

EAST BETHEL CITY COUNCIL WORK MEETING

May 12, 2011

The East Bethel City Council met on May 12, 2011 at 6:00 PM for a work meeting at City Hall.

MEMBERS PRESENT: Bob DeRoche Richard Lawrence Heidi Moegerle
 Steve Voss

MEMBERS EXCUSED: Bill Boyer

ALSO PRESENT: Jack Davis, Interim City Administrator

Call to Order The May 12, 2011 City Council work meeting was called to order by Mayor Lawrence at 6:00 PM.

Adopt Agenda **Voss made a motion to adopt the May 12, 2011 Work Meeting Agenda. Moegerle seconded; all in favor, motion carries.**

Interview for
Civil and
Prosecution
Services

Smith &
Glaser, LLC

Kurt Glaser from Glaser & Smith said he is going to tell you about himself personally first. He said other than hiring a city administrator the city attorney is a personal relationship, you need to be able to talk about logic and give good advice, how to run as a City and good community standards, both from an official standpoint and community standards. Glaser said he never wears a suit, but of course he is wearing one tonight. He said he is the product of a Marine Corp. family. Glaser said he does for the cities of Lexington and Centerville and has to be available 24/7, he is for their officers, and would be for your sheriff's officers. He said when people see me as prosecutor and as the city attorney as well, he wants them to know he takes his duties seriously. Glaser said he has two personalities one as a prosecutor and one as a civil attorney. As a prosecutor, stern, fair and measured. As a civil attorney he rarely talks unless he is spoken too. Glaser said you work is usually done before you walk into Council Chambers, you talk to City staff, send out memos; give good city advice, etc. He said he doesn't think a good city attorney should weigh in on value advice.

Glaser said his mentor Dennis Smith taught him that he is not here to be a politician. He said he has been asked by elected officials and citizens what he really thinks, but that should not be a matter of public record. Glaser said the way his staff works is Sami Stenger, paralegal is more than average, she has legal training and the way he runs his office is Sami does a lot of the leg work. He said she puts the cases together for him, work that a current attorney does for prosecution and city attorney, he does rely on staff a lot more. Glaser said he is going through a time that he is changing roles, he is looking forward to serving in more city attorney roles, he would like to only be a city attorney and move his practice out of Minneapolis closer to Anoka, closer to his home. He said he enjoys working with citizens; there is a nice feeling that comes from that. Glaser said he divides his work between being a city attorney and city prosecution work.

Glaser said the firm you have for prosecution is a good bunch of folks. He said we would work differently; they rely on billing per hour, \$35 per hour for assistants and \$40 an hour for complaints. Glaser said there is a cost difference with a firm using attorneys to do all the work, but if you have staff doing some of the work, that makes his work more efficient and reasonable. He said he is a techy nerd; he and Doug Johnson from Coon Rapids are working on making the prosecution more computer friendly. Glaser said we are using the

databases from Anoka County; pass that data to create documents, to create notices, and to contact deputies. He said but the reality is we still need boots on the ground and lawyers in court. Glaser said and he is not doing divorce law or other areas of practice. He said Christopher Keyser will be helping me with prosecution and he would be here tonight, but he is off at Jag School. He is new. He said what you are going to get with Chris and myself is he will do arraignments and pretrial hearings. Glaser said I will do the contested hearings and jury trials and have been doing this for 20 years. He said he has either been a prosecutor or working criminal defense, and then he met his mentor and went into to civil law.

Glaser said he would offer to do this at a flat rate of \$80,000 annually. He said all the prosecution work that needs to be done for the next three years at this rate. He said this does not include code compliance work or criminal appeals, but he only saw one of those in the last couple years when he revised the cities records. Glaser said what you paid in 2009 was \$90,800, 2010 was \$88,977 and 2011 so far was \$32,736 for a projected \$130,944, we are proposing a fixed rate you can budget and bank on. Voss asked is this for both civil and prosecution. Glaser said no, just prosecution. He said we think you are paying more than you should. Glaser said we think we are more efficient.

Glaser said lets move on to civil work. He said there is a bridge between the two when you have someone doing both, someone that understands the standards of community it works better. Glaser said when you are the city attorney doing the civil work, you get a better feel for the community standards. He said on the civil side, you would almost always see me, you would only see Chris if I was sick or on vacation. Glaser said for the civil attorney work, he would be here to give good logical work, he has been working in this county having been a civil attorney for 10 years, you get his historical knowledge on what has been going on for the last 10 years, it is good that he knows what has been going on here. He said such as the Anoka County Connect contract, we went to the county and said you have to revise this or you would have lost your franchise fees. Glaser said we had to pull in the other city attorneys and form a group to get the agreement changed. He said with the fiber optic agreement we had to pull in some commissioners and impress on them that the changes were very important. Glaser said there still going to be rough changes with that agreement. He said the mix he gives you is the combination of prosecution and civil.

Moegerle said you talked about history, so explained why when East Bethel has a contract with the Anoka County Sheriff to issues tickets, we contract with a prosecutor to issue fines, and then the fines go to the state, she doesn't understand the process and it seems like a big rip-off. Glaser said this is statutory framework; you are too big of City to use the county attorney. Moegerle asked because we are a third class City. Glaser said yes. He said fine revenue started this. Glaser said when he started this fine revenue completely paid for his prosecution services and part of the police services. He said there is a simple there has been erosion of the system, the state has come in need a little more here and a little more there of the money. Glaser said it is like a pie chart with massive little splinters. He said it started out a third, third and third, City, county and state unless you contracted with the sheriff for services. Glaser said and now, if people don't pay tickets you can't throw them in jail for not paying anymore. He said the short answer is to try to have administrative fines so we aren't sending these things to court. Glaser said he and the other cities attorneys need to take on St. Paul, the legislator. He said we have a county attorney's group; we want to go to St. Paul and lobby them to get the fines collected, not to just send the ones that aren't collected to la-la land. Glaser said so administrative fines. Moegerle asked would we have to change our ordinances. Glaser said this would be up to your prosecutor. He said staff has to be involved; sheriff's department has to be involved. Glaser said this is another set of administrative

tickets; the sheriff would have a problem writing those tickets even if you adopt those.

DeRoche asked what kind of experience you have working with unions. Glaser said he worked with them an awful lot and then stopped when he became a city attorney. He said he uses Paul Floyd and here is why. Glaser said if he is working on a grievance and they don't like the outcome, then he has to work with that city staff person next week and they don't work with him well. He said he is capable of doing the work, but he thinks it is better for him not to do it. Glaser said he has worked well with the unions and worked well against them. Moegerle asked looking at some of our ordinances, if we say this ordinance is not sufficient, how you would go about this, getting the information, short of interviewing us. Glaser said first would be getting input from Council, at least a little of what you want. He said then he would see what else is out there, he is not going to reinvent the wheel. He said five years ago he went through revamping the Centerville code. Glaser said but it really comes from consensus from Council, he would present redlines with alternatives to reflect the ideas of different members.

Voss said on the prosecution side probably our biggest task we have had is dealing with blight in the City, and knowing Centerville and Lexington you have probably dealt with this, how do you deal with that. Glaser said Lexington has a greater problem. He said he uses the City approach in Lexington, criminal charges. Glaser said but If you don't start by asking you are never going to get anywhere. He said he deals with the property owner and sometimes that is an absentee owner or the banks. Glaser said you can't just send off letters from City Hall and expect everyone to comply. He said he will start with a friendly phone call and if that doesn't work then start using civil statutes. Glaser said it is easier to get the property owner to clean it up. He said when you have blighted property, lots of times you have bad tenants, so we can go after the landlord.

DeRoche how asked how do you handle plea bargains. Glaser said folks that have committed offenses that have a victim, if you have hurt someone you need to atone for that. He said we have to deal with the problem. Glaser said when it is lighter types of charges, community issue. Glaser said it can depend on the economic situation.

DeRoche asked what your stance on innocent until proven guilty is. He said he knows it sounds funny, but if someone is set up, how aggressive are you to find out that someone is not set up. Glaser said he questions the police officer to make sure they have investigated to make sure it has been investigated thoroughly. He said he feels strongly that there are easy cases out there to get, to send a message to society that is we are going to get it wrong, innocence is a freedom. DeRoche said some people don't take that this serious, but this depends on the prosecutor, some think my police would never get this wrong, some rubber stamp things. Glaser said he trusts his officers implacably, but they are human, they can get things wrong. He said the worst, the toughest, is a domestic case. DeRoche what do you do when you have two neighbors arguing with each other and technically you can get charged with 5th degree assault. Glaser said send them to mediation services. He said because they are trained in this, they do a great job.

Moegerle asked what do you think about these charges lately for terrorist threats. Glaser said the way our system is built is for the one case that is real. He said he has been through this, one of his childhood friends had this done to them and most prosecutors have this happen to them. Glaser said if it is a question about public safety; go on the side of public safety.

Moegerle asked about his experience with economic development issues. Glaser said he has had quite a bit of experience. He said Centerville had worked up a development for downtown, but had to draw it down. Glaser said he had to draw it down, worked with the developers, grant fund agencies, architects and bond counsel. He said he had a lot of experience in real estate, but kind of served as the person to bring them all together. Glaser said he did the developers agreements. He said we are in the midst of this with Lexington rezoning their blighted areas. He said they have an old elementary school that they used to use for City Hall and they are trying to attract development to that. DeRoche asked have you had any malpractice claims against you. Glaser said he was sued by a client in 1998 and the courts threw it out. He said unfortunately it comes with the territory. Glaser said he was sued by a criminal defendant in Lexington because the police took his knife and car.

DeRoche asked if Glaser had any questions for them. Glaser asked to be straight about it, how you guys are getting along. Lawrence said we have a diverse thinking of minds around here. Glaser said as long as you don't take it out on your city attorney that is not bad. He asked you just hired a city attorney in January why are you going out again. Voss said we didn't hire an attorney, we just appointed them. He said now we are going through the process. Glaser said you have only had your current prosecutor for 2 years and now going out for RFPs, why. Voss said it is just part of the process. Glaser said and now Mr. Davis is permanent. Davis said he was the flavor of the month and now he is permanent. Glaser said the reason he asks is he realizes that after becoming the city attorney, there would be like a trial period. He said but after that period if you thought it was a good fit, would you be interested in signing a contract for 2-3 years. Lawrence said yes, we would. Moegerle asked would you be interested in just the prosecution services. Glaser said he is interested in doing more civil attorney services, but yes.

Davis asked what your general response time is. Glaser said he is usually pretty quick; he tries to return every phone call really quick. He said prosecution work comes first because of public safety. Glaser said but his office staff can help. He said but with text messaging, his response can be right when he is in court. Moegerle said if you got the prosecution work, would you try to get the calendar changed so Lexington and Centerville and East Bethel were all on the same day. Glaser said if the court was willing to do that, but it would take 6 months. Lawrence said we would hope whoever we land with would stay for longer than a year or two. Glaser said that makes sense both way, he likes to hear that.

Knaak &
Associates

Fritz Knaak of Knaak & Associates said this is his chance to see you while you see me. Knaak said he has been practicing for 32 years and his primary practice has been public law for 30 years. He said in his course of 30 years he has never been fired. Knaak said he has ended a couple relationships with cities for all the right reasons. Knaak said he would love to be your city attorney, this is what he likes to do, and part of what keeps him going as lawyer, the fact that what he does when representing a City is a public service in the every meaning of the sense. He said he had gone to law school with people that are in the profession the get overly specialized and burnout. Knaak said with civil service there is something different going on every day; it is very different, different clientele with a broad array of City problems. He said this practice has changed over last 30 years, thankfully we don't have to do the many things anymore, such as the litigation that LMC does.

Knaak said he is a litigator; he is not shy about courts and is not shy about prosecuting. He said he will tell you that he means it when he says he welcomes the opportunity to represent East Bethel as their lawyer, you are a smaller town. Knaak said If you choose me as your lawyer you would be comfortable with me and over time confident with me. He said with

me is Don Kohler, he has been practicing municipal law for about a dozen years, and he has known him since we were kids. Knaak said he wants to be around people he is comfortable with. He said Kohler is primarily responsible for prosecution. Knaak said that requires day to day ongoing management. He said staying on top of it administratively.

Lawrence said we are doing some construction and growing, and some of our legal questions are coming from our contractors, are you familiar in handling this. Knaak said he doesn't represent any large contractors, he has represented rapidly developing cities, Lake Elmo and Afton, and he is familiar with that. He said we have the templates and everything we need in our office to deal with those kinds of questions.

Moegerle asked do you have experience dealing with economic development. Knaak asked where you want to start, he has been very involved with economic development and authorities. He said he was the city attorney in Newport, involved with the city of Fridley HRA and Medtronic's development. Knaak said he deals on a regular basis with economic development and authorities, if on the cusp of it the fun part; it is a lot of effort to develop it. Moegerle asked have you read the opinion regarding the Anoka HRA and East Bethel HRA and do you have an opinion. Knaak said he is aware of it. Moegerle said and it was affirmed. Knaak said we had a similar position in the city of Fridley and Anoka County backed off. Moegerle asked did your HRA pre-date the Anoka County HRA. Knaak said yes.

DeRoche asked what your background in prosecution is. Knaak said he has prosecuted since 1982 and also defended. He said he has a general practice, it keeps him sane. Knaak said he has done felony trials. He said he has prosecuted misdemeanors and gross misdemeanors, but now he mostly does the civil side. Knaak said Kohler does the prosecution. He said what immediately comes to mind is a zoning case, those always generate the heat and we had a case down on 65, a Chiropractor that built an \$85,000 sign, flashes and everything, incredibly illegal. Knaak said we took it to court, his way of provoking, and the plaintiff to it to the local American Legion and well respected citizens and his first use of sign was waving American flag, but we did cite him for illegal signage. He said we won the case and took it up on appeal and won it again. Knaak said this stuff only can happen to you if you are a city attorney.

Kohler said practicing law is a second career for him, he was a truck driver and injured his back and went back to school. He said they ended up sharing office space and ended up working together. Kohler said he wrote the brief for the case that Fritz was talking about. Kohler said while he was in law school he did an internship with the Ramsey county office, and then did general law. He said he has probably have tried 10-20 cases, civil or administrative. Kohler said most criminal cases do settle. Kohler said when working for the Ramsey County public defenders office they told him they were all guilty of something. He said they said if you don't get them with what they are charged with, they will plea to a lesser offense. Kohler said we have worked on several cases together, represented both sides of fence.

Knaak was reminded of a case where we successfully challenged the discretion of the city of Saint Paul. He explained the case. Knaak said he likes to have regular staff meetings, it is the only time he had a room full of staff members. He said he would be the city attorney and Kohler the assistant; he is the person that would be focusing on managing prosecution. Knaak said we proposed in our proposals a fixed fee arrangement, that used to be unheard of but now it is becoming more common, that way there is no disincentive for the city to use us.

He said we try to be on target, that way there is no disincentive for the staff to call for a question, there is no such thing as a stupid question, if people are prepared to do that, and what got me to do that is he likes to meet with staff. Knaak said in his monthly staff meeting all the staff questions get answered and it tends to avoid problems. He said see he has an additional hourly rate for more than 10 hours when there is litigation that goes beyond 10 hours. Knaak said the last time that happened in the city of Fridley was 6 years ago. He said that is designed to be there in case we have a major case. Knaak said we would expect given our practice we never see that. He said we don't charge you for copies, there is occasionally a filing fee, but very rare.

Davis asked describe your response to staff, time. Knaak said when you call you are going to get me. He said today he talked to two city administrators, one two times, the other three times. He said his job, the benefit of experience is to give you an answer, and you are probably going to get the answer right away. Knaak said and 90% of the time you are going to get an answer right at the meeting. He said he shows up with a computer so he is able to do research here. Knaak said if he doesn't have the answer right now, he will have the answer tomorrow, he wants people to ask the question.

Lawrence asked what cities are you currently working with. Knaak said Newport and Fridley. He said he does conflict work for others. He said he had Maplewood, but they are just big enough to need someone, but not quite, to almost need someone in house. Knaak said in this particular case, his partner at the time was there all time; he set up an office there, so he finally said to him, why are we pretending you are here so he is now the in house city attorney for Maplewood. He said in the case of Lake Elmo, he was in politics at the time, was a former legislator, they were doing an annexation, and he offered support, and a campaign brochure came out that he was working for them and it was skewed and he withdrew from working for them. Knaak said these are two cases where he has had to withdraw from representation.

Moegerle asked how much of your time do you consider educating council on the pro and cons on the wording of a provision in an ordinance that needs to be changed. Knaak said if this is a Council directive, one thing he has learned is it is hard not to enter yourself into the picture, cardinal rule it is not your City. He said sometimes if you have been a city attorney for a long, long, time you have to resist that. Knaak said when you talk about merits or demerits of a position, you have to talk objectively of the ordinance, he does this for clients all the time, and this is part of his job.

Knaak said he likes what he sees; he is comfortable, that is important to him. He said some of what he does is a gut feel. Knaak said this City has a good reputation, you are growing. Issues are different, development fights, and new people. He said he grew up in the city of White Bear Lake and that fight was going on there in the 50's. Knaak said ultimately what matters is if the Council is positive and forward looking.

Moegerle asked if it should happen that we split prosecution and civil do you have a preference. Knaak said we would like to do both. He said but it is up to you. Knaak said if there is someone you like better for prosecution, which is your call. He said he likes doing prosecution, he loves doing civil.

Lawrence said for this city, which is smaller than what you have been handling, but would provide something interesting for your background, he wants to make a statement from the group. He said we are five members who have diverse thinking and it makes for interesting

discussion, hopefully we are progressing forward at an even rate. Lawrence said normally our council meetings are on Wednesdays, is that a problem for you. Knaak said not for him now. He was relieved when he learned your meetings were on Wednesday nights. Knaak said because of what he does and so many cities he does not schedule things on Wednesdays, so they are free.

DeRoche asked for his take on domestic abuse. Kohler said those are some of the most heinous crimes, violence against another person. He said people make mistakes as they go through life, domestic situations, tend to escalate if they are not dealt with severely. Kohler said he doesn't know if they have victim advocates in Anoka County, but where we are now, we get input from victim advocates.

DeRoche asked how about neighbor against neighbor, 5th degree assault. Kohler said neighbors have some friction between them. He said he had a neighbor personally, his tree branches were on his side of fence and he cut them and threw them over the fence. Kohler said alcohol is usually involved. He said after people are arrested and charged they are usually contrite, we will do a lesser offense if they remain law abiding. Kohler said on the other hand we have a situation in Newport that it is constant and one party takes offense at anything neighbor does so we are judicious about our time, because it is just one neighbor just complaining every time. Kohler said he thinks his experience in his career prior to becoming an attorney is helpful; you can cut through the BS.

Moegerle asked she has been learning through the Anoka County attorney that they write citations, then we hire a prosecutor, then we get fines in place but not much comes back here. She asked what can we do about this. Kohler said there are a couple ways to get more revenues to come back to the City. He said in Washington county there is a hearing officer, we gave them guidelines for settlement, the majority of the fine comes to the City and then the ticket doesn't go on the license. Knaak said the LMC has been trying to increase the amount of revenue to the City. He said the cities collectively have been talking about how do we get around this. Knaak said the courts however are pushing back. He said you can work out an agreement, but the Judge will look you in the eyeball and say glad you are amenable and will give them this, but guess what we are going to split this. Knaak said cities everywhere and their attorneys are conspiring to see some of that revenue. Moegerle asked we can't add an ordinance to add a fee. Knaak said it doesn't work to do this. He said you absolutely can't do this with traffic cases. He said you need to understand there is a lot of pressure from the forces out there.

Lawrence asked when you take on a new city, what kind of timeline are you looking at. Knaak said we are looking for a contract. He said you are a city, so if you hire me, by statute you can fire me next week. Lawrence asked how long of a contract. Knaak said that would be up to the Council, but he would encourage Council to do a review every year. He said he would like them to be candid for fairness so we both know what the shortcomings are, it needs to be stated. Knaak said he has had long relationships, 16 years in Fridley and 30 years in Newport. He said he has good relationships with his clients and if he is doing something they don't like he hears about it.

Voss said we set a policy to go through this process every so many years. Davis said every five years. Knaak said five years if fairly common, it is a good idea, that way you are not feeling pressure.

Speltz, senior associate who is actively prosecuting your accounts along with Spring Lake Park. He said he is proud of what she has done for our firm and our accounts. Clelland said we represent eleven cities and Brooklyn Center is the largest. He said we have enjoyed working for you; we were selected as your prosecutor in 2008. Clelland said one of the things he about in selecting the prosecuting attorney, is it is not just experience and technical skill, but what he would think is a good fit, you fit better with some than others, some are more responsive. He said he hopes we have been addressing concerns on a legal and practical basis. Clelland said he thinks when you assess our fees; our fees are the lowest of the Twin Cities attorneys. He said we do work effectively and competently. Clelland said we are the only ones that have applied for just prosecution services. He said sometimes there are concerns about just doing prosecution and not sharing with the civil. Clelland said almost all the work we do would never go to your civil attorney. He said it is rare that each of us are working on part of a problem, but if so, we would be careful to allocate the responsibilities so we don't duplicate the responsibilities, such as with Randall. Clelland said he hopes you recognize you work well with us. He said he has been before this council on license actions, and he has worked personally on problem properties.

Speltz said she knows you heard from three others. She said as far as the prosecution side, prosecution for Hennepin and Anoka counties is like apples and oranges. Speltz said it is like walking into a new place, Anoka likes to be different, and she thinks there is a lot of value you receive from having an attorney that has experience in Anoka County. She said the judges trust me. Speltz said it is not cost effective to litigate every case. She said she has a good relationship with the public defender, had only one jury trial in the two years she has done this with East Bethel. Speltz said we are working to increase the prosecution costs back to the cities, to make sure you see the money back. She said she has gotten a good response from the bench. Clelland said everyone is fighting about the money. Speltz said in Anoka County you don't pay for the jail time, if it is prosecution cost it goes to the city. She said we have to be careful to say this, instead of court cost, and then it goes to the county. Speltz said we are trying to get more money for you.

Voss said back in 2008 the big focus when you were interviewed was addressing blight, in the few years you have been doing this for City, have you seen improvements, settling cases, getting resolutions. Clelland said for budgetary, we have not been asked to do much recently. He said your staff identifies these and we recover nuisance costs. He said you don't have a housing maintenance code that deals with the maintenance of homes. Clelland said Brooklyn Center has this and he thinks that would benefit you in the future. He said we can remediate any problem property if they are identified with enough specificity. Clelland said City staff are good, until they realize they can't get any further. He said by the time we get to court we have the high road. Clelland said it is a little more difficult now with people abandoning properties to foreclosures, people getting elderly. He said he strongly believes in the broken window theory, and if there is a broken window there is another broken window, you need to keep curb appeal to make people think this is a nice community. He said he is not sure if it is a change of focus, economic, etc. Speltz said in court once they realize how serious it is they take care of it, they comply.

Moegerle asked do we have ordinances we need to tweak. Speltz said we work a lot of out of the Appendix A, Brooklyn center is more specific. You are more like Corcoran and Greenfield. She said she knows you have large properties out here. Clelland said the court distinguishes between building and maintenance; the contractors need to know that rules won't change from one community to another, need to know we aren't going to be big brother and knocking on doors and looking in windows. He said but It can happen by

accident or you can use the hazardous building act, you have to find out if the building is not habitable. Clelland said if the family is dysfunctional, then we are looking to social services. Moegerle said staff is working on that ordinance now is he working with you on that. Clelland said no, but because he came from Brooklyn Center, he has a lot of large cities to look at.

DeRoche said you have been in the business for a long time, he ran into a gentleman that has a dead horse on a hill on a property, is there something to cover this. Speltz said she thinks she knows this property. Clelland said there is a statute that covers this, public nuisance. He said if there are several neighbors that are affected by the smell of decay, is it attracting vermin. Clelland said also, you might find a county health ordinance, they may have ordinances there that deal with a specific situation, dogs and cats are regulated under Chapter 347, but horses might be covered under Chapter 346. He said he assumes he can bury them or burn them. Voss said we had this issue about 10 years ago, a different place and we went in and buried the horse.

Clelland said he feels he knows you, he hopes we can retain our contract with you and go forward. He said we work for many cities doing civil and criminal, Brooklyn Center, Spring Lake Park, Long Lake, Corcoran, Hanover, Greenfield, East Bethel and others. Moegerle asked would you visit us more than once a quarter. Clelland said yes. He said we provide and update on the outcome of court cases to the sheriff and we would be happy to send this to the city administrator. Speltz said we also do this on the code enforcement, send an update. Davis said he would like to see that. Speltz said she is in court every Thursday and every other Friday. She said combining the calendars for Spring Lake Park and East Bethel is good for you. Speltz said if she goes there for four hours each is being billed for two.

DeRoche asked is there an increase in DWIs. Speltz said there are some grants out there, Safe and Sober. Clelland said there are over 40,000 DWIs in Minnesota. Voss said one of the reports we got, analysis of prosecution costs to the city and offset of fines, do you now offhand what the budget is. Davis said \$58,000 is what we got back in, about 65 cents on the dollar. Voss asked has that changed, prior to 2008. Davis \$48,000 in 2007. Speltz said if you get a speeding ticket, she does this all in prosecution costs. She said it allows them to keep it off their record and then they don't go to court. Speltz said this is the difference between her and Randall. Davis asked does this go to the state first. Speltz said goes directly to the City. She said unfortunately with the economy, a younger bench, there has been a reduction of fines; they are giving community work service. Clelland said frankly he has some respect for people that say they are willing to work it off; they are at least paying their penalty.

DeRoche said with this economy do you see increase in burglaries and such. Speltz said we don't see felonies. Clelland said a lot of this is drug driven. Speltz said we do tend to see the frequent offender list. She said this is the benefit of having someone that has worked with you city is they know these frequent offenders.

Eckberg,
Lammers,
Briggs, Wolff
& Vierling,
PLLP

Mark Vierling of Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP said he brought a good sampling of his staff along tonight. He said he brought Sean Stokes, Amanda Prutzman, Jennifer Nodes, Wendy Murphy and Tom Weidner. Vierling said our firm has been around since 1946 and has 14 attorneys. We have a significant focus in the municipal field and service the cities/villages of Woodbury, Hugo, Oak Park Heights, Bayport, Lakeland, Lake St. Croix Beach, St. Mary's Point, Birchwood, Marine on St. Croix, Grant,

May Township, Mahtomedi, Wyoming, Lake Elmo, Somerset and Hammond.

Vierling said we can offer you value, we suspect we are one of the higher ones in hourly rate, because of the experience we offer, we can turn things around faster and provide you with a response faster than most. He said they took a look at what we have done for you since January this year. Vierling said you averaged about 27 hours a month. He said also if you opt for the hourly rate, we don't bill you for hourly time. He said some firms will bill you for Westlaw research, there are no enhancements for out of pocket, no administrative fees, we do not charge for phone calls. Vierling said we don't bill for electronic copies and technology, we have most of our clients that want their product electronically. He said we own a title company, FSA, so we can turn this work around faster and cheaper now because of this. Vierling said no firm is going to be able to handle everything, but our firm has the depth that can handle most everything. He said we do all our appellate work. He said we have the resources and connections that firms that are metro wide need to do what we need to do. Vierling said we have offered you two different options for billing, hourly or \$3,200 per month.

Vierling said we are interested in doing both the civil and criminal. He said we have found in communities where we do that they are better served. Vierling said more important is with the issues we own it 100%, we have the problem, community has the problem and we are going to get you the solution you are looking for. He said for instance, when you have a problem with the blight issue, you might need to go the civil route to get something done. Vierling said we have gone the paperless route in Washington county. He said we have offered you a reasonable rate on prosecution services, and we think it is lower than what you are paying now. Vierling said we are familiar with the judges in Anoka County; they are the same as Washington.

Sean Stokes said he is partner at the law firm and he has been a criminal prosecutor for 15 years now. He said he began his practice in the Sherburne County attorney's office, and for about 5 years we were short judged, in Sherburne, Anoka and Washington we had the same judges. Stokes said Anoka would rotate a judge to Sherburne every week. He said he got to know the judges fairly well. Stokes said he is also in private practice and has quite a number of cases in Anoka County. He said what distinguishes Eckberg Lammers is the team approach.

Stokes said what we have found over the many years we have represented cities is the need to be a crossover of the civil and criminal services. He said there are cases where criminal is the approach and cases where a hybrid is what you need. Stokes said really when we look at representing our clients we look at public safety and quality of life in the community and to meet those needs and how they want them afforded under the law. He said this is a significant benefit to the City. Stokes said because we have been doing this for so long at Eckberg, Lammers, we have two full time support staff that only supports prosecution staff; one has been with us for over 15 years, which is unusual for a prosecution law firm. He said if you need something during the day we have someone that will assist you. Stokes said we are effective in what we do. He said we enjoy trying cases.

Stokes said there are a lot of attorneys that say these cases as not worth going to trial. He said you can not meet your public safety in your community if you are not willing to go to trial, it allows us to maximize public safety objectives that the client has. Stokes said If we end up with the opportunity to serve, he would be the primary prosecuting attorney. He said you would need to have a primary contact, and that would be him. Stokes said we have an excellent team. He said he has reviewed your city ordinance as far as problem properties; it

needs to be what is the best tool, sometimes abatement action, sometimes enforcement through the criminal system, sometimes others. Stokes said Vierling mentioned we have innovated a paperless system for current municipal clients, this insures things are done in a timely manner; we would look to implement this for you as well.

Moegerle asked in your review of our code, did you find any wholes in places or any places we need to strengthen. Stokes said in your code you state that violations are misdemeanors, such as under Solid Waste provisions and it says them can be charged as a crime, this is most of your code provisions. He said but your nuisance section is one exception to that. Stokes said your code does an excellent job of defining a nuisance, but what is not there is a violation of the nuisance code is a misdemeanor. He said we could get around that and could do that as a violation of state statute, but would rather do this under your code. Stokes said most lawyers think that any violation of city code is a misdemeanor but that is not true. He said he thinks you need to amend this.

DeRoche said he has an issue where three people approached him where a neighbor dumped three dead horses in his property, how can you deal with this. Stokes said statute 609.745, public nuisance dangerous to someone's health, loud noises, odors, he would need to review the specific provisions of code, would need to review your code, and solid waste provisions, but that would deal with it. Weidner said Prutzman is one of our experts on animals and he knows she knows about some changes with horses being categorized as livestock that might affect this. Prutzman said yes, horses were just moved into the category as livestock and with regard to livestock, there is no requirement to remove livestock. Stokes aid under Chapter 26 the Code Enforcement Officer could issue a clean up order, we may have conflict with state order, and it would be an interesting case. Vierling said you just never know what comes up in communities, it is one of the benefits of having had 17 communities we have done a lot of clean up, perennial problems.

Lawrence asked what do you do about a cat issue. Vierling said you can have an ordinance; it comes up to what your community will tolerate. He said we have had some issues with this, if doing damage you can usually do something about this.

Moegerle asked what your experience with economic development is. Vierling said he has worked with communities that have been on the high growth mode, Woodbury, Hugo, there are fiscal opportunities that cities are offering, tax increment, bonding that you have available, tax abatement where tax increment is not available, community if the school district will sign on this, it is a big significant value to get a business in, the tax increment world is getting bigger and bigger all the time. Moegerle asked is this just for the industrial or for big box entities. Vierling said if you get everyone on board, you can do it with anyone. He said it is a very competitive market for businesses and they are always looking to squeeze the extra dollar out.

DeRoche asked how you deal with domestic abuses cases, from assaults to felonies. Stokes said we are limited to misdemeanors and gross misdemeanors, the county attorney's office would deal with any felonies. He said as far as domestic violence we take that very seriously, we partner with domestic advocacy groups out there. Stokes said with misdemeanor crimes you have non-alcohol driving crimes, to domestic abuse crimes. He said when someone drives without a license or no insurance this pales compared to a domestic abuse case. Stokes said as a family attorney he has a lot of experience with this and he takes these matters extremely seriously, offenders need to be held accountable and victims need to be protected.

DeRoche asked how do you go from that to two neighbors fighting with each other and a cop shows up and all of a sudden it is a 5th degree assault. Stokes said the statutes are very broad on 5th degree assault. He said the first part of this is someone commits an act with intent to cause fear in another of immediate bodily harm or death and the second part is someone intentionally inflicts or attempts to inflict bodily harm upon another, the intent to cause harm. Stokes said the deputy will likely issue a ticket on the second part the intent to cause harm. He said this is something you need to have a lot of experience on to understand. Stokes said crimes of domestic violence happen behind a curtain, it is very rare you will have a third party. He said with a misdemeanor case you don't have bodily injury, they are tough cases. Stokes said it is the objective of a city prosecutor is to insure community safety and quality of life. He said sometimes there are false acquisitions; it requires a lot of experience.

DeRoche asked how do you deal with plea bargains. Stokes said this is the nature of our business and plea bargains are a necessary thing. He said if we didn't do this, law enforcement would sit in the hallway of the courthouses and wait for cases to be called, they would never be out on the streets. Stokes said repeat offenders need to be treated differently and we need to look at the severity of offense. He said having prosecutors that are experienced is key; we make plea bargains that are appropriate and fair. Stokes said we say based on what you have done and what we know, this is what you are going to get, if you don't want to do that we will take your case to trial.

Weidner said Murphy just put a person in jail for stealing a tuna sandwich, put him in jail for 45 days he was a repeat offender, but you can't handle each case equally just because of the charge. Weidner said as prosecutors, it is almost adult parenting. He said you find out from experience. Vierling said another thing you need to consider. He said the last thing you need in a court house is attorney du jour. Vierling said our people talk to each other, talk to the courthouse staff and talk to your staff. He said we try to stay consistent with how things are handled. Vierling said the last thing you want is a defense bar looking for a different attorney to move their case to on a different day because they think they will get a different outcome. He said if the community wants a value they want impressed on a certain type of offense, we want to hear that.

Stokes said it is somewhat like parenting, these people are acting in a somewhat antisocial manner. He said we need to get behavior modification. Lawrence said on an average, do you know how many cases are done on a plea bargain versus trial. Stokes said plea bargain is all you need sometimes. He said most cases are not tried. Stokes said plea and stand behind principles, there is not always a bargain with it. He said we do a flat fee prosecution because we don't want to spend our time with administrative fees and recording every document that goes out. Stokes said some say you have no incentive to go to trial, but we like to try cases. He said it gives us the reputation that we will not fold early on. Stokes said we have almost 4,000 cases a year, we believe in what we do. He said you have to try cases to back up what you are talking about.

Lawrence asked as far as spending time in the Anoka County courts, how often have you been there. Stokes said he spends a lot of time there in his current practice. He said he personally knows the judges there very well. Stokes said one was his former boss. He said he is quite familiar with the court; he has a number of cases there as we speak. Stokes said Washington County just got Judge Hoffman, he was a judge here for many years and he just transferred over there. He said Anoka County has a well deserved reputation for a very strict bench it is considered to be a county you don't want to commit a crime in because the

judges will hold you accountable. Stokes said he would be excited to come back and prosecute in Anoka County, because the judges hold you accountable.

Moegerle asked about ordinances we need to tighten up on City side. Vierling said he had some comments on the personnel policy, he had sent a memo to the former city administrator. He said and Ms. Nodes is also working with the fire chief on some personnel issues.

Moegerle asked do you have an opinion on the Anoka County HRA versus East Bethel HRA case. Vierling said he was sitting in his office at Woodbury and the administrator came in and you sure have made a ripple effect. He said the Washington County HRA is wanting the administrator to sign on the HRA there. Vierling said as he suggested to the Council, the only resolution that will come to the county is they will try to get legislation passed regarding this, and we will have to watch it.

Moegerle made a motion to adjourn at 9:45 PM. DeRoche seconded. Voss what is the next step in this process, he thought we would discuss this while everything was fresh in our minds. **Moegerle withdrew the motion.**

Voss said he doesn't think we have to have the same attorney for prosecution and civil. He said he wasn't impressed with the prosecution side of Knaak and he wasn't very impressed with Glaser. Voss said he likes the idea of Clelland being right there. He said the prosecution side of Eckberg Lammers seems kind of hard-handed. Voss said for the civil said eh has a toss up, he thinks Vierling does a good job but he is inquisitive why he is proposing a flat fee and yet has such a high rate. He said he doesn't understand the math there, it seems odd.

Lawrence said when he reviewed these he thinks Clelland put on a good display for prosecution, the method of analogy was good. He said Vierling was strong which is good, the value of having it all in one group so you don't have a possible mismatch is good. Lawrence said with that in thought, he finds he has two front runners of the group.

Voss said Knaak and Glaser weren't set on having both prosecution and civil. He said he doesn't know that we have had issues with having this separate. Voss said he likes the fact that with the clean up they have had a long history, Clelland has, and Eckberg would have to learn this.

Moegerle said Eckberg and Lammers is not afraid to try things, she likes that. She said she also likes their reputation, that impresses her. Moegerle said they are all nice people and all qualified. DeRoche asked are we trying to turn this into a police state. Moegerle said take the domestics for an example, do we want to be strong on domestics. She said we have to give them direction on prosecution style. DeRoche said they have to act under Council direction. Moegerle said we have a problem with the contractors, and if we have attorneys that are known to back down, then it might be different. Voss said but isn't that civil. Voss said in terms of the criminal side, all he heard from Eckberg was never part of resolution. He said he brought that up intentionally with Clelland was that council liked finding resolution. Davis said whatever we do; we need to make sure the attorney knows our community standards.

DeRoche asked Davis's opinion. Davis said Eckberg's service has been very good, whenever we ask a question they are right on it. He said he has been very good to work

with on the civil side. Davis said and for the prosecution side, Eckberg and Clelland were both strong. He said he felt Knaak was weak. Davis said Glaser was intriguing at first, but then he lost him. He said staff doesn't deal with prosecution as much. Davis said but for civil he would definitely recommend Eckberg, we have gotten very good advice from him.

Voss said he has been impressed with Vierling and given the things that the City is going to go through over the next few years and the importance of the economic development, it is going to be more costly. He said as far as Knaak he was impressed, but he remembers when he was a politician. Voss said we have made a lot of progress on blight in the City with Clelland and he doesn't see a reason to change. Voss said his firm does a lot of this stuff, anything environmental but it doesn't mean we do it all.

Moegerle said she looks at the RFP submittals and to her they represent the quality of work they do. She said Eckberg is definitely a cut above the rest. Moegerle said Stokes came up and said we have a problem with our nuisance ordinance she likes that. Voss said it comes down to personality, in terms of how they deal with people. Moegerle said three years ago Clelland said we had a problem with our housing maintenance laws and he said the same things three years later, to her that is a person that hasn't show initiative. She said she wants someone that will stay ahead of the ball and show initiative. Moegerle said it is very disappointing to her that he said this three years ago and it still isn't fixed. Lawrence said if you want good prosecution, you need good direction from the City. Voss said we dropped Randall from prosecution because nothing was getting done.

Moegerle made a motion to hire Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP for both civil and prosecution. DeRoche said he would like to process this. Moegerle said she would like to do this also, but it seemed that someone wanted a decision made. **Motion dies for lack of a second.** Voss asked do we need more information before they next meeting. Lawrence asked if we went with Eckberg, Lammers, Briggs, Wolff & Vierling only, for both, what would be the problem with that. Voss said he doesn't see that we need to change the prosecution. Moegerle said the city attorney works with our people on the new ordinances that are going to be used for prosecution. She said you are not going to get the effectiveness in two separate offices, they will understand each other better if in the same offices.

Council asked Davis for the budget amount for civil services and what has been spent so far. Davis said \$140,000 and so far \$45,000 has been spent, but there might be some bills out there that might not be included here.

Moegerle made a motion to hire Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP at a flat fee of \$3,200 for civil attorney services. Voss seconded; all in favor, motion carries.

Voss made a motion to retain Carson, Clelland and Schreder for prosecution services and he would like to negotiate a flat fee with them. DeRoche said he only sees an hourly rate on this one. Voss said the average monthly charge was slightly higher than what Eckberg was proposing for a flat fee, \$500 higher. Lawrence asked why would we go with someone that is so much higher. Voss said you go with what you know. He said this is an attorney we have a track record with, we haven't had any issues, staff hasn't had any issues, and we have increased revenue and they are local. Lawrence said Stokes is in Anoka right now. Voss said this is someone that is there everyday of the week, it is different than someone that isn't. Moegerle said you get synergy with them working together. Voss said

so you are saying that Vierling won't work with them. He said nothing gets changed unless it gets changed at this table. Moegerle said Vierling will work with him, and share information, she just thinks it is better to have this in one office. She said if Clelland only does prosecution they are isolated in their own little area. Voss asked what would not work with this. Moegerle said she is not saying that, she is saying it would work better for them to work together. **Motion fails for a lack of second.**

Adjourn **Lawrence made a motion to adjourn at 10:09 PM. DeRoche seconded; all in favor, motion carries.**

Attest:

Wendy Warren
Deputy City Clerk