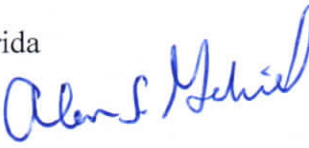




MEMORANDUM

To: City Council, Marco Island, Florida
From: Alan L. Gabriel, City Attorney 
Copy to: David Harden, Interim City Manager
Re: City Attorney Matter Review
For June 17, 2019 Council Meeting
Date: June 10, 2019

During the period commencing from May 1, 2019 through May 31, 2019, the City Attorney's Office has participated in or has been working on the following matters:

- **General City Business**
 - Marco Island Academy Sign
 - Key Marco User Fee
 - Various Public Records Requests
 - Waiver Of Records Exemptions
 - Yacht Club Contract Revisions
- **For Council Agenda Approval**
 - Special Meeting Re City Manager Candidate Interviews
 - Approval Of City Manager Agreement
 - Approval Of Sidewalk Ordinance Amendment
 - Approval Of Nautical Garage Conditional Uses
- **Council Matters/Inquiries**
 - Medical Cannabis/Marijuana Policy Information Etc.
 - City Manager Employment Terms And Conditions
 - Governor Veto Of Plastic Straw Preemption Legislation
 - NCH Property – Purchase Of Property Procedures
 - Status Of Short Term Rentals
- **Planning Board**
 - Planning Board Meeting
 - Dumpster Enclosure Requirements Ordinance
 - Hideaway Beach Clubhouse Site Improvement Plan
 - Conditional Use / Variance Approval To Permit Seawall Cut In's
 - Olde Marco PUD
 - Nautical Garage Conditional Use Approval's
 - Island Plaza Conditional Use
 - Misc. Site Plan Improvement Approval's

○ **Code Enforcement**

- Vehicle Damage To Species Protected Zone
- Attend May 28th Special Magistrate Hearings
- Prohibition Of Cargo Trailers On Private Driveways
- Preparation of Special Magistrate Orders
- Misc. Code Enforcement Process And Procedures

○ **Miscellaneous Police and Fire Labor and Employment Matters**

- Police Department Labor Agreement
- Employee Resource Handbook
- Hennings Employment
- Macciarolo Employment
- Camparini Complaint
- Thompson Employment
- Request To Remove Records From Personnel File

○ **Litigation Matters**

- ***Picayune Strand / Belle Meade Acquisition by South Florida Water Management District*** (File No. 2016-028-106)

The subject 162 Acre parcel is owned by the City to be used as an alternate reliability water wellfield source should the City's Henderson Creek/Marco Lakes water source facility become disabled, contaminated or otherwise be unavailable to the City as its current water supply source. A joint meeting was held with SFWMD Officials On February 24, 2017 to discuss possible options. This matter remains open, pending formal action by the District.

- ***Sonia Rodriguez v. City and Coastal Concrete Products***

On January 23, 2017, the City received notice of a personal injury claim from lawyers representing Sonia Rodriguez. She was allegedly injured on October 7, 2015 in a bicycle accident. The purported cause of the accident is defective construction or lack of construction hazard warnings at a location being worked on by Coastal Concrete. The City was sued on April 20, 2018 after being placed on notice. Because the accident site was within a construction area being managed by Coastal Concrete under contract with the City, we placed Coastal Concrete and its insurer on notice of the claim and, now, the lawsuit, expecting them to defend it and indemnify the City.

The City has approved defense counsel appointed by Amerisure, the insurance company for Coastal Concrete. Coastal has undertaken the City's defense as required by the contract. The City Attorney will serve as the client contact for the insurance defense counsel going forward. Stipulation to substitution of counsel to allow Coastal Concrete to undertake City's defense is forthcoming.

The Court has entered an Order Granting Stipulated Dismissal, without prejudice, of Cross Claim against Coastal Concrete. We will continue to monitor this action as warranted.

- ***Chadd Chustz v. City of Marco Island (PGIT Claim # 329498)***
A Summons and Complaint was served to the City on behalf of the claimant, who is alleging violations of his First Amendment Rights as well as wrongful termination. A Motion to Dismiss was filed, instead of responding, Plaintiff filed an Amended Complaint. We then filed a motion to dismiss, which was denied based solely upon the requirement that the Court view the Amended Complaint in a light most favorable to the Plaintiff. We have since filed our Answer and Affirmative Defenses, and we are currently conducting discovery.
- ***In Re: Risk Protection Order Marco Island Police Dept. v Tremont***
Tremont Risk Protection Order, the Respondent was recently Baker Acted again, and an affidavit attesting to such was filed with the court, for their consideration when time comes for the expiration of the final order.
- ***In Re: Risk Protection Order Marco Island Police Dept. v. Tessarolo***
For your City Manager Update report – the City Police Department pursued a risk protection order against Mr. Robert Tessarolo, after he used a firearm in an attempt to kill himself. All of his firearms were seized. Efforts by the police department lead to the judge issued a final order of protection, which is good for one year. The Respondent was also ordered to undergo a psychological evaluation. A compliance hearing on the final order of protection is scheduled for June 12th.
- ***Cristena B. Yeutter, as Trustee v. City of Marco Island (“City”) Bert J. Harris Act Claim (PGIT Claim # 347250)***
The Trustee owns the residential property located at 764 Hull Court, Marco Island, Florida (“property”). In 1989, a dock was constructed on the property, and in 1992 a single-family residence was constructed on the property. In 2005 the residence on the property was demolished, leaving the dock as the only remaining improvement on the property. The City cited the Trustee for a code violation under section 54.110. To cure the code violation, the Trustee would either have to construct a single-family residence on the property or would have to demolish the dock. On December 26, 2018, the City received a section 70.001, Florida Statutes (“Bert Harris Act”) notice from the Trustee claiming that the City’s application of section 54.110 to the property burdens the Trustee’s alleged right to maintain the boat dock on the property, which the Trustee claims is a legal non-conforming use because the dock was constructed in 1989. The claim has been submitted to the City’s insurance carrier, and the City is developing a response to the claim. Trustee’s counsel did submit a proposed settlement agreement, the City Attorney and City Manager have evaluated the proposal and offered alternatives to the Trustee’s counsel; however, at this time these discussions do not appear to be

worthwhile. On April 26, 2019, the Claimant agreed to an extension of time for the City to file a response to their Harris Claim to June 24, 2019, unless otherwise further extended.

- **Lydia Moers – 1049 San Marco**

As of May 13, 2019, Lydia Moers (and the 1049 San Marco property) is not subject to bankruptcy protection. The bankruptcy case is dismissed. Specifically, a dismissal effected pursuant to an Order Granting Motion to Dismiss Case on March 22, 2019, went into effect on April 6, 2019. While the Court gave Ms. Moers the opportunity to redeem the bankruptcy, subsequently and to date, no further action has been taken by or on behalf of the Debtor to reinstate the case. A new search reveals she has not attempted to file bankruptcy again as of the date of this memorandum. As previously recommended, the strongly suggest the City protect its interests by recording any outstanding liens with respect to this property.

- **Foreclosure Actions**

- **Bank of New York v. Vazquez, et al – 910 Ruby Court**

This foreclosure action was filed by Bank of New York, the mortgagee, for foreclosure due to a default by Vazquez, the mortgagor, regarding 910 Ruby Court, Marco Island, FL 34145. The City was named as a Co-Defendant due to several liens it has against the subject property. On February 18, 2019, the City filed its Answer & Affirmative Defenses in which it asserted it has pending and valid liens against the subject property. Further, the City has also filed a motion to vacate an improperly entered Clerk's default. A hearing on the City's Motion to Vacate was heard on Thursday, April 18, 2019. The Magistrate granted the City's Motion to Vacate, and, on May 7, 2019, the Court entered a written Order vacating the Clerk's Default finding that the City's Answer and Affirmative Defenses to have been timely filed on February 18, 2019 in accordance with the Magistrate's ruling. The hearing on Co-Defendant's Motion to Quash Service of Process that was scheduled for hearing on June 6, was cancelled. The Parties will submit and Agreed Order providing that individual Defendant was properly served with the Complaint.



WSH Legal Services Billings Summary
Bills Dated May 8, 2019, for April, 2019 Legal Services

2914.001	Retainer	Inv. #215658	\$10,000.00
2914.001-1	City Manager Investigation	Inv, #215659	\$814.00
2914.003	Labor and Employment	Inv. #215660	\$5,478.00
2914.003-3	Macciarolo, Nicholas – Misconduct IA	Inv. #215661	\$198.00
2914.003-04	Hennings, Kevin – Grievance Re Termination	Inv. #215662	\$843.00
2914.003-5	Camparini, Heather – EEOC Charge Gender Discrimination	Inv. #215663	\$1,910.00
2914.003-6	Thompson, Tige Employment Matter	Inv. #215664	\$1,364.00
2914.003-4	Tessarolo, Robert Anthony RPO	Inv, #215665	\$5,984.00
2914.006	Miscellaneous Matters	Inv. #215666	\$4,936.80
2914.006-1	Misc. Matters-Fratelli Properties	Inv, #215667	\$88.00
2914.007	Planning & Zoning	Inv. #215668	\$1,782.00
2914.008	Code Enforcement	Inv. #215669	\$3,146.00
2914.009	Litigation – Miscellaneous	Inv. #215670	\$638.00
2914.021	Rodriguez, Sonia & Coastal Concrete Products – Premise Liab.	Inv, #215671	\$110.00
2914.025	Tremont, Peter Domenick – Risk Protection Order	Inv. #215672	\$44.00
2914.026	Vazquez, Robert – Defense of Foreclosure	Inv. #215673	\$2,178.00