

Town Counsel Search Committee Minutes

Monday, December 16, 2013

7:30 p.m.

Thompson Room, Flynn Building, 278 Old Sudbury Road

In attendance: Len Simon, Liam Vesely, Myron Fox, Scott Nix,
Maryanne Bilodeau, Jim Kelly, Jody Kablack, and John Drobinski

Absent: Andrea Terkelsen

The meeting started at 7:30 p.m. with a quorum being present.

Acceptance of Minutes from October 16, 2013

The committee voted unanimously to approve the minutes of 10/16/13.

Review Proposals/Applications/Choose which firms/attorneys to interview

Supplemental budget information submitted by Brackett & Lucas today. Ms. Bilodeau distributed it to members.

Discussion regarding recommendations received. Mr. Fox has received several recommendations for one respondent. Ms. Bilodeau thought qualifications should be reviewed before we read recommendations. Mr. Vesely didn't feel strongly one way or the other and understands Human Resource's position, but likens it to the firm that copied their Lawyer's Weekly articles in their proposal. Mr. Simon didn't think it would hurt to read them and didn't think this will change the way he judges the other candidates. The Committee may consider requiring applicants to provide written recommendations. Will decide that in the future. Recommendations were not required in Request For Proposal (RFP), but the committee felt that if recommendations were received, they should be considered part of a proposal. Recommendations were distributed to the members of the committee.

Ms. Bilodeau disclosed that she received a gift card from Kopelman & Paige as a raffle prize earlier this year and did not want it to appear that there would be a Conflict of Interest so she contacted the Ethics Commission. They told her that there was no problem with winning a gift card from a random raffle and that as long as it wouldn't affect her ability to be impartial and fulfil her obligations effectively that there was no reason to be concerned; however, she did want to share that with the committee.

Mr. Fox discussed what a "Super Lawyer" is. Most agreed that it is self-promotion and should not be used as a significant judge of a lawyer or a firm.

Mr. Fox reminded members of a 5/31/13 memo from the Town Manager to the Board of Selectmen regarding peer communities and their Town Counsels. She notes that most Town Counsels develop long standing relationships. No other town had a bylaw requiring advertisement for Town Counsel services like Sudbury. Mr. Fox further reminded the committee of its Mission Statement - review applications, conduct initial ranking and recommend finalists for interviews by the Selectmen and Town Manager. It was noted that if the committee recommends 3 for interviews, the Selectmen can then interview whoever they want (could be more, or less).

Ms. Bilodeau handed out a memo from the Town Manager on Sudbury's Town Counsel services and how they are paid.

Proposal Review

Paul L. Kenny

Mr. Fox began the discussion on this application. Mr. Fox has worked with him for all 37 years Mr. Kenny has been in Sudbury – Sudbury Housing Authority, Zoning Board of Appeals, Board of Selectmen, and Moderator. He views Mr. Kenny's work as professional, competent, and successful. He feels Mr. Kenny is bright and creative. His fee is less expensive because he is a sole practitioner with little overhead. What impresses Mr. Fox is Mr. Kenny's theory of avoiding litigation - this makes him less money but saves money for the Town. His litigation experience is sufficient. Mr. Fox is confident in following Mr. Kenny's advice. They work very closely for Town Meeting. Comparison of fees vs. type of work will be difficult with these proposals, as many did not detail what they would work on in Sudbury. Mr. Kenny submitted Activity Reports which details exactly what he works on in Sudbury.

There was a general discussion on what the Town needs/wants in Town Counsel services - individual attention, or firm with many attorneys who do seminars, write articles for Mass. Lawyers Weekly, etc., and the attendant cost. This will ultimately be up to the Board of Selectmen.

Mr. Vesely was somewhat confused by the payment schedules included in the responses (but discussed above). He thought that back-up counsel was very important to the committee. Mr. Kenny's proposal did not specifically mention who would be back-up, although resumes of Robert Kenny and Denis Sullivan were included in the response. Mr. Sullivan doesn't seem to have much municipal experience. Mr. Vesely thought the committee should also consider how much longer Mr. Kenny wants to work for Sudbury - are there any succession plans? Is it Robert Kenny? Were Mr. Kenny's rates included? It was noted that Mr. Kenny is proposing remaining as a Town Employee, and is asking for \$99,000 per year salary.

Ms. Kablack noted that Denis Sullivan has worked on several land purchase projects in Sudbury and Robert Kenny has attended Land Court on a Sudbury matter.

Mr. Simon stated that he has virtually no experience working with Mr. Kenny, but does have experience with how lawyers provide services. Mr. Kenny has been in house counsel for 37 years – there is a measure of continuity and familiarity with Sudbury's issues. In firms, back-up counsel could change more frequently and we would have little recourse. Principal counsel could also change. What is important to consider is how Sudbury has used legal services in the past, and what our comfort level is. We must make sure our legal advice is good quality. Cost is also an issue for the town, and Mr. Kenny's proposal is the least expensive. Availability of Town Counsel is also important. Mr. Simon thought that he would be more comfortable if Mr. Kenny's back up counsel was stronger, but this is not critical. Mr. Simon opined that one of Mr. Kenny's weaknesses is his written communication to non-lawyers. He does not use layman's terms, and Mr. Simon pointed to the recent noise issue at Old County Road as an example. However, Sudbury is Mr. Kenny's primary client so we would receive his attention, and as a salaried employee pressure to bill extensively is not an issue.

Ms. Kablack stated she works very closely with Mr. Kenny. He is smart, creative and extremely accessible. She cautioned against making too large of a change from sole practitioner to large firm. Mr. Kenny's advice has always been excellent and she relies on his counsel on a nearly daily basis.

Mr. Drobinski noted that Mr. Kenny has always been a straight shooter and is non-political. His opinions are not biased and he recommends him highly as an interviewee.

Ms. Bilodeau has worked with firms before and agrees that Mr. Kenny should be interviewed. He has a lot of knowledge and familiarity with Sudbury. She is concerned about back up counsel. Noted it is

difficult to compare prices submitted. Noted Ms. Terkelsen's written comments, which all the members received.

Chief Nix doesn't work with Mr. Kenny very often, since the Sudbury Police Dept. has special counsel, but believes Mr. Kenny has been successful for the town. He thinks the sole practitioner model is good for Sudbury - easy access for employees, cost effective. Should consider Mr. Kenny's longevity and make a decision based on that. He also believes it is not a good time to make drastic changes with the new Board of Selectmen.

Mr. Kelly noted that Mr. Kenny proposes more office hours than any other firm, and his hourly rate is lower. He believes reviewing proposals is a good exercise to make sure we are doing the best we can for the town, but believes Mr. Kenny has more experience than any others and will devote his time entirely to Sudbury. This is a huge benefit for Sudbury. Open door communication is vital to whoever is Town Counsel, and day to day legal support for staff is very important to maintain. Mr. Kenny puts a lot of work into his opinions. Back up counsel is not so important. We will not be assured of a specific lead attorney if Sudbury hires a firm – the proposals seem to indicate that the lawyers may move around quite a bit. Mr. Kenny has served Sudbury for 37 years.

Unanimous vote to interview Paul Kenny.

Mr. Fox felt that any firm that only bid hourly will not work for Sudbury. The budget will be uncontrolled and too high. He asked the committee if anyone else wanted to eliminate firms that did not provide a good alternative for the budget.

Mr. Simon and Mr. Vesely indicated they wanted to discuss all the proposals.

Discussion of remaining proposals:

Brackett & Lucas – The committee decided not to interview due to only hourly billing. The financial model was not thought advantageous for the Town.

Deutsch Williams - highest price, removed Appellate Tax Board from matrix. No interview.

Miyares & Harrington - hourly billing. Mr. Vesely liked similar town experiences. Not a Boston firm. Seems accessible. Thorough responses on board interaction. Researched Sudbury Bylaws. Credentials impressed him.

Mr. Simon does not want to interview. Gave themselves very high ratings. No office hours proposed.

Ms. Kablack also liked similar town experiences, but not much else about the proposal. Not very creative, didn't appear to put much effort into proposal.

Mr. Drobinski put them on a short list for interviews, but not very interested after the discussion.

Ms. Bilodeau liked their transition plan, and thought their back up attorney had depth. Will not bill for some smaller clerical items.

Chief Nix was concerned about cost of this proposal.

Mr. Kelly thought they provided great accessibility, good menu of services, and indicated a willingness to discuss cost proposal. He thought they didn't oversell themselves.

Mr. Fox was concerned for any firm which represents too many towns. How do they handle Town Meetings with all these towns, since they have similar schedules? Budgets from Littleton and Hopkinton were troubling - smaller towns than Sudbury. Our legal budget might be increased significantly.

Murphy Hess Toomey – fee based. The financial model was not thought advantageous for the Town. No interview.

Urbelis & Fieldsteel – fee based. The financial model was not thought advantageous for the Town.
No interview.

Petrini & Associates -

Mr. Vesely was generally familiar with firm, not a strong feeling, middle of the road for availability, office hours, accessibility and closeness to Sudbury.
Fee structure - fixed retainer (what is included in this?). Does not include PBC, real estate transaction, comp permits - should have put it in terms of what they are going to do for retainer, not what they are not going to do.

Mr. Fox noted the budget of other towns seemed large compared to population. What services will they provide? Difficult to accurately assess.

Chief Nix asked for clarification of what they will provide.

Kopelman & Paige

Mr. Vesely noted their alternative fee schedule but wondered what we would get for \$60,000? No budget info. from other towns. The fee schedule is confusing and needs clarification.
Chief Nix felt that their reputation as municipal attorneys deserves an interview.
Mr. Fox noted that the lead counsel, Mr. Silverstein, is a litigator with an expertise in casinos, which are not an issue in Sudbury.
Mr. Simon wondered if the same lawyer will provide office hours each week?
Mr. Kelly opined that we would likely get junior staff for office hours.

Discussion

The committee noted the Mission Statement says we will offer 3 firms to the Selectmen for interviews. Committee will interview 4, then decide who to recommend to the Selectmen.
The Committee reviewed each of the RFP's, and the general consensus was not to interview: Brackett & Lucas
Deutsch/Williams
Murphy Hess
Urbelis & Fieldsteel
Blatman, Bobrowski & Mead.

The Committee voted unanimously to interview each of the following firms/attorneys:
Miyares & Harrington
Paul Kenny
Kopelman & Paige
Petrini & Associates

Discuss Interview Schedule/Format

Next meetings are Monday, 1/6 and 1/13. Two interviews will be scheduled for each night. It is assumed that back up counsel will be in attendance.

The committee discussed how to interviews should be conducted and decided on the following Interview Outline:
Overview of firm
Q&A
45 min total
How will they serve Sudbury?

Fee structure
Familiar with current Sudbury issues
Predominant work area
Interview questions will be sent around by Ms. Bilodeau

Ms. Kablack and Ms. Bilodeau will take the names of the four candidates/firms to be interviewed and draw the names from a hat as to when to schedule the candidates for interviews.

Maryanne Bilodeau also noted that she will need to check with Labor Counsel on whether Paul Kenny's Interview could be public since he did not submit his price proposal as a consultant. He submitted his proposal as an employee. We would have followed a different process and would have attracted a different candidate pool if we were recruiting an employee and the initial interviews would not be public. She will see what Labor Counsel suggests.

Several members of the committee did not realize that the price proposal Mr. Kenny submitted was not as a contractor but in fact as an employee. There are added costs for employees. Mr. Vesely asked if Ms. Bilodeau could send out what that cost would be.

Meeting adjourned at 10:00 pm