

SELECT COMMITTEE ON LEGAL REVIEW MINUTES

March 27, 2008

7:30 p.m. Town Hall Meeting Room

Meeting called to order at 7:30 p.m.

Committee Members Present:

Lincoln Briggs
Elayne Robertson Demby
Steven Ezzes
David Fleming
Douglas Olin
Dennis Tracey
William K. Watanabe

1. Approval of Minutes

David Fleming moved to approve the minutes of the March 13, 2008. Douglas Olin seconded. The motion passed unanimously.

2. Public Hearing

The Chair then invited members of the public to speak on any subject relevant to the mission of the Committee. Speakers were reminded to limit their comments to factual information that is relevant to the mission of the Committee and to limit comments to no more than 10 minutes in length. The following witnesses appeared before the Committee:

Henry Roehr

Mr. Roehr stated that he had information concerning the claim by Losito Electric against the Town based on his review of certain materials relating to the case. Mr. Roehr stated that he reviewed the claim and, based on that review, concluded that the Losito Electric lawsuit against the Town had no merit and did not include the type of support that is customary in such matters. He further stated that based on his review of the contract between the Town and Losito Electric in September of 2007 in Jarvis House, the contract was dated in March 2004 and had an arbitration provision. Mr. Roehr stated that he advised First Selectman Bliss of his opinions.

Mr. Roehr stated that the Town settled the Losito Electric claim for \$125,000 with a partial release that allowed future claims, even though the

Construction Manager, O & G Construction, concluded that the matter had no merit. Mr. Landry, Town Administrator, however, stated that the Town concluded that the claim did have merit.

Robert Turner

Mr. Turner, the Town's Zoning Enforcement Officer since 1998, stated that he had information concerning the performance of the Town Attorney based on regular contact with the Town Attorney in his position as Zoning Enforcement Officer. Mr. Turner stated that the Town Attorney's regular visits to the Town on Wednesdays provided a good opportunity for interaction with the Town Attorney. He further stated that in his experience the Town Attorney provided legal advice to the Town, but did not issue instructions to Town employees. He described the Town Attorney's advice as "consistent" and "constructive". Mr. Turner further stated that he found that the law firm of the Town Attorney had a good "back room" with the breadth of experience necessary to address the varied questions that arise in the conduct of the Town's business. Mr. Turner stated that it was his opinion that it was not necessary to have an in-house Town Attorney.

Richard Wolf

Mr. Wolf, the Chair of the Zoning Board of Appeals and the past Chair of the School Building Committee, stated that he has information concerning the performance of the Town Attorney, but has no opinion on the fee structure.

Mr. Wolf stated that in his experience the Town Attorney provides advice to the Zoning Board of Appeals, but does not direct the Board's deliberations and allows the Board to make up its own mind on questions before it.

With respect to the School Building Committee, Mr. Wolf stated that the Town Attorney provided advice to the Committee on the drafting of contracts for the project. He stated that, based on the advice of the Town Attorney, the Committee decided to strike the arbitration clause in contracts with the building contractors for the project, but retained the clause for the contract with the project architect.

Mr. Wolf further stated that the Town Attorney provides information on claims filed by contractors against the Town. He emphasized that the Town Attorney provides a professional opinion on the costs and possible outcomes of claims, including that of Losito Electric, but does not decide whether to settle the claims. With respect to the Losito Electric claim, state statutes allow the type of release signed in that case. He stated that the Committee had a fiduciary duty to recommend to the Town the best and most economical manner of resolving claims.

The School Building Committee recommended the resolution of the Losito Electric claim on the terms agreed.

Monty Kaufman

Mr. Kaufman is a resident of Weston and the owner of Puppies of Westport. Mr. Kaufman provided information concerning a personal dispute with the Town Attorney regarding Mr. Kaufman's business.

James Maggio

Mr. Maggio expressed concerns about the settlement of the Losito Electric claim against the Town, and that he was also concerned about the pending claim by C&H Electric, the electrical contractor for the high school building project.

Mr. Maggio further expressed concerns relating to the contract for the resurfacing of Revson Field. He stated that the contract specified only that the resurfacing would be performed using "topsoil mix".

Mr. Maggio read from a deposition of Mr. Robert Turner in the matter of *Stones Trail, LLC. v. Ridgefield Bank* in Superior Court, Stamford. In particular, Mr. Maggio referenced the testimony of Mr. Turner that it was "[p]robably a technical nicety, that I'm not sure that town counsels can direct people to do things." A copy of the deposition was provided to the Committee.

Mr. Maggio noted that the Town Attorney had represented the Martins in a dispute with the Town regarding access to their property, and that the Town Attorney should have recused himself when a related issue came later before the Town and instead provided advice that led to the creation of a one-lot subdivision.

Mr. Maggio also noted that although the Town Attorney was involved in the Trout Brook project and other environmental disputes, he failed to advise the town concerning violations involving Morehouse Park. The Town Attorney fought the imposition of a fine, which has resulted in the expenditure of \$30,000 per year of monitoring expenses, as well as potential damage to nearby wells.

With regard to Lachat, Mr. Maggio stated that the Town Attorney provided advice that was inconsistent with the phased approach contained in the Lachat documents, which caused the Town to waste \$200,000 in the development of a plan that was ultimately rejected by the Town.

Gay Schonbrunn

Ms. Schonbrunn addressed the personal dispute between Mr. Kaufman and the Town Attorney, stating that the Town Attorney was counsel to the Westport Coalition Against Puppy Mill Factories. The Chair stated that the

personal dispute between Mr. Kaufman and the Town Attorney was beyond the scope of the Committee's mission.

Donald Salzman

Mr. Salzman, the Chair of the Planning & Zoning Board, expressed confidence in the services of the Town Attorney. He stated that the Town Attorney does not settle claims – the Town and the Selectmen make the settlement decisions. Mr. Salzman offered to provide the Committee further information on his communications with the Town Attorney in Executive Session.

3. Executive Session

The Chair stated that the Committee would be receiving information that included confidential attorney-client privileged information in an interview of Tracy Kulakowski. David Fleming moved to go into executive session. Douglas Olin seconded, and the motion was carried unanimously. The Committee thereupon conducted an executive session for the purpose of interviewing Ms. Kulakowski.

Meeting adjourned 9:35 pm

Respectfully submitted,

Dennis H. Tracey, III, Chair

Approved April 2, 2008