Board of Selectmen
Minutes of September 11, 2012
Bourne Community Building
Bourne, MA 02532

TA Guerino

John Ford, Chairman
Don Pickard, Vice-Chairman
Peter Meier, Clerk
Earl Baldwin (excused)
Linda Zuern

Members of the Press: Diana Barth, Bourne Enterprise and Paul Gately, Bourne Courier
Guests: Phil Goddard, Dan Barrett of ISWM

List of documents
- None

Meeting called to order
6:00 pm by Chm. Ford

Presentations by legal firms to assist Town Counsel in representing ISWM in contract negotiations 6:00 pm – 7:00 pm
Atty. Bennet Heart from Noble & Wickersham, LLP
Brief summary of project in both environmental and land use projects and construction and land use law. Some of work in renewable energy realm (wind projects) with two large State agents which are similar to projects to the ISWM project. A portion of the required work would be with real estate transaction experience. He would jointly work with Atty. Rebecca Lee, with regard to the real estate transactional work, funding, lender benefits. He would focus on environmental issues. Atty. Heart held position in the Environmental Affairs for eight months.

TA Guerino explained the main focus of the interim development agreement is to protect town during the permitting process, and then ultimately the 25-year site lease.

Pickard – the firm the town is looking for is to specifically focus on draft leases and site responses which will be coordinated with Town Counsel.

Atty. Heart – is qualified for the environment piece in combination with Ms. Lee in the real estate transaction as well as the fiduciary issues (properly insured and if went bankrupt, had funding to remove facility to start over). Atty. Lee's rate is $400/hour. Atty. Heart's fee is $260/hour.

Meier – asked Atty. Heart what he learned from having clerked for Judge Black. Atty. Heart clerked for Judge Black for a year. During the day he sat through all trials at court and spent nights writing draft opinions.

Atty. Heart – he works mostly for Holy Oak, CT on renewable energy projects, permitting with Holy Oak Dam, mitigation requirements of parks (Historic, Wetlands, Army Corps. His firm works for Pittsfield on solar projects (lease arrangement). The hourly rate for himself and Atty. Lee is discounted for municipalities and non-profits.

Zuern – how much time to get the job or how long it would take you by looking at the development of documents or going through the permitting of projects. TA Guerino said it would be phased. The intent, if retaining counsel for the purpose of site assignment and interim agreement, the firm would take Bourne through the project, but a phased piece for assessment.

Mr. Barrett – sees the phases as to first look at the documents and work through, step into interim development agreement then negotiations with the lease. The timeframe will be known as the town goes through the process.

Mr. Heart has not worked with any landfill assignments, but has worked with DWP doing types of projects, is familiar with the process and understands the regulations.

TA Guerino – as negotiatate, what does the firm do to protect the town's fiduciary position beyond bonding through ISWM; what are the other assurities while doing contract, and from work with DEP where are protections to the BOH and site assignment if there is an environmental failure in the end. This all falls back to the town and the BOH has a responsibility.

Atty. Heart – environmental: lease provisions (assurances and insurance type) for both ISWM and the BOH. The fiduciary issue he would defer to Atty. Lee as there are other mechanisms (deposits and would like to hear particular issues). He added that what the company can afford is also a factor.

<u>Thomas Mackie from Mackie Shea O'Brien</u>
Corporate experience and Environmental laws experience (hazardous waste laws). As far a protecting the town's financial status and protecting the Board of Health (BOH), there would be a host agreement between the Facility Operator and the town (both separate and as a part of the agreement with ISWM). He has negotiated host community agreements, representing landfill developers. He's had success in negotiating host agreements (transfer and solid waste landfills in variety of circumstances). Towns he's worked with include South Hadley, arrangement for putting funds aside for adequate closure and post closure for the town and DEP (typical mechanism). The issue is that there will be no one has operating experiences and

this will be where "the rubber hits the road". He has worked for Harvest Power and negotiated contracts, fuel supply contracts, and operating agreement. There is no conflict of interest from working with prior clients. Assurance provisions over environmental exposures (ammonia leak) are through obtaining insurance through AIG (cost prohibitive).

Atty. Mackie cannot help the town with bonding, however, the environmental liability policy is typical. He has submitted comments to the DEP with regard facility operations and site operations requirements. He's represented landfills with Interstate Waste Systems in Western MA. There was a project in Hadley with solar panels with the DEP for a financial assurance program. In greater New Bedford he has done some environmental work by negotiating a landfill gas contract. He has been involved a little on the 30B process and has drafted responses. In North Hampton he has negotiated settlements along with the first half of arbitration with a landfill gas energy plant over gas quality and revenues. He has worked with landfill contracts in St. Louis, Plainville.

With regard to municipalities, his firm has worked for more landfill site assignments in the State, and has handled multiple in the states. He's worked for Gloucester, Falmouth, Fairhaven DPW, City of Brockton, City of Concord to look at public/private use of water supply program.

With regard to the scope of arrangement, although he hasn't seen the mark up of the document, he has negotiated before and estimates 20-40 hours of work for documents. His rate is $400/hour and may be able negotiation. He has two associates who are $250 - $290/hour.

Some of Atty. Mackie's site assignments have been achieved, and some were an honorable withdrawal.

Meier – asked about the Sturbridge and the National Solid Waste Association and whether or not there was a right of appeal by the 10 citizen group. Atty. Mackie said the appellant prevailed.

<u>Mark Kalpin from Wilmer Cutler Pickering Hale and Door LLP</u>
Experience working in the energy and environment face since 1986 and is actively involved in the Commonwealth since 2000 in renewable energy section. Projects include wind, solar, bio mass, landfill, ethanol, renewable fuel in MA. As far a municipal work, MA Clean Energy Center in helping to work to get the community wind and solar projects (some on landfills and next to wastewater plants); a client representative in a Scituate wind project and solar; Dartmouth solar project on a closed landfill, solar on private property; City of New Bedford RFP for solar projects on city-owned property both on development and model purchase and site lease agreement; negotiated with a developer on a side agreement to make opportunities for both private commercial operation and residents in the city; Cohasset solar project on a school roof and solar on the town's former landfill. He has also worked with private companies in MA; the largest in MA is up and running in Salsbury; working with a private company in Billerica

(environmental issues) and the US Environmental Protection Agency. He has also worked on solar renewable energy certification program and net metering for facilities and is currently representing the Governor of the Commonwealth of Puerto Rico. He has landfills experience and has worked on gas energy projects in MA, ME (Casella – wind, transfer, site assignments and landfill operation agreements), NH, CA.

Atty. Kalpin has been able to bring associates and other partners as needed. For putting together, it is a package deal from the town's perspective which includes how it physically works and how the project is financed. The town needs to work with the lender's perspective, which is a different perspective. Atty. Kalpin knows how to work with these components together and how to operate (lease, development agreement, host agreement), understands the risks; all risks allocated across the board, is the most important.

Moving forward, in terms of protecting town there are two areas of risk: 1) is the project going to get constructed (upfront funding); and 2) renewable projects (escrow accounts). Not knowing the proforma (how much money to generate), you still have to make sure the project is successful. All communities he has worked with are mindful of this. Atty. Kalpin's rate is $629/hour, which is discounted rate. His rate is higher, but has healthy experiences. The fee in line with what expected.

With regard to the permitting, Atty. Kalpin said before applications are being put in, think through how this project will work, what can go wrong and how fix. Know what site conditions are documented and accept documented conditions. If this information is not in the conditions or documented, the town is responsible.

In conclusion, Chm. Ford explained there will be some research and will come back with a decision in about two weeks.

Pickard MOVED and SECONDED by Meier, the board unanimously voted a four-minute recess. Meeting reconvened and Chm. Ford called meeting to order at 7:07 pm.

Note this meeting is being televised and recorded. If anyone in the audience is recording or video-taping, they need to acknowledge such at this time

Moment of Silence/Salute the Flag

Public Comment
None requested.

Approval of minutes – regular: 9/4/12
Pickard MOVED and SECONDED by Ford to approve regular session minutes of 9/4/12 as submitted. VOTE 4-0 (under the Necessary Act, absent members can vote).

Correspondence
Meier read correspondence into record. Hard copies are available at the Town Administrator's office upon request.

Item B - TA Guerino forwarded to DPW, DNR, Conservation and Pollution Task Force to come back.

Item D – the board will address on 9/18/12.

Item G – emails and attorneys. TA 5/2/12 – 8/9/12 and determined all scheduling information per public records request.

Item H – Poling members of the Charter Compliance Committee for an attorney.

Chm. Ford – additional item with regard to Record for Retention.

Note Signing
State House Note $1.421M requires no vote as it is a temporary bond. Selectmen signed per Town Treasurer's request.

Licenses/Appointments

a. **Transportation Advisory Committee – John York**

Pickard MOVED and SECONDED by Meier to appoint John York to the Transportation Advisory Committee for a term to end 6/30/14. VOTE 5-0.

Town Administrator's report

a. **ARC meeting with Board of Selectmen**

Item will be before the board on the 10/2/12 meeting.

b. **Training Schedule – TA Guerino**

9/20/12 and 9/21/12 – Mass Managers' training in Amherst, MA
10/5/12 through 10/10/12 – ICMA National Conference in Arizona. Transporation for Baby Boomers. Mandated by the Selectmen.

TA Guerino to return on Tuesday 10/18/12.

c. **Hoxie School – update/moving forward – TA's discussion with Attorney Troy**

Selectmen's business
TA Guerino met with Atty. Troy. Moving forward, he will invite the Friends sit with himself and Town Counsel with the timeframe between now and the end of the fiscal year.

Selectmen's Business

a. **Eco toilets**

Eco-Toilet demonstration project and Town of Falmouth's $5,000 grant and other Incentives on Thursday 9/13/12 from 7:00 pm – 9:00 pm at the Falmouth Public Library.

Zuern – attended workshop. Looking for some 60 volunteers Capewide to retrofit bathrooms with eco-toilets. DEP will test nitrogen for a period of time. The first 10 who apply get $5,000 incentive towards the toilets. Future workshops will be on Saturday 9/15 and 9/26 from 10:00 am – 12:00 pm. The system includes a large drum for larger projects (commercial) and composite comes out at the other end.

10/23/12 - shorter presentation presented to the board as part of the BOSC meeting. Zuern will confirm with TA's office.

Allyson Bizer-Knox – asked for a brief description of the eco-toilets (composting toilets). A container goes into the basement. The newer models have a handle to turn to clean. $6,000 is the price of a cheaper model.

b. United Nations Day Proclamation

This comes before the board annually. The board voted the last two years.

Zuern – has a concern signing the Proclamation and will not vote in favor.

Pickard – feels it is a simple request.

Ford MOVED and SECONDED by Pickard to table and move Indefinite Postponement of the United Nations Day Proclamation. VOTE 5-0.

Adjournment

Pickard MOVED and SECONDED by Meier to adjourn. Meeting adjourned at 7:34 pm.

Respectfully submitted - Lisa Groezinger, sec.