



The Commonwealth of Massachusetts
Office of the Inspector General

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November 3, 2009

Robert Cadle
Chairman
Town of Groton Zoning Board
173 Main St.
Groton MA, 01450

Peter S. Cunningham
Chairman
Groton Board of Selectman
173 Main St.
Groton MA, 01450

Dear Chairman Cadle and Chairman Cunningham,

The Office of the Inspector General (office) is writing to you in response to complaints received by this office regarding certain practices of the Groton Zoning Board of Appeals (ZBA). This office has conducted a review of the Groton ZBA and its business relationship with 40B consultants Mark Bobrowski and Michael Jacobs to determine whether Mr. Bobrowski and Mr. Jacobs were hired and paid by the ZBA in accordance with applicable laws and regulations. Highlighted below are two areas of concern identified through our review into this matter.

Contracts and Bidding

Documents submitted by the town indicate that between September 2003 and January 2009 Mr. Bobrowski and his firm; Blatman, Bobrowski, and Meade LLC., were paid \$49,325 out of the ZBA 593 account. During this same time period payments from the ZBA to Mr. Jacobs totaled over \$10,000. The ZBA 593 account was established under the provisions of M.G.L c.44 §53G and is a revolving fund for specific service fees payable by permit applicants. Although permit application fees constitute the source of funds for this 593 revolving account, when expending money from this account, cities and towns must still comply with the Uniform Procurement Act, M.G.L c.30B (Chapter 30B).¹

Section 2 of M.G.L c.30B defines "services" as "The furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports." Hiring outside consultants falls within this category of services regardless of the source of funding.

Chapter 30B establishes a graduated set of procedures for procuring supplies and services. The specific procedures used depend on the estimated dollar value of the procurement.

¹ See *Procuring Outside Consultants with Fees from Applicants*, Massachusetts Office of the Inspector General, July, 2008

- *Contracts under \$5,000.* Use sound business practices.²
- *Contracts between \$5,000 and \$24,999.* Seek price quotes from at least three vendors and award the contract to the responsible vendor offering the supply or service needed for the best price.³
- *Contracts of \$25,000 or more.* Conduct a formal advertised competition using sealed bids or proposals. In a bid process, the contract is awarded to the qualified bidder who meets the bid specifications and offers the best price. In a proposal process, the contract is awarded to the offeror submitting the most advantageous proposal, taking into consideration the specified evaluation criteria as well as price.⁴

The payments to Mr. Bobrowski span over six years and cover five different 40B hearings. It is the understanding of this office that the ZBA initially hired Mr. Bobrowski to act as its 40B consultant in a particular matter before the ZBA without a competitive procurement process and that a contract was not executed for this engagement. According to the Town Manager, Mark Hadad, since the ZBA was satisfied with Mr. Bobrowski's services the ZBA continued to retain Mr. Bobrowski in each subsequent comprehensive permit hearing without conducting a hearing process.⁵

Groton ZBA Payments to Bobrowski								
Project	2003	2004	2005	2006	2007	2008	2009	Grand Total
Groton Residential Gardens	\$1,360.00	\$11,120.00	\$3,040.00					\$15,520.00
Hicks/Pineridge			\$300.00	\$1,780.00	\$1,340.00			\$3,420.00
Oak Ridge Meadows	\$2,100.00	\$3,940.00	\$9,060.00			\$1,150.00	\$1,775.00	\$18,025.00
Squannacook Heights		\$440.00	\$5,880.00					\$6,320.00
Washington Green	\$780.00	\$5,260.00						\$6,040.00
Grand Total	\$4,240.00	\$20,760.00	\$18,280.00	\$1,780.00	\$1,340.00	\$1,150.00	\$1,775.00	\$49,325.00
<i>Figure 1</i>								

Figures 1 and 2 summarize the payments made from ZBA 593 accounts to Mr. Bobrowski and Mr. Jacobs by year and by project.

Groton ZBA Payments to Jacobs				
Project	2004	2005	2009	Grand Total
Groton Residential Gardens	\$3,500.00			\$3,500.00
Hicks/Pineridge				
Oak Ridge Meadows	\$3,645.25	\$585.00	\$1,858.49	\$6,088.74
Squannacook Heights		\$2,925.00		\$2,925.00
Washington Green				
Grand Total	\$7,145.25	\$3,510.00	\$1,858.49	\$12,513.74
<i>Figure 2</i>				

It is also our understanding that Mr. Jacobs was also retained by the ZBA without conducting a procurement process. According to Mr. Hadad, Mr. Jacobs was originally recommended to the board by Mr. Bobrowski who previously had worked with Mr. Jacobs and was familiar with his work product.⁶

² M.G.L c.30B, §4

³ M.G.L c.30B, §4

⁴ M.G.L c.30B, §§5-6

⁵ Letter to the Inspector General dated 29 July, 2009.

⁶ Letter to the Inspector General dated 29 July, 2009

While the amounts paid to Mr. Bobrowski and Mr. Jacobs are not extravagant, these services were not procured pursuant to M.G.L. c.30B. The law requires that their ZBA develop a description of the services it is seeking and, depending on the estimated dollar amount, conducting a competitive solicitation process.⁷ While M.G.L. c.30B exempts legal services from competitive procurement procedures, Mr. Bobrowski's services are not, in these instances, strictly legal in nature but rather general consultant services.⁸ In order to be exempt from M.G.L. c.30B, this office has consistently held that the services performed by an attorney must be strictly legal work: if the work can be performed by a person other than an attorney, the work is not exempt. Furthermore, if a vendor is performing both exempt and non-exempt services under one agreement, the entire agreement would be subject to M.G.L. c.30B. In these circumstances, the ZBA should have estimated the cost of services by contacting several experts to determine a dollar range for the services.⁹ Based on the dollar range, the ZBA should have then implemented a proper procurement process to legally contract with a consultant.

This office has found no evidence that such a procurement process was implemented. On the contrary, it appears Mr. Bobrowski is the de facto ZBA consultant for permit applications and Mr. Jacobs the default recommendation for financial or pro forma reviews. This not only violates M.G.L. c.30B but appears to conflict with the standards for contracting under M.G.L. c.40B regulations. Department of Housing and Community Development (DHCD) regulations 760 CMR 56.05(5)(c) states: "the Board's rules shall set out procedures for inviting proposals by qualified outside consultants..."

Meeting minutes from the March 5, 2003 Groton Residential Gardens Hearing reflect Mr. Bobrowski's incumbency and the lack of any procurement procedure to competitively solicit bids and proposals from other consultants. The minutes relate that discussion "ensued regarding the consultants for peer review to be hired", and then go on to state, "the board moved and voted unanimously to hire the *consultants as suggested by Mark Bobrowski, and including Mr. Bobrowski*, as acknowledged for the record." Mr. Jacobs' MHJ Associates was included among the consultants suggested by Mr. Bobrowski as the pro forma reviewer.

Meeting minutes reveal that this manner of contracting with Messrs. Bobrowski and Jacobs was repeated consistently for every comprehensive permit hearing before the ZBA over the past six years.

⁷ M.G.L. c.30B, §§4-6

⁸ M.G.L. c.30B, §1(b)(15)

⁹ See Massachusetts Office of the Inspector General [Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property, \(5th Edition\)](#), September 2006

Consultant Interactions with Applicants

Mr. Jacobs performed a pro forma analysis for the Oak Ridge Estates 40B hearing on behalf of the ZBA. Mr. Jacobs' analysis was completed November 4, 2008 and an invoice for \$3558.75 was submitted to the ZBA on November 23, 2008. The applicant, however, refused to replenish the 593 account and the ZBA's 593 account statements show that by the time Mr. Jacobs' invoice had been processed there were insufficient funds to pay him. Communications between the Zoning Coordinator (Margot Hammer), Mr. Jacobs, and the applicant, revealed the frustration on the part of Ms. Hammer and Mr. Jacobs.¹⁰

On March 30, 2009, after months of unsuccessful resolution, Ms. Hammer informed Mr. Jacobs that the ZBA would release the \$872 left in the ZBA's 593 account.¹¹ The zoning coordinator also informed Mr. Jacobs that the applicant would be in contact with him regarding the balance. On April 6, 2009, the applicant contacted Mr. Jacobs to thank him for working out the outstanding invoice. On the same day the applicant also contacted the Zoning Coordinator to ask whether the \$2000 payment should be made out to the Town of Groton or Mr. Jacobs. The Zoning Coordinator replied, "you can send the money directly to Mike. If he's happy, I'm happy." On April 6, 2009 Mr. Jacobs emailed Ms. Hammer to ask if the ZBA was still releasing the remaining funds in the 593 accounts and informed her, "I received a \$2,000 check from the applicant."

Mr. Jacobs' revised invoice of April 24, 2009 reflects a \$700.26 write off and a \$2,000 payment from the applicant for a total net invoice of \$858.49 to the ZBA.¹² The funds from the Zoning Board's 593 account were disbursed to Mr. Jacobs on May 22, 2009.

While significant effort was expended by the ZBA in an attempt to compel payment from the applicant, the ZBA's desire to remunerate Mr. Jacobs led them to compromise their responsibilities by choosing expediency over diligence by allowing Mr. Jacobs and the applicant to settle disputes over payments in private. In the opinion of this office consultants, employed by any town boards, should not negotiate payment directly with the applicant(s) because these interactions can, at a minimum promote the appearance of impropriety – even if there is none – to the detriment of the integrity and reputation of said boards.

¹⁰ An email dated 3/18/09 Hammer writes to the applicant, Mattbob, to explain the efforts to collect payment are "to put it mildly and politely – frustrating" In a 3/30/09 email Jacobs wonders why he must bear the brunt of their inaction.

¹¹ The actual balances reflected in the ZBA's March and April 593 account statements are \$858.49 and \$858.53, respectively

¹² [\$3,558.75 (original invoice) - \$2,000 (payment made by applicant) - \$700.26 (write-off) = \$858.49 (final net payment)]

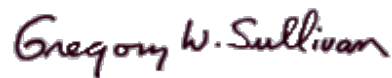
Recommendations

This office recognizes the recent efforts by the ZBA to improve the administrative work of the board including authorizing minutes and scheduling business meetings for board members to discuss relevant issues. This office encourages the ZBA's willingness to adopt better practices and makes the following recommendations to further improve operations:

- The cost of consultant services should be estimated and a proper procurement procedure pursuant to M.G.L. c.30B should be implemented based on the estimate.
- Execute contracts with ZBA consultants that define specifically the tasks and expectations in clear, unequivocal language that clearly articulates the scope of services to be provided.
- Review ZBA 593 statements on a regular basis and request that the Zoning Coordinator copy the ZBA on all communications.
- Establish rules that prevent private negotiations between ZBA consultants and Zoning Board applicants.
- Require billing disputes be settled through and/or before the board.

If you have any questions or concerns, please do not hesitate to call me.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, flowing style.

Gregory Sullivan
Inspector General

cc: Mark Haddad, Town Manager