

**AGENDA MINUTES
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
WEDNESDAY, FEBRUARY 23, 2022 10:00 AM**

1. CALL TO ORDER

The City of Leesburg Commission held a special meeting on Wednesday, February 23, 2022, at the Venetian Center. Mayor Pederson called the meeting to order at 10:00 a.m. with the following members present:

Commissioner Jimmy Burry
Commissioner John Christian
Commissioner Jay Connell
Commissioner Dan Robuck
Mayor Mike Pederson

Also present were City Manager (CM) Al Minner, City Clerk (CC) J. Andi Purvis, Purchasing Manager (PM) Mike Thornton, and others.

2. INTERVIEW - LAW FIRM: SHEPARD, SMITH, KOHLMYER & HAND, P.A.

PM Thornton thanked everyone for attending and read a brief opening statement for Request for Proposal (RFP) 220042 for city attorney services. This is the interview between the City of Leesburg and Shepard, Smith, Kohlmyer & Hand, P.A.

Mayor Pederson asked if they would provide some background on their firm along with some qualifications for the city attorney position.

Andrew Hand of Shepard, Smith, Kohlmyer & Hand, P.A. stated he has Patrick Brackens with him today. Their firm has a long rich history in local government representation. Their firm was founded in 2008 and it was founded after practicing in the area going back quite a long time. Local government is not something that they do exclusively. They are a full-service law firm. However, it is the cornerstone of representation that they provide. All of their attorneys are expected to become board certified in their areas of expertise, whether they are local government attorneys or not. Currently, they have six attorneys who practice within the area of local government. They are able to handle anything on a large or small scale when it comes to local government needs.

Patrick Brackens stated he is board certified in city, county and local government law. The only attorney in their firm who is not yet certified is taking the test and will be qualified this year. They fully expect him to be board certified by August. As Mr. Hand mentioned they are a full-service firm and he would say seventy percent of their firm is dedicated to local government work, but at the same time, they are not so over extended that they have so many local government clients that they cannot give their full and complete attention to those clients that they do have. For example, Mr. Hand is the city attorney for the City of Mascotte and for the City of Dunnellon and those are his primary cities. He does not have a city where he is city attorney, but he is general counsel for the Winter Park Housing Authority and he is also the assistant city attorney for all of their local government clients. He is the special magistrate for the City of Orlando's red light camera program and he is the counsel to the Orange County code enforcement board. In addition to that, they have a fairly robust litigation practice that benefits their local government

clients and in two respects, one whether he is setting up a planning commission meeting or sitting at the city commission meeting. His background is in litigation. He spent eight years as a law clerk for a state magistrate judge, which is the primary trial judge you see before in trial and federal court. Before that, he was a staff attorney for the ninth judicial circuit here in Florida, where we handled the kinds of things that you see. The code enforcement appeals, when they came up with Chapter 162, those were the things that he would work on. However, his mindset is litigation, so when he is sitting there and they are doing a quasi-judicial hearing, he is thinking about the record in the event that they have a party that is going to appeal. That is now where his mindset is. In addition to that, they provide extensive sunshine, public records, quasi-judicial and ethics training for all their clients. They also do that for cities they do not represent. The other thing they do because of their litigation experience is that they are frequently hired by cities and other agencies for special litigation purposes. For example, right now he will not get into too many of the details because the case is on going, but they successfully represented the city of Satellite Beach in a fairly entertaining pattern sunshine law violation case and the city of New Smyrna beach and also a very entertaining fact pattern case for Sunshine and Section 1983 violations. The other thing that they do that was mentioned in some of the other proposals is that they do represent private parties on occasion before local governments. That is actually to the city's benefit for a couple of reasons: it allows them to charge a below market rate for the local government services because they are able to charge market rates for their private clients that they represent. They do not do a lot of that work, maybe ten percent of it is represented on the opposite side, but it is a big state. Central Florida is a large area and they do not currently represent anybody against any entity in Lake County. Most recently, they represented the City of Clermont for a revocation of a conditional use permit and certificate of occupancy for an all-male review and that happened at a restaurant in January.

Commissioner Burry asked about some of the issues facing our city. What issues are they familiar with and have they been following them and what can their firm bring to help us overcome some of these things?

Mr. Hand answered that one of their primary areas of practice is representing local government and, of course, they are full service, but they represent soup to nuts, seeing everything that local governments see. One of the things that they are focused on is land use. It is the hottest practiced area in Florida for a number of reasons. Following Leesburg is one of the things he has done over the years and he has been a professor at the University of Florida and he has designed a land use course, so he started paying attention to Leesburg about ten years ago because of what is going on here in Lake County. With some of the teaching that he has done, he taught the students what the development issues are in different areas of the state. In looking at Leesburg, one of the things they have been following is how the development has been unfolding and what is going on in Lake County in general, as well as seeing some of the things happening here when it comes to redevelopment in the CRA's. That is one particular area where they are extremely well equipped to help the city out. Their firm represents as general counsel the FRA, which is the Florida Redevelopment Association. It is very similar to the League of Cities, but it is sort of the overarching where CRA's and the cities go when they need some help with CRA's, so whenever anybody has a CRA development director who needs assistance, they contact them and it comes to them. In addition, they are special counsel and one of the things that Mr. Bracken touched on was the diversity of things that they do for local government. Special counsel and they can talk about some more of the other areas, but that is one of their biggest practice areas in this land-use area. When it comes to redevelopment and land use, he thinks you will find that they are top notch and that this is where they really excel.

Mr. Bracken added that he was at the last meeting when they talked about the scores and who they wanted to interview and it was a large meeting. There were a lot of items on the agenda. A lot of ordinances came for first reading regarding development. One of the things we propose and he believes that all of their local government clients have adopted is a pass-through ordinance which Mr. Hand can talk about, it also goes to what he calls the below market rates that they charge for local government work. The pass-through ordinance allows them to review these large development plans. It allows the city

to pass through the costs of that review to the developer at market rates. Not the rate that they charge, but the rate that they charge them since they would be reviewing the product for them. In addition, he could also see just from his time driving around here that the city has several CRA related needs for redevelopment and that is, like Mr. Hand said, something that they have a lot of experience with. Frequently, they get called when there are problems with the CRA or problems with the audit for the CRA and they get called to fix things that they did not help create. Those are some of things that they would bring to the issues that this city is facing.

Commissioner Christian questioned what role they saw their firm taking in this city, if they were selected?

Mr. Hand responded that they view the city attorney's role as empowering local governments and officials to make good decisions and that is essential the role that he sees the city attorney performing. They understand that they are not part of politics, nor should they be. They are there to provide the answers they need so they can make decisions. In addition, their role is to handle litigation needs for the city and to coordinate and facilitate the jobs of staff and to support them. **Commissioner Christian** asked if the city would be assigned a single attorney or would we have multiple attorneys?

Mr. Hand replied that the firm would essentially provide representation. When it comes to city commission meetings, that is something that has to be discussed. He does have an obligation on the second Monday of the month which causes conflict. Mr. Brackens does not, so it would be the city's choice when it comes to city commission meetings whether there should be one attorney at one and one at the other or go with just one attorney at the firm who does not have a conflict. As far as all the other meetings for various boards and so forth, we would be assigning an attorney to that particular board and that would be the primary contact. For each board, you would see the same attorney for those meetings.

Mr. Bracken said, generally, Mr. Hand would come to the second meeting of the month and he would come to the first meeting of the month. It would be the city's choice for who you want to come to the planning commission meetings and things like that. Basically, the bottomline is that it would be either one of them attending. In the event that there was a special meeting or something like that, where there was a conflict that neither one of them could attend, which would be very unlikely, but at that point, it would most likely be Drew Smith from the office. He is also board certified in city, county and local government law. Mr. Hand and himself would be the primary attorneys that the city would see and have access to on a daily basis.

Commissioner Robuck asked if they would talk about any one specific experience that they have with either electricity, gas or utility, whether it be municipal or otherwise.

Mr. Hand responded that several of their clients have their own utilities. He knows that Leesburg is not looking to divest its utility system, but he has provided extensive soup to nuts legal advice and divestiture of thirteen million in utilities over the last few years.

Commissioner Robuck asked which one that was.

Mr. Hand replied this was in Marion County and it was the City of Dunnellon utility.

Commissioner Robuck wanted to know if it was electric or gas.

Mr. Hand replied that it was water.

Commissioner Robuck stated that he was specifically looking for electric or gas.

Mr. Hand responded that electric utilities had provided representation to Mt. Dora previously and they have done all of their utility work up until the last few years. They have a lot of experience with water. Electric, they have dealt with Winter Park even though they do not represent them.

Commissioner Connell questioned how assessable their firm was on a daily basis when responding to phone calls or emails from staff or the commission with questions.

Mr. Bracken responded that they are available twenty-four hours a day. They would have their cell phone numbers, their office number, and would also have Mr. Smith's numbers, so if anyone was working

on a particular project, if Cliff Shepard was working on a project, that member of staff would be able to get ahold of them. They do have meetings and they call people back the same day. Being in constant contact is not realistic just the way everyone's schedules go, but in terms of getting a call back that day, that happens.

Mr. Hand said if there was a case of an emergency they are a medium sized firm and if there was a situation that arises where he may not be available or Mr. Bracken was not available, for whatever that reason, there will be someone who is there, whether it is someone who has an extensive relationship with the city, or someone who only works on small parts here or there. They make sure there is coverage for whatever emergency is addressed immediately.

Mr. Bracken stated that their assistants, the folks that answer the phones and route their calls, have everyone's cell phone numbers. They will get you an attorney from their firm. In the time that he has been with this firm, there has never been a situation where an attorney was not available, such as where they had to refer them to another attorney for a time-sensitive matter. There are six attorneys in that practice area and you will get one.

CM Minner said a couple of the answers made him wonder. As the city is managing the community and as you are layering the community sometimes you let the sleeping dog lie. How would you approach that if you were to come to Leesburg and you see the way we have done some things that you see a little differently. Maybe there is an inclination to make an immediate change to avoid litigation. Sometimes, maybe not. How would you approach that? Do you see sleeping dogs that we need to wake up?

Mr. Bracken stated, Mr. Hand can talk about this in specificity with one of his clients, but when we look at land development codes, those are some things that we have experience in drafting for our clients and sure we see areas that could be improved or others where there could be a problem. They could be dealing with an issue of a setback next to a river or a lake that might not have been handled the way that it should have been handled. Usually, when that happens, they are not the policy makers so they do not come in and say you need to change your code right now. What they do is talk to the staff members or the planning director or whoever, if that issue comes up and usually that is by a phone call, because they do not create public records because that may cause a problem for their clients, but the city makes the policy decisions. They are there to provide advice and at the end of the day a sleeping dog does lie. One example for him personally is in the City of Flagler Beach where they had an issue where they had protestors in Veterans Park carrying signs that said "F" (spelled out) the president. The residents wanted those folks arrested and the politicians obviously wanted to be responsive to the stitchuouncy, but at the end of the day, what was decided was they would provide a memo blandly explaining what the first amendment allows and what it does not. Then sleeping dogs were let lie. Yes, the lawyers were blamed sometimes and yes, sometimes, it is our role to be blamed. They like to help, but sometimes that is what they are there for. They try to use their commonsense and always protect their client, which is the city, and not create more problems.

Mr. Hand said that Mr. Bracken said it well when he talked about not being policy makers and knowing that we are not decision makers. The way that he handles those types of issues when they come up is to go ahead and have that dialogue with the city manager and say he has noticed this, these are what he would identify as something that could potentially be a problem and essentially have a discussion. However, ultimately, it is up to the city to address it with the commission. It is up to the commission to see how they want to move forward. They provide the advice and they make the identification. From there, it is up to the city to see how they want to proceed. In local government, that is something that comes up frequently. He has never seen a perfect code and there are things that could be cost prohibited to have. It is just having an understanding and looking at it as to how it can be fixed and how reasonable it is to fix it and what is the plan to handle it once they have provided all the information. Again, going back to helping empower everyone to make good decisions.

Mr. Bracken added another purely hypothetical example is if the city had red light cameras and they were going through the process of repermitting those cameras with FDOT. If FDOT told you they were

not sure how they were given a permit in the first place because those cameras are near a railroad track and you cannot have those cameras there. Hypothetically, he would imagine you would have a conversation with the city manager and the mayor and maybe it would be time for a political decision to stop red light cameras without creating a public record trail that says we have a problem with our FDOT cameras and creates legal issues that you do not need to have. That is how they do it. They always think and it is always in the back of their minds about the consequences of the actions of an email. Should I send this email or should I pick up the phone?

Mayor Pederson mentioned that the city owns the airport and he is curious about their experience with a municipal airport.

Mr. Hand responded that they have represented the City of Apopka, which also has a municipal airport, so they have dealt with airport issues within their representation of Apopka.

Commissioner Burry asked if they could provide an example of a specific case where they have dealt with a community redevelopment issue.

Mr. Bracken answered recently they were involved in one where they got in after the audit letters had come out. This was not in central Florida, this was on the west coast. In working with and he believes there had been arrests made on this prior to them being called. That was an all-hands on deck situation to try and satisfy the auditor, to try and get the CRA back to where it should be as quickly and efficiently as possible. They dealt with CRA's, which ran very smoothly. For example, on the east coast there is a different CRA where they call and ask them if they need an attorney present for the meetings because they run very smoothly and their meetings sometimes last between five and ten minutes and it is not worth the drive and they do not need them. Sometimes there is a fire to put out and that is what they get calls about.

Mr. Hand stated they have had a few hot issues in litigation and some are revolving around audits in the last few weeks that he has not been involved in. For one of the specifics that he has mentioned, some of their CRA's are very successful, which is not what they were really intended to do. They have a tendency to be in areas where some of them, over time, have become rather affluent and that can create some issues there since it was meant for redevelopment. Some of the CRA's and some of the issues that he has worked on are sorting things out between a county and a city where there were some disputes as to looking at the continuing purpose of the CRA which led to going back to the very conception and the very beginning of the CRA and looking at how it was created and really getting it all organized from the ground up. Putting it back in working order. Some of the CRA's, when they came in have been in existence for twenty years and they may not have been created the correct way they should have been. There may be a massive amount of disorganization of those documents from when they were created to ultimately where it ended up through various amounts of money. In some of those projects, it is going back to the very beginning and completely getting up and running again the way it was supposed to be and resolving some of those conflicts. Those are some of the projects and a lot of the CRA work that he has done. Some of the other attorneys have been more involved in the litigation aspects, but his expertise is getting them going and making them run the best way they can.

Mr. Bracken said to be clear if they do not come in and say you need to do all these things. They contact them and say they have problems here. Can you confirm whether they do or do not have problems and how would you recommend addressing them? They then provide a series of options and they tell them what they want and that is what they do. For example, Leesburgs CRA's may run like clockwork and everything may be perfect. They are not going to come in here and tell them everything may be perfect. They are not going to come in here and tell the city that the CRA is run terribly and that is what they need to do. That is not their approach.

Commissioner Christian said they mentioned that they represented Apopka in an airport issue, but how many cities or counties do you represent currently on a full-time basis, in the last three years. And have

you lost a client or a city specifically? And the reason why?

Mr. Hand replied the total number off the top of his head that they currently represent as general counsel is six. As far as special counsel, it is much greater than that. In the past few years, they have represented Davenport for some time after a transition where they had some issues with their previous counsel and, ultimately, two years ago, they hired a firm more local to that area in that county.

Mr. Bracken said the City of Apopka has an interesting history and they have a long-term Mayor and he does not think he is exaggerating when he says he was Mayor for about sixty years. When he lost the election, they had a new mayor and they were hired to come in and represent them and they had a very good relationship with the City of Apopka. They were a large city and they were growing, but ultimately they came to the determination that they needed to move the city attorney position in-house with their own in-house staff. That is not what they do but they did assist them with that and they still do their development work. The relationship with them is still strong.

Mr. Hand added that they still provide representation to them on specialized matters and special counsel in a number of areas.

Commissioner Robuck asked if they could provide a specific example of a challenging land use case where they were representing a municipality and then also one where they were the firm represented and, on the other hand, a private developer or a citizen.

Mr. Bracken stated they had a multi faceted case but it basically had to deal with ten different parcels of property that were owned by the same developer or owner. They wanted to put a thirty-five-foot tall three-story outdoor boat storage store on the property and they wanted to redevelop a lot of different things that were not permitted under the current comprehensive plan when the developer bought the property. So, as the litigation went on, there were sixteen different actions that were brought by the developer against the city, from DOA proceedings to county proceedings, to trial court proceedings, circuit and federal takings, claims. It was a massive lawsuit. It ended up at the end of the day at one point in the case of the town of Ponch Inlet, which is either four or six square miles. It is a tiny town. There was at one time a thirty million dollar judgment against it which meant that they needed to talk to bankruptcy lawyers. That judgement, unfortunately, when you walk into court you never know what you are going to get in terms of the judge. The judge issued a fifty-two page decision that was legally, from his perspective, one of the worst decisions he had ever read legally and factually, but it put them in a bad spot. They were successfully able to overturn that judgement and win three circuit court proceedings against the developer. Finally, at the end of the day, after all these proceedings, the town walked away completely victorious. They did not have to get the judgment in the federal case because they ended up entering into a settlement agreement with the city, so it is not confidential and you can look it up. The developer walked away with nothing. The thread to any government from that type of schoorcher litigation practice against a city you cannot control what they are going to sue you for. All you can do is defend against it as vigorously as possible. They did, they made the political decision to fight and at the end of the day, they won. The owner is still there and it is still under development. There are sore feelings but that was an intense case. The town at the end of the day, the town was always right because the development they wanted was always illegal under the comprehensive plan and they never made an application for development, so their claims were never even right. Imagine eleven years of fighting through the courts for that very simple decision and the claim was never even right. These are interesting fact patterns in the New Smyrna Beach case. He believes the planners' name in that case is Kanan vs. the City of New Smyrna Beach. It had to do with it and it is still going in the courts because they do not have a decision from the 5th DCA yet, but they did win in the trial court by roll. The city has some leased property or they own some property that they lease to a private club. The plaintiff sued the city and the private club alleging multiple accounts of constitutional violations and sunshine violations against the city. A host of creative claims against the city, but ultimately, at the end of the day, why he believes they prevailed in trial court and why he believes they will also prevail in the Appellate Court, although it is not final, is that the plaintiff never applied to become a member of the club. Details do matter, especially

factual details. The other case which is more challenging from a fact perspective and is currently on appeal. The briefing is not closed in the City of Satellite Beach, there was a public workshop scheduled. The city canceled the public workshop and instead it had to do with water quality issues. Instead of having a public workshop staff, members of the press and some private parties met. One council member attended the meeting and after about thirty minutes, that council member would get up and leave and another council member would come in and sit. There were no allegations that the council members ever spoke to each other, that they had simply listened. Think about all the times that they go to a meeting or a planning commission and simply the two of you there and you listen. The argument is that it is a sunshine violation. Those are particularly difficult legal questions from their perspective, but they are very interesting fact patterns and you can imagine what would happen if it was found to be a sunshine violation. Those are the most recent litigations that they are currently involved in and the previous response in that case was well reported in the media throughout that eleven-year period.

Mr. Hand said they are really proud of that specific case. It is unfortunate, of course, that there were some bad feelings with that particular member of the community towards their government, but it made good law. It made the right law and that is what their goal was. He thinks the point there was in talking about some litigation is that no one is going to out work them. They go over everything with a fine-toothed comb. He will remember the details for years to come because he worked with them. When looking at things from the other side, for land use decisions, most of their representation, they are hired a lot because they know how things work. They deal with land use and each government has their own code. They have become very familiar with it and there are similarities from government to government. Some of their other work has been assisting applicants in other areas and he has represented numerous applicants in the City of Orlando and Orange County and some of them have gotten very complicated because of the regulatory structure down there. For instance, one was a veteran-owned company that was in a redevelopment area and they had made a purchase and then realized that they could not do what they wanted to do and they had to work that out with the city. They had to come to a good solution without litigation. That was something he was really proud of.

Mr. Bracken said they had one case and he really did not want to go into details because it is ongoing and it has not been decided at the trial court level, but you may have heard about it from another one of the interviewees, having to deal with representing a commercial landowner who is in a residential zoned area of a city but they have been a commercial operation. They are an agricultural outdoor storage landscaping business and they have been there for around sixty or seventy years doing the same thing. They started getting code violation notices for what they had on their property and their shipping containers that they had on that property they had been on there before the code was written and they went to a hearing violation rep and they hired them to appeal the decision based on the property being illegal and a non-conforming use. They will see what happens in that case, but they certainly do not make a business out of representing people against the government, but if there is no conflict and it is a good case or if they believe it has merit, they will represent their clients. From his perspective, his work with local governments is aided by the work that he does for private clients. It allows him to do it at a below market rate and it also helps frame his perspective on the legal issues that the city faces. He can also hear from the developers and the attorney client privilege of the issues that they are seeing and it helps them and they want to resolve issues short of litigation and before they become a problem. It adds to their education and knowledge.

Commissioner Connell asked if they currently represent anyone being a conflict of interest if they were the attorney for the City of Leesburg.

Mr. Bracken answered no, they do represent one commercial party that has property in Lake County, but it is not in the City of Leesburg.

CM Minner said they mentioned the City of Apopka going to the in-house for their attorney. Do you see a definitive line when cities go from law firm contracts to having an in-house attorney?

Mr. Hand responded that it really depends on the budgetary needs of the city. He does not see a definitive line, but it is apparent when he thinks the time is right for them. Simply being that when a city is grown to the point that it can support an entire legal staff and if they want to have fulltime, working solely for that city that is when it is time. Apopka is huge and while they served as counsel for them, they did not grow too much annexation wise but development took off. They were ready and it just became clear. As far as indicators, he thinks that it is really about when they can really support that staff that is working for them fulltime. It is when they are ready.

Mr. Bracken said they have a very open relationship with Apopka, so they talked about the pros and cons of them going in-house. One of the concerns he had for them was you are going to have a city attorney, an assistant and a full staff, so they could actually focus full time on it and they would devote resources to it. Think about the proposals you have seen for the flat all in rate. How are you going to pay someone, a city attorney whose salary is half-staffed, to support them for that same rate? At some point you can and at some point, if you are willing to expand your budget, you can and it makes sense to have your team and dedicated attorneys that are there, but until you can close that gap and you are willing to commit those resources, from his perspective, going in-house with one attorney, by himself, without staff, for the same price you are paying a firm, a team, an army of attorneys with staff. He thinks that could propose challenges from a budgetary standpoint.

Mr. Hand added that when a local government goes in-house they should hire special counsel at a minimum. They still do special counsel for a number of in-house cities, but their legal staff should be capable of handling the broad spectrum outside of something that is very specialized. That is another source of criteria that is important. When a city can support a team and when a city is then capable of pretty much handling almost everything that could be thrown at them.

Mayor Pederson wanted to wrap this up with a closing question: if they could tell the commission why they should select their firm over the other three firms that applied.

Mr. Hand stated first and foremost they know their role, that is something they have talked about. They are here to empower and make good decisions. They know that and not everyone knows that. In addition to that, they bring a wide realm of expertise. Local government is their cornerstone and practice. Special counsel is probably the biggest part of that. When city attorneys are having problems and they need to call an expert, they call them. Serving as their city attorney, they do not have to call those other experts because you would already have them. He thinks that is their strongest suit in every practice area in local government.

Mr. Bracken said that the commission has a difficult task before them for a couple of reasons; they had Mr. Morrison for thirty years and the rate provided over that time period did not go up very much. You are now in a situation where there is a huge inflation environment but you have proposals that came in.

CM Minner pointed out that they had Fred Morrison for thirty years on a letter of engagement.

Mr. Bracken said that is special and those opportunities are few and far in between. He also knows because he was here for an earlier meeting and he knows some of the other firms had a relationship with his firm because they used to work there. The city knows them and they are a known commodity. He also has the benefit of hearing how they got to come to this interview. They realize the realities of it, but in terms of why the city should select their firm over the other firms, he thinks this has to deal with his litigation background and it is not very humble. Whenever he is sitting in the second chair at a trial and his colleague is making the argument, he is always in his heart thinking; "man, it should have been me. I could have done better". He is simply saying he has confidence in his colleagues at the firm. He shares some of the commissions' concerns that they raised about the flat rates that are charged and the difference in the breakdown, which is very challenging to do. One of the things that they can front whenever these opportunities arise is our fees. There is usually one firm that comes with a lowball number and tries to make that lowball number actually work in the real world when, for thirty years, you had one hundred and thirty-five dollars an hour or one hundred and fifty dollars an hour. Those are not market rates today. So now, how do you make it work? The only way from a competitive standpoint that they have been able

to determine to make it work is through the pass through fee ordinance that allows them to do market rates for development work on consultants. In addition to that, being able to do other litigation. Frankly, he does not know how a firm could survive on some of the rates that they charge if it is all inclusive for litigation. Can you imagine if we gave you that flat rate and you had litigation that lasted eleven years like the Ponce Inlet case did. The reality is that at some point that relationship is going to have to change because we cannot do eleven years of litigation for one hundred and eighty thousand a year. What the city would get is honest discussions at all times.

Mayor Pederson thanked them for their time and stated that he appreciated their interest in the city attorney's position.

Commissioner Christian said he had one more question before they left. How common is the pass-through ordinance in their cities? Is that is common practice for local governments.

Mr. Hand said yes, it is very common. It is an ordinance that when a developer comes in they pay their application fees and, in addition to that, they pay a deposit and that deposit if the city engineer needs to take a look at something or if a surveyor needs to look at something legal, then those fees are deducted from that deposit and then the deposit is renewed until the application is heard by the commission. Essentially, it requires the developer to pay their own way so that the taxpayers are not the ones that are funding the developer. It is common because it protects the taxpayer, the city and it places the individual who is ultimately going to receive the benefits if a particular decision is in place that they incur the benefits and they incur the costs. It is the fair way to go.

3. BREAK - 15 MINUTES

4. INTERVIEW - LAW FIRM: STONE & GERKEN, P.A.

PM Thornton thanked everyone for attending and read a brief opening statement for Request for Proposal (RFP) 220042 for city attorney services. This is the interview between the City of Leesburg and Shepard, Smith, Kohlmyer & Hand, P.A.

Mayor Pederson asked if they would provide some background on their firm along with some qualifications for the city attorney position.

Grant Watson started by introducing everyone with him today. Lewis Stone, Scott Gerken, Kevin Stone and Francheska Sabatini. They are all attorneys with Stone & Gerken, PA, and came today to meet with everyone. They are very excited about this opportunity. They believe Leesburg is a great city and this is a beautiful location. The city offers some interesting services, like the international airport and the utility services, and they believe that those types of things really mesh with a lot of what they do. He grew up in north Florida in a small town, Fernandina Beach, just north of Jacksonville. He went to college at UCF and he went to the University of Florida for Law School. He has spent his entire legal career here in Lake County. He got his first job out of law school working at Willam, Smith & Summers in Tavares. He worked with Gary Summers and Bob Williams. He also worked with CJ Smith there. He worked there out of law school basically doing a lot of general civil litigation, contract work, some local government work and real property. They did some work with the tax collectors in the City of Tavares. He really enjoyed his time and he has great respect for all those guys, but after about seven years, he decided to set out on his own and start his own firm in Mt. Dora where he continued a similar practice of general civil litigation, doing a lot of property and contracts and, continuing doing work for the tax collectors' office.

After about two and a half years or so of running his own firm, which was certainly a different experience than his first job working at Smith & Summers, he had the pleasure of an invitation to join up with this firm. They are a really great group of people and he is happy and thrilled to be there. The firm was founded in 1992 and it has always been located in Lake County. It has always had its focus on providing representation to local governments and utilities and that focus has continued today. All of them at the firm, all the attorneys, do work with our local government. Some of our clients that we are blessed to work with are the cities of Minneola and Umatilla. They represent several dependent and independent special districts within The Villages and SECO is another one of their clients. They believe that the issues and the things that these clients deal with are very much aligned with what the City of Leesburg deals with. They think that provides them with a pretty good solid foundation of experience and background in being able to help and work with the city. They continue that focus and they have great respect for the city and the county here. They really enjoy this type of work. They believe the city attorney position fits in well with what they like to do.

Commissioner Burry asked what are some of the issues facing our city that you are familiar with that you may have been following and how is your firm situated to deal with those?

Mr. Watson answered that some of the things they know about the city from the outside is that they know about the international airport, which is a unique service to the county. They do have some experience with the City of Umatilla, which has an airport. It is not international but they deal with some of the airport issues there. They think that would be consistent with that type of work as well. They also know that the city here provides a wide range of services with electric and gas and things of that nature. Other cities that they service do not provide those services necessarily, but they clearly have some experience in working in the electric utility business with SECO. Then, of course, you have your local government issues with contracts, expansion, development and things like that. Dealing with planning and zoning and dealing with those types of land use issues. Having their experience and knowledge of dealing with those issues would be valuable to the City because they do it well. They would be looking to meeting with everyone as soon as possible to get a feel of what the big issues are at this point so they could pick up where those are and help navigate them and plan moving ahead in the future.

Scott Gerken stated that, like most of the cities in Lake County, they realize there are a lot of growth issues that are going on with Leesburg. They are all trying to balance the growth with serving the historic main city and trying to keep all the constituents happy at the same time. They have been the city attorney for Minneola for over twenty years. When they first started there, it was a town of maybe fourteen hundred people and now it is over fifteen thousand people. If anybody has been down there lately, you would see the massive growth that is going on. One of the things as city attorneys we realize is that we need to help the city with that growth, but the city makes those decisions. They understand that sometimes, when you sit through all the meetings and everything, you may want to put in your two cents. We realize that it is the elected officials' job to do that. They really appreciate it and they focus on that. It is funny he actually filled in at a Leesburg meeting back when Ski Beach was first talked about being developed a number of years ago for Fred Morrison. He now sees those projects moving forward and those projects do take time. They are a Lake County firm and some can look at that as a good or a bad thing. They are very careful with conflicts. They do represent other folks within the area, but it was a pointed issue that we came to Leesburg. If you look at the city and the people that it represents, they do not envision any conflicts with Leesburg here. Minneola is in South Lake County and Umatilla is just east of the Golden Triangle and Leesburg is in the area here. That was something that when they applied they were sensitive to that issue. They do appreciate the city considering their firm. Frankly, everyone knew Fred very well, he gave him his first job when he came out of law school and not that it had anything to do with this selection. They just appreciated the city considering their firm and they acknowledged the loss and the loss to Leesburg. They thought a great deal of Fred. He was sort of the dean of local government attorneys in Lake County, so it is almost sad to say, but they would be honored to step in and assist if they could.

Commissioner Christian asked what role they saw their firm taking in our organization. Would there be a primary or dedicated attorney or would you have a team of attorneys who would service Leesburg?

Mr. Watson responded their envision was that he would be the primary attorney and Mr. Gerken would be the secondary attorney. However, as we were saying, we are all fully capable and happy to work with the city. If he was unavailable for whatever reason, any of the attorneys were more than happy and willing to work with the city. They have all covered plenty of city meetings. They all talk and deal with those clients. Although it would be primarily him and he would be devoting a great deal of his time to the City of Leesburg and all of the issues, it would be somewhat of a team approach in the sense that they all work together, they all support each other and some of them have more specific knowledge in certain areas. Again, Mr. Stone's knowledge and experience with electric and utilities is perhaps unrivaled by anyone in the area here, so he is a great resource for those types of issues. They all work together in a sense and they would all be there. They would be happy and willing to help the city with whatever was going on.

Commissioner Robuck stated that they alluded to representing SECO for quite a long time. If they could, talk a little bit and give some specifics on the type of work that you do there.

Mr. Watson replied he does not do much with SECO. He does some things with their easements and those types of things. Mr. Gerken is really SECO's counsel at this point and Mr. Stone has certainly worked with SECO for decades and he can provide some more inside.

Mr. Stone stated he represented SECO as general counsel for thirty-four years. In the last few years, as he was winding his way towards retirement, he stepped back and they took Scott Gerken on. There are a plethora of issues that electric utility is involved in. At the beginning of the representation he was pretty much a soup to nuts guy. However, over the years, as they grew and the issues became more complicated, they tended to hire outside experts. For example, in labor negotiations, they are unionized and, as a result of that, they have labor contracts where SECO would hire outside counsel. They would keep their nose in it, but they would not be lead counsel for specialty items. Certainly, stuff, historically, with the public service commission involved in making sure the i's are dotted and the t's are crossed for rate setting and that sort of thing. They were involved in territorial agreements and franchise agreements. The good news is, that when speaking of the potentiality of conflicts, he thinks that SECO has recently signed a fairly long-term territorial agreement with the City of Leesburg which actually went very smoothly about twenty-five or thirty years ago, which did not go smoothly. He is happy those days are behind them. He thinks the butting territorial issues should not come up for quite a while. The franchise agreements are pretty standard and basically everybody gets a favorite nation clause and the way those work is that everybody has the same franchise fee. So he does not see a real issue with conflict there either. Back in the day, he did condemnation work, taking cases to trial all the way from acquisition through trial. With any organization and certainly, cities are like this as well. If you say what you do, it kind of depends on what the day is and what issue that came up at that time, but they did a general scope of work for them for a long time.

Mr. Gerken said he is now representing SECO and it is not unlike a city in many respects. They are general counsel to SECO. They have their own in-house attorney and a whole cruise of others depending on what the specialty is. Whether your city manager is going to test your electric industry as its own special thing and there are a lot of specifics that go into that. As general counsel, they sit and they have a board of trustees that is elected to the electric co-op. He sits at the board meetings and does generally what you would see in a city attorney doing; oversee and generally responsible for all the legal functions of the co-op. SECO is now a billion-dollar in-asset entity. They have a lot of customers. They thankfully checked the franchise agreement, it is in place and it is fairly standardized.

CM Minner said something interesting about Leesburg is that we have about twenty-seven thousand electric customers and we are still growing, but all our growth is going to be in Duke or SECO territory.

So, in the next five to ten years, we could have twenty thousand new residents who are not going to be on our electric system but in our city. Do you think that poses challenges for us and how would you advise the commission on that? Do you see any potential issues arising from that type of pattern?

Mr. Stone answered that clearly, if an issue does arise to the level of conflict, it is not like their representation is not known to everybody, so they would make sure to avoid that contract. They would follow their rules with regard to that and make sure the city was well said and that SECO was well said. Generally speaking, territorial agreements tend to control, although, as they know, in the electric industry there are times because of growth patterns and because of existing facilities in the field, swaps and changes are made just because it makes engineering, safety or financial good sense to do. He has not checked and he does not know what the rate of return is for the electric utility, but certainly the six percent franchise fee in the event of not doing the electric yourself is generally speaking, for most utilities, in the general nature of profitability for the system, without having to endure the obligation of providing the service, but if there is conflict obviously they would announce it and make sure that the sides are well looked after. Generally speaking, territorial agreements are intended at the time they are created to be what is done, but there are engineering, safety and economic reasons to make changes from time to time.

Mr. Gerken said obviously the public service commission would eventually weigh in if there was a territorial dispute, but they think their involvement with local governments and with electric utilities helps with those instances, because you can understand the incentives of both and, frankly, also knowing the area quite well, they can sometimes help avoid conflicts but help with some sort of remedy or issue that may pop up.

Commissioner Connell wanted to expand a bit on the cities that they have mentioned and SECO. Are there any other clients that they represent where they could see there being a conflict if they were the attorney for the City of Leesburg?

Mr. Stone replied, being the old guy, he had backed off from this over the last couple of years, but they had represented the Commercial Community Development Districts at The Villages, Springwood Landing, Village Center District, Brownwood and they also represented the utilities for North Lake Sumter and now the new utility springing up. They call it WUDD. Everything over there has initials, but it is the Wildwood Utility Dependent District. These utilities are dependent districts, but of course they are tied to local governments, their dependent districts of local governments. Is there a potential for conflict? There is. Sitting here, does he see a big potential for conflict? No, he does not see that. He sees a disclosure and there is a potential for that. Again, they are well known that they represent these people and they would certainly follow all the bar rules if that came up. What they are just trying to say is their firm has done local government and utility work forever. That is what they do. He was the city attorney for Eustis for eighteen years. They did Umatilla. They stepped in and represented local governments in other contexts. He has been special magistrate and still, from time to time, he has served as special magistrate for land use issues where you have to go to the special magistrate for those in Orange County, Clermont and other cities of Lake County. They feel like their heart is in the right place. They are people who enjoy local government and understand it. It is not their place to be elected officials, but it is their place to assist elected officials. You are the people that are elected and need to be the ones making the decisions. Their track record is that they are very good at assisting, doing that and spotting issues that are important.

Mr. Gerken stated that specifically they do not represent any of the developers that they are going to be seeing in this area, specifically the home builders and those folks. Specifically, they have not represented those to avoid any kind of conflicts, which is where most of those conflicts that you are seeing would occur. There are a lot of local government attorneys that play both sides, if you will, that will represent both developers, but a few, almost what he would call mom and pops that do work for none of them, are doing work in the Leesburg area. They would not have any conflicts.

Mr. Watson said with the land use, they actually made a firm-wide decision not to take that on in the

private context because of the fact they knowingly represent local government bodies that are reviewing these applications. So, while they are doing a lot of land use in the context of reviewing, helping development staff in the various cities and that kind of thing, they really do it for private clients in that same sense and a lot of the reason they do not is to limit the areas where they would have conflicts, and certainly that is an area you know.

Mr. Gerken said if you have been over by the Turnpike it is all dirt now and they are just building houses everywhere. They are sensitive to that and they try their best to avoid that, like Mr. Stone said if an instance does come up here or there, they think it is their job to make sure the city will have confident good counsel to provide good advice to our clients if we were unable to help. In those rare situations where that may come up, they do want to make sure that the city gets good counsel to help you and take care of you, but they will try their best to just not be involved in the lines of business that create or that are conducive to those types of conflicts.

Mr. Stone stated that the city would not need to worry about who they are supposed to call because Mr. Watson would be the contact person to call, but there would always be someone. The work would be shared around the office. If Mr. Watson was not available, it would be Mr. Gerken. If for some weird reason both Mr. Watson and Mr. Gerken were not available, the rest of them are there. You do not have to guess about you have to call. You would call Mr. Watson. The other thing they do is they operate pretty well as a team from the standpoint that they regularly meet and run problems and issues with one another so that they have input from several heads on almost anything that would amount to a significant decision or legal position that would need to be taken. The reason they are all sitting there today is because they operate as a firm and they wanted to make that clear to the city.

Mayor Pederson commented that they had answered all of his questions through their answers so far and he opened it up to others commissioners for any of their questions.

Commissioner Burry stated that part of the city's mission statement and the number one goal of Leesburg is that we want to eliminate blight and stimulate growth by investing in neighborhood redevelopment. Can you provide some examples of how your firm has been involved with either community development districts or in cities where they are achieving those goals?

Mr. Gerken responded they have actually represented several CRA's for the cities they have represented before and they are very familiar with all of the issues that come along with that, as far as tax increments, financing and things. Again, that is one of those issues he talked about earlier about trying to balance the needs of the historic town, the city which you obviously have here in Leesburg, with the need for growth, and that certainly is one area that you can do with the redevelopment.

Kevin Stone commented that they have a lot of experience with the Community Development Districts and most of that experience is in The Villages, which is a little bit different from the kinds of blight and redevelopment that they are referring to, but it does give them a familiarity with those structures and the resources that are available for those kinds of entities. The reason why he spoke up here is because in Umatilla they have a Community Redevelopment Agency that they are really proud of. Umatilla is not a place that a lot of people think about very often, but he does. They have done a lot of interesting things with tax increment financing to try and redevelop their downtown core. He thinks you will be excited to travel there over the next few years if you need to leave Leesburg for any reason. They have established new zoning districts in overlay districts and they are giving out facade grants left and right to businesses. They are using the zoning code and their land development regulations as best they can, but he does not want to get into the weeds with that. He can tell you those types of projects are very interesting to him and a lot of his focus is on the way they can use the financial tools uniquely for municipalities to participate in those kinds of redevelopment programs.

CM Minner stated that he mentioned something briefly about facade grants. We are doing that here in Leesburg, three different ways with our facade sign landscape grant that we have had for a couple of

years and we just implemented the downtown redevelopment grant, but we have not made any awards on that one yet. Have you had issues using those funds or have you seen problems that arise out of using money in those fashions for redevelopment?

Kevin Stone replied he had seen nothing serious that was difficult to overcome. One of the frustrations that Umatilla ran into, especially with all the money that has been flowing from the federal government with COVID, is that it is hard to find good ways to spend the money that is available. Sometimes we have more money than we are able to spend and what they found in Umatilla was that a lot of that was a public education issue. When you have people knocking on doors letting them know what the opportunities are to take their little bit out of the blade, you know to take their part in increasing their taxable value by using that grant money. It is a win-win. So, for them, if they had issues, it was just communicating the existence of the programs, what was available and we overcame those. As far as the implementation, you know that receiving the applications, getting the awards done, having them done efficiently, ethically and resulting in the kinds of improvement we were expecting, we have had a lot of success and he cannot really say that they have had issues to overcome.

Mr. Stone commented he had not been city attorney for Eustis for quite a while but they also had that. He was trying to think back to any problems they had. He remembers no problems securing the money, it was making sure that the contractors who came in, who were going to be the ones performing the work, understood the scope of the work. This was a long time back, but there were issues with the quality of work and the contractors had time limitations, so there were some issues with working around there.

Commissioner Robuck asked for an example of a specific challenging land use case where they were representing a governmental entity and, if applicable, also if they had one where they represented a private entity against a government.

Mr. Watson said they made it a focus to not take on private land use disputes, so he could not point to any specific private client that has really butted heads with a local government where they were involved with that. However, as they have been talking about with the City of Minneola, he does a lot of work with that city and their land use planning and zoning. There is a lot of development going on there, a lot of PUD's, a lot of development agreements and a lot of issues to sort out. There is a lot of mixed-use development in terms of residential, commercial, and industrial. There are a lot of different components and unique design criteria that shift throughout time, so personally, he does not have a good example of where they have had significant disputes with landowners. They meet with them a lot with city staff and, obviously, with the planning and zoning meetings and all of that, they talk to these folks outside of the city meetings to try and work out whatever issues exist. He thinks, for the most part, his experience on those issues has been very good. There are some challenges that come up here and there with commercial components and industrial components and residential components, with trying to blend and mix those with school sites and park sites and things like that. They have had a lot of success in working with their clients and the property owners within their boundaries that are looking to develop and sort through whatever issues or problems come up and those projects are moving forward and they are proud of what is going on.

Mr. Gerken mentioned he is also unaware of any disputes with representing property owners because they avoid that. There is nothing wrong with attorneys representing developers and local governments. They understand that as lawyers, and they also understand that a lot of people that they are serving do not understand that. Frankly, he would not want to lie in bed at night arguing that five units per acre is perfectly reasonable for the developer and then be sitting at the diocese when somebody is feeling guilty that the city may deny it. He could see where people could perceive a conflict, so they chose to stay out of that. As far as challenging land use, it hardened. The same example with Minneola. For those of you that are familiar with the area, they have the sugar loaf development, which is a development that was approved by the county in the 1990's as a large two thousand acre land development, and they also have the hills of Minneola, which was a DRI that was formed just over two thousand acres. Between those two developments, over four thousand acres of planned development within the city. They have been

involved within the last couple of decades with those processes and both the DRI's coming from the county to the city dissolving the DRI's through the process. Frankly because we had CRA's and then going through and dealing now with all the plethora of builders and developers that are coming along now. One thing that he thinks the commission would appreciate is, believe or not, the code is not always specific or absolutely clear on every issue that comes through and one thing they try to assist their local governments with is just, bring reasonable and make sound decisions that are good for the local government but that are fair for the folks coming before them. Sometimes it is hard to hit that balance. **Mr. Watson** added that with the City of Wildwood, while acting as the special magistrate for local planning and zoning and code enforcement, they are not representing private companies. In that context, he had the interesting perspective of making decisions on those issues for Wildwood for several years.

PM Thornton said one thing they discussed in their proposal was that they included an attorney and a paralegal hourly rate. Do they know what the percent breakdown might be between those services? **Mr. Watson** replied it would be something they would get a better grasp of once they see and meet with everyone in the city to give them a better understanding of what is going on. He would anticipate that a lot of time would be spent by the attorneys if you look at legal issues for the city. They would have their hands on that. In terms of drafting ordinances and things like, talking to staff, reaching somebody at the office, they certainly have paralegals involved with that. They would have paralegals drafting things, whether it be easements, contracts or anything like that, based on the forms they have already developed. We will ask for their help wherever we can. They understand fiscal responsibility is something that everyone is certainly paying careful attention to. They understand that, so wherever it makes sense to use paralegals, they will so that the city can use the benefit of that rate. However, there will be many times when the lawyers do need to be involved and wherever the paralegals are involved they will still be involved. They will do their best to use the paralegals and their staff because they have the utmost confidence and faith in all of them. All of them have exposure to local government work and they would use them wherever it makes the most sense.

Mayor Pederson asked in closing if they could explain why the commission should select their firm over the other firms.

Mr. Watson said, from his perspective, he gets what the city does here and it fits with their day-to-day practice. They like this type of work, they like interviews, they like the contracts, the utilities and it is all interesting and challenging for them. It is always changing and evolving. They pay attention to these things because they have to because they have a number of clients with similar interests. They are all here today and they all take a team approach to support each other. They support and love their clients. They are one hundred percent dedicated to their clients and they do what is best for them, even in hard times. They have great respect for all the local city leaders.

Mr. Stone added that they not only represent a number of local governments and other significant institutional clients, but they tend to keep them for a very long time. Boards come and go and he thinks there is something to be said for being able to establish that institutional knowledge and continuity and keep that up. If you do not have that good interaction and provide that service to the clients, they feel very confident that they can do that. When you live in a small area, there are not that many Leesburgs out there, so when the opportunity comes around that we are considered, we certainly want to be in the mix and they greatly appreciate the chance.

Mr. Gerken remarked that he hopes they check their references and to feel free to do that. They know the folks that they have worked for. He knows they can speak honestly about the work they have done for them. One of the strengths of their firm is that they serve as general counsel to the city and other clients. They get to know the people they serve and they serve them for a number of years. Just to take the pressure off the city, they know the other firms that have been interviewed and they are all fine firms. You could not make a bad pick. They believe that they bring the distinction of a firm that is well known, they would like to think that they are well respected, and they do not go after, and this is the first time

that they have interviewed for a city attorney position in over a decade. The City of Leesburg is right. It fits in with what they do given what the city does and they would be very honored if you were to select us.

Mayor Pederson said on behalf of the commission, thank you for your interest in responding to the RFP. He appreciates the whole team coming out.

At the close of the interviews, **CM Minner** suggested to the Commission that they rank the firms for discussion at Monday's commission meeting. **PM Thornton** suggested the Commission rank the firms from One to Four, with One being the top. He will provide ballots to the commission. **Commissioner Robuck** suggested the commission discuss the top two firms and then make its decision. The Commission was in agreement. **CM Minner** stated this item would be placed on the February 28 agenda for discussion and selection.

5. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." The City of Leesburg does not provide this verbatim record.

The meeting adjourned at 11:46 a.m.