



Agenda

City Council Work Session

Oelwein City Hall, 20 Second Avenue SW, Oelwein, Iowa

6:30 PM

November 28, 2022

Oelwein, Iowa

Mayor: Brett DeVore

Mayor Pro Tem: Lynda Payne

Council Members: Karen Seeders, Tom Stewart, Matt Weber, Dave Garrigus, Dave Lenz

Pledge of Allegiance

Discussions

- [1.](#) Lynch Dallas Presentation.
2. Peters & Longmuir Presentation.

Adjournment

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 319-283-5440



To: Mayor and City Council
From: Attorney Doug Herman, Lynch Dallas, P.C.
Subject: City Attorney Questions
Date: November 22, 2022

1. Please tell us why your firm would like to represent the City of Oelwein as City Attorney.

Response: Our firm, made up of 18 attorneys, includes 12 attorneys with a focus on public sector work. Our "Public Sector" group represents approximately forty (40) cities as City Attorney and represent others on a case by case basis. We have intentionally chosen to focus in the Municipal Law arena, we do not do so as a sideline or as a means to fill time when we don't have other clients to represent. We focus in this area because we want to, and because our focus in this area we are well positioned to meet the needs of our clients.

2. Tell us about your firm's experience as it relates to municipal law and related fields.

Response: I touched on this above, but would add the following comments. Our Public Sector group includes attorneys who focus on prosecution work, nuisance abatement/municipal infractions, real estate, employment law, council operations (meeting requirements, closed sessions, etc.), and all areas in between. Because we represent so many cities we have seen it all, or nearly all, and can call on that experience when representing Oelwein. As the primary attorney assigned to Oelwein I also bring fifteen (15) years of experience as a City Administrator (Monticello, Iowa) where I served the dual role of City Administrator/City Attorney, so I am very familiar with the day to day operations of a City the size of Oelwein.

3. The City of Oelwein does a lot of code enforcement and nuisance abatement, how does your firm handle these cases?

Response: We perform code enforcement and nuisance abatement work for many of the Cities we work with. As the "prosecutor" of these matters, we take the lead of the Council and Code Enforcement when it comes to policies and goals. Some Cities are more focused on penalties and punishment for violations while others are more focused on problem solving. My combined experiences as a City Administrator/Attorney and now as an Attorney representing many Cities, allows me to see the Code Enforcement / Nuisance Abatement from both sides of the equation. My personal philosophy is to approach Code Enforcement / Nuisance Abatement from a problem solving standpoint. While penalties and punishment are sometimes called for, if after the penalties and punishment the problem property remains, the City is no better off. Working with property owners towards a solution should always be the first goal. Sometimes that calls for more creativity and problem solving than legal efforts. Being prepared, however, to approach the problem from both sides of the coin will put the City in the best position to rectify the problem and move on to the next.



4. How have you familiarized yourself with the city to understand the main areas of work for the City Attorney?

Response: I have been generally aware of Oelwein most of my life as My Great Grandmother lived in Oelwein in her later years as did other relatives. I am aware that Oelwein has over the years seen a decline in single family owner occupied homes, has acquired “block(s)” of homes for demolition, has seen losses in the industrial/commercial arena, loss of restaurants and similar service businesses, and a general decline in population, losing approximately 1,000 residents in the last thirty (30) years, after losing about 1,000 residents in the ten years prior. The loss of owner occupied homes, commercial and industrial operations, and service industries has likely led to a decline in valuation, an increase in dilapidated and poorly maintained homes, reduced tax revenues for the City, and increased pressure on tax rates. I have also read the City Council minutes for the last six months.

5. Are you following the court case in Orange City about rental inspections? What impact do you anticipate this having on the City of Oelwein?

Response: I haven’t reviewed the City of Oelwein Ordinances yet but will do so before the November 28, 2022 City Council meeting. My review of the pending Orange City case suggests that the Court did not find enough support in the City’s arguments to dismiss the Case outright, basically choosing to give the Plaintiff’s their day in Court, also finding that a dismissal would result in Plaintiff’s being put in a very difficult position to challenge the Ordinance after it had been applied against them, also noting, that the Court was not at that stage of the litigation deciding if the City Ordinance was legal/constitutional or not. The primary issue of the case being centered around the constitutionality of the application for and receipt of an administrative search warrant to perform a rental code compliance inspection, without alleging “grounds” for the warrant, such as apparent nuisance or other code violations that could be set forth within a supporting affidavit. My opinion, without studying this case in depth, is that a City can enforce a rental code and that if the rental code calls for annual or bi-annual inspections and the City is not permitted access, that the rental permit may be pulled. There may not be grounds for an administrative warrant, but the privilege of “renting”, if you will, could be revoked if the inspection is not allowed.

6. The City uses 657A to acquire dilapidated properties, how familiar are you with this process?

Response: While more than one of our Public Sector Attorneys has experience in this area, one attorney in particular, as well as two legal assistants, have prosecuted numerous 657A actions successfully to completion. That attorney would be assigned most if not all 657A actions.



7. How would you help to limit or regulate legal costs to the City? Do you plan to send work to other associates and subordinates?

Response: Much of the prosecution and nuisance abatement work, but for what I will call more complicated matters or potentially high visibility or highly contested matters, would be handled by associates with the assistance of Legal Assistants where appropriate. When necessary, more experienced attorneys will advise and assist as necessary but will not perform the lion's share of the work. We also have legal assistants and associates who can handle much of the real estate work. One of the benefits of our Public Sector Group is the ability to pass work to the attorney best suited to handle the matter.

8. In government positions, you can do research or present an idea to the council member, the mayor, and the City Administrator and they may completely disagree with your recommendation. How would you handle this situation?

Response: The example set out above is not far-fetched. When presenting an idea/plan/proposal I always make an effort to provide support for the conclusions/recommendations made, an analysis if you will, to support where I have landed while also discussing and noting alternatives solutions, as well as risks and benefits. If I have done a good job in that regard I find that the objections tend to be more thought out and a better discussion can ensue, where there is less argument about the background facts, options, risks and benefits, with the discussion being more focused on potential differences in policy directions. The less there is left to argue about or to disagree on the better. Having different views and opinions is good, coming at the same issue from different angles will often lead to the best solution.

9. If the city works toward no attorney present at council meetings, how will you prepare the council to hold meetings without a City Attorney?

Response: I believe there are meetings the City Attorney should attend in person, some virtually if technology allows, and some the City Attorney does not need to attend at all. I like to get my hands on the agenda and packet as soon as possible for many Cities I represent so that I can review, question, and comment in advance of the agenda being posted and the packet going out. I find that many potential issues can be identified at this stage which allows the agenda/packet to be cleaned up in advance of the Council meeting. The amount of clean up/comment/questioning varies from community to community and would be less in Oelwein than many I work with where there is not a City Administrator. This process can help to reduce City Attorney involvement at Council meetings. It would make sense, however, for us to be present for at least a few City Council meetings if appointed to get a feel for current practices and procedures and to discuss any concerns or recommendations we may have regarding same.



10. What is your firm's policy on e-signatures?

Response: The use of e-signatures, generally, is becoming much more commonplace and accepted. But for specific circumstances where not allowed, e-signatures are perfectly appropriate.

11. Can the firm split out billing by department, or just one lump sum charge?

Response: We can split up billing as much or as little as desired. In a City Oelwein's size I would expect to split billing into many categories, for example: Prosecution, Nuisance, Real Estate, Ordinance/Resolution drafting, Library, Employment, Administrative, General, etc. The categories can be crafted to fit the City's needs.

12. How many cases do you anticipate taking to the supreme court for Oelwein?

Response: Very few to none. Most matters handled by a City Attorney, if handled correctly, should never end up before the Supreme Court. That said, there are recalcitrant defendants out there, that no matter how wrong they may be, how in violation their property may be for example, that will push their case, typically without a lawyer, as far as they can push it. In the event a matter is taken to the Supreme Court of Iowa, or the Iowa Court of Appeals, we have attorneys with the experience and ability to represent the City at that level. I personally have appeared before the Iowa Court of Appeals twice.

Thanks again for the opportunity to submit our interest in the City Attorney position. I look forward to meeting with you on the 28th.

Lynch Dallas, P.C.

Douglas D. Herman

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