TOWN OF GREENWICH
BOARD OF ESTIMATE AND TAXATION
LAW COMMITTEE MEETING
MINUTES

Tuesday, April 17, 2018
Law Department Conference Room

Committee: Elizabeth K. Krumeich, Chair; Karen Fassuliotis

Law: John Wayne Fox, Town Attorney; Valerie Maze Keeney, Assistant Town Attorney; Eugene McLaughlin, Assistant Town Attorney; John K. Wetmore, Special Counsel

BET: Jill Oberlander, Chair; Leslie Tarkington

Finance: Peter Mynarski, Comptroller

Retirement Board: Joseph Pellegrino, Retirement Board Chair; Edward H. Smoot ("Ted"), Patterson Belknap Webb & Tyler LLP, counsel for Retirement Board (by telephone)

The meeting was called to order at 10:02 AM.

1. Discussion in Executive Session of Pending Cases in Litigation

The Committee voted 2-0 to go into Executive Session at 10:02 AM to discuss pending cases in litigation. After some discussion the Committee voted 2-0 to come out of Executive Session at 10:50 AM.

On motion by Ms. Fassuliotis, seconded by Ms. Krumeich, the Committee voted 2-0 to accept the proposed recommended settlement for Swesinger v. Henrie, et al.

2. New Business

Due to time constraints of Attorney McLaughlin upon motion by Ms. Fassuliotis, seconded by Ms. Krumeich, the Committee voted 2-0 to adjust the Agenda and consider the proposed Amendment to the Investment Management Agreement with Neuberger Berman (NB) currently under consideration by the Retirement Board. Under the proposed Amendment, NB would retain National Financial Services, LLC (NFS), a subsidiary of Fidelity, to serve as a clearing agent and sub-custodian in order to manage the Retirement Funds of the Town. Attorney McLaughlin is determining whether or not the Retirement Board has the authority under Section 208 of the Town Charter to approve of this engagement by NB to retain a sub-custodian rather than continue with State Street Corporation, the current custodian for the Retirement Funds. Attorney Smoot believes that it does meet what the Charter is requiring but indicated that he would look at Section 208 with the Law Department to review the requirements of 208 relating to the proposed amendment.
Attorney McLaughlin advised the Committee that he was seeking assistance from attorneys in the National Association of Pension Attorneys (NAPA) to see if other outside investment advisors to retirement funds retained a sub-custodian. The Committee was given information as to what other municipalities who use NB are doing with respect to a custodian for their pension plan.

The Committee was informed that an RFP had a request for a separate custodian and separate investment manager but the responses were limited because of the indemnification language required by the Town. The Committee asked the Comptroller to provide them with a copy of the RFP that went out as well as a copy of the indemnification requirement by the Town.

Attorney Smoot was asked whether it is common for there to be an investment advisor that is also serving as a custodian through a third party? Mr. Smoot explained that it was not unusual, but that it is a business decision. It must be determined if the arrangement would be right for the Town based on what the Town wishes to accomplish. What is unusual is that there can be a concern about fraud, but Attorney Smoot felt that because there is elaborate SEC, FINRA and other regulations to cover the investment advisor serving as a custodian this is less likely. He noted that historically fraud is more likely for smaller institutions, not a large institution such as Neuberger Berman. Discussion focused on the various aspects of having NFS serve as the clearing agent and sub-custodian and whether it were possible to have the Town enter into a contract directly with NFS. That question had been asked but NFS does not have customer interface and would not enter into such an agreement as they are a clearing agent and sub-custodian, not a separate custodian. The Committee reviewed aspects of the amendment and requested that in Paragraph 1.6 language be added that notice goes to the Retirement Board should NB decide to use a different clearing firm than NFS.

The Committee deferred a vote on the amendment pending clarification from the Law Department.

3. Discussion in Executive Session of Pending Cases in Litigation

The Committee voted 2-0 to re-enter Executive Session at 11:43 AM to discuss pending cases in litigation. After some discussion the Committee voted 2-0 to come out of Executive Session at 11:52 AM.

4. Discussion of Insurance Policies for Town

The discussion of insurance policies was deferred to the next meeting.

5. Discussion of deed restrictions for the property at 70 Parsonage Road

The Committee discussed the need to search the land records for deed restrictions. The information gathered in 1995 as well as a recent settlement of three neighbors of The Nathaniel Witherell in 2004 or 2005 which ended in agreements between Planning and Zoning, Inlands Wetlands and Waterways and the Zoning Board of Appeals were discussed. Attorney Wetmore and Town Attorney Fox will follow-up to determine whether any documents can be found. The Committee indicated that The Nathaniel Witherell Strategic Planning Committee would need to know what the legal restrictions are, if any, for the transfer of the
property to an outside entity and whether any restrictions were placed on forming the hospital district.


Ms. Krumeich indicated that she will pull out the Charter/ordinance provisions relating to the $5000 spending limit for discussion by the Committee at a later date.

7. Discussion in Executive Session

The Committee voted 2-0 to go back into Executive Session at 12:18 PM.
The Committee voted 2-0 to come out of Executive Session at 12:26 PM

8. Approval of Minutes of Past Meetings

The Committee approved the Minutes of its February 13, 2018, meeting by a vote of 2-0-0.
The Committee approved the Minutes of its February 23, 2018, meeting by a vote of 2-0-0.

9. Adjournment

The meeting was adjourned at 12:29 P.M.

Karen Fassuliotis, Recording Secretary

Elizabeth K. Krumeich, BET Law Committee Chair