

May 3, 2010 Town Council Meeting (1:18 pm to 1:35 pm)

Mayor Kiker: Next is the discussion of the status for the Town Attorney status search.

Terry Stewart: I'm going to turn that over to Council Member Alan Mandel, sir.

Mayor Kiker: Mr. Mandel was given the exercise if you will, and direction from the Council to look at the choices or options that might be available to the Council. Mr. Mandel.

Alan Mandel: I have a suggestion to bring before you today based on how one might approach this from a business standpoint situation looking at a lot of the conditions that exist that lead me to deal with and let me just read through some of the notes I put together in thinking about this and I think you'll see the recommendations and in my mind, is justification for going in this direction. But frankly, if you agree fine, and if you don't we'll go back into the process.

The Town Attorney, Ms. Anne Dalton submitted a letter of resignation April 12th to pursue other legal career objectives. And placed before you now is a proposal to accept the proposal of Ms. Anne Dalton and engage Fowler White Boggs as interim attorney for the Town of Fort Myers Beach. Here are the benefits of doing this. This proposal permits Ms. Dalton, after years of service to the Town, to begin her new career as soon as possible. It permits the Town to immediately engage on an interim basis with (1) a firm with extensive governmental legal experience (2) a firm currently representing the Town (3) a firm experienced in municipal financing issues (4) a firm with an office in Tallahassee which may represent us at the State Capital on an as needed basis (5) a firm with staff experience in representing the water utility of Bonita Springs (6) a firm to be evaluated over several months following, a pattern as we have with the Town Manager, quite frankly a firm established in 1943 and representing clients such as Lee Memorial (7) a firm who works with Nabors Giblin, a law firm also associated with the Town and a firm introduced by Ms. Dalton.

I think immediate action is needed instead of a long process because all members of the Council, and I say all members because Tom Babcock is not here but I think all members of the Council have identified in a prior meeting three significant time sensitive issues facing the Town....the lease on Town Hall ending in June, if I'm correct, and both temporary and long term real estate matters need to be negotiated. Financing is required to repair the water utility system for the safe and reliable delivery of water. The lowest financing term available currently ends in December. Council reviewed it to secure financing and the storm water management report anticipated by May in actions to response to this report will require Council as well.

All of these time sensitive issues require counsel who is available throughout this time period and has a mutually vested stake and successful outcome. It is suggested that Town Council consider authorizing me as Chair of the Committee and Mr. Stewart as Town Manager to negotiate with Fowler White Boggs. I have not had any conversations with them as to pricing. They do offer, just so you know folks, retainer basis and hourly basis considerations, but the proposed agreement is presented to you for your review and comments.

Mayor Kiker: Mr. Stewart, do you have anything extra you'd want to add to this

Terry Stewart: Nothing extra to add Mr. Mayor

Mayor Kiker: Then I'll turn to the Council and Anne.

Anne Dalton: I was not familiar with Mr. Mandel's proposal and I'd like a couple of minutes to think about it and I'll provide a comment.

Council Member Raymond: If Alan wants to talk to them and find out what they have to offer, what the pricing is and everything else, then I think you should go forward no matter what we do to bring someone in, we have to know what our actual costs are, basically, have them give us a written proposal for what they can offer, what the costs are and what benefits it is having them. I think that's probably the next step.

Mayor Kiker: Jo List

Jo List So we don't have to do an RFP?

Anne Dalton: I believe Mr. Mandel is suggesting you talk to them and then if for some reason it doesn't work out, then you would do the RFP. You're not legally required to do a Request For Proposal.

Jo List: That was really my question.

Alan: I found out that you don't have to do that.

Jo List: OK

Council Member Mandel: But you can do this and remember the reason for this is it's a company who Anne has introduced us to and we're working with them and there are such time sensitive issues on the table that I think we need representation to work with us on these .

Jo List: I think we should move forward. Yea.

Mayor Kiker: Just perhaps a correction on when you're talking about hourly vs. retainer. I think those are the same thing. And they are hourly. A retainer says here's \$10,000 up

front and we're going to charge you hourly against the retainer and I think that's usually how that works. So I think maybe you want a specific cost.

Anne Dalton: Actually if I may, Mr. Mayor. There are a variety of ways you can have attorney fees charged. One you can say I'll pay you a flat amount and here's the work you'll be doing for that flat amount whether it's meetings, staff meetings, attendance at whatever, and that's not always in the Town's best interest but the more specific the scope of services is, obviously the more advantageous it is to the Town. But you certainly can do a retainer that has hourly rates billed against it, that's correct. If you choose

Mayor Kiker: My guess is from my application if the Council decides for you to move forward is that rather than discuss it in terms of a retainer, perhaps maybe a flat fee, is that what you're talking about.

Council Member Mandel: That's what I mean by it. Yea.

Mayor Kiker: Just so we get the terminology the same. I just want to make sure we're talking about a flat fee. The second thing. This is quite a laundry list you put together here. I can't imagine how much time you took to get to this. Whenever you discussed interim, one of the discussions we had when we talked about bringing in Mr. Stewart in, as a prime example, is that we put a time frame on it and in some cases, well I think when we had a discussion with Mr. Stewart we wanted to make sure we got through the budget and as I'm looking at your laundry list, I'm seeing the same topics, so would your proposal include that we go to a certain date.

Council Member: Yea. I didn't want to put that in here in the initial discussion, I thought had a different perspective but I agree with you and probably you could go up to the time before the next Council.

Mayor Kiker: Well there's a BIG difference...

Council Member Mandel: If you like or at some other time period you all want. I think you have to give them several months.

Mayor Kiker: I think there's a huge difference between if you want to bring someone in on an interim basis while we do an RFP that's one thing you know then I would say I don't understand why we want to go through all this.

Council Member Mandel: : What I was thinking here, is that given the real estate matters coming up before us, given the water utilities coming up before us, we should have someone here on an interim basis to guide us through that.

Mayor Kiker: And through the budget as well.

Council Member Mandel: And through the budget as well.

Mayor Kiker: So you're talking about six to eight months.

Council Member Mandel: Right

Mayor Kiker: As you would negotiate with Fowler, you would make sure that they were going to represent the Town until some date certain minimum and include in that transition if we choose not to keep them, that kind of a thing

Council Member Mandel: I think this just represents what we have on our plates and what needs to be done. I hope it's considered as fair to the current Town Attorney and that she can get on with what she wants to do.

Mayor Kiker: Sure.

Council Member Mandel: These matters are going to go on for obviously six or eight more months and we can bring somebody on who is experienced, who has a relationship with us already and just take that off our plates so we can focus on these three major issues.

Council Member Mandel: That's all that's really here.

Mayor Kiker to Council Member Raymond: Did you want to say something here?

Council Member Raymond: What I'd really like to have is I'd like to have them give us a proposal. You haven't talked to them at all yet?

Council Member Mandel: I had a general conversation, not specifics.

Council Member Raymond: What I'd like them to do is have them put together a proposal if they really want to do this. We should be able to have it by the 17th which is our next meeting and I'd like to see a proposal in writing with different options that they could offer and basically as attorneys know how to write these fancy things. As long as it's put into English so that I could read it. The proposals what they can do and what the effect is of each separate type of proposal. In business, when something happens, it happens. That's always the way I've run my business.

Council Member Mandel: And there are some other things, I think, possible benefits to this, too I mention it in here their office in Tallahassee there are some very experienced people up there that could and currently into the future represent us when we have a specific request to make up there.

Mayor Kiker: Ms. Dalton, you wanted to say something

Anne Dalton: Yes sir. Thank you, and I appreciate the opportunity to collect a few thoughts. First of all, I want to thank Mr. Mandel for his compliment. I appreciate that.

And secondly, I have a great deal of confidence in Fowler White as Mr. Mandel indicated. As a matter of fact, I had been instrumental in bringing them in and I have heard a lot of positive things from Council on Fowler White Boggs and I share in those positive things. There are a whole bunch of ways that outside counsel can handle matters that are not necessarily in the best interest of the client but perhaps in the best interest of the Attorney's bottom line. I have not, as your Town Attorney, seen any of that from Fowler White. As a matter they have repeatedly accommodated the Town's request to be conservative as witnessed by doing a flat fee for the Ganim litigation that went up to the second DCA (Second District Court of Appeal) in a certiorari action that is now concluded and it is very unusual for folks to give a flat fee for work of that type because it can drag on forever and be quite expensive.

I appreciate Mr. Mandel's comment. Secondly, I have a great deal of confidence in Fowler White. Thirdly, I appreciate the Council making some positive movements to move forward. I indicated that I would accommodate the Town's timetable because I have tremendous fondness for you folks and for your predecessors in office and I certainly would do nothing to prejudice the Town's future in terms of attorneys and transitions

I kind of had in my mind roughly June-ish and that sounds like when the transition would occur if Fowler White were selected by you folks and I think that would give you a tremendous amount of budget certainty if you go forward and my suggestion is that you retain them at least through the rest of this budget year and then see how you like them and that would coincide with Mr. Stewart's review. I believe his contract runs through the end of September, but that's up to you, obviously, and I appreciate Council authorized me to work with Mr. Mandel on this. I've been a lawyer for 30, 30 million years, but maybe it's only 34 years and I've assisted with hiring all kinds of outside counsel all through the years and I would be most happy to assist with this if Council so directed. Thank you.

Mayor Kiker: It sounds like everybody's on the same page. So, I guess ...do we need a motion or just a consensus

Anne Dalton: Just direction

Mayor Kiker : If I may, I'm hearing consensus to direct Mr. Mandel to move forward with his proposal, and of course, use Mr. Stewart and Ms. Dalton as needed for advice.

Mr. Mayor to Anne Dalton: Yes ma'am

Anne Dalton: I'm sorry I think I'm interrupting that's not always a happy thing. I just want to clarify for the public that Mr. Mandel does not have a committee because as we know that would be a sunshine committee, so it's I think you made reference to a committee and I think you were just talking colloquially, and there is no committee it's just Mr.Mandel.

Council Member Mandel: It's just me, myself and I.

Anne: Just so the public doesn't have any reason.

Mayor Kiker: I've experienced that one myself.
And I appreciate you saying that.

Council Member Mandel: OK. Thank you.

Mayor Kiker: And as far as sunshine goes, I would assume if there's any communication that needs to go to Council in terms of educating us before that would have to go through Mr. Stewart and so that we can have a correct and accurate discussion on this.

Mayor Kiker: So with that, we're going to move forward with that.

Submitted by Lois Poff
May 28, 2010