

JANUARY 11, 2006 SPECIAL MEETING

The Wethersfield Town Council held a special meeting on January 11, 2006 at 6:00 p.m. in the Police Community Room, 250 Silas Deane Highway.

Present: Councilors Adil (6:30), Drake, Forrest, Kirsche, Kotkin, Walsh, Deputy Mayor Fortunato and Chairperson Morin.

Absent: Councilor Cascio.

Also present: Bonnie Therrien, Town Manager, and Dolores G. Sassano, Town Clerk.

All stood for the pledge of allegiance to the flag which was led by Councilor Forrest.

The purpose of the Special Meeting was to conduct interviews for the position of Town Attorney.

Sabia & Hartley, LLC, Attorney John Shea

Chairperson Morin explained that each candidate for the Town Attorney position will be asked the same questions and that the interview for each candidate will take approximately one half hour.

Chairperson Morin asked Mr. Shea to provide an overview of his firm, how Wethersfield's issues will be handled, and any pertinent information regarding employees of the firm.

Attorney Shea introduced himself and Attorney Melinda Kaufman, and explained that Sabia & Hartley is a small Hartford-based firm established in 1994 and currently employs nine attorneys. He said that the firm initially dealt with commercial law; however, its scope of services has grown as the firm has grown to include an active municipal practice. Attorney Shea said that the firm has found that municipalities need proactive representation in facing the unique and real needs of their citizens, problems, and financial constraints. He said that the firm's municipal clients are asked to share their objectives so that the firm can find ways to safely accomplish those objectives, rather than focusing on what cannot be done. Attorney Shea said that the firm prides itself on the timely provision of services by experienced attorneys. He also commented that none of the firm's attorneys reside in Wethersfield; however there are support staff who do.

Deputy Mayor Fortunato asked Attorney Shea to review the fee information he has provided and asked if his firm would be willing to do work for a flat fee. Attorney Shea stated that the fee proposed for the Town of Wethersfield is below the fee normally charged for new clients and is consistent with the fees charged to other municipal clients. He said that the firm has discussed the concept of flat fee arrangements; however have not agreed to one due to the scope of services required by municipalities, which could include costly litigation. Attorney Shea said that although the firm would not rule out a flat fee, before agreeing to one, a refined scope of services would first have to be discussed.

Councilor Drake asked Attorney Shea if he has any suggestions to bring Wethersfield's costs down. Attorney Shea said that the firm has not invented anything new regarding cost-saving billing arrangements. Attorney Kaufman explained that a lot of being proactive includes reviewing policies before implementation to insure that there is nothing that could bring on liability. She said that this review up front saves money in the long run. Attorney Shea said that municipality's savings are found in efficiency and all of Sabia & Hartley's attorneys have many years of experience and the firm has had extensive involvement with CIRMA which has been very effective in reducing future claims. Councilor Drake inquired about a retainer fee and what the expected cost is for the Town's day-to-day legal matters. Attorney Shea asked if attendance is required at Town Council, Board of Education, or other Town committee meetings and was told that this is only required when requested and that the Board of Education has their own legal representation. Town Manager Bonnie Therrien said that the hours required would be approximately four to five hours per week. Attorney Shea said that this is not typical of a Town this size as this number of hours required is on the low end of the

spectrum, but that one point person contacting the firm on behalf of the Town could greatly reduce the number of hours required.

Councilor Adil arrived at this time (6:30 p.m.).

Councilor Kotkin asked Attorney Shea if his firm has any conflicts of interest with the Town of Wethersfield, or if any arise, how they would be handled. Councilor Kotkin also asked if any of the attorneys in the firm have experience in environmental law. Attorney Shea stated that the firm has no existing conflicts with the Town of Wethersfield and the firm's policy is to not take work that will create a conflict with a municipal client. He said that the firm has one of their counsel who has beyond a minimal environmental acquaintance; however, it is not extensive. Attorney Kaufman said that she has done some minimal environmental litigation as well.

Councilor Forrest asked who the contact person with the firm will be through the Town Manager, and how the other staff at the firm will be utilized in working on various Wethersfield issues. Attorney Shea said that he will be the main contact person and the other attorneys will be utilized based upon his determination as to who can most efficiently and skillfully handle the issue.

Councilor Kirsche asked Attorney Shea to speak to the experience his firm has with construction contract law. Attorney Shea said that he has handled several construction contracts and the firm also has two attorneys with a great deal of private construction litigation experience.

Councilor Walsh asked Attorney Shea to review the firm's experience regarding labor law. Attorney Kaufman said that the firm has fairly extensive labor law experience. Attorney Shea said that he has a lot of experience under MIRA, handling grievance arbitrations, unfair labor practices, and binding arbitration.

Chairperson Morin explained that after the interviews are complete this evening, the Council will not be taking any action on a decision regarding the Town Attorney until their first meeting in February. He asked Attorney Shea if he had any closing remarks or questions. Attorney Shea said that he is surprised that the Board of Education would not be included in the scope of work, as he would not have focused so much on the Board of Education work in the firm's proposal. He said that there is so much in a municipality that is interconnected; therefore it is beneficial to have an attorney with experience in this labor work. Attorney Shea said that his firm prides itself on their prompt responsiveness which is invaluable today.

Rome McGuigan, P.C., Attorney John Bradley

Attorney Bradley stated that his firm has a dedicated team with the resources available to deliver the services necessary to run a Town the size of Wethersfield. He said that the firm works closely with the Town Manager and Town Department Heads on a day-to-day basis and the firm is familiar with how both the Council and the Town operate. Attorney Bradley said that his firm is aware of the quick and timely turnaround of work required and has a team of people who are dedicated to responding and delivering a high level of legal service at the lowest cost.

Chairperson Morin recognized that Attorney Bradley and Attorney Borrea are both residents of Wethersfield and asked Attorney Bradley if any other representatives from his firm reside in Wethersfield. Attorney Bradley said that he does not think that any other attorneys in the firm live in Wethersfield; however, the firm does employ staff members who live in Town.

Deputy Mayor Fortunato asked Attorney Bradley to review in more detail his firm's fee proposal and whether or not they would be willing to work on a flat fee basis. Attorney Bradley said that the key point to the proposal is that there is no hourly rate increase over the current fee being charged to the Town, and that the rates are consistent with what other municipalities pay. He said that litigation work requires a higher hourly rate and this has been consistent over the past ten years. Attorney Bradley said that the firm would be willing to consider a flat fee; however, he feels that the hourly rate system is most efficient for both sides because there is greater ability to control costs by screening proposals. He said that his firm would consider a flat fee, but there would need to be a guaranteed agreement as to what the level of demand will be. Attorney Borrea said that he does not recommend a flat fee concept as he does not

feel that the Town will receive the best level of service with such an agreement. Deputy Mayor Fortunato asked if there is a way to create a flat fee based on the firm's history of representation. Attorney Bradley said that a review of the budget pertaining to non-litigation work would need to take place in order to develop the flat fee amount. He said that this could be difficult, since the demand for legal services increases each year.

Councilor Drake asked if there is anything the Town should be doing differently to keep their legal costs down. Attorney Bradley said that the Town Manager has made a big difference and that the Town should continue to follow along this track. He suggested that some training sessions for proper procedure might be appropriate for certain Boards and Commissions at this time so as to avoid unnecessary litigation which would definitely keep legal costs down.

Councilor Kotkin asked Attorney Bradley if he is aware of any conflicts his firm may have involving the Town of Wethersfield, especially since Attorney Borrea represents Rocky Hill and towns have been known to sue each other. Councilor Kotkin also asked for an overview of the firm's experience with environmental law. Attorney Bradley said that the firm has no conflicts with Wethersfield in that the firm does not represent any clients who are attempting to sue the Town, and while representing the Town, no one in the firm would take a case against the Town. He said that there could be potential issues by having the firm represent different towns; however in practicality, he doesn't think that there are any. He said that he, himself, has been representing the Town of Cromwell for ten years, as well as the Town of Farmington, and Rocky Hill and that if there should be a situation of conflict, the firm would disqualify themselves from representing either party. Attorney Borrea said that this could actually happen with any firm. Attorney Bradley stated that his firm has expertise in litigation and contract work, but not really in environmental law, other than that pertaining to real estate transactions.

Councilor Forrest asked Attorney Bradley if he would continue to be the contact person for the Town of Wethersfield. Attorney Bradley answered that he would continue in this capacity. Councilor Forrest asked Attorney Bradley how he and other attorneys in his firm would continue to communicate or improve communication with the Town. Attorney Bradley said that copying people on email messages is a good way to communicate and his firm is accustomed to delivering personal service; therefore, he stops into the Town Hall often as well as having frequent phone conversations with the Town Manager and Town Department Heads.

Councilor Kirsche asked Attorney Bradley to provide an overview of his firm's experience regarding construction contract law. Attorney Bradley said that he has been working on numerous contracts for the past ten years as a municipal lawyer, and he has attended seminars on AIA contracts which are the contracts that form the basic building block for most construction projects. Attorney Borrea said that he has similar experience in representing the Town of Rocky Hill in their contracts and construction issues, as well as construction contract experience for the past twenty years.

Councilor Walsh said that the Town currently uses a separate attorney for labor issues and asked Attorney Bradley to comment on his firm's experience in the area of labor and if the firm could provide the Town with these services if they should continue to represent the Town. Attorney Bradley said that the firm would like to represent the Town in this area and that the firm does have attorneys who have extensive experience in representing both management and labor. He said that his firm has provided specialized service to Wethersfield regarding the pension plan.

Chairperson Morin asked the Attorneys if they have any closing comments or questions. Attorney Borrea commented on the Executive Square tax assessment case decision which was favorable for the Town.

Branse, Willis & Knapp, LLC, Attorney Mark Branse

Chairperson Morin explained that the same questions are being asked of each of the five firms represented this evening and that a decision will not be voted on until the first Council meeting in February.

Attorney Branse introduced himself, Attorney Matt Willis, Attorney Ken Kaufman, and Attorney Ron Ochsner, stating that none of the attorneys or staff in his firm currently reside in Wethersfield. Attorney Branse reviewed the credentials and experience of the attorneys at his firm who are all committed to municipal and public issues. He said that his firm believes in being proactive rather than waiting until a crisis has arrived, and also that his firm provides courses and

seminars regarding legal issues to all of their client towns, while maintaining a completely nonpolitical, nonpartisan stance.

Deputy Mayor Fortunato asked Attorney Branse to review his billing proposal and asked if his firm would be willing to work on a flat fee basis. Attorney Branse said that his firm works on a precise computer based billing system which has a built in timer to track how much time is to be billed to a particular file. He said that this system not only provides information to the firm, but also to the Town so that they can track which files are costing the most money. Attorney Branse said that his firm will not agree to work on a flat rate basis as they never have done so. He said that working on a flat rate, from a business stand point, indicates that as little work as possible will be done, and if the work is done correctly the Attorney fee would work out to a minimal amount per hour. Deputy Mayor Fortunato asked Attorney Branse if he would be open to charging a specific fee for routine work and additional fees for special cases. Attorney Branse said that he would not agree to this because an Attorney could ignore a problem at the regular fee, knowing the issue would go to litigation which would mean that the attorney can then charge a higher litigation hourly fee. He said that this scenario poses no incentive for the Town Attorney to intercept an issue early on. Attorney Willis suggested to the Council that no matter which firm is chosen, the Town does not proceed with a flat fee agreement as it creates a system with problems. Attorney Branse said that his firm prides themselves on immediate response.

Councilor Drake asked Attorney Branse what other towns have done to keep their legal costs down. Attorney Branse said that the number one item is to have the Town's front line staff understand and be knowledgeable about what their legal obligations are; therefore he recommends that they attend seminars offered by his firm or other agencies. He said that towns need to play it straight and be up front about issues rather than playing games. Attorney Willis said that the Town's staff also needs to call early to obtain feedback from the Town Attorney.

Councilor Kotkin asked Attorney Branse if his firm has any conflicts with the Town of Wethersfield, if his firm has experienced any conflicts within towns they represent, and asked him to provide an overview of the firms experience with environmental law. Attorney Branse said that his firm is not aware of any current conflicts they have with the Town of Wethersfield. He said that his firm represents Old Lyme, Old Saybrook, and Westbrook, and he is always conscious of the fact that when he is representing a particular town, he is representing that town only. He said that there have not yet been any issues with any of the participants. Attorney Branse said that his firm has experience representing wetlands agencies, but has not done much with DEP permitting. Attorney Kaufman stated that he was a counsel for the redevelopment agency in Hartford addressing many property issues. Attorney Ochsner stated that he has had experience with environmental law.

Councilor Forrest explained that the Town's point person is the Town Manager and he asked Attorney Branse if his firm requests a specific point person to deal with. Attorney Branse said that the firm is flexible with this, but they request, for budget control, that a contact person is designated so that there aren't many different representatives calling the firm. He said that often times responses are emailed and these communications can then be copied to whomever the Town representative deems necessary. Councilor Forrest asked who the contact person will be with the firm. Attorney Branse said that Attorney Kaufman would probably be the key contact person for Wethersfield because he has an extensive background in dealing with a more urbanized area.

Councilor Kirsche asked Attorney Branse to speak briefly about the firm's experience with construction contract law. Attorney Ochsner said that he has had some experience in this area and that he has an engineering background. Attorney Branse said that each attorney is a primary contact for a specific municipality; however they pool their experience together to work for each town.

Councilor Walsh asked Attorney Branse to review his firm's experience with labor relations and whether they would be able to service a community the size of Wethersfield. Attorney Branse said that his firm does not have experience with labor law stating that it is a specialized area to be handled separately.

Chairperson Morin asked Attorney Branse if he had any closing comments or questions. Attorney Branse said that the Council's questions covered a wide range and he and his partners have provided very blunt and honest answers, as they always do.

Jackson, O'Keefe and Phelan, Attorney Peter O'Keefe

Chairperson Morin explained that the same questions are being asked of each of the five firms represented this evening and that a decision will not be voted on until the first Council meeting in February.

Attorney O'Keefe said that his dad, who started the firm, was Wethersfield's Town Attorney in the late 1960's and also served as the Town's Prosecutor. He said that Jackson, O'Keefe and Phelan is a small firm of nine attorneys who pride themselves in working with a partnership approach. He said that the firm strives to be proactive in providing a legal advisor to advise the Council, Town Manager, boards and commissions as to legal needs. Attorney O'Keefe said that the Council needs to consider what they are looking for in a Town Attorney, other than the requirements stated in the Town Charter. He said that he would like to speak with the Council, the Town Manager, the Police Chief, etc to examine what they anticipate the legal issues of the Town will be and then determine how his firm can be a benefit. He said that he suggests this proactive approach rather than a reactive approach. He said that his firm generally works on an hourly basis; however they could work on a retainer agreement depending on the Town's legal needs. Attorney O'Keefe said that his firm offers a wide variety of municipal legal defense experience and that they have dealt with both construction and employment issues. He said that it is best to seek legal advice before taking action so as to avoid costly litigation down the road. Attorney O'Keefe said that his firm can provide the Town with high quality legal work while saving them money.

Deputy Mayor Fortunato asked Attorney O'Keefe to provide an hourly rate since one does not appear in his proposal. Attorney O'Keefe said that the firm's normal hourly rate is \$200-\$250; however, he recommended to the firm that services be provided at a rate of \$150 per hour. Deputy Mayor Fortunato asked Attorney O'Keefe for feedback regarding a flat fee for routine issues and additional for litigation work. Attorney O'Keefe said that "routine" is a relative term and he does not know how much time has historically been spent on these issues. He said that his firm is open to discussion of a flat retainer-type fee for some issues; however, he suggested that the Town look into hiring an attorney as a Town employee to handle the routine, mundane issues that occur on a regular basis.

Councilor Drake asked Attorney O'Keefe if his firm represents any other municipalities. Attorney O'Keefe said that his firm does not currently represent any other municipalities as Town Counsel. Councilor Drake asked Attorney O'Keefe what he would recommend to help the Town save on legal costs. Attorney O'Keefe said that his firm has represented a number of municipalities in litigation matters and the firm does only what is necessary so as not to charge any town any more than it should.

Councilor Kotkin asked Attorney O'Keefe if his firm would have any conflict of interest in representing the Town of Wethersfield and also to provide an overview of the firm's experience with environmental law. Attorney O'Keefe said that the firm currently has no conflict with representing Wethersfield. He said that the firm has handled a small number of cases in the environmental field, and have a very strong litigation aspect in the firm.

Councilor Forrest asked Attorney O'Keefe if he will be the contact person in his firm for the Town. Attorney O'Keefe said that, for the sake of continuity, he would be the contact person in his firm. Councilor Forrest asked how Attorney O'Keefe would utilize the other attorneys in his firm. Attorney O'Keefe said that he would utilize the expertise and experience of the appropriate attorneys in the firm.

Councilor Kirsche asked Attorney O'Keefe to expound upon his firm's experience with construction contract law. Attorney O'Keefe said that the firm's experience goes back to the collapse of the Hartford Civic Center in 1977-78, as well as numerous other extensively litigated construction cases.

Councilor Walsh asked Attorney O'Keefe to provide an overview of his firm's experience with labor law and labor relations, and whether the firm would be able to handle Wethersfield's needs in this area. Attorney O'Keefe said that labor law and labor relations are specialized areas and his firm does not get involved in this as they do not have the experience to do so at this time. He recommended that the Town continue to utilize specific labor lawyers to handle this.

Chairperson Morin asked Attorney O'Keefe if he had any closing comments or questions. Attorney O'Keefe said that

he would have liked to have been more concrete with his proposal to the Town; however he does not have experience serving a municipality and therefore has not been able to fine tune a flat fee in terms of routine work and other work.

Halloran & Sage, P.C., Attorney Duncan Forsyth

Attorney Szerejko stated that Halloran & Sage has been in Hartford for seven years and there are currently three attorneys and many staff members of the firm residing in Wethersfield. Attorney Szerejko said that the firm has served Wethersfield in the recent past and they have represented a number of municipalities over the years. He said that the firm is primarily known for litigation and from this the firm has learned a lot about how problems begin and how they are resolved. Attorney Szerejko said that Halloran & Sage is a large firm with a separate municipal group. He said that a large firm provides for much greater resources and experience. He also said that the firm prides themselves on returning phone calls immediately or as soon as possible within the same day, since with their experience they are aware of the problems faced by municipalities.

Deputy Mayor Fortunato asked for a more detailed description of the proposed fees and whether or not Halloran & Sage would consider a flat fee. She also asked for an explanation of what an "extraordinary cost" would be and was told that an "extraordinary cost" would pertain to something like a major environmental issue that would require a special arrangement to be discussed with the Town. Deputy Mayor Fortunato asked if there is a range of fees for this type of work and was told that the range would be between \$175 and \$225 per hour. Attorney Forsyth said that the firm always works with the municipal client to develop a reasonable fee since the firm is aware that the Town has a fixed budget. He said that working with a flat fee is dangerous because lawyers would have to compromise somewhat and the Town will not get the full service they deserve.

Councilor Drake asked Attorney Forsyth what his firm would do for Wethersfield in terms of being proactive in keeping legal costs down. Attorney Forsyth said that his firm provides free seminars on pertinent topics, which help to educate Town staff and avoid problems before they occur. He said that not only is there a cost saving in that the seminars are free, but the education gained will ward off future litigation. Attorney DiVincentis commented that he was a contractor before becoming an attorney; therefore he understands the contracting business and this is of great value to clients. He said that because of this experience he understands the project delivery systems and therefore can structure contracts legally and provide good business advice. Attorney Forsyth said that his firm always encourages municipalities to be proactive in asking questions before taking action rather than after when there could now be an issue.

Councilor Kotkin asked Attorney Forsyth if his firm has any potential conflicts with working with the Town of Wethersfield, and also asked him to review the firm's experience with environmental law. Attorney Forsyth said that his firm is still currently representing the Town of Wethersfield in various matters, and therefore could not be involved in a matter adverse to the Town of Wethersfield. He said that his firm has been involved in various environmental matters in both the private and public sector.

Councilor Forrest asked who the firm's primary contact with the Town would be and how this person would be contacting the Town Manager. Attorney Szerejko said that his firm's two contacts would be himself and Attorney Forsyth. He said that at least two contacts are helpful, since attorneys can be called out of the office and it is difficult to rely on just one. Attorney Szerejko said that his firm is flexible in pleasing their municipal clients and has even developed "exotic billing" so that billing is divided into subsets of Town departments so as to better track a Town's legal fees.

Councilor Kirsche asked for a more detailed explanation of the firm's construction contract law experience. Attorney DiVincentis said that he has personally been a part of putting approximately \$300,000,000 of construction into the ground from a contracting perspective, and has represented many districts from a legal perspective. He said that he is proactive with his clients in terms of risk avoidance and risk management. He said that he has handled claims in excess of \$85 million and he would rather help clients avoid those risks up front rather than deal with the problems afterward.

Councilor Walsh stated that the firm's proposal notes that Attorney Forsyth has extensive experience with grievance arbitration and other appointment-related matters, and he asked if Halloran & Sage would be able to handle the labor

relations needs of a Wethersfield. He also asked that if this is possible, would the services fall under the ordinary billing category or considered extra services. Attorney Forsyth said that the firm can handle Wethersfield's labor needs and that this service would fall under the regular billing rate.

Chairperson Morin asked the attorneys if they have any closing comments or questions.

Attorney Szerejko stated that since his firm has represented a number of municipalities, the attorneys realize that the position and decisions of a Town Councilor can often be uncomfortable and that his firm is nonpartisan and nonpolitical. He said that the Town Attorney is not an attorney for one political party or another, but rather the attorney for the Town and has the responsibility to do, with the highest ethical standards, what is in the best interest of the Town. He asked that if the Council does not choose Halloran & Sage that they keep the firm in mind for special counsel work since the firm enjoys municipal work.

A consensus was made by the Council go have Town Manager Bonnie Therrien make reference checks on all firms by Sabia & Hartley, LLC and Jackson, O'Keefe and Phelan, who will no longer be in the pool for Town Attorney.

ADJOURNMENT

At 9:03 p.m., Councilor Kirsche moved "**TO ADJOURN THE MEETING**" seconded by Councilor Kotkin. All Councilors present, including the Chairperson voted AYE. The motion passed 8-0-0.

Dolores G. Sassano
Town Clerk