

MINUTES
COMMON COUNCIL SPECIAL MEETING
WEDNESDAY, OCTOBER 23, 2001
7:00 P.M.
COUNCIL CHAMBERS

MEMBERS PRESENT: Mayor Rietz, Council Member-at-Large Chaffee, Council Members Goodnature, Jorgenson, Christopherson, Poppe, and Nordin.

MEMBERS ABSENT: Council Member Lang

OTHERS PRESENT: Larry Maus and Lee Bjorndal (7:00 to 8:00), David Hoversten, Steve Hovey, and Marty Helle (8:00 to 9:00) Media.

Mayor Rietz opened the meeting at 7:00 p.m.

Kermit Mahan, Executive Director of the Austin HRA has received a grant to clean up the contaminated soil at the old railroad yard. The total grant is for \$1,200,000 and is from the Minnesota Pollution Control Agency. The contaminated soil will be dug up, burned on the site (decontaminated), and then deposited back into the site. Once this is completed, Austin Transportation will be ready to construct their facilities.

Moved by Council Member-at-Large Chaffee, seconded by Council Member Nordin, adopting a resolution approving the grant from MPCA to clean up the contaminated railroad site.

Larry Maus and Lee Bjorndal representing the Baudler Baudler Maus & Blahnik law office discussed the qualifications of their firm in representing the City of Austin for prosecution services. Mr. Maus noted he has interviewed members of the Police Department, the Judges, and the County Attorney in order to get a full understanding of the job that is needed. Mr. Maus stated the caseload of 5,000 to 6,000 cases per year can be done by himself and his two back-up attorneys, Lee Bjorndal and Thomas Baudler. Currently, the Baudler law firm represents the municipalities of Ostrander, Wykoff, and Spring Valley.

Mr. Maus noted he would ensure the City Council and the Police Department were happy with the outcomes of the cases. Mr. Maus also noted his firm would do the job correctly, and would ensure justice is done.

Council Member Jorgenson asked what the strongest reason would be for the Council to contract with Mr. Maus's firm for prosecution services. Mr. Maus stated the quality of the job the City will get from his firm is the number one reason for hiring them, as they have the experience in dealing with issues of this community. Mr. Maus did note that

plea bargains are part of the judicial system, but any plea bargains would be on the prosecutor's terms.

Council Member Nordin requested more information on how Mr. Maus would handle conflict of interest cases. Mr. Maus noted some conflicts would arise between the prosecutor's job and clients his firm represents, but this would be kept to a minimum. Mr. Maus noted his firm will step aside if a client is arrested, but would not step aside for friendship. Mr. Maus noted a local firm could be used in conflicts, but so far has only received comments from one firm in Albert Lea to assist in conflict prosecutions.

Council Member Poppe asked if Mr. Maus would be the primary attorney, with Mr. Bjorndal and Mr. Baudler serving as back ups. Mr. Maus said that was correct as Mr. Maus would need a back-up to perform the duties while he is on vacations. Mr. Maus noted he would still handle other civil cases and litigation as part of his regular firm practice, but this would be his primary role. Mr. Maus noted he does not do much paper legal work such as contract writing.

Council Member Poppe asked who would perform the duties of the Victim Coordinator/Secretary. Mr. Maus said there is a requirement for a Victim's Coordinator with this position. In the beginning, Mr. Maus added that he would hire a secretary to perform this function.

Council Member Poppe asked if any attorneys spoke a foreign language such as Spanish. Mr. Bjorndal said he spoke enough Spanish to be able to communicate with people. Mr. Bjorndal added that a court translator is also available.

Community Development Director Craig Hoium asked how Mr. Maus would handle scheduling issues such as being ready within three weeks on a zoning complaint. Mr. Maus noted there would be no time problems with any cases as long as Mr. Hoium or the Police Department has the facts and files prepared to go to trial. Mr. Maus noted it is very important for the staff to be well prepared in order for him to do his job properly.

Mr. Hoium stated that many people give a guilty plea at the arraignment hearings. Mr. Hoium asked what sort of sentence would be appropriate for land use and zoning violations. Mr. Bjorndal said he would be handling most of the zoning violations. Mr. Bjorndal stated that judges don't typically view zoning violations as serious offenses. Mr. Bjorndal noted the goal is to remediate the situation and get it fixed. Council Member-at-Large Chaffee noted zoning violations are big issues for the council, and neighborhoods need to be kept clean.

Council Member Christopherson questioned the firm's experience in contract writing. Mr. Bjorndal noted his firm does contract writing such as for Spring Valley; it's just that Mr. Maus personally does litigation work and relies on the rest of the firm for the "paper legal work". There is not much contract writing in criminal law.

Council Member Goodnature questioned the breakdown of the number of cases, and how many would go to trial? Mr. Maus said he would not plea on issues involving the law. Council Member Goodnature stated it may be more of the case that Mr. Maus would need

to hold our nose to the grindstone to ensure proper information is being maintained. Council Member Goodnature noted he has had to deal with Mr. Maus many times as the Mower County Sheriff; Mr. Maus is always well prepared and does a great job as a defense attorney. If Mr. Maus does as good a job prosecuting as he does defending, we will see a decrease in violations. Mr. Maus stated that if his firm gets the job, he will need to meet with the police officers to ensure they know the items he will need (pictures, statements, etc.) to properly prosecute cases.

Police Chief Paul Philipp noted our system is a huge change in the legal process in Mower County. Chief Philipp asked how Mr. Maus would handle scheduling. Mr. Maus noted this is a great unknown, but would expect the police officers to prepare with him for trials.

Chief Philipp asked if Mr. Maus and his firm would help train the police for changes in the law. Mr. Maus noted he expects to meet with staff on a regular basis to discuss law changes as part of his contract.

Chief Philipp noted currently Mr. Maus expects 1 or 1.5 attorneys to do the prosecution. Chief Philipp asked if the price would change if more are needed midway through next year. Mr. Maus noted if more attorneys are needed, there would still be no change in the price. Mr. Maus noted he is obligated by his bid and recognizes his responsibility.

Mr. McGarvey asked if theirs is a one-year proposal, or could it be extended if the City so desires? Mr. Maus said, if the city desires an extension, they would stick with the same price for a second year.

Mr. McGarvey clarified that if Mr. Maus's firm has an open file on a defendant, they would transfer the case to another law firm. Mr. Maus affirmed this.

Council Member Nordin asked if Mr. Maus or his firm would send a prosecution case to another firm if the defendant had been represented by them in the past, but the case was now closed. Mr. Maus noted there is no conflict if a case is closed as long as nothing was learned from the closed case. Mr. Maus noted he does not see this happening.

Mr. Maus and Mr. Bjorndal were thanked for submitting a proposal and meeting with the council.

David Hoversten, Steve Hovey, and Marty Helle discussed the background of their firm and their qualifications. Mr. Hoversten noted that before the City and the County decided to jointly prosecute, Mr. Hoversten's law office did all of the prosecutions. Mr. Hoversten noted that John Beckmann heads up the litigation portion of his practice, but the firm handles all cases as a team approach. Mr. Beckmann and Mr. Hovey will assure the Council that the job will be carried out correctly and efficiently. Mr. Hoversten noted Marty Helle would handle some of the day-to-day operations of the prosecution. Another attorney would be hired to also handle part of the tasks of prosecution. Mr. Hoversten noted city prosecution is not rocket science, but is hard work, and that the Hoversten law office has the staff to do this job. Mr. Hoversten noted that to prosecute, one needs to be

fair and have great integrity, and one advantage the City Council would have with his firm is their longstanding relationship with the City.

Mr. Hovey stated all litigation needs to be handled the same way, no matter what type of case is involved. Documents need to be studied, and witnesses need to be interviewed. Mr. Hovey stated all of these cases would be considered the firm's cases, and corners will not be cut.

Council Member Jorgenson asked what would be the strongest reason for the council to contract with Mr. Hoversten's firm for prosecution services. Mr. Hovey stated his firm has been entrusted with a wide variety of litigation work over many years. His firm will put the time in to do the case correctly, not just try a case to get it done.

Council Member Nordin requested more information on how Mr. Hoversten's firm would handle conflict of interest cases. Mr. Hovey noted they have a system in place to ensure no conflicts would arise. If a conflict did arise, an outside firm would need to be utilized to prosecute the case. Mr. Hovey noted all conduct is governed by the Rules of Professional Responsibility. Council Member Nordin asked if a closed file prosecution case would arise, how would it be handled? Mr. Hovey noted each situation would need to be reviewed on its own merits.

Council Member Poppe noted Mr. Beckmann and Mr. Hovey would oversee the cases, and one more attorney would be hired. Mr. Hoversten stated staff could handle the job currently between Mr. Helle and Craig Byram. The entire litigation department would support this process. However, Mr. Hoversten noted additional staff will more than likely be hired in the near future to handle this contract.

Council Member Poppe asked if more paralegal support would be needed. Mr. Hovey noted at this time, no, but the situation would be evaluated once the process started moving.

Council Member Poppe asked if any foreign languages were spoken? Mr. Hovey noted they are currently advertising for an attorney with Spanish speaking skills.

Council Member Christopherson asked who would keep the fine revenues. Mr. Hoversten noted by state law, one-third of the fine money stays with the county to cover court costs, the other two-thirds would be kept by the city to offset the costs of prosecution.

Council Member Goodnature questioned why Mr. Hoversten's firm would want to get into prosecution, since they have been primarily civil cases in the past. Mr. Hoversten noted this was a great opportunity for his firm to make some more money, as they have already done work in the criminal field. Mr. Hoversten noted they are bulldog investigators, and stones would not be left unturned. This would be an additional component to their business.

Council Member Goodnature asked if a new attorney would be hired? Mr. Hovey noted he and Mr. Beckmann would do 20-30% of the prosecution. For the immediate future,

Mr. Helle and Mr. Byram would handle the balance of the work. Mr. Hovey noted they would not take a fresh law school graduate for this position, but one may be hired to learn the process.

Mayor Rietz asked why Mr. Helle would be interested in this work? Mr. Helle noted he is the associate attorney in the office, and does a wide variety of jobs for the firm. Mr. Helle noted he has always been interested in criminal proceedings as it is interesting work.

Mr. Hoium asked how Mr. Hoversten's firm would handle scheduling issues, such as being ready within three weeks on a zoning complaint. Mr. Hovey stated there would be no problem keeping up with the schedules that may be imposed on them, which is why the city would have several attorneys assigned as a team for the city to use.

Mr. Hoium stated that many people give a guilty plea at the arraignment hearings. Mr. Hoium asked what sort of sentence would be appropriate for land use and zoning violations. Mr. Hovey noted that would take some thought as to what the violation was, the history of the violation, etc. Snap judgements should not be made on these issues and more time would be needed to evaluate the situation.

Chief Philipp asked regarding the preparation time in putting together the bid. Mr. Hovey noted they spent time internally and in the Mower County District Court to get some answers. The time they would need to spend on these cases was what they had expected before they started the evaluation process.

Chief Philipp asked if the bid price be changed if more staff were needed to handle the job. Mr. Hovey said they would hire as many staff as is needed to get the job done with no increase in the bid price.

Chief Philipp asked what their views are on plea bargaining. Mr. Hovey noted plea bargains are a necessary component of the court system. Every case, however, would be analyzed as to the strength of the case. Mr. Hoversten noted that plea bargains will never be used due to time restrictions.

Chief Philipp asked what time would be needed with the police officers? Mr. Hovey noted police officers would need to be interviewed before cases, and that they are an integral part of the prosecution. Mr. Hovey also noted new developments in case law would be part of the education that could be given to the police officers through training seminars.

Mr. McGarvey noted this is a bid for one year, but should the City decide to go for a second year would Mr. Hoversten's firm be willing to do for a second year at the current bid price? Mr. Hoversten noted his firm would need to review the time spent and the services rendered. Costs and overhead continues to rise, and we would be naive to believe a reasonable cost adjustment may not be needed. Mr. Hoversten noted his firm is taking a risk here, but is willing to do the job.

After the attorneys left, Mayor Rietz noted the City has made the correct decision in taking the prosecution services over, as we have two excellent law firms proposing their services to us. Council Member Nordin noted she would abstain from any vote due to a conflict of interest.

Council Member Goodnature said the price should not enter into this discussion. There is no price tag on justice. Council Member Goodnature noted his experience in law enforcement required a clear path of communication. Mr. Maus and his firm is the best firm for this job as they have clean lines of communication and much depth and experience in this line of work.

Council Member-at-Large Chaffee agreed that two great law firms have proposed their services to us. However, the Hoversten firm has been with the city for many years, is well informed of all of our ordinances, and has done a great job for us. It may take more time for Maus's firm to get up to speed. Mr. Hoversten's firm is willing to do what it takes, and is willing to do it for much less money. We need to take care of the taxpayers interests here.

Council Member Jorgenson noted experience and communication are very important and that Mr. Hoversten's firm is very capable of doing this job. Mr. Hoversten's understanding of the ordinances would allow his firm to hit the ground running.

Council Member Poppe agreed that both firms are equally proficient. However, price should not be a consideration as the reason we are primarily here is the unsatisfactory services of the prior prosecutions. Council Member Poppe noted Mr. Maus and his firm showed great preparation for this evenings interview.

Council Member Christopherson noted both firms stuck up for their team, which is very impressive. Council Member Christopherson noted Mr. Maus's compensation is a firm number. Mr. Hoversten's compensation seems not so firm.

Mr. McGarvey discussed the funding, noting the City would now receive two-thirds of the fine money, or approximately \$130,000 based on prior years. The City would need to use this money plus \$54,000 out of the unallocated 2002 budget to fund Mr. Maus's firm. If the City chooses to hire the Hoversten firm, no additional funding would be needed as the fine money would pay for the prosecution services.

Chief Philipp noted both firms did an excellent job, but that Mr. Maus's firm seemed to be better prepared. Chief Philipp also agreed that price should not be a consideration for getting the job done correctly.

Mr. Hoium noted he would rely on Chief Philipp's comments as the police department will have more involvement with the prosecutor.

Mr. Dankert noted both firms came off well in the interview, and that no matter what firm is selected, both will do a good job. Mr. Dankert noted the Council should make their decision based on what is important to them and the City, and money may not be the issue for some. The City has approximately \$186,000 that is unallocated for the 2002

budget, and the extra \$54,000 could come from here if the council so desired, but there is a large list of items that departments have requested funding for that have not yet been approved.

Mr. McGarvey agreed noting the priority of the council may not be money; it may be prompt effective justice, which may bring in more money.

Mayor Rietz questioned Chief Philipp that if more prosecution is successful, would more fine money be brought in? Chief Philipp noted in theory there would be more fine revenue.

Council Member Goodnature noted price should not be an issue, service should be.

Council Member-at-Large Chaffee noted we have two great law firms here, but the taxpayers money needs to be spent prudently.

Motion by Council Member-at-Large Chaffee, seconded by Council Member Jorgenson to authorize preparation of an agreement with the Hoversten Law firm for prosecutor services for 2002, for approval at the November 5, 2001 council meeting. Motion failed 3-2 (Council Members Goodnature, Christopherson, and Poppe voted nay, Council Member Nordin - Abstain).

Motion by Council Member Poppe, seconded by Council Member Christopherson to authorize preparation of an agreement with the Baudler Law firm for prosecutor services for 2002, for approval at the November 5, 2001 council meeting. Motion carried 3-2 (Council Member-at-Large Chaffee and Council Member Jorgenson voted nay, Council Member Nordin – Abstain).

Moved by Council Member Christopherson, seconded by Council Member Nordin to adopt a resolution to approve the contract with the low bidder, Moorhead Construction, for \$477,770 for the rehabilitation of the Southwest Lift Station. Carried 6-0.

Moved by Council Member-at-Large Chaffee, seconded by Council Member Nordin, to adjourn the meeting. Carried.

Adjourned: _____ 9:44 pm _____

Approved: _____ November 5, 2001 _____

Mayor: _____

City Recorder: _____