**Town of Cape Elizabeth**

**Review of External Professional Service Providers**

Each year the Cape Elizabeth Town Council adopts goals for the ensuing year. One goal for 2014 is as follows:

* The town council will evaluate its external professional service providers including legal and audit services.

At a town council workshop on February 24, 2014, the council asked Dave Sherman and Jamie Wagner to meet with the town manager to conduct the evaluation and to report back to the council. Our report follows:

**Legal Services**

The primary focus of the review was legal services. The town charter provides that the council shall *appoint a town attorney or attorneys, who shall serve at the will of the council.*

The position of town attorney has been held by Thomas G. Leahy of Monaghan Leahy, LLP since 1982.

Mr. Leahy serves as the primary counsel for the town. He handles issues before the town council and consults with staff on governance, administrative, real estate and contract matters. In addition, John J. Wall, III of Monaghan Leahy serves as counsel for the planning board and the zoning board of appeals. He represents the town in litigation arising from decisions from these boards.

In addition to Monaghan Leahy, the town utilizes other legal counsel in areas of specialty. Patricia M. Dunn of Jensen Baird Gardner & Henry has and continues to advise town staff on employment law issues. Kenneth M. Cole, III, of Jensen Baird served as counsel on issues involving the development of a shooting range ordinance. Durward W. Parkinson of Bergen Parkinson assisted the town with the review of issues related to approval of an updated greenbelt plan. Maurice A. “Cito” Selinger, III, of Curtis Thaxter provides occasional advice on affordable housing provisions. Bruce A. Coggeshall of Pierce Atwood has served as the town’s bond counsel since 1977.

Other communities tend to utilize a single firm for all of their legal work except when conflicts arise. The practice of the Town of Cape Elizabeth varies from the norm in that we use one firm as primary counsel but look for specialized expertise when deemed appropriate. The study group believes that this approach has served the town well. Our legal costs have generally been lower than similar communities when these numbers were examined in the past. The town has a good record of defending its boards while keeping litigation at a low level. This reflects good advice given before decisions are made and competent citizens serving on municipal boards. The town also has a relatively good record of resolving conflicts prior to them leading to litigation.

The study group reviewed the amounts the town has spent for legal services over the last five years. The total is $211,529 with 77.9% of that to Monaghan Leahy. Of the total amount, $3,019 was spent on legal fees to Preti Flaherty as part of a settlement of an employment issue. The current rate charged by Mr. Leahy is $175 per hour and $165 per hour for Mr. Wall. These are very reasonable rates and are typical of law firms giving municipalities lower rates than are billed to commercial clients.

**Legal Services Recommendations**

The study group makes the following recommendations:

The town should continue with Thomas G. Leahy and the firm of Monaghan Leahy LLP as the primary town attorney serving in the areas of law as have been customary over the last several years.

The town attorney should meet annually with the town council to review any pending litigation and to provide an overview of legal issues Cape Elizabeth and other communities are typically facing.

The town should continue to utilize other counsel when deemed appropriate. As the charter provides that attorneys are appointed by the town council, the town manager may receive permission from the town council chair to engage any firm prior to a meeting but the engagement of any new counsel not previously used shall be made by the full council.

For land use issues, Durward Parkinson should continue as the primary alternative counsel when Monaghan Leahy has conflicts and should be asked to continue to represent the town on any issues arising from the adoption of the updated greenbelt plan.

For employment law issues, past councils have been aware of the use of Patricia Dunn but the appointment of her as an attorney for the town may have never been formally voted. This should occur.

Bruce Coggeshall should continue as bond counsel.

It is anticipated that the firms of Monaghan Leahy, Jensen Baird Gardner & Henry, Bergen Parkinson and Pierce Atwood will not bring any action on behalf of other clients against the town while serving as attorneys and counsel for the town. The firms may do routine work involving the town on behalf of clients that is not in in conflict with the town. The town manager may not waive any conflict of interest with these firms for litigation against the town. The town council may consider a waiver in unusual circumstances.

**Legal Billings- 2009-2013**



**Audit Services**

Runyon Kersteen Ouellette (RKO) , a South Portland firm, has served as the town’s auditors since 1987. They are the premier municipal audit firm in Maine. Our partner is Casey S. Leonard and the audit manager is Jennifer Conners. Mr. Leonard is the fourth partner to oversee our relationship with RKO and there have been quite a few audit managers.

Unlike legal services, RKO is the auditor for both the town and the school department. The cost is just over $30,000 per year. In addition, RKO prepares the 990 for the Thomas Jordan Trust and the Museum at Portland Head Light which are separate 501 c 3 not for profit corporations.

The firm provides excellent services to the town with Cape Elizabeth usually being one of the first communities in Maine to receive its annual audit following the end of the fiscal year.

**Audit Services Recommendation**

The study group recommends that the town continue to engage RKO as our auditors. The town finance chair should meet with the RKO partner later this year to discuss the upcoming audit and the need to ensure that RKO staff rotates from time to time so that fresh eyes review our financial practices.

**Proposed Town Council Vote**

To accept the recommendations of the external professional services study group, to affirm the continuing appointment of Thomas G. Leahy as town attorney and the firm of Monaghan Leahy LLP as the town’s primary legal service provider, to appoint Patricia M. Dunn and the firm of Jensen Baird Gardner & Henry as additional legal counsel on employment law issues , to appoint Durward W. Parkinson and the firm of Bergen Parkinson as primary alternative counsel when Monaghan Leahy has conflicts, to affirm the continuing appointment of Bruce A. Coggeshall and the firm of Pierce Atwood as bond counsel, to appoint Maurice A. Selinger, III as a continuing legal counsel on affordable housing issues and to authorize the town council chair in consultation with the town manager to procure any other additional legal counsel needed prior to a meeting with the understanding that any continuing appointment of any attorney serving the town shall be done by the full town council. All appointed attorneys and legal counsel serve at the will of the town council.

To reappoint Runyon Kersteen Ouellette as town auditors for Fiscal Years 2014, 2015 and 2016 upon such terms as may be mutually agreeable. The engagement letter for each year shall be signed by the town council chair and the town manager at amounts not to exceed budgeted amounts.