



**CITY OF GROSSE POINTE WOODS**  
**SPECIAL CITY COUNCIL MEETING AGENDA**  
**Monday, December 13, 2021 at 7:00 PM**

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*Robert E. Novitke Municipal Center - Council Chambers/Municipal Court,  
20025 Mack Plaza, Grosse Pointe Woods, MI 48236  
(313) 343-2440*

**1. CALL TO ORDER**

[A.](#) Administrative Memo: December 7, 2021

**2. ROLL CALL**

**3. PLEDGE OF ALLEGIANCE**

**4. RECOGNITION OF COMMISSION MEMBERS**

**5. ACCEPTANCE OF AGENDA**

**6. INTERVIEW ATTORNEY TIM DIEMER**

[A.](#) Tim Diemer Biography

**7. COMMUNICATIONS**

[A.](#) Retainer Agreement

1. Letter 12/08/21 - Jacobs & Diemer

**8. NEW BUSINESS/PUBLIC COMMENT**

**9. CONSIDERATION OF A CLOSED SESSION UNDER SECTION 8(E) OF THE OPEN MEETINGS ACT TO CONSULT WITH THE CITY ATTORNEY REGARDING TRIAL OR SETTLEMENT STRATEGY IN CONNECTION WITH U.S. DISTRICT COURT CASE NO. 21-CV-12546, U.S. SPECIALTY INSURANCE COMPANY V GROSSE POINTE WOODS, WHERE AN OPEN MEETING WOULD HAVE A DETRIMENTAL FINANCIAL EFFECT ON THE CITY'S LITIGATION AND SETTLEMENT POSITION.**

**10. ADJOURNMENT**

**Lisa Kay Hathaway, MiPMC-3/MMC**  
**City Clerk**

**IN ACCORDANCE WITH PUBLIC ACT 267 (OPEN MEETINGS ACT)**  
**POSTED AND COPIES GIVEN TO NEWSPAPERS**

The City of Grosse Pointe Woods will provide necessary, reasonable auxiliary aids and services, such as signers for the hearing impaired, or audio tapes of printed materials being considered at the meeting to individuals with disabilities. All such requests must be made at least five days prior to a meeting. Individuals with disabilities requiring auxiliary aids or services should contact the City of Grosse Pointe Woods by writing or call the City Clerk's office, 20025 Mack Plaza, Grosse Pointe Woods, MI 48236 (313) 343-2440 or Telecommunications Device for the Deaf (TDD) 313 343-9249

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cc: Council - 7  
City Administrator  
City Attorney

Treasurer/Comptroller  
City Clerk  
Email Group/Media

Post - 4

**\*\*\* NOTE TO PETITIONERS: YOU, OR A REPRESENTATIVE, ARE REQUESTED TO BE IN ATTENDANCE AT THE MEETING SHOULD THE COUNCIL HAVE QUESTIONS REGARDING YOUR REQUEST. \*\*\***

COUNCIL ADMINISTRATIVE MEMO  
December 7, 2021

OFFICE OF THE CITY ADMINISTRATOR

**Subject: Recommendations for Council Meeting of December 13, 2021**

- Item 1      CALL TO ORDER Prerogative of the Mayor to call this meeting to order.
- Item 2      ROLL CALL Prerogative of the Mayor to request a Roll Call from the City Clerk.
- Item 3      PLEDGE OF ALLEGIANCE Prerogative of the Mayor to lead the City Council, Administration, and members of the audience in the Pledge of Allegiance.
- Item 4      RECOGNITION OF COMMISSION MEMBERS Prerogative of the Mayor to request Commission Members in attendance at tonight's meeting to approach the podium and introduce themselves and the Commission on which they serve.
- Item 5      ACCEPTANCE OF THE AGENDA Prerogative of the City Council that all items on tonight's agenda be received, placed on file, and taken in order of appearance.
- Item 6      INTERVIEW ATTORNEY TIM DIEMER Prerogative of the City Council to interview Attorney Diemer to serve as legal counsel regarding U.S. Specialty Insurance Co.
- Item 7      COMMUNICATIONS
- Item 7A      RETAINER AGREEMENT Prerogative of the City Council to appoint legal counsel and approve the Retainer Agreement for legal counsel to represent the City in U.S. Specialty Insurance Co. v Grosse Pointe Woods, U.S. district court case no. 21-cv-12546, and authorize the City Administrator to sign the letter from the Jacobs and Diemer law firm dated December 8, 2021.
- Item 8      NEW BUSINESS/PUBLIC COMMENT Prerogative of the Mayor to ask if there is any New Business to come before the City Council from the City Council or Administration; and then, to ask members of the audience if there is any Public Comment to come before the City Council.
- Item 9      CONSIDERATION OF A CLOSED SESSION UNDER SECTION 8(E) OF THE OPEN MEETINGS ACT TO CONSULT WITH THE CITY ATTORNEY REGARDING TRIAL OR SETTLEMENT STRATEGY IN CONNECTION WITH U.S. DISTRICT COURT CASE NO. 21-CV-12546, U.S. SPECIALTY INSURANCE COMPANY V GROSSE POINTE WOODS, WHERE AN OPEN MEETING WOULD HAVE A DETRIMENTAL FINANCIAL EFFECT ON THE CITY'S LITIGATION AND SETTLEMENT POSITION A motion, second, and roll call vote with a minimum 2/3 of Council voting in the affirmative is required to meet in Closed Session.

Prerogative of the City Council to recess the City Council Meeting and convene in Closed Session to consult with the City Attorney regarding trial or settlement strategy in connection with U.S. District Court Case No. 21-CV-12546, U.S. Specialty Insurance Company v Grosse Pointe Woods, at which time this body may or may not reconvene in regular session to address additional items as necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce J. Smith", with a stylized flourish at the end.

Bruce J. Smith  
City Administrator

**Timothy A. Diemer, Esq.**

Jacobs and Diemer, P.C.

[www.jacobsdiemer.com](http://www.jacobsdiemer.com)

Ever since joining the firm in 2005, clients have called upon Timothy A. Diemer to advocate on their behalf across a wide range of jurisdictions. Corporations, insurance carriers, small businesses, hospitals and doctors, municipalities and other civil litigants have benefitted from Tim's vigorous advocacy in state and federal courts, including the Supreme Court of the United States.

While Jacobs and Diemer's unique specialty is reversing devastating money judgments, Mr. Diemer's appellate practice is diverse and wide-ranging. Tim has extensive experience defending hard fought trial court victories against challenges on appeal, litigating insurance coverage matters in trial and appellate courts, and compelling interlocutory reversals of adverse evidentiary rulings or wresting the case away from the trial court when controlling questions of law present an opportunity for early appellate review before valuable resources are poured into a trial that may not be necessary. Tim also prides himself on his pro bono work, providing his legal services free of charge for the less fortunate.

In his time with the firm, Mr. Diemer has garnered numerous awards and accolades that recognize him for his talent as an appellate and insurance coverage specialist. At the age of 32, Mr. Diemer was honored as a biographee in Best Lawyers of America, making him one of the youngest Appellate Lawyers in America to be so recognized. At the age of 35, Mr. Diemer became the youngest to ever serve as President of Michigan Defense Trial Counsel, a statewide association of trial lawyers who nominated an appellate lawyer to advocate on their behalf and serve as their leader.

Mr. Diemer recently earned two significant victories on behalf of municipal clients, including vindication of the rights of the City of Grosse Pointe in an insurance coverage dispute with the same insurance company Grosse Pointe Woods is currently facing.

**Summary Judgment Granted in Favor of Policy Holder on Duty to Defend; Costs, Attorney's Fees and Penalty Interest Awarded**

When the City of Grosse Pointe was faced with a civil rights lawsuit for money damages, it faced the additional, daunting prospect of defending the claim without any liability insurance protections. After the city's insurer carrier declined to cover the claim, Tim Diemer was hired to pursue a breach of contract and declaratory judgment action in federal court. After a year and a half of litigation, U.S. Specialty Insurance Company was compelled to live up to its insurance commitments by the grant of summary judgment in favor of the municipality, which also required reimbursement of the city's out-of-pocket defenses costs coupled with an award of penalty interest.

**Appellate Reversal of Order Certifying Class of More Than 16,000 Claimants**

Tim Diemer was hired to contest a federal court's order that certified the claims of more than 16,000 current and former prisoners to be tried as a class action against Wayne County. Obtaining a reversal of the class certification decision presented two significant hurdles: (1) interlocutory review is disfavored in the federal system and (2) the order appealed from was reviewed for an abuse of discretion.

Tim overcame both obstacles as the Court of Appeals Granted the Petition for Permission to Appeal and then later Reversed the Order Certifying the Class, without exception and without an opportunity to re-formulate the class on remand.

Additional information regarding Mr Diemer and the judicial decisions referenced above can be found at [www.jacobsdiemer.com](http://www.jacobsdiemer.com).

# Jacobs and Diemer

PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW

John P. Jacobs  
Timothy A. Diemer

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December 8, 2021

**VIA E-MAIL**

Lisa A. Anderson, Esq.  
Rosati, Schultz, Joppich &  
Amtsbuechler, P.C.  
27555 Executive Dr., #250  
Farmington Hills, MI 48331  
[landerson@rsjalaw.com](mailto:landerson@rsjalaw.com)

Dear Ms. Anderson,

I am writing to provide additional information about me and my firm for consideration by the City of Grosse Pointe Woods as it, through City Council, selects legal counsel to represent the City in insurance coverage litigation with the City's insurer, U.S. Specialty Insurance Company. The insurance coverage case was filed in the Eastern District of Michigan, Docket No. 21-cv-12546, and concerns U.S. Specialty's coverage obligations regarding underlying class action litigation pending in Wayne County Circuit Court.

I have previously provided biographical information about me and my firm and, as requested, below is a proposed Retainer Agreement for further consideration by City Council. If you need any additional information, please let me know.

During our initial conversations, I have learned the broad contours of the case and the legal dispute the City is currently involved in. In the interim, I have downloaded the Complaint filed by U.S. Specialty and its attachments, which include the underlying complaint and the insurance policy, itself. I also know that you have secured an extension of time for the City to answer the complaint in federal court.

From these discussions, I have some preliminary thoughts on how I think the City should approach this litigation strategically. While I have proposed strategies, my practice is to offer recommendations based on my judgment, but it is ultimately the client's call on what tactics to adopt. It is the client's case, not mine, and my role as advisor is to serve the client's wishes.

In the same vein, my practice is to obtain client consent and

**Jacobs and Diemer, P.C.**

Ms. Lisa A. Anderson, Esq.

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approval prior to preparing and filing motions or acting on any litigation strategy. To that end, I also make it a priority to provide regular status updates to the client to make the attorney-client relationship collaborative as we weigh appropriate strategic decision-making. This also provides cost containment benefits as the tasks I undertake are always at the direction of the client.

With this letter, I also want to outline my firm's expectations about billing for our services, if we are ultimately retained. It is necessary for me to spell out such terms in some detail so as to meet the requirements of the Canons of Ethics.

The attorneys of the firm and their hourly rates which are applicable to you are as follows:

Partner Timothy A. Diemer, Esq.: \$285.00 per hour.

Partner John P. Jacobs, Esq.: \$285.00 per hour.

Associates: \$200.00 per hour.

Paralegals: \$110.00 per hour.

Attorneys' time will be billed on a per-task basis to the one-tenth of an hour. In addition, all letters and emails sent and received, as well as phone calls made and answered, will be billed in the nature of routine and standardized charges in keeping with the complexity of the matter and the length of the phone calls, emails and correspondence.

In addition to billing for attorney's time spent representing the City in this case, the City of Grosse Pointe Woods will be billed for any and all out-of-pocket expenses for legal research time, transcript expenses, motion fees, court fees, xerographic graphic expenses, binding and xerox fees and any and all out-of-pocket expenses related to litigation activity in the Trial Courts as well as a potential appeal.

The non-payment of legal fees is a growing problem in the legal world. Thus, you and the City must also understand that if the City does not pay us and if the account falls into arrears, you will be given several chances to make good on all outstanding payments in arrears, but, if and when those payments do or does not or cannot happen, this firm and its lawyers will then be free after reasonable notification to you and the City to withdraw from the proceedings and/or be given the opportunity to terminate the legal services and terminate the attorney/client relationship, and to do so at any stage of the proceedings and at any time of the proceedings, for non-payment of the outstanding bills, as our relationship is always mutually understood to be "at will."



**Jacobs and Diemer, P.C.**

Ms. Lisa A. Anderson, Esq.

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No result in the law is ever guaranteed. While we think that your case certainly has substantial merit, there are no guarantees of success that can be assured by us for you and the City of Grosse Pointe Woods. We can assure you that our law firm will pull out every ethical and professional "stop" we possibly can to represent you and to do all that it takes, within the Canons of Ethics, to obtain a good result for you, to the extent legally or ethically possible to do so. We are always constrained by the record and Professional Responsibility concerns, of course.

Your agreement with us is that the City will pay our bills in a reasonably expeditious and prompt fashion so that we can continue fighting for you as this cannot be done without an adequate budget and without current payments being timely made as new bills are sent out. Our responsibility and promise to you is to conduct your legal work as aggressively and as well as the record and ethical parameters permit, to the best of our capabilities.

This, then, is the general outline of how we will conduct business among ourselves and with you and we trust that it is agreeable.

Thank you for trusting us to represent the City of Grosse Pointe Woods in this very important case.

Sincerely,

Timothy A. Diemer