

**SELECT BOARD MEETING MINUTES
TOWN COUNSEL INTERVIEWS
MONDAY, JUNE 14, 2021
APPROVED**

SB Members Present: Rebecca H. Pine, Chair; Alison S. Manugian, Vice Chair; Peter S. Cunningham, Clerk; Joshua A. Degen, Member; John F. Reilly, Member

Also Present: Mark W. Haddad, Town Manager; Dawn Dunbar, Executive Assistant;

Ms. Pine called the meeting to order at 7:00pm and reviewed the agenda for interviewing Town Counsel firms.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Peter Mello & David DeLuca were present for the firm.

BECKY: How does your firm keep current on ever changing regulations and how do you ensure that knowledge and guidance about changes are passed on to the Town Manager, Board Members and Chair, and Town Employees as appropriate?

Mr. Mello said that governing rules was fast and fluid to which you must stay in tune to changes. He said that they share information when changes have occurred. He said that they represent municipalities and deal with issues on a daily basis and are constantly conferring with each other on different matters/changes before them. He said that they like to stay in constant contact with key officials within their municipalities.

PETER: What types of trainings to employees/officials do you offer?

Do you typically hold regular office hours in the communities you serve? (Why/Why Not/What you suggest)

Do you typically attend meetings of the Board of Selectmen in the communities that you serve? (why/why not/what you suggest)

Mr. Mello said that they offer trainings across the spectrum to include Open Meeting Law, Public Records Law, and also trainings around specific needs of the municipalities. He said that trainings could be designed. Mr. Mello said that they could discuss the number of trainings the Town would like. Mr. Mello said that they saw tremendous benefit to holding office hours and would be happy to do that. He said that they encouraged it.

ALISON: Since you are retained in contract with the Select Board but more often will interact with the Town Manager, what is your process to take in requests and gather information from the Board?

How do you work effectively with the Town Manager to ensure legal input is sought at appropriate times? What do you recommend we as the Select Board do to facilitate this process?

Mr. Mello said that an open and responsive line of communication was important. He said he liked to have an active relationship with the head municipal official. He said he liked to have frequent telephone conversations also as a means of checking in. He said open lines of communication was also important for budgetary reasons. Mr. Mello said you had to be willing to have hard conversations should there be a communication gap and address it as soon as possible.

JOHN: How much background and explanation do you provide when you are asked for a legal opinion? Are you willing to follow up all legal opinions in writing?

Mr. Mello said that they would be willing to put opinions in writing. He said he always writes or has close contact with all written opinions. He said that efficiency and an economy of words was an important piece of the product. Mr. Mello said that clients weren't interested in dissertations adding they just wanted their questions answered. Mr. Mello said that they had a core municipal practice group and for the most part, those were the people the Town would be dealing with, with him (Mr. Mello) leading the group primarily.

JOSH: If it becomes clear that an employee is not planning to do what you advised, what do you do?

Mr. Mello said that they could provide advise and their opinion of risks, etc. but the client could take what action it chooses. He said there was no one size fits all approach. He said if there was an adverse consequence, they would assist the client with whatever came down the road. He said that it was their job to guide the client in the best way they could with their opinions. Mr. Mello said that they couldn't guarantee perfect results but their opinion would be provided in what the believed was in the best interest for the Town.

Ms. Manugian asked at what point the conversation would be escalated if an opinion wasn't going to be followed. Mr. Mello said that he would always keep the Town Manager informed on all advise and would keep him apprised of something like this also. Mr. Mello said that the Select Board was the entity that manages the Town legal affairs and would also keep the Board apprised if they thought the Select Board wasn't informed by the Town Manager.

BECKY: At what point prior to a typical Town Meeting do you review and comment on Warrant Articles? What other preparations for Town Meeting and participation at Town Meeting do you provide?

Mr. Mello said it was critical for Town Counsel to be an active participant during Town Meeting. He said they would work closely with the Moderator about scope issues, review all articles, drafting of the articles to proper form, and attending Town Meeting. He said that they very often would have meetings with the Town to discuss proposed warrant articles. He said it was also important to know what articles may be coming to future town meetings to be prepared for what lies ahead.

PETER: What is your internal process to distribute tasks and keep your team up to speed in case of absences, vacation etc. so that our needs are met in a timely fashion?

Mr. Mello said that they were a full-service firm of approximately 40 attorneys. Mr. Mello said that responsiveness was very important to the firm adding he would be available to the Town 24/7. He said the timing of the advice would be dependent on the situation and the advice needed. He said that the Town would receive a response from the firm within 24 hours as a notice of receipt of the request.

ALISON: Discuss how your firm works to manage costs while providing efficient yet effective legal representation. How is billing tracked and discussed? What are your thoughts on a retainer approach - what have you seen work well?

Mr. Mello said he liked to be informed in all estimates prepared. He said it was important to be mindful when preparing an estimate but would communicate if there was a potential for overage. Mr. Mello said they would be flexible but that retainers were more prevalent years ago than they were now. He said that watching costs was important.

JOHN: Please describe a difficult situation you have handled at a legal appeal hearing, such as at the Appellate Tax Board, the ABCC, or a DEP Administrative Review.

Mr. Mello said that there was a case at the Appellate Tax Board adding Mr. DeLuca had done a great job defending this difficult case. Mr. DeLuca explained the case briefly.

JOSH: If problems arise and you become aware that either the Town Manager or Board Members are unhappy with your services, please tell us how you would address that?

Mr. Mello said that there needed to be honesty adding he thought he was honest and candid and hoped the others would be too. Mr. Mello said that the most effective correction plan was effort. He said that best way to address a problem was honesty and candor.

Mr. Cunningham asked about the travel from Quincy and travel expenses. Mr. Mello said that they had clients spread out geographically and wasn't an issue.

BECKY: Do you have any questions for us?

Mr. Mello asked what they saw as the important issues confronting the Town over the next year or so and approaches. Ms. Pine said that a lot of their issues were around land but across the spectrum. She said they were interviewing because of costs for one factor.

KP LAW

Brian Maser and Lauren Goldberg were present.

BECKY: How does your firm keep current on ever changing regulations and how do you ensure that knowledge and guidance about changes are passed on to the Town Manager, Board Members and Chair, and Town Employees as appropriate?

Mr. Maser said that one of the main things they did to keep their clients informed were E-client updates as changes come up in real time. He said that as an example they did this throughout COVID as things changed at the State level. He said that they offered quite a bit of training to their clients also to get out in front of things and keep clients informed.

PETER: What types of trainings to employees/officials do you offer?

Do you typically hold regular office hours in the communities you serve? (Why/Why Not/What you suggest)

Do you typically attend meetings of the Board of Selectmen in the communities that you serve? (why/why not/what you suggest)

Mr. Maser said that they had provided harassment training as an example to the Town pre COVID. He said that they offer trainings on many topics and cited some of those trainings. Ms. Goldberg said that they do trainings for employees for things such as minute taking, record keeping. She said they try to focus on the practical trainings for employees. Ms. Goldberg said they had been doing more and more office hours adding towns like to have them there. She said that they attended Board meetings all the time but rarely attended all Select Bard meetings adding the Board was the policy makers.

ALISON: Since you are retained in contract with the Select Board but more often will interact with the Town Manager, what is your process to take in requests and gather information from the Board?

How do you work effectively with the Town Manager to ensure legal input is sought at appropriate times? What do you recommend we as the Select Board do to facilitate this process?

Mr. Maser said that there was normally a gate keeper in the Town and from what he had seen was the best way. He said it also provided continuum for watching the budget also. He said that it also allowed the lead attorney to know what was coming their way and if the advice was authorized. Ms. Goldberg said that they believed it was better to be proactive than reactive.

JOHN: How much background and explanation do you provide when you are asked for a legal opinion? Are you willing to follow up all legal opinions in writing?

Mr. Maser said that they would like to get as many facts as possible so that they could provide them with a short and elongated opinion depending on needs of the client.

JOSH: If it becomes clear that an employee is not planning to do what you advised, what do you do?

Ms. Goldberg said that they were not the police adding they worked for the Board representing the Town. She said that the Town ultimately made the decisions and it was their job to defend them.

Mr. Degen said that they followed the firms advise when it came to Indian Hill and asked how they would clean up that mess. Ms. Goldberg said that when things went bad for the Town, they went bad for the firm also. She said that she couldn't guarantee an outcome but would present the Town with potential consequences.

BECKY: At what point prior to a typical Town Meeting do you review and comment on Warrant Articles? What other preparations for Town Meeting and participation at Town Meeting do you provide?

Ms. Goldberg and Mr. Maser both answered “early”. She said that they always tried to be as prepared as possible for Town Meeting. She said they always recommended a pre-Town Meeting Meeting to discuss the issues, what the Town was hearing, etc. She said they want to have the opportunity to preserve the flexibility needed for Town Meeting. Mr. Maser said that they took pride in how they handled aspects of town meeting.

Ms. Pine said that they knew Mr. Maser as a labor attorney. She asked how Shirin Everett was going to be used as backup. Mr. Maser said that all issues should be referred to him and he would shepherd them out with constant oversight on those issues. He said that he served as primary counsel in other towns. Ms. Goldberg said that the backup knew what was going on in a general way but could look up where something was at should the lead not be available.

PETER: What is your internal process to distribute tasks and keep your team up to speed in case of absences, vacation etc. so that our needs are met in a timely fashion?

This was answered with the previous question.

ALISON: Discuss how your firm works to manage costs while providing efficient yet effective legal representation. How is billing tracked and discussed? What are your thoughts on a retainer approach - what have you seen work well?

Ms. Goldberg said that the bill should look like one person did all the billing. She said that things should be broken down so matters make sense. Ms. Goldberg said that they make a lot of retainer proposals but not a lot of towns took them up on it. She said they liked to make sure they were as efficient as possible but would work under any model the Town liked. She said that they would review the previous years bills and see where the Town would be comfortable budgeting. She said that they were open to discussing this with the Town.

JOHN: Please describe a difficult situation you have handled at a legal appeal hearing, such as at the Appellate Tax Board, the ABCC, or a DEP Administrative Review.

Mr. Maser said that he handled hearings at the SJC as an example but none at the ones mentioned. He said that they had involved attorneys that handled cases at the Appellate Tax Board, etc.

JOSH: If problems arise and you become aware that either the Town Manager or Board Members are unhappy with your services, please tell us how you would address that?

Ms. Goldberg said that the relationship between the firm and the Board and Town Manager was the most important. She said that they were all people and didn’t consider themselves so likeable that no one would disagree with them. She said they worked hard to repair any issues.

Mr. Cunningham said that MIIA may hire counsel based on something that comes their way. He asked how they would handle that. Mr. Maser said that they would stay involved to make sure things didn’t go astray. He said that the best interest of the Town was their priority. Ms. Goldberg said that counsel more often than not wants to talk too them adding they as Town Counsel may have the information a special counsel hired by MIIA need.

BECKY: Do you have any questions for us?

There were no questions.

MIRICK O'CONNELL

Brian Falk, Marc Terry and David McCay were present.

BECKY: How does your firm keep current on ever changing regulations and how do you ensure that knowledge and guidance about changes are passed on to the Town Manager, Board Members and Chair, and Town Employees as appropriate?

Mr. Falk said that their firm had a continuing education requirement for attorneys within the firms. He said that they generally kept up to speed with the changes in the law by means of listservs, etc. He said that they sent out e-alerts as needed.

PETER: What types of trainings to employees/officials do you offer?

Do you typically hold regular office hours in the communities you serve? (Why/Why Not/What you suggest)

Do you typically attend meetings of the Board of Selectmen in the communities that you serve? (why/why not/what you suggest)

Mr. Falk said that they could come out to provide trainings specific to the needs of the community. He said they didn't typically hold office hours but could. Mr. McCay said that trainings on the labor side were typically done for the department heads.

ALISON: Since you are retained in contract with the Select Board but more often will interact with the Town Manager, what is your process to take in requests and gather information from the Board?

How do you work effectively with the Town Manager to ensure legal input is sought at appropriate times? What do you recommend we as the Select Board do to facilitate this process?

Mr. Falk said that he found it worked best to work with the Town Manager as the gate keeper for legal services.

JOHN: How much background and explanation do you provide when you are asked for a legal opinion? Are you willing to follow up all legal opinions in writing?

Mr. Falk said that his formal opinions provided options and usually included a bulleted list of the facts.

JOSH: If it becomes clear that an employee is not planning to do what you advised, what do you do?

Mr. Falk said that the Manager should always be kept up to speed so there were no surprises. Mr. McCay said that he always circled back with the Manager after speaking with a department head especially if there is pushback from the department head on legal advice provided.

Mr. Degen asked what would happen if a Board didn't follow advise. Mr. Falk said that they represented the Town and it was their job to make sure the Town was as informed as they could be.

BECKY: At what point prior to a typical Town Meeting do you review and comment on Warrant Articles? What other preparations for Town Meeting and participation at Town Meeting do you provide?

Mr. Falk said that he attended Town Meeting and was happy to get involved as soon as the Town wanted him to be. He said that they had a contact at the AG's office and could seek their advice for something they weren't sure of in answer to Mr. Cunningham's question.

PETER: What is your internal process to distribute tasks and keep your team up to speed in case of absences, vacation etc. so that our needs are met in a timely fashion?

Mr. Falk said that the firm talked to each other as much as possible to keep each other up to speed as much as possible.

ALISON: *Discuss how your firm works to manage costs while providing efficient yet effective legal representation. How is billing tracked and discussed? What are your thoughts on a retainer approach - what have you seen work well?*

Mr. Falk said that it was best to keep the Town Manager aware of what they were working on to keep track of costs. He said that he also would pick up the phone and speak to the requester to make sure he provides what the requester was looking for to control costs. Mr. Falk said that they generally didn't use retainers. He said that they preferred to use the pay as you go.

JOHN: *Please describe a difficult situation you have handled at a legal appeal hearing, such as at the Appellate Tax Board, the ABCC, or a DEP Administrative Review.*

Mr. Terry said that 99% of DEP issues came through him. He said that one of the more challenging ones recently was a municipal landfill adding there were a variety of environmental issues they had to deal with in order to protect the community.

JOSH: *If problems arise and you become aware that either the Town Manager or Board Members are unhappy with your services, please tell us how you would address that?*

Mr. Falk said that a direct conversation as early as possible was the approach. He said that they didn't get a lot of complaints about their billing but would go right to the Manager of chair to discuss. Mr. McCay said that getting some feedback a few months into the relationship was important. He said that the firm was there to support the Town. Mr. Terry said it came down to communication. He encouraged municipalities to be proactive when it came to cases and budgeting.

Ms. Pine asked if there would be any benefit for them having the same counsel as Dunstable or any conflicts. Mr. Falk said that they had been counsel since 2006 in Dunstable. He said that he checked with Dunstable to make sure they were okay with them responding to this RFP. He said that since his time in Dunstable, he hadn't seen anything Groton related come to his attention and didn't see any issues. He said that there were some similarities but didn't see any advantages or disadvantages with being counsel for both.

BECKY: *Do you have any questions for us?*

Mr. Terry said that one thing they didn't asked what why they should be hired. He said that one thing that made them unique was the collegiality within their firm which he believed improved the services their firm offered. He said they were selective about the Towns they took on as clients and would serve the Town well.

MIYARES & HARRINGTON

Tom Harrington, Ivria Fried and Bryan Bertram were present.

BECKY: *How does your firm keep current on ever changing regulations and how do you ensure that knowledge and guidance about changes are passed on to the Town Manager, Board Members and Chair, and Town Employees as appropriate?*

Ms. Fried said that they stayed current by reading case law adding she was on the Board for the MMLA. She said that they produced a newsletter every month as well as a client alert should something be important to get out. She said that they offered 3 trainings every year to department heads as well as board members.

PETER: *What types of trainings to employees/officials do you offer?*

Do you typically hold regular office hours in the communities you serve? (Why/Why Not/What you suggest)

Do you typically attend meetings of the Board of Selectmen in the communities that you serve? (why/why not/what you suggest)

Mr. Harrington said that they had done office hours in past and would do it if the Town thought it was in their best interest. He said his concern with them was he didn't want someone sitting on a question waiting if they could get them the answer when they needed it. Ms. Fried said that they could attend meetings when asked.

ALISON: *Since you are retained in contract with the Select Board but more often will interact with the Town Manager, what is your process to take in requests and gather information from the Board?*

How do you work effectively with the Town Manager to ensure legal input is sought at appropriate times? What do you recommend we as the Select Board do to facilitate this process?

Mr. Harrington said that the gate keeping rules were for the Board to decide but added they would follow that. He said that it was important for them to understand when an opinion was needed by and what the Town was trying to accomplish.

JOHN: *How much background and explanation do you provide when you are asked for a legal opinion? Are you willing to follow up all legal opinions in writing?*

Mr. Bertram said that they would provide any opinion in writing. He said that depending on what the Town was looking for, that would dictate the opinion they provided. He said that they would share a draft opinion. He said it was their job to provide legal advice and not be a 6th selectman.

JOSH: *If it becomes clear that an employee is not planning to do what you advised, what do you do?*

Mr. Harrington said that they had no real authority adding it was the employee and or Board's right to not follow an opinion. He said they could take no other action than to re-stake their case.

BECKY: *At what point prior to a typical Town Meeting do you review and comment on Warrant Articles? What other preparations for Town Meeting and participation at Town Meeting do you provide?*

Mr. Fried said they were highly involved in preparing for Town Meetings. She said that they made sure they understood which articles might be contested. Mr. Harrington said that they like to have a meeting with Manager as much as needed to check-in. He said they talk about short term and long-term projects to prepare themselves.

PETER: *What is your internal process to distribute tasks and keep your team up to speed in case of absences, vacation etc. so that our needs are met in a timely fashion?*

Ms. Fried said that they had weekly meetings to talk about client communities so everyone was aware of what was going on.

ALISON: *Discuss how your firm works to manage costs while providing efficient yet effective legal representation. How is billing tracked and discussed? What are your thoughts on a retainer approach - what have you seen work well?*

Mr. Harrington said that they could set up their billing as a single billing matter or by matter/project. He said they didn't offer a specific retainer but would entertain one. He said he thought their hourly rate was fair. He said that the Board could provide them with a budget and they would work within it adding they may have to make some decisions to achieve that. He said they wanted to be partners and wanted everyone to be honest about it. Ms. Fried said that they liked to be proactive with legal advice and encouraged the Town to call them.

Mr. Bertram said that litigation budgets were tough to predict adding communication was the biggest component. He said that they needed to reassess and work toward the goal of the Town when it comes to a particular case.

JOHN: *Please describe a difficult situation you have handled at a legal appeal hearing, such as at the Appellate Tax Board, the ABCC, or a DEP Administrative Review.*

Mr. Harrington said that the complaint against his partner was dismissed but added it was a tough situation.

JOSH: If problems arise and you become aware that either the Town Manager or Board Members are unhappy with your services, please tell us how you would address that?

Mr. Harrington said that he would set up an in-person meeting within 24 hours adding he wanted to know if he or an member of his team were not meeting standards. He said that the Town as their client deserved the best. Ms. Fried said that they had constant check-ins with their clients to make sure communication was open.

BECKY: Do you have any questions for us?

Mr. Harrington said that they were excited to be here and thought they would be a great fit for Groton. He said they wanted to be a key fit for the team and wanted to be a part of it.

Ms. Pine said they didn't have a clear process set here. She asked if they were ready to narrow the field down, call references, etc. Mr. Haddad said he wanted to clear the record on the last firm. He said that a lot of their towns held separate labor counsel adding that wasn't their strength. Mr. Cunningham said that there had been bumps in the road having two counsels for things that weren't clear on who should be providing an opinion.

Mr. Degen said he was ready to eliminate 2 firms and check references on the other two firms. Mr. Cunningham said he was close to eliminating one firm. Ms. Pine said she could clearly eliminate at least one firm. Mr. Reilly said he could eliminate two also. Ms. Manugian said she would be interested in pursuing references for three of them. She said she wasn't keen on Mirick O'Connell. Mr. Degen said he would eliminate Murphy, Hesse, Toomey and Lehane but was interested in Miyares and Harrington. He said he liked Brian Maser but wasn't happy with Ms. Goldberg's answer on Indian Hill. He said KP was off his list. Mr. Reilly said he liked Miyraes and Harrington adding that lack of labor was an issue. He said he liked Murphy, Hesse, Toomey and Lehane and he liked Brian Maser. He said he wasn't opposed to having 2 counsels. Mr. Cunningham said that he liked the firm that had a contact at the AG's office. He said that Miyares Harrington was good adding they could keep Brian Maser. He said they knew what they got with KP and they had a lot of expertise within their firm. Ms. Pine said that she would eliminate Murphy, Hesse, Toomey and Lehane. She said she was concerned about the travel from Quincy. Ms. Pine said that KP clearly had a huge level of competence. She said that Mirick O'Connell's attorneys work in Dunstable which was close to home. Mr. Degen said there was a wealth of knowledge at KP, he liked a smaller firm adding he thought they would get more attention. He said he liked the idea of a hybrid approach. Ms. Manugian said that non labor discussion had been had with Mr. Maser adding she had been happy with his response. Ms. Manugian said she had concerns with Miyares Harrington wanting to be too flexible. Ms. Manugian said that the last time they went with a small firm, that didn't work out well for them either.

Mr. Haddad said he had worked with 3 of the 4 firms. He said that they all had their strengths and their ability to provide legal advice. He said that the Board knew his opinion on KP Law. He said he thought Mirick O'Connell had a great interview tonight. He said that Miyares and Harrington was also another good firm and said Mr. Harrington was a great attorney. He said he thought they should check references on 3 firms.

Mr. Degen said that he thought the Chair should check references and pick two references from each list. Ms. Manugian said she thought they should reach out to Select Board Chair and the Town Manager/Administrator for some of the Town's they represent also.

Ms. Pine asked the Town Manager to let Murphy, Hesse, Toomey and Lehane know they were eliminated.

Ms. Pine adjourned the meeting at 9:02pm.

Approved: _____
Peter S. Cunningham, Clerk

_____ respectfully submitted:
Dawn Dunbar, Executive Assistant

Date Approved: 6/28/2021