

Select Board

2 for 3 years

League Question: **Discuss the advantages and disadvantages of hiring an in-house counsel:**

Incumbent

Douglas M. Lucente

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Phone number: 781-862-2534

Community Activities: Select Board, Member and Current Chair (2017-present); Town Meeting Member (1997-2010); Lexington Youth Commission, Student Member, Adult Advisor and Former Chairman (1988-2017); Lexington Lions Club: Member (1996-present), Past President, Treasurer (2005-present), Organizer of 4th of July Carnival (2004-present), Organizer of the Patriots Day Road Race (1997-present), Lincoln Field Restroom Facility Construction Committee (2014), Fletcher Park Ice Rink (2015-present); Lincoln Park Sub-Committee (2014-2017); Board of Directors of Visiting Nurse and Community Health (VNCH) (2002-2007).

Question

As an attorney, I appreciate the complexities behind the decision Town Meeting will face with Article 24. Should Lexington maintain the current model of representation by an outside law firm for Town Counsel, or should the Town create a staff position Town Counsel? The advantages to hiring in-house include: routine tasks might be handled at a lower cost, there is potential to have a predictable budget for the Town, and it allows an attorney to focus solely on Lexington's issues.

The disadvantages to the in-house counsel model include: The Town would lose ready access to multiple senior attorneys with specialized expertise in a wide range of municipal law topics (real estate, zoning, litigation, labor, bonds, cable television contracts, etc.). The Town would be challenged to hire a generalist attorney with expertise in all facets of municipal law. Additionally, the Town would be highly dependent on one individual with a high degree of responsibility. In-house counsel may not meet the perceived goal of saving the Town money. One attorney may not be able to handle the workload we have here in Lexington, and we may need to create multiple positions to meet our needs. For in-house counsel, legal research would take a large amount of time. Conversely, with our outside counsel, we often find that they have already done the research for another client community.

Further, my analysis of the data from Massachusetts Municipal Lawyers Association shows that of the Towns with Select Boards with similar populations to Lexington, only about 20% of them hire in-house counsel. The other nearly 80% use an outside firm. There is a reason so many Towns use outside firms. Most importantly, the Town of Lexington has been very well served by

the current model of representation by outside counsel, and the users of the services are satisfied with the work product.

Mark D. Sandeen

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Community Activities

- Chair, Sustainable Lexington Committee (2010 – 2019)
 - Won Commonwealth's Leading by Example award in 2017
- Chair, Community Choice Aggregation Task Force
 - 100% renewable electricity saving \$3 million for over 10,000 customers
- Member, Solar Task Force
 - Solar energy systems generating \$600K in revenue per year
- Co-chair, Getting to Net Zero Emissions Task Force
 - Getting to Net Zero Emissions Plan approved by Board of Selectmen
- Proposed healthy, 100% renewable, new school designs that will save \$200K a year, approved by Board of Selectmen and School Committee
 - Lexington Children's Place and Hastings School will be net zero schools
- Chair, Lex Drive Electric program
 - Doubled number of electric cars in Lexington in 2018, while saving residents up to \$14K on purchase of new electric cars
- Co-founder, Interfaith Garden (now in its 10th year)
 - Hundreds of volunteers delivered 16,000 lbs. of produce to Food Pantry
- Chair, Building a Better Future
 - Unanimous approval of Stretch Energy Code
- Author, All Things Sustainable in Colonial Times Magazine (7 years)
- Founding Member, LexFarm
- Member, Hancock Church & LexGWAC
- Teach science classes at Diamond Middle School
- Judge at Lexington High School and Estabrook School Science Fairs

Question:

The primary advantage for hiring an in house counsel is the possibility of saving money on the Town's legal expenses. The expectation is that if the Town were able to hire a lawyer who could provide the majority of the Town's legal services, the Town could avoid incurring outside counsel legal fees for every legal issue the Town faces and so reduce our legal expenses. In order to determine if this is possible, we should consider what services the Town requires our Town Counsel to perform.

Lexington Town Counsel must provide a wide variety of services for the Town, including representing the Town's departments, committees and boards in court and other tribunals for trials and hearings.

Town Counsel must be well versed in appellate, district and superior court practices, land use and real estate practices, zoning matters, taking of land by eminent domain, and tax title work.

The Town Counsel will be required to perform legal research, prepare documents required for trials, requests for discovery, preparation of briefs, pleadings, motions, review of evidence gathered, and interviewing of witnesses both prior to court hearings and at hearings.

An effective Town Counsel must also have exceptional experience in very specialized areas of general municipal law, including planning, zoning, land use and environmental law, conflict of interest, construction contracts, and consultant contracts for professional services.

Here is a list of just some of the topics that Lexington Town Counsel has been asked to advise the Town on over the last 10 years.

Oil & Hazardous Waste Contamination 21 C & 21 E
Zoning Chapter 40A Smart Growth 40R & 40S
Zoning Chapter 40B Affordable Housing
Chapter Lands 61, 61 A, 61 B
Education Chapter 70, 71, 72, 74, 76
Community Preservation Act
Expedited Permitting 43D
Municipal Finance
Liquor Licensing
Chapter 90 & Transportation
Procurement Laws for Municipalities Chapter 30B
Telecommunication and Cable Access Agreements
Public Construction Laws
Ethics for Public Employees
Assessing Real Property Chapter 59
Tax Title Laws in the Commonwealth
Public Entertainment Laws Chapter 136
Open Meeting Law
Public Records
Building Inspections Chapter 143
Public Health Chapter 21A
Commonwealth of Massachusetts Wetland Protection Act
Power Purchase Agreements

One disadvantage of hiring an in house Town Counsel is that it is extraordinarily unlikely that we could hire one person who has the required expertise in all of these areas. When a legal issue arose in an area where in house counsel did not have the required expertise, the Town would most likely need to hire outside counsel to provide that service – and the Town would no longer have any savings on our legal fees. Alternatively, if the Town opted to use in house counsel without the required expertise in that area of the law – that could result in exposing the Town to significant liability if we lost a dispute or made an unwise determination.

Another question to ask is whether one person would have the bandwidth to provide all the services the Town requires. If the Town would need more than one full time equivalent to provide all the Town's legal services, then we'd either need to set up a legal department with multiple lawyers on staff, or we'd need to hire outside counsel to cover the extra work. In either case, we'd be incurring significant expense above and beyond hiring one lawyer to act as in house counsel.

We should also consider the additional costs the Town would incur when hiring in house counsel above and beyond salary expenses, including providing employee benefits, health insurance, pension, and providing office space in an already highly constrained Town Office Building.

Finally, it makes sense to consider the preference of the Town Manager. Our Town Manager has had experience working with both in house counsel and outside counsel. He has stated that he believes that using outside counsel provides the best results for the Town both in terms of quality of legal counsel and for effectively managing our legal budget.

Mark sent the following comments in response to the League question from Candidates Night (Feb. 13, 2020)

Question

Given the many competing demands on the town budget from both the operating budget and capital projects, how would you prioritize capital projects going forward? Have the members of the Select Board and the Town Manager agreed on a method of establishing these priorities?

The Select Board and the Town Manager have made the development of a comprehensive capital master plan one of our high priority goals for the next two years. The intention is that Town staff will develop a capital master plan that would encompass all school and municipal capital requests over \$500,000 and provide a mechanism for ranking each of the proposed projects by priority for the Select Board's review.

The School Committee and the Select Board recently approved an Integrated Design and Construction Policy for our new building projects which set high performance standards for healthy indoor air quality, eliminating toxic materials, energy efficiency, all-electric heating and cooling systems, all while maximizing the amount of solar energy we generate onsite.

During that process, the School Committee, the Select Board and the Town Manager also committed to developing a similar High Performance Building Policy for our existing buildings. The goal would be to set high performance targets for healthy indoor air quality, reduction of toxic materials, energy efficiency and all-electric heating and cooling systems for our existing buildings all while reducing our operating costs for those buildings.

The intention would be to incorporate those high performance standards into the town's capital master planning process so we can plan for example, to upgrade our existing heating and ventilating equipment at the end of their useful life to systems that can deliver healthy indoor air quality for our students and staff.

We are also planning to use the capital master planning process to guide the Town in the purchase of our vehicles – looking at when it would be appropriate to electrify our vehicle fleet in a way that will reduce our overall operating and maintenance costs for our vehicles.

One of the other improvements in the capital planning process I'm looking forward to seeing is a more transparent method of tracking and reporting on our debt service by project type and department. I'd also hope that we'd be able to see projections of how our proposed projects will impact our debt service into the future – while being able to much more easily track declining debt liabilities from previous capital projects – so our residents could easily anticipate the effects of new capital projects on their taxes.

We are expecting the new comprehensive capital master planning process to be in place by the Fall of 2021.