

1:34 Law Transcript

Donnalynn Kahn, City Solicitor:

Hello everyone, madam chair, aldermen who are present, you have my section in the book, I'm just going to draw your attention to two of the accomplishments from last year and two current year issues that we're working on. One of our goals last year was to change how we process claims as a department. What we did was assign specific attorneys to specific areas of claims so our categories are: potholes, vehicle accidents, collections, falls on city property, water and sewer claims, and damage to fences and trucks is sort of how we broke it out. I can report after doing it now for a year that it's worked out very well because you have consistency to answers to claims, what you also have is the ability for us to do some better risk management so for example on vehicle accidents while it used to be that they were scattered throughout the department now that we have one attorney in charge of those we can see when we have a repeat driver who's gotten in three or four accidents. We can see when a particular type of vehicle seems to be causing accidents especially in the public works department; especially with some of the larger vehicles we're got. And we've sent people to remedial driving school before waiting for the next accident to happen. We've been able to make some recommendations to the public works department on some of the equipment and how it's being used. So I plan to continue with that and we now have someone who's become an expert within the department and that's Bob Waddick with water and sewer claims, utility issues across the board. I think it's working out well and I want to see how we continue over the next year but I like the results we got from that. The other accomplishment from last year that I want to draw your attention to is that we're starting to build up a very successful legal intern program in the law department. Fortunate for us but unfortunate for the poor students and lawyers out there, it's a really bad job market right now for lawyers, so we are getting attorneys who are out of work and looking to work for free for however long they can. We most recently had a rotation of 4 interns, so we had 2 that were available certain days and two that were available on other days. That crop is leaving over the next two weeks and we have our new interns starting on June 4th. Our only problem was finding space for them but we've been creative in reconfiguring some of the spaces in our offices. We've had actual attorneys who can go and help with things like recording at the registry and having the opportunity to come with us on actual trials. We don't come geared up like the big firms do with all the interns and paralegals, but this program of interns allows us to have some flexibility and they really really appreciate it. Word is also getting out on the street that this is a great program to get into so we have a lot of resumes for the summer program. We have second tier choices waiting until the fall to get into the program.

This year, well a couple of things, any of you who are on, a lot of you are on various committees here, forgive me for not remembering everyone's, I remember yours Ald. Hess-Mahan, what we've done in the committees and commissions that we staff, is, you may or may not know that historically we have one attorney that would come to your meeting, just to be forward thinking and do some cross training and make sure we can serve those committees and commissions as best we can at any time, what if someone had an extended illness, what if someone was on vacation for a month and it was critical for them to be there, so what I've done is now double tiered my staffing for committees and commissions that we regularly staff, so for example ZBA ZAP Reuse and Landuse, anyone who's on any one of those committees or commissions now understands that there are two attys assigned to those. In some cases they will alternate the days they're going, or sometimes both come but then when they get back to the office the work is divvied up. I've also found just that the collaborative working is just, it's more enjoyable. If we get a lawsuit both of them have been there and they can sort of bounce ideas off each other, so I like the way that's working, I know there was a little hesitation with some of the committees

or commissions, but I think that, I've tried to spread it out so that each team has one newer member to a committee or commission, and then one that people are accustomed to. That is something that we plan to continue.

Another thing that we are working on this year, I'm sort of going off the menu here on desired outcomes, which I'd be happy to answer after I go through these items which are off the list, is that we have been doing some internal auditing of our payments from our cable providers. As you may or may not know we have 3 cable providers that we get money from, RCN, Verizon, and Comcast. A full blown audit of these payments is extremely expensive. We did one I'm going to say 7-8 years ago. It yielded very little in terms of extra money that was found or wasn't found. But I now have Alan Mandel who is out telecommunications expert on board. He has conducted his own internal audit and has already found within the past 2-3 months 125,000 underpayment for INet, I don't know if an auditor would have caught it or not. He has such a keen eye to what these payments should look like so he caught it. Unfortunately there were some un-cashed checks found at the bottom of a file from our last telecomm person that amounts to \$10,000. So we're finding money everywhere in the telecomm world. He will continue to work on that, he is also working closely with Dave Wilkinson on it. The other thing that we've stepped up is, and this is included in my continued goals for next year, are collections. Police detail collections was one place where the whole process was in our list of revamping and we've had many meetings on it already and plan to have more and get a better process in place with how police details are handled. Most recently we've collected about \$30k in uncollected previously police details. We're also changing the way, for example if someone comes into various departments in the city of newton, for example ISD, and they're on our list, they have to come down and give their check before they go on. Sometimes if you see a line of scrappy looking people hanging outside the law department we've literally had a line of people sometimes waiting to pay for police details. So that has been very successful and our plan is not to be in the collection business for police details, but to change the procedures and process for how it works so that we have very few of these cases that we need to follow up on. So that's something I'm working on sort of eliminating, but we have to get rid of the backlog first.

The two new areas most recently for the law department change wise were the labor attorney. If you recall from some of the other meetings, I don't know if many of you have had dealings with Jeff Honig but he's doing a terrific job. It's worked out very very well to have that function in house. It also allows him to develop a closer relationship with the union representatives and union personnel and having that allows you to sit down and really have a dialog with them. We have regular meetings with certain unions, this is in our plans where we catch things before they go to litigation and really have a dialog about it. A good example is most recently, finally, the rules and regs are going to be changed with the fire department. The last time they were changed was 1935, I think, there were still horses still mentioned in it, and this has been a problem for many many years because we have not been able to have a dialog with the union reps from fire, but we have a working document and we're almost done with it. The benefit of having someone in house to build those kind of relationships is invaluable. He's also been in court, he won in arbitration today, so I think it's been a good cost savings for us and just good policy wise that we're able to have these open dialogues when the union representatives and the department heads. I think everyone feels that they're pretty well served having someone in house. The telecommunications may not be a position that you're as close to, it's only a .6 positions, Alan Mandel has been putting a lot of work into energy contracts and solar panel projects and bidding issues that have come up. He's the guy that came to us with a lot of experience and has really been invaluable. While we are still using part-time attorneys in negotiating this latest Comcast deal, I'm going to be changing the way that goes forward too. The plan is to wean ourselves off of that and do business a

little differently with the cable providers. Those were the points I wanted to make because I didn't know if they would be, really stand out, in the pages I have here, but I'd be happy to take any questions for desired outcomes, what the law department is doing lately, issues that have come up that you're concerned about:

Ald. Blazar: it's great to hear what you said about the labor lawyer being such an addition, I never understood why we never had a labor lawyer. I was just wondering do you have any idea how much money we save by not having those outside lawyers, not just in labor but in general.

Atty Khan: I can tell you that the last time we were using labor lawyers and not doing it in house, our costs were about \$325,000. I think Jeff Honig's salary is somewhere about \$90,000. Right there is an obvious savings, but what you don't see in those numbers is all the future litigation and little problems that we're avoiding by having someone, I mean Jeff has finished off litigation that had come about in my opinion because of some poor relationships with some outside attorneys and dealing with our union representatives. When you are outside attorneys, what is the benefit of really doing something quickly? The benefit is keeping the billable hours going as long as you possibly can, so having someone devoted in a way that you're not worried about the billing sheet and you want to build relationships and not necessarily drag them out, that's the number that you're not seeing in there and it's hard for me to put a dollar value on that but it puts it way up over what we're currently saving.

Ald. Blazar: The other things that I wanted to say is that the police detail, it seems to me that the way to get away from this and not worry about collections which is a terrible thing to have to do, is make sure the police department gets the money up front

Atty Khan: this is the direction that we're going in. If you look at the detail on that second page we're looking at on-line bill payments. When people sign up for a detail there is a minimum that they have to pay up front before they get their detail. That is exactly the direction we were thinking.

Ald. Linsky: A lot of our discussion the past year or so was around that position, and when those contracts were finally negotiated we had discussion that were very useful. I want to pick up on the desired outcomes. You identified two areas for which we would anticipate reductions you kind of spoke about the labor side, you also identified education related. Understanding that it's a somewhat sensitive subject that a lot of the department's job is claims with newton residents, this would certainly be one of the more sensitive. It would be useful to know how much you can ascribe to how much of the office has been involved in this over the years, which direction it's going in, and how you identify going forward how it will change.

Atty Kahn: OK, so, on the education related, it's broader than just special education cases that would go to the BSCA, education related includes everyday problems that we have in the school system. A kid brings a knife to school, a kid in inappropriately touching another kid, the way the city deals with those problems is the make or break for what kind of litigation as a risk manager you're going to have going forward. We've also, the school department still does have their own labor lawyers, but for some of the personnel matters that those labor lawyers had also handled we are taking on more of that work, voluntarily. We have offered our services to take on some more of that work. We can do it more cheaply, we can do it more efficiently and again we are in-house and we have those relationships. So, in the past we only sort of had Ouida doing school related work and a lot of her time was taken up by school related work. Ouida has sort of drifted away from that and has become second handling school cases. She has become, it depends on what the business is, there's a lot of reuse stuff going on right

now and a lot of school stuff going on with buildings. We have Angier going and a lot of her time is spent on watching those processes through. Angela Smagula is going to bulk of the school work. She has created a very dynamic relationship with the school principals so a lot of what you see again in our plans for education is relationship building. It's not so much being adversarial but training for the schools and principals and administrators across the board so that everybody knows how to handle a case of a child bringing a knife to school. A child getting caught with a scale and a giant bag of pot at school, which is a case we handled today, that it's handled across the board the same way, that we deal on a very personal and understanding way with the families who are often shocked to find that their children are engaged in this kind of behavior. You avoid a lot of litigation by just really bringing together a team and supporting the parents and the teachers and the school administration and not making it adversarial so I'm glad you asked the questions because what we're doing again is relationship building.

The other relationships were building is with the new HR person over in the school department who has been giving us more personnel work. Rather than giving it to the outside counsel, give it to us and we'll let you know when you've got us to the breaking point and it's becoming too much and we can talk about what should be done with some of this schools work with labor and personnel matters.

The other piece that is always on-going is the special education cases which are governed by law. There are certain mechanisms in place than need to take place when a family is in crisis. Unfortunately we will see more and more and more special education cases coming forward because of the breakdown in the state in funding social services programs for families. We're responsible in large part for going in and even brushing a kid's teeth in the morning so that they won't have bad breath and won't be made fun of and can have access to their programming when they come into school. So, again, with training and education and working closely with special educators we've got a very good relationship with them but regular meetings; I'm a big fan of weekly or monthly meetings to move something along so that people are in contact so that they know what's coming down the pike. Don't just get together when there's a crisis, let's do some ahead planning. And training, we do a lot of, we're going to really step up our training. One of our summer projects is to make a list of some things that we'd like to sort of refresh some of the principals and assistant principals, and they ask us for training, and you also want to be in the position where they're making those phone calls. If something happens they're not making a bad decision that's going to be a mistake and get us in trouble, but they'll call us first, and that's what we want.

Ald. Linsky: You'd said earlier with the assigning things with the secondary backup, so for instance when you mentioned the example of multiple vehicle types of things, which, are you indicating that we only know anecdotally and do we not have a database that would point out certain things to use regardless of who is on the case?

Atty Kahn: Things were never brought together that way. Maura O'Keefe is our vehicle person, and she is keeping statistics and we let the department head know. The way it used to be done was claims used to come in "you get one you get one you get one" so people may never speak and may have the same driver two months apart; there wasn't a lot of sharing of information.

Ald. Linsky: in the end you have to look and see what the effect is too, so we're going to need markers going forward so for instance in some of the areas like special ed where you're dealing with families and very challenging issues and you'd indicated correctly that these will expand going forward because of legal requirements and a number of things, can we as a start, what are our assigned costs

been , what effects and changes going forward. How much do we use for instance in mediation and arbitration in the special ed cases.

Atty Khan: We take advantage of this quite a bit. In terms of saving, what we're trying to do with special ed, I'm trying to avoid ones that will go to full blown BSCA hearings. Whenever there is an opportunity for us to do arbitration or mediation at a reasonable cost considering what the risks are of the case we will always do it. I'll do it in superior court anytime I can get into that free program and do it, but there are some cases where even litigation wise, there's one I just finished up, if someone is asking for 500,000 and your value is 5k it doesn't make any sense to go to mediation you know, you're not going to close that gap. But I think your idea is good.

Ald. Linsky: just to back over time and just see whether the new policy has that kind of effect that you're looking for, just anecdotally.

Donnalynn: in our next staff meeting I'll talk to everyone and get an idea for measurements and markers.

Ald. Fischman: So I guess I wonder, we haven't had outside counsel, and I'm assuming you don't have any but I'm assuming under certain circumstances?

Atty Kahn: No, the only situation where we're using an outside counsel right now is to finish through this last outside contract with Comcast. Other than that I have cut what was normally put aside 100-125k from Morgan, Bown, and Joy.

Fischman: My question is if you've had failures in part because you don't have outside counsel or are you satisfied

Atty Kahn: Oh I'm satisfied. I can't tell you we've been successful in every single case we've had but given the cases we have we have a very high success rate. It's always hard to predict what would happen if you have outside counsel opposed to in house but I think we are doing a much better job having it in house. So I think your question is if we're sacrificing anything by not having a whole firm at our disposal: no.

Ald. Fischman: So we lost the Land Use case Bradford Road.

Atty Kahn: Right.

Ald Fischman: I had heard that no one was appealing it

Atty Kahn: There is an appeal, but not by the city. The land owner appeals because they are the parties of interest. That is our policy. We are not the ones pushing the litigation.

Ald. Fischman: And that was in house support you gave to the land owners.

Atty Kahn: Correct.

Atty Fischman: so the answer is that it is being appealed but it isn't your procedure to appeal it

Atty Kahn: In land use cases you have parties of interests- people who have a very big stake in

what's going on one way or another, we sit by the sides and see what happens in the end and abide by whatever decision comes down.

Ald. Sangiolo: so you're on the sidelines but you're supporting the city personnel here.

Atty Kahn: we're always in this funny position

Ald. Sangiolo: from my perspective, and I'm always the one that says the board needs their own attorney, there might be a situation where the board remembers passing an ordinance that says x and it's being implemented but someone else says "y" where do you fall?

Atty Kahn: I wouldn't want to, I would think that, I can't imagine a case where a Board member is going to have, I mean if there's a dispute about whether something was passed or not I would think that between the Clerk's office and the Board members and internally we would be able to figure something like that out. In all this time we haven't had a piece of litigation that remotely resembles that. If there are people understanding things one way or another there are people having those discussions up front.

Ald. Hess-Mahan: one of the things, and I know you have more than enough to do, it's something that you might want to keep in mind, it occurs to me based on the quality of people that you work with that one thing you might want to do is encourage your solicitors to publish or get out there and share their wisdom. This is a major law firm in size and expertise and so forth and beyond going to the MMA, publishing in law journals to get the word out because the quality of work that is done by the law department, we should share that wealth.

Atty Kahn: that's a great idea, and we have some excellent writers.

Ald. Blazar: The fact that the school department has its own lawyers, I don't quite understand why that is and how much we're spending to have lawyers for the law department instead of hiring more lawyers in house. And also, for the special ed cases, are the school department hiring out for those?

Atty Kahn: No, we do those.

Maureen Lemieux: I don't know how things were with the prior administration but based on what people have said we are working much more collaboratively with the school department than the prior administration was. We meet every week, the mayor and I meeting with the chair and vice chair of the school department, the superintendent, and Sandy Guryan. As far as the outside labor counsel, I can't tell you what they spent in years past, but this summer with the labor contract there were no lawyers in the room and we saved a bundle. I believe, and this is only anecdotally, but I believe there has really been a cultural change for the city to work collaboratively not just in law but in everything we do. We even have a school department representative in the finance cluster. It doesn't happen overnight but there's been a real change over the last two years.

Atty Kahn: we wanted to have the overture to introduce them to our services and how we work, and over the past year do a couple of cases for them so they can see how it works and what kind of money they save they are very very please so it is trending in that direction.

Maureen Lemieux: In everything that we're doing we're working much more closely so I think over time we'll see a big change with the Law Department.

Ald. Hess-Mahan: Move to discharge to the committee of the whole.

The motion the discharge carried unanimously.