the answer is yes, then he wants to know how we can get it done. He doesn't want the reasons why we can't. He said we are becoming more complicated. He would like a firm that will help us get it done. We want to protect the town. We don't need the risk – we need the solution to the risk.

David said he was asked once if he is a dealmaker or a deal breaker. He would like to think of himself as a dealmaker. He would like to show them how to get the job done.

Jack said he would like to hear from Michael. Michael specializes in Labor. Michael stated that any client is all of their clients. They would all know you.

Jack questioned Brandon about the public records changing. Do you see that happening? He feels that something will happen where they might have a facilitator in each town. Technology can be lacking in a town. Sec. Galvin's office has filed legislation, and it may take a year to take effect. Jack said a group is lobbying to make changes to the public records, and not to the good.

David does tax title. He said specialized work goes out to counsel who has the ability. David said they do it themselves. They do a lot of work for Assessors and appellate tax work.

Jeff asked if they had experience in agriculture, land use changes and protecting abutters from other neighbors changing use that may affect their neighbors.

David said that he has worked with working farms, and the different smells of the animals that neighbors complained about, as well as fumes from vehicles. Jim asked how you worked between agriculture and entertainment? David said it didn't happen without digging their heels in. They got a few judgments and had the people around the table trying to see what is in the best interest. Try to have the opportunity to be productive. Not everyone will be happy, but found a place where the business is thriving, and the neighbors aren't so upset. Zoning and planning comes into effect.

Jim asked about 40B. We now have potentially 3 or 4 before us. Jim asked if they have worked with a large firm that has asked – you change the zoning, and I will do this. Brandon said yes and explained. Jim asked about an overlay district. David said yes and explained and said they are very custom to giving advice and guidance to that.

Jim asked if you have counsel in-house that could assist and guide our Zoning Board of Appeals through 40B's. They assured us yes.

Jack said he would like to review and improve on protecting us when the economy soured, and developers did not finish their work and left behind bonds. He wants to be sure that we have protection in place, and can finish the work. Brandon said there are special provisions you can have in place so that you don't have to go through town meeting to spend the money. Homeowners Association is another thing they look at. David said you have to make sure your Planning Boards look at everything.

Scott Bragdon asked about some of the things that might be proactive. Police – they are in the news every night. New policies. Can you help us before it happens? Michael said he would do that. They routinely put out client alerts. They let you know if a law changes. They email, do seminars for the clients. If there is an event that they are going to speak to, they let their clients know that they will be there and what it is about. Always trying to keep the clients educated on what is going on.

Scott asked about Police. Michael said that he was a union attorney before coming to this firm, so he sort of knows the playbook. With all that's going on with police in this country, we want to make sure that all of our officers are aware of what they are doing, and educated as to what standards are, even in the law.

David is special counsel in Foxboro, to help with liquor and entertainment licensing mostly because of the venue of Gillette Stadium.

Jim asked how does the transition work? David said about 10 hours from the former firm to us. We would host meetings with town departments, and introduce ourselves to set a comfort level. They will not come to all Board of Selectmen meetings unless you feel its necessary. It is a seamless transition, and if we said we want your services tomorrow, can you do that? They all replied yes.

Pierce, Davis and Perritano

John Cloherty, III present.

John thanked the Board for having him present. He said his main practice is municipal litigation. He doesn't presently serve as town counsel for any other town. They don't consider themselves anything other than municipal litigation. They were invited to interview, and are pleased to do so. They are absolutely suited to do the job.

He has 22 years of experience, and his other two partners have over 30 years experience. They work mainly with insurance companies. They work with a lot of employment issues. They know the law because of this work. Sometimes they have created law.

They do not do a lot of land use. They do it but are mostly litigation. He said that he worked on the Pine Creek development. He listed several cases where he litigated land use issues.

Jack asked about how would you work on Human Resource cases, and how would you translate your litigation experience into creating bylaws, etc.

John said they have the expertise and wealth of information available. They have 22 attorneys in the firm. There is always someone who can assist you in an issue. John said because he hasn't been a town counsel, doesn't mean he can't be.

Jeff asked us about his time. John said it would be the same with any firm. How much time are you going to have dedicated to you? John said if he has worked on litigation and gets a call from Jack, he quickly responds. He doesn't avoid or dodge phone calls. He said he stays ahead of things. He files and does things on time, and follows up with his clients so he doesn't get the calls of people asking for updates.

John said that he would be the main person, but he has associates in the firm who will fill in if he is not available, such as a vacation. He does not have to split his time with other towns, and their firm is not searching for other towns.

John said he doesn't have experience in drafting bylaws. He said that if he weren't sure of something he would consult other attorneys or look something up. Scott asked about billing. John said he likes to work with his clients and be happy, so he would work with us as far as billing. John said he doesn't have a way to figure out how much time he needs to spend on our needs. He would adjust a bill if we weren't happy.

John said he works with insurance companies mainly, but he also works through the town as well.

Jim told him that what we really need is help with land use. He said that John was very clear and honest that his expertise is not land use. Jim asked if any other member of your firm has land use expertise? John said not really. He would use sound judgment, and do the best he can. If we called and wanted a zoning bylaw tomorrow, he would have work to do.

Jim and Jack both stated that they invited John tonight, because of their satisfaction in the quality of his work for litigation.

Jeff asked what if this didn't work out – for either party. Jim said this is a one-year appointment, so we can always rethink it at the end of the term. John said that he would consider himself being employed at will.

Kopelman and Paige

Jeff Blake, David Doneski, David Jenkins

Jim explained that they are our current town counsel, so we don't need to explain to them. Jim said we review our town counsel position every five years or so, so this isn't anything new.

Jeff Blake gave opening remarks. They have a significant amount of experience. All of their attorneys have knowledge in municipal matters. Not required to spend a significant amount of time on a certain issue. They do not have to do research. They refer to in-house experts, and don't need to use special counsel, which saves us money.

They have built the law firm around unique municipal needs.

David Doneski said they consider this "the mission". They are built to serve municipal corporations. They provide us with experience across the board, but

they are also built to work specific issues. They find working our issues satisfying, and they hope to continue with us.

David Jenkins said that he is our Labor attorney, and he has worked here since 1977. He said that most of the work he has done with us, is telephone discussions.

Scott Bragdon said when he first approached the firm, he was not satisfied with the attorney he was assigned. But after awhile, he was given David Jenkins and he is happy with this match.

Scott mentioned being proactive, and wondered how they would work with their clients. David said they have two attorneys who have been trained by MCAD. David said he keeps on us about sexual harassment, etc. He said he runs seminars for supervisors on sexual harassment. He tries to issue eblast or all town memos so they can keep us informed on what is going on and to educate us on changes that we need.

Police situation – training is key. The department should take advantage of anything offered to them. He counsels police chiefs on information pertaining to these things.

Jack said that Jeff asked why we are doing this. It is partly that we would like stability. We had Joyce Frank, then Kay Doyle, and now Jeff. Jeff said he doesn't plan on leaving the firm. He plans to be around. David said he agrees with stability. He said they have decided where to go and what to do as a firm. They have decided to lease their present building and stay.

Jeff Palumbo said in terms of land use boards, he has a pretty good idea of what the firm does in that respect. Are there proactive things your board does for land use boards as the environment changes. There is a certain amount of changeover as it is volunteer, but what types of things do you offer? Jeff said they will come in and train a board, discuss the open meeting law, come in and run them through the decision making process. They can also include as few or as many boards at training sessions at once. They think you make out better by including more boards than fewer, because you get the collective thought process. Jeff said we should take advantage of this.

Jim asked about if he asks if something can be legally done, and the answer is yes. It's legal and we want the help to be able to do this. Tell me why we can do this, and how. Jim said we have a lot of land use issues coming up, and we need to know how to work these out. Jim said that he is not looking to be told he cannot do it, he wants solutions. There will be times when you tell me I

can't do it, but there are always risks involved. Jeff said they could commit to this.

Jack said changes in the public records laws. Have you heard about the legislation being changed, and pushed in a certain direction. David Doneski said he would be surprised if there weren't changes. He said the accommodations that need to be done are resource and dollar based. If you are going to reduce or eliminate charges, any town is going to tax their resources because you don't have anyone who does this. There are exemptions. You have to be careful with information that can't be given because it could be confidential. David said that he doesn't know where this is, but it wasn't rushed through like they thought it was.

Scott Bugbee asked how many clients you have. David Jenkins said they are growing. They have picked up other communities, and have added attorneys. They are a mid-sized firm. They try very hard to make sure the towns don't get lost. We want to work with the team.

Jack said he liked the small family feel, but likes all the different ones that he can use for different topics.

Discussion Items with Kopelman and Paige Run and Gun – Seekonk Street

Jack said he had a discussion with Mike Brogan who feels that if you are going to license him, you should be licensing all baseball games, etc.

Jeff said he is putting on a show, and they believe he should be getting an entertainment license. The license is above zoning. They are serving food – that needs permitting. Are they serving alcohol? He talked with Jack, and he can give a list of information that we need to determine what he needs. Jeff said that he wants to hear about the concerns and complaints. He said we could condition the permit. Loudspeakers, and other noise concerns. You can limit hours, you can limit the amplification of the speakers, parking, maybe police details, and other things.

Jack wondered if we should have a hearing? Jeff said we should take the owner up on his offer and meet with the guy. Let's even talk with abutters and what the major concerns are.

We will meet with Jeff Blake, and then schedule a hearing. We will let the residents know we are not having the hearing on September 8th.

September 22nd is good if it works for Mike Brogan.

WRAP UP ON TOWN COUNSEL SELECTION

Scott Bugbee doesn't feel John Cloherty is ready to take this on, and we'd be the guinea pigs. Scott liked Murphy, Hesse, Toomey and Lehane (MHTL) and the fact that they will do office hours. With Kopelman and Paige (KP), Scott liked David and Jeff being stable. He would have a tough time choosing between MHTL and KP.

Jeff said he isn't seeing proactivity from KP on a land use side. Ray has a good grasp on things. Now we are coming to the point where we can take advantage of the firm. Jeff doesn't see KP and John Cloherty being too different. Jeff said he hasn't been on the Board all that long, and maybe the Board has been here longer and can help him see things differently.

Jim said he would hire John Cloherty in a minute, but we can't afford to be the test case. Jim said he was impressed with MHTL. He said he doesn't dislike KP, but he wasn't thrilled. Land use is what we really need expertise with.

Jack agrees that land use is the big concern. He said that he has had complaints from departments that they are frustrated with KP. Jack was impressed by MHTL, and liked the advisories they send. Jim said that at town meeting, George used to get up and give a concise explanation that everyone could understand. We don't have that now. We don't understand what answer we are being given.

Scott agreed that MHTL was impressive. Brendan was young, but he answered a lot of questions.

The Board agreed that KP didn't give us concise, clear answers. When we asked a question, they didn't provide answers, or in a timely fashion.

The Board will defer this conversation to our September 8th meeting.

At 9:59 p.m., Scott Bugbee moved to go into executive session to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. Jeff Palumbo seconded, and it was a roll call vote: Jim Lehan, **aye**; Scott Bugbee, **aye**; and Jeff Palumbo, **aye**.

- preparation of upcoming police/fire negotiations
- age discrimination suit

At 10:18 p.m., Scott Bugbee moved to adjourn the meeting. Jeff Palumbo seconded, and it was **so voted**.

This is a true and accurate report of the Selectmen's Meeting of August 25, 2015.

Scott Bugbee, Clerk