



Board of Selectmen Board of Selectmen Meeting Minutes January 18, 2022

The meeting was called to order at approximately 5:00 p.m. by Chairman Mark Forest. Selectmen present: Mark Forest, Tracy Post, Michael Stone, and Dan Horgan. Peter Q. Smith was present remotely via Zoom. Also attending: Town Administrator Robert Whritenour.

Chairman Forest read the advisory as required by Massachusetts General Laws, Chapter 30, Section 18-25, and pursuant to Chapter 20 of the Acts of 2021, an Act relative to extending certain COVID-19 measures adopted during the State of Emergency, signed into law on June 16, 2021, that the public was welcome to attend the meeting either in person or via the alternative public access. The Chairman then led everyone in the Pledge of Allegiance.

Town Counsel Interviews:

The Chairman said that the Board would be interviewing three law firm candidates for the position of Town Counsel. Just prior to the meeting, the Town Administrator had been informed that one of the firms, KP Law, P.C., would be unable to attend this meeting. The law firms appearing this night would be asked prepared questions by each of the members of the Board of Selectmen.

1. Murphy, Hesse, Toomey & Lehane, LLP

Chairman Forest welcomed the attorneys and asked them to discuss the firm's background and experience in providing general Town Counsel services to municipal clients. Attorneys David DeLuca, Karis North and Peter Mello were present representing the law firm. Atty. DeLuca said that the firm had been active in municipal and labor practice since approximately 1985, operating in both public and private areas. As Town Counsel, they currently represent nine towns located on the North Shore, Metro West, and on the Cape. They are available 24/7 and are dedicated to providing knowledge, understanding, and advice to their clients. Atty. North said that she had been with the firm for almost 16 years, but had been practicing law for 25 years, providing Town Counsel or Special Counsel services to multiple towns. She said she would be backup to Atty. Mello, who would be assigned as lead attorney for Yarmouth, if the firm was chosen. She said that other lawyers would be assigned based on their expertise as well. Atty. Mello said that he had been with the firm since 2019, but had been practicing for nearly 20 years. His role would be both advisory and in litigating. Atty. DeLuca added that Atty. Mello currently represented the Town of Holbrook in the Holbrook, Randolph, and Braintree Water District, so his experience would be relevant, as water management was critical on the Cape.

Selectman Post asked them to describe the firm's experience with Town Meeting and election issues. Atty. North said that as lead Town Counsel, she would help develop and review warrant articles, and attend all town meetings. With the pandemic, for elections, they had to become experts in mail-in voting, and access to voting, keeping the voting secure. With virtual town meetings there were questions on the changing quorum requirements. Atty. DeLuca said that some towns going to virtual town meeting was not an easy process, but it was achievable.

Selectman Post asked about the firm's experience in Real Estate issues. Atty. DeLuca said their work in the various areas of Real Estate was essential for all the towns represented by their firm. Those issues included eminent domain, tax recovery, and tax title management, as examples.

Selectman Post asked about the firm's experience with zoning and subdivision law, including regulatory aspects of land development. Atty. DeLuca said that they had handled many zoning matters over the years, and associated land use issues, and were familiar with 40A. Atty. Mello said the firm had a total of seven lawyers, each using each other as resources. Atty. North said that the firm had worked on property acquisition, property disposition, and had also been involved with environmental issues, giving her involvement with the redevelopment of Natick's downtown district as an example.

Selectman Horgan asked about the firm's experience with financial and procurement laws and related issues. Atty. DeLuca said that they had extensive experience in procurement, generally under chapters 30B and 149. In his previous practice, the firm had a niche practicing construction law. He said the lawyers at his current firm were well versed in different special projects using different delivery methods. Atty. Mello added that they had all been involved with bid protests, defending the towns.

Selectman Horgan asked if the firm planned to assign a single attorney, or would a team of attorneys be used to cover the Town's legal needs. He continued, asking if a team was employed, would the work be split up by subject matter or availability. Atty. DeLuca answered that they go by the individual town's preference. They would assign a lead attorney (Atty. Mello for Yarmouth), with a dedicated backup (Atty. North for Yarmouth), and the entire office staff would be available as well, including paralegals, law clerks and assistants. Assignments and responsibilities would be delegated by the lead attorney if required, for efficiency. Atty. Mello added, that since he is a recent addition to the firm, he currently had the capacity to exclusively devote himself to the Town of Yarmouth.

Selectman Horgan asked how the firm proposed to interact with the Town's Administration to organize and coordinate the process of fielding and responding to requests for legal assistance and managing communication to ensure timely responses. Atty. Mello answered that the best ability is availability, so with electronic communication he could be constantly accessible to the relevant town officials. The goal would be to build a good rapport with the chief administrative official, and he would be responsive to the objectives as well as proactive. Being a good listener was first and foremost. Atty. DeLuca said that, in regards to flow of work, some towns were formal in their requests, going only through the chief town official. Pre-COVID office hours would be set up, but with the pandemic, their firm had gotten away from that, trying to accommodate meetings on a virtual basis. Chairman Forest asked Atty. Mello about his municipal experience. Atty. Mello said he had not been Town Counsel, but had done Special Counsel work. Atty. DeLuca mentioned that their firm already had worked for the Town of Yarmouth in some labor matters, and he represented the Dennis-Yarmouth School District on workers compensation matters. Selectman Post asked if that would be a conflict. Atty. North said that their firm had arrangements in other towns, representing both the town-side as well as the school-side, or the town-side and the labor-side.

Selectman Stone asked how the firm would manage the legal issues involved in the planning and implementation of massive public works projects, such as the Town's wastewater treatment project. Atty. Mello said that a project like that was very complicated, involving different legal issues. There could be procurement issues, wetland issues or other zoning-related issues. Special legislation could be required. The firm's expertise in such matters would come into play.

Atty. DeLuca stated that it was fortuitous that Atty. Mello had worked on the Braintree-Holbrook-Randolph Water District project. Atty. North added that it was key to know who the key players were, and to have regular communication with them, such as DEP, EPA, and coastal zone representatives. She had expertise in environmental permitting, land-use permitting, and she had represented water and sewer treatment facilities in enforcement actions both across and outside of the Commonwealth.

Selectman Post inquired about Atty. Mello's style when it came to communicating with the Board. She wanted to know if he would be proactive or reactive, especially in the event the Board took the wrong path involving an issue. Atty. Mello replied that his interest was always to protect the Town's interest. He wanted to have a good rapport and a friendly relationship with whom he worked, and to inspire trust by having a solid command of the subject matter. He said that his firm was proactive, not reactive, because legal developments were happening all the time. Issues could be brought to their clients' attention through trainings or advisories. Atty. DeLuca invited the Board to take a look at the firm's references. Atty. North added that the attorneys of the firm all had enough experience and confidence to tell their clients about possible consequences of certain decisions. Atty. Mello said that municipal lawyers could get into trouble if they tailor their advice to convey what they think the client wants to hear. He said formulated advice had to be delivered objectively.

Selectman Stone asked what emerging areas of law did they see having the largest impact on municipal governments in Massachusetts, and how did the firm propose to best prepare the Town to deal with those issues. Atty. North replied that in her practice she had seen "pushing the envelope" when it came to permitting marginal pieces of land for residential or commercial development, because the value of Real Estate had increased so much, especially in eastern Massachusetts and on the water. Consequently there was a lot of conflict in the process resulting in more litigation over permitting decisions. She felt it would be important to understand the "culture" of the town and know the permitting process in order to make solid legal recommendations, whether to perhaps change Zoning bylaws or the permitting process itself. Atty. DeLuca said that due to the pandemic, towns had been forced to change the way they communicated with their constituencies, and the way they handled meetings, possibly changing what the open meeting laws could mean in the future.

Selectman Stone stated that the Town desired a hands-on counsel to work with departments and boards, meeting with them face-to-face during office hours at the Town Hall. He asked if this was an advisable policy and how would their firm make it a success. Atty. DeLuca said that he advocated for that type of practice. With the pandemic, certain protocols had to be followed, but he felt it was a win-win for practitioners and clients to be able to meet on a regular basis. Atty. Mello concurred, saying that although electronic communication could add to efficiency, meanings could too easily be lost in translation. Atty. North added that face-to-face meetings helped in building good relationships with the department heads, as well as support staff. Selectman Post asked if travel time would be charged. Atty. DeLuca replied that would be a negotiated item, but he could foresee being able to accommodate the Town without having to charge for travel time. Selectman Post said that Zoom virtual meetings had proven to be very effective, allowing more people to be involved in the meetings. Selectman Stone followed up, asking if the virus went away and there were no health issues to consider, would they advocate conducting office hours on a remote basis or in person. Atty. Mello said it would be the Town's preference.

Selectman Smith's question had to do with Chapter 91 and other coastal issues, including erosion, accretion, buildability of land, and opening up some culverts in Town to help water flow

better. He asked how the firm would handle these environmental issues, when it involved abutting Barnstable and Dennis, in particular if Yarmouth opened up additional culverts. Atty. North doubted that much of the land being created would be buildable, but if some of it was, then there could be permitting issues and conversations would have to take place with the neighboring towns. If the actions taken were to have an impact to the neighbor's water, or if there was discharge, discussions and possibly an inter-municipal agreement might be needed. She said the firm had dealt with various Chapter 91 license issues in the towns of Danvers and Cohasset. It would require understanding the regulatory landscape, which could be complex, and then be able to work with both the local conservation commission, with DEP and with waterways entities. She said she enjoyed doing environmental land use and water type work.

Selectman Smith's second question was about how the firm handled Open Meeting Law issues now with meetings being held on Zoom. Atty. North stated that the move to remote meetings was new with the pandemic, with the Governor issuing an order that said a quorum could be done by remote means. Their law firm developed a checklist that board chairs could use to ensure that the regulatory steps were followed. It allowed for the chairs to become more comfortable running the meetings remotely. Zoom-bombing was another issue, because meetings had to remain secure. There also was the issue of an increase in the number of meeting participants, resulting in more questions and longer meetings. Efficient ways to conduct the meetings had to be developed, in making reasonable interpretations of the Open Meeting Law and staying consistent with the law. Atty. Mello said there were some issues unique to the virtual format. With remote meetings there were different rules governing attendance at subcommittee meetings by a member of the full committee, when it had to be determined if it was acceptable or if it might constitute improper deliberations. Because participants appear on the screen in panels, sometimes confusion would result. Atty. Mello said that the firm dealt with Open Law issues all the time, almost on a daily basis.

Selectmen Smith's final question was about how the firm dealt with a town that ignored the legal advice of the attorneys. Atty. DeLuca said that it was not unusual for Town Counsel to come in conflict with strong-willed public officials who were convinced of their correctness. He said his firm was perfectly capable of defending the town when required, and also able to provide candid advice to town officials when necessary. Most town offices respect the advice from their lawyers. He felt his firm's ability to give straightforward, candid, solid and reasoned advice was the best service provided to its clients.

The Board members then followed up with some additional questions. Selectman Horgan asked if the attorneys had an opportunity to look at the Town of Yarmouth, and if they had any concerns or saw any opportunities from a legal perspective. Atty. DeLuca mentioned the wastewater project as a great opportunity for Atty. Mello to use his expertise. Atty. North stated that she took a brief look at the Town's Charter, and it seemed straightforward. She also noted the Town's waterways and shellfish type-specific regulations. Selectman Stone said that sometimes there were cases of first impression, with very little guidance, and it had to be decided whether to walk away because of the uncertainty, or to go forward and litigate it. He asked how the firm would present the risks and the uncertainty of that type of case to an executive board such as this one. Atty. Mello said that it served everyone best to look at the case from a few angles and appraise the legal risks, and to determine the likelihood of success. If it was a true case of first impression, perhaps you would need to look outside the jurisdiction to see how other state courts dealt with analogous issues. A critical component also would be estimating what the cost associated with the legal dispute might be. Atty. North added that with all their firm's experience, they could discuss it amongst themselves and then advise. Sometimes when there was no straightforward answer, they

would have to rely on their gut. That would be where the importance of relationships would come in. Atty. DeLuca said they wanted the client to be comfortable relying on their advice and being confident with the representation being made on behalf of the client. Atty. Mello said that they would have to be comprehensive and try to identify as many pros, cons, advantages, disadvantages, risks and options as possible. Selectman Post asked if they were familiar with the lawsuit case that the Town had with the school district, to which the attorneys replied no. Selectman Post then asked if they had experience with regional school law, to which the attorneys replied in the affirmative.

On behalf of the Board, the Chairman thanked the attorneys for appearing before them, and announced a brief recess.

2. KP Law, P.C.

The representatives from KP Law, P.C., were not able to attend this meeting.

3. Mead, Talerma & Costa, LLC

Chairman Forest welcomed Attorneys Jay Talerma and Kate Feodoroff, noting that their firm was currently serving as counsel for the Town of Yarmouth. He asked them to talk about the firm's background and its experience in providing general Town Counsel services to municipal clients. Atty. Talerma told the Board that Atty. Feodoroff recently was named partner in the firm, and she was also the director of their labor and employment group. He then proceeded with a brief history of the firm. Around 2004 his partner Lisa Mead, former mayor of Newburyport, started the municipal practice with former partner Mark Bobrowski. Atty. Talerma left Kopelman & Paige (now KP Law) and joined the practice in 2006. They wanted to provide mechanisms for a team approach with the communities they represented. They founded some economic models which allowed them to be available more to their clients. The firm now has 14 attorneys, and represents 22 towns as Town Counsel, and serves as Special Counsel on some individual projects ranging from general matters to land use matters to tax matters. Atty. Feodoroff said that she had joined the firm about five years ago, and had worked for the City of Brockton previously as in-house counsel. She described her various legal experience, and noted how she felt teamwork, constant communication, creating good relationships with clients, and trust building, were all very important. Her approach was to give sound advice to management as to how to handle problems, and how to approach issues in a way that hopefully would produce a positive result. She said that they enjoyed dealing with the breadth of topics found in municipal law. Atty. Talerma then provided information about some of the other attorneys in the firm, including Brian Winner, and Mike Kennefick. He also noted their firm's flat fee arrangement option, which many towns found advantageous. He also said that he enjoyed being part of a team, and taking part in office hours with the Town's staff, pre-pandemic. He looked forward to being able to get back to holding office hours again in the future. He also announced the opening of the firm's New Bedford office, which would help serve their southeastern Massachusetts clients.

Selectman Post asked to describe the firm's experience with Town Meeting and election issues. Atty. Talerma said that they considered themselves at their best during Town Meeting time. He noted that he himself was a moderator for his town, and he really enjoyed it. The firm assisted in 23 sets of Town Meetings during the year. He considered parliamentary procedures his specialty, although he enjoyed working on warrants and bylaws and providing municipalities with

the understanding of budgeting options. All the partners handled Town Meetings, and considered it their firm's stock and trade. Atty. Feodoroff added that, coming from a city environment, attending Town Meeting was exciting and she had come to enjoy it. A lot of preparation went into it, because some of the questions could be complicated, but they also could be interesting, requiring a lot of background work. In regards to elections, Atty. Talerma said that the past year and a half was crazy due to the pandemic, but that the Town Clerks were all heroes in dealing with it all. The firm had to review election laws to see how some COVID requirements could be adapted. There were some residency challenges and ethics questions to deal with. The firm always tried to be proactive instead of reactive so that everything would go correctly.

Selectman Post asked about the firm's experience in Real Estate issues. Atty. Feodoroff said that they were well versed in those issues. They had worked on eminent domain cases and betterments, both requiring title work, and they oftentimes would work with Conservation Commissions. She said they had a robust Real Estate department, with a group of attorneys handling closings, preparing deeds, and doing recordings. Atty. Talerma added that they would routinely handle title work, handling agreements, the closing checklist, communications with banks, and getting all required signatures. He cited an easement case in Chatham, where they had successful litigation, but it required a lot of preparation. Property and boundary disputes could involve litigation, negotiation, contracts, settlements, and risk benefit analysis. Atty. Feodoroff said that, as lead counsel, she would ensure the work was done timely, accurately and correctly. She said she often followed the litigations of one of the firm's attorneys, Mike Kennefick, so she could keep apprised and know what was going on.

Selectman Post asked about the firm's experience with zoning and subdivision law, including regulatory aspects of land development. Atty. Talerma said that type of law had been their stock and trade before they got into the "Town Counsel business" in 2004. Almost everyone at the firm were well versed in Zoning and Planning, Conservation, and other land use disciplines. He said they sometimes lectured on the topic, or would draft a Zoning bylaw, or attend subdivision meetings, or take part in litigation over a wetlands case. He felt their land use group was the best in the entire Commonwealth, and had been for years. He said that when towns have complex problems, whether in 40B, subdivisions, or a zoning matter, the firm could fit the bill seamlessly in any of those disciplines.

Selectman Horgan asked about the firm's experience with financial and procurement laws and related issues. Atty. Talerma said their firm had a team of attorneys with expertise in procurement and contracts, led by Lisa Mead and Ben Taylor. The firm just hired an attorney from the City Solicitor's Office in New Bedford, who had a lot of experience in procurement and contracts. A lot of procurement work involved public construction projects, such as the projects done by Yarmouth's DPW. The firm also would provide advice involving municipal finance statutes, and the various types of fund options available that could be involved in contracts. For complex contracts they relied on the firm's contract team, but for day-to-day financial advice, any of their attorneys were well versed. He noted that Atty. Feodoroff pioneered a set of standard contracts for towns to use, so that when the town went out to bid on something, the contract would be part of the procurement. There are different contracts for different types of services and amounts, but they can be customized. With the contracts going out with the bids, it would provide predictability and expediency, and the municipality's interests would be protected. Atty. Feodoroff added that Atty. Kennefick had dealt routinely and successfully with the Attorney General's Office on challenges to bid awards, change orders and other matters of that nature.

Selectman Horgan asked if the firm planned to assign a single attorney, or would a team of attorneys be used to cover the Town's legal needs. He continued asking, if a team was employed, would the work be split up by subject matter or availability. Atty. Talerman stated, as the firm was currently Town Counsel for the Town of Yarmouth, the Board already was a bit familiar with how they operated. Atty. Talerman was the prime contact, but as the Town Administrator and Board became familiar with the other attorneys, they could reach out directly to them on their particular areas of expertise. During Dan Knapik's time as Town Administrator, Atty. Feodoroff had been brought in on some labor-oriented matters. As primary contact, Atty. Talerman would constantly keep abreast of what was going on, and could convey additional information. While other firms might charge hourly and have associates doing additional work, Atty. Talerman said their flat fee charge worked out well for municipalities, and allowed for the attorneys with the most experience to do the work. The attorneys dealing with the municipality were the partners who were the primary and secondary contacts. Atty. Mead, a partner, would be involved in contracts. Atty. Kennefick, a partner, would be involved in litigation. Atty. Brian Winner, a partner, had been doing a lot of wetlands work and Board of Health work with the Town of Yarmouth. Associates could fill in, but the contact would always be Atty. Talerman or Atty. Feodoroff, followed by the senior people in the firm, handling the things that might require more expertise.

Selectman Horgan asked how the firm proposed to interact with the Town's Administration to organize and coordinate the process of fielding and responding to requests for legal assistance and managing communication to ensure timely responses. Atty. Feodoroff said that every town was different in respect to communication. She said would communicate via text messages on her cell phone, or via email, or take emergency phone calls for those issues that could not wait. Generally requests would be funneled through the Town Administration, unless it was an ongoing project, and then they would coordinate with the appropriate department head. She said that some things could be handled easier in a 30 second phone conversation, or text, or quick email, than in a comprehensive document. Those times when a public facing document was needed, more analysis would be required. Sometimes legal citations would be included, and face-to-face meetings would take place to discuss the issues. The firm encouraged communication. It was their model to ensure that the municipality not be afraid to contact Town Counsel for fear of additional costs. Atty. Feodoroff said that it usually cost a municipality much less when able to deal with issues from the front end with the appropriate legal advice. Atty. Talerman added that in the past, all legal questions and answers would be on letterhead, but in these times communication cannot be handled that way because then nothing would get done. When formal opinions are required for the public or for the Board, then the requisite formality will be taken, but for many opinions that are needed immediately, they try to provide the answer quickly, allowing the Town Administrator or department head to proceed with confidence.

Chairman Forest noted that it seemed that the firm represented a lot of municipalities, so he asked Atty. Talerman for how many other communities was he lead counsel. Atty. Talerman said that Atty. Feodoroff has helped lighten his load of cases. He used to be in court 3-5 days per week, but now his role is more of a primary contact, with other attorneys doing the litigating. Over time clients have developed confidence in Atty. Feodoroff and the other partners so duties could be shared. Even though the job can be demanding, the firm tried to design the workload in a way that each attorney could spend personal time out of the office or with their family and not burn out. Atty. Feodoroff added that the attorneys of the firm are not competitive with each other, but instead help each other out. The client would benefit as well. Atty. Talerman said that he probably represents from 5 to 8 clients, some very small communities, but the workload was less than when he was a partner at the other municipal firm.

Selectmen Stone asked what they felt the role of Town Counsel should be in regards to managing the legal issues involved in the planning and implementation of a massive public works project such as the wastewater treatment project. He asked how they proposed to become a valued member of the Town's team to complete this project. Atty. Talerman said that was a multi-tiered question, requiring a multi-tiered answer. Referencing Yarmouth's wastewater project, Atty. Talerman said that a project like that would demand expertise in many areas. There could be significant contract issues. Town Meeting votes would likely be needed on land acquisitions, whether voluntary or takings. Infrastructure projects on the Cape possibly could require inter-municipal agreements. There could be litigation with contractors or landowners. Financial decisions would need to be made, not only from the construction side but also related to ongoing user fees. The Town would need to decide whether to do betterments or to tax the community. Atty. Talerman said there would be many tough policy decisions for the Board to make, and the firm would try to offer the pluses and minuses, based on what they had seen, benefiting from their experience. He said the firm was equipped to handle all possible issues, in both projects of a large size and scope, as well as in smaller scale issues.

Selectman Stone asked what emerging areas of law did they see having the largest impact on municipal governments in Massachusetts, and how did the firm propose to best prepare the Town to deal with those issues. Atty. Feodoroff said that municipal law was constantly evolving. There have been changes to Open Meeting Law. There were issues with marijuana. She stated that she was the firm's marijuana lawyer. The pandemic had impacted many areas of law. There had been impact bargaining with unionized employees due to certain changes made, whether it was in regards to face masks or vaccine mandates. The pandemic affected how elections needed to be handled, to ensure safe and secure voting. Atty. Feodoroff and Atty. Talerman then spoke for a while on the impacts of Zoom remote meetings on the Open Meeting Law and public participation. The pandemic affected municipal governance, altering the way business was handled. Atty. Talerman also stated that climate change would be a topic affecting coastal communities, with regulatory changes emerging from the State House, as well as from the Federal Government. He said that he expected impacts from new regulations that were not even on anyone's radar five years ago. Related to climate change, Chairman Stone asked a question regarding design standards changing and the possibility of liability being an issue for a municipality. Atty. Talerman said that it was, citing a situation in Scituate where the standards had changed, ultimately causing their town to go back to Town Meeting to appropriate a large amount of money after seeking legislative help to no avail.

Selectman Stone stated that the Town desired a hands-on counsel to work with departments and boards, meeting with them face-to-face during office hours at the Town Hall. He asked if this was an advisable policy and how would their firm make it a success. Atty. Talerman stated that they began recommending holding office hours back in 2005 or so with the Town of Bellingham or Ashland. Although other firms warned that it would not work, their firm found that from both a client approach, as well as a firm management approach, it was a huge success, especially with incorporating the flat rate. There was more of a chance to avert problems meeting face-to-face on a regular basis, meaning less litigation. Atty. Feodoroff added that meeting more frequently helped build relationships and trust. Atty. Talerman said that the flat fee allowed for the cost of travel not to be an issue, helping them deal with problems on the front end instead of reacting to problems on the back end, which usually would be more time consuming. Atty. Feodoroff said, without having to worry about hourly fees, they could take their time to be thoughtful in their answers or do more research if necessary. Selectman Stone concurred, saying that sometimes it would take a lot of effort to investigate and research a problem, and if not under a lot of billable pressure, then the attorney could do a better job for the client.

Selectman Smith asked about Chapter 91, and issues with erosion, accretion, and dredging. He asked what the firm's views were on those items, as the Town was looking at possibly opening up some culverts to improve the flow of our rivers and embayments. Atty. Talerman said that Atty. Mead would be the attorney with the most expertise on Chapter 91, however, he said these items were all evolving issues, going back to climate change and the changing landscape from the approach of environmental matters especially in rural or coastal communities. He said he became a sort of accretion expert litigating some cases in Chatham. He also said that they routinely dealt with local wetland permitting in any kind of removal of culverts, in addition to Chapter 91 type of issues. As there were some unique State level regulations regarding that, different State agencies would also get involved.

Selectman Smith asked a question touching upon Open Meeting issues and election issues, and how the firm would control everything on Zoom or similar. Atty. Talerman said that the Division of Open Government was struggling with Zoom issues on a day-to-day basis. He said it was inevitable that there would be violations, although he said that the technology had advanced a hundredfold since everyone started using it. Access for the public to Zoom into a meeting was spawning a whole new line of Open Meeting Law complaints. Sometimes the speaker could not be heard or a person would raise their "hand" in the "waiting room" and not get recognized to speak. Training and educating clients would hopefully ensure compliance, and would help prevent innocent errors. Selectman Stone stated that he and Selectman Post were on a recent Zoom call with the MassDOT regarding the replacement of the Bass River Bridge. He said they handled the meeting remarkably well, recognizing people to speak, and reading text/chat comments. Although a lot of people participated, everyone seemed to be accommodated. Selectman Post noted that when there were a lot of people participating, it was difficult to tell who were actually residents and allowed to participate. Atty. Talerman said that chairs could get training and be advised on how to handle situations and possibly facilitate moving the meeting along. However, with so many issues regarding what should be part of the meeting, or how records should be saved, etc., Atty. Talerman said that dealing with it all could end up being trial and error over the next couple of years. It was becoming very challenging and demanding for chairs to run their meetings. Atty. Feodoroff said that the ACLU was sometimes stepping in, giving their opinions, and further complicating matters for the municipalities as well.

Selectman Smith's final question was about how the firm would deal with a town that ignored the legal advice of the attorneys. Atty. Talerman said that towns were free to make the decisions they want, and all the lawyers really could do was give advice. If a decision was made that would put the Town in jeopardy in terms of liability, the firm would need to be very clear about that. Sometimes it is not comfortable. If involving litigation, his firm was duty bound to file it as long as it was not frivolous. He said his firm would always try to get the largest win possible, and if unable, would try to get the best settlement. He then gave some examples. Atty. Talerman said that their flat fee would sometimes allow a town to fight on principles and take a matter further than they otherwise would, because the bill at the end of the month would be the same. Atty. Feodoroff said that some towns would not want to listen to advice when wanting to fire someone. She would need to talk through the problem and have them try ways to correct it. If everything was tried, then they would have grounds for termination, and it would be defensible. She also mentioned that there occasionally were extreme opposite interpretations of union contracts. As lawyers they would want to reduce the risk or liability to the town as much as possible. Selectman Stone said that if a client gave facts, the judge or jury had the prerogative of believing so of the testimony of the witness, all of it, or none of it, and the attorney would have no control over that. Advice would be predicated on the facts, but the judge or jury could strip that foundation away on a credibility issue.

When asked if the firm had any final comments, Atty. Talerman said that they had enjoyed being the Town Counsel for Yarmouth, and that the staff and members of the Selectmen and land use boards had been terrific. Yarmouth was a client they took seriously, with honor and respect, and they would like to continue to work with the Town. Chairman Forest thanked them for coming and for their service to the Town.

There then was a discussion about arranging to interview the firm that had been absent. Selectman Post said it was unfortunate that key members of the firm had to deal with COVID issues, but she believed the firm was large enough for other members to either come to the meeting or Zoom remotely in their stead. She did not think it would be fair for them to possibly watch the previous interviews before being interviewed themselves. Selectmen Horgan and Smith both wanted to hear what the firm had to say, so wanted them to be invited to come before the Board. Selectman Stone agreed with Selectman Post, having a problem with fundamental fairness. He did not want to give the public the perception of favoring this third law firm over the others, and he said he would not be surprised if the other two firms gave some pushback if they were not chosen.

MOTION: To schedule an interview with KP Law, changing the questions, holding it at a time that can be arranged, convenient to this Board and to the representatives from the law firm.
Motion by: Dan Horgan Seconded by: Mark Forest
Roll Call Vote: Mike Stone, nay; Tracy Post, nay; Dan Horgan, aye; Peter Q. Smith, aye; Mark Forest, aye. The motion passed in favor, 3-2.

Selectman Post asked if Town Counsel was a majority vote contract by charter. The Town Administrator said that it would have to be 4/5 of the members of the Board of Selectmen, and no term was mentioned.

4. Adjourn

MOTION: To adjourn.
Motion by: Tracy Post Seconded by: Mike Stone
Vote: 5 ayes; 0 nays. The motion passed unanimously.

Meeting adjourned at approximately 8:25 p.m.

Respectfully Submitted,



Mary Alice Florio