


## MEMORANDUM

To: City Council, Marco Island, Florida

From: Alan L. Gabriel, City Attorney



Copy to: Michael A. McNees, City Manager

Re: City Attorney Matter Review for  
August 19, 2024 Council Meeting

Date: August 9, 2024

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During the period commencing from July 10th, 2024 through August 9, 2024 the City Attorney has participated in or has been working on the following matters:

### General City Business

- o Misc. Public Records Requests
- o Misc. Procurement Matters
- o Code Update Discussions
- o Correspondence To FEMA Chief Counsel Re
  - FEMA Policy
  - FEMA Violation Tracker
  - FEMA Records Request
- o Osceola Court Property – Excavation of Canal
- o Fire Prevention Code High Rise Safety Systems

### For Council Agenda Approval

- o Resolution Approving Variance for Landscape Buffer At 588 Bald Eagle Dr.
- o Ord. First Reading Revised Municipal Code Of Ordinance
- o Ord. Authorizing Mixed Use Overlay In District Two

### Council Matters/Inquiries

- o Financial Disclosure Requirements
- o Candidates Qualification Requirements
- o FEMA Policy
- o County And City Dock Agreement
- o School Resource Officers

### Planning Board

- o Rezoning 531 S. Collier Blvd. – Zoning C-1/C-17 To C-3
- o Rose Marine Site Plan Amendment
- o YMCA Site Plan Amendment
- o Tax Collectors Building – Site Development Plan

#### Code Enforcement

- o July 30, 2024, Magistrate Hearings
  - 25 Code Hearings
  - 3 Mitigation Requests
- o 1870 Apataki Foreclosure
- o Zombie Task Force
  - 910 Ship Court Nuisance Complaint (To Be Filed)
- o Miscellaneous Mitigation Requests
- o Miscellaneous Enforcement Matters
- o Code Of Ordinance Re-Write

#### Labor and Employment Matters

- o Employee Misconduct Investigations and Discipline
- o Former Employee Arbitration Challenge (litigation)
- o Employee Procedural Appeal
- o Collective Bargaining (Police)
- o Unfair Labor Practice Charge

#### Litigation Matters

- **Marco Club, LLC Request for FLUEDRA Relief (Florida Land Use and Environmental Dispute Resolution Act (Section 70.51, Fla. Stat.))**

Applicant alleges that the City's denial of the requested offsite parking agreement was either unreasonable or which unfairly burdened the use of the land (1202 Bald Eagle Drive) and is seeking to mediate through the non-judicial (FLUEDRA) mediation process with the hope that the parties can reach a mutually agreeable compromise, utilizing the participation of a special magistrate who will be selected by the parties. Applicant and City have agreed to a mutually acceptable magistrate.

Marco Club requested mediation before the selected special magistrate. The mediation was scheduled for October 18, 2022, at 9 a.m. in City Council Chambers, and pursuant to FLUEDRA must be open to the public. As required, the City has provided written notice of the Applicant's claim to (1) owners of property contiguous to the Applicant's property (1202 Bald Eagle Drive) and (2) interested parties. Interested parties consist of those who provided testimony at the public hearings before City Council on the Applicant's offsite parking agreement. The October 18<sup>th</sup> mediation was continued by the parties to November 7, 2022; after Marco Club submitted of a new site plan application to the City, the parties agreed to further continue the mediation to December 6, 2022 which was re-scheduled to be heard by Special Magistrate Scott Steady on March 24, 2023. This hearing was cancelled by Marco Club on March 20<sup>th</sup> and

has not been rescheduled. As of this time there has been no additional activity regarding this Claim.

- **Marco Club, LLC Request for FLUEDRA Relief #2; Resolution 23-07.**  
The Applicant filed a new revised Site Plan with reduced seating for the subject property located at 1202 Bald Eagle Drive with the City. That new Site Plan Application was reviewed and approved by the Planning Board on December 2, 2022. The neighboring property owner filed an appeal of the site plan approval which when heard by City Council, Council upheld the Planning Board's approval with two additional conditions. On February 22, 2023, the Applicant filed a second FLUEDRA request alleging that these additional conditions "impose a higher standard of approval than required by the code" and "codify disparate treatment of the Property owner relative to other similar-situated property owners in the City". Pursuant to the Act, the City will file its Response to the Claim and a special magistrate will be selected by the parties and mediation of this second claim will commence once Marco Club indicates a desire to proceed with its claim. As of this time there has been no additional activity regarding this Claim.
- **Shannon Schemel, et al v. City of Marco Island, Case No. 2:22-cv-00079-JLB-MRM (M.D. Fla.) (Section 1983 4<sup>th</sup> Amendment/State Constitutional Claims)** – This case involves the City's use of an automated license plate recognition ("ALPR") system on public roads. Plaintiffs allege that the City's use of the ALPR system, which photographs plates publicly visible on public roads locations, and its 3-year retention period (as permitted by state law) violate the Fourth Amendment and Florida's constitutional right to privacy. Plaintiffs filed their original complaint on February 7, 2022, against the City and the City's police chief in her official capacity. Following the City's motion to dismiss, the district court dismissed the Police Chief, in her official capacity, with prejudice on February 14, 2023, and gave Plaintiffs leave to amend their pleading once more. Plaintiff filed their amended complaint on March 7, 2023, again asserting Fourth Amendment and state constitutional claims, which the City moved to dismiss with prejudice (the "Motion"). While the Motion remains pending, The Court recently issued an order directing the parties to file supplemental briefs on new authorities supporting their positions as to the Motion. The City filed its supplemental brief on April 30<sup>th</sup>, and the Plaintiffs filed theirs on May 21<sup>st</sup>. The hope is that the Court's recent order, and the parties' recent filing of supplemental briefs, will prompt the Court to rule on the pending Motions. In the meantime, the Court *has stayed all remaining deadlines as well as the trial term.*
- **City of Marco Island v. Artesian Pool Construction, Inc.**  
The City will be filing a civil action based on a code enforcement fine in the amount of \$16,200.00 entered against Artesian Pool Construction, Inc.'s ("Artesian Pool") by the Special Magistrate. Because the code enforcement fine is only

against Artesian Pool and not against the property owner, the City is unable to foreclose on the real property where the violation occurred.

- **City of Marco Island v. Uooligan Marco Island Real Estate, LLC**  
On September 20, 2023, the City filed a lawsuit to foreclose on a code enforcement lien in the amount of over \$120,000.00 against this non-homesteaded commercial property. The property owner was served with the Complaint on October 5, 2023. We are communicating with the property owner regarding the code enforcement lien and what needs to be done to bring the subject property into compliance with the City's Code. The property owner has filed a response to the Complaint. This case is pending. At this time, we are contemplating preparing a Motion for Summary Judgment with the intention of moving this case forward.
- **Tige Thompson v. City of Marco Island, Case No. 11-2023-CA-001996-0001) (Florida Arbitration Code – Reinstatement of Employment Claim)** – This case involves former employee Tige Thompson's Petition to Confirm an Arbitration Award (the "petition"). On October 14, 2021, an arbitrator issued a decision relative to Mr. Thompson's 2020 termination. The arbitrator did not order the City to reemploy Mr. Thompson in his award. Mr. Thompson therefore remained separated. On May 16, 2023, Mr. Thompson petitioned the court to reinstate his employment, claiming that the arbitrator reinstated him. The City filed a motion to dismiss, which was denied. The City then answered the petition and filed a counterclaim (the "answer and counterclaim"). The answer and counterclaim are pending, but a reply by Mr. Thompson is anticipated. This case is pending.

#### Vacation Rental Litigation

- **Ferrarie (formally Reinalda Properties), et.al. v. City (PGCS Claim)**  
Complaint originally filed by Reinalda Properties, LLC on September 15, 2022 with the focus on the Voters Ordinance Initiative. The City filed a Motion to Dismiss the original Complaint on October 14, 2022 which remains pending. On April 3, 2023, an Amended Complaint was filed and includes different named plaintiffs and the adopted Rental Registration Ordinance. The City has not filed a response to the Amended Complaint; a temporary extension to reply to the Amended Complaint has been agreed. On May 22, 2023, Council agreed to extend the date for the enforcement of Ordinance 22-08 from June 30, 2023 to January 8, 2024 for any residential property utilized for a Transient Rental. A Joint Suggestion of Mootness and Notice of Voluntary Dismissal has been filed with the Court. This action has been dismissed by the Court.
- **Florida Association of Realtors v. City**  
This Complaint was filed on April 4, 2023 and the City was served on April 12, 2023. The City has not filed a response to this Complaint; a temporary extension to reply to the Complaint has been agreed. On May 22, 2023, Council agreed to

extend the date for the enforcement of Ordinance 22-08 from June 30, 2023 to January 8, 2024 for any residential property utilized for a Transient Rental. Joint Suggestion of Mootness and Plaintiff's Notice of Voluntary Dismissal has been filed with the Court. This litigation has been dismissed by the Court.

- **Howard D. Reitz, et.al. v. City**

This Complaint was filed on May 3, 2023 and the City has been served. The City has not filed a response, agreement to a temporary extension has been agreed. On May 22, 2023, Council decided to extend the date for the enforcement of Ordinance 22-08 from June 30, 2023 to January 8, 2024 for any residential property utilized for a Transient Rental. Currently, the City's Litigation A Stipulation of Dismissal with Prejudice has been filed with the Court. This Litigation has been dismissed by the Court.

- **Gulfcoast & Atlantic Corporation v. City**

This Complaint was filed in the Collier County Circuit Court on April 12, 2023 and the City was served on April 18, 2023. The City did not file a response to the Complaint, a temporary extension to reply to the Complaint had been agreed. On May 22, 2023, the Council decided to extend the date for the enforcement of Ordinance 22-08 from June 30, 2023 to January 8, 2024 for any residential property utilized for a Transient Rental. On June 28, 2023, the Governor of Florida signed into law Senate bill 250, which deemed the Challenged City Ordinance "null and void ad initio" and therefore completely mooted Plaintiff's controversy. On October 2, 2023 the City approved City Resolution 23-54 which specifically recognized that Senate Bill 250 nullified the challenged Ordinance by operation of state law. After numerous attempts to have Plaintiff voluntarily dismiss this litigation, on August 8, 2024, the City served upon Plaintiff's Counsel the City's "Motion for Sanctions Pursuant to Section 57.105, Florida Statutes". Section 57.105 provides the Plaintiff and its Counsel twenty-one days to withdraw the claims or be required to pay the City's attorney's fees.

#### Risk Protection Orders

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Tracey Lynne Taylor***  
On October 25<sup>th</sup>, 2022, threatened harm to herself with a handgun. All accessible firearms were seized, and a final Risk Protection Order was entered on November 4, 2022. The Order was extended for another year, and now expires on October 25, 2024. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches.
- ***In Re: Risk Protection Order Marco Island Police Dept. v. Michael Vincent Clausen.***  
On September 20, 2021, Mr. Clausen, who was taking medication for psychiatric

conditions, experienced recent hallucination events. During an argument with his father, he grabbed for his firearm, which was taken away from him without further incident. Police were called, and Mr. Clausen was committed for evaluation under the Baker Act. The subject firearm is owned by Mr. Clausen, and was taken into protective custody. The Respondent stipulated to the entry of a final risk protection order on October 5, 2021. This Order expired on October 4, 2022 was extended by Joint Stipulation for another year, to expire on October 1, 2023. Mr. Clausen continued to provide cause for an extension of the Order. On September 26, 2023, the City attended a hearing to extend the Order a second time, and the City's Petition was granted. Order expires September 26, 2024. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches.

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Chad Nelson.***  
On June 19, 2023 the Respondent made threats of self-harm with the use of a firearm. All accessible firearms were seized. A Final Risk Protection Order was entered by joint stipulation. Final Order expires July 4<sup>th</sup>, 2024. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches. The Respondent has moved out of the State. He has attended court-ordered psychological evaluation and filed proof of same with the Court. The Respondent has no other significant criminal history. No grounds for extension exist, so the Order has expired.
- ***In Re: Risk Protection Order Marco Island Police Dept. v. Meire Lourdes Ramos***  
On November 22, 2023 the Respondent threatened to kill herself with a firearm. A Final Risk Protection Order was issued via joint stipulation. Final Order expires on December 6, 2024. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches.
- ***In Re: Risk Protection Order Marco Island Police Dept. v. Kimamana Waste Win Heminger***  
On March 15, 2024, the Respondent threatened to kill herself with a firearm. A Final Risk Protection Order was issued via joint stipulation. The Final Order expires on March 20, 2025. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches.

#### Worker's Compensation Matters

- ***Scott Edson v. City of Marco Island***  
Claimant filed a new Petition for Benefits on March 24, 2024, requesting authorization for medical treatment. Mediation was held on July 16, 2024, at which time all issues were resolved as to the new Petition. As a result, the Final Hearing scheduled for September 4, 2024, will be cancelled.

- ***James Jay v. City of Marco Island***  
Private mediation was scheduled for June 20, 2024, and was rescheduled for July 11, 2024. Private mediation has been rescheduled for August 26, 2024.
- ***Ricardo Ostos Salazar v. City of Marco Island***  
This is an automobile accident involving a City employee. The case has been assigned for pre-suit liability review. We are the process of preparing a report for the City's carrier.

**WSH Legal Services Billings Summary**  
**Bills Dated July 12, 2024 for June 2024 Legal Services**

2914.001	Retainer	Inv. #287754	\$12,500.00
2914.003	Labor And Employment	Inv. #287755	\$3,980.69
2914.006	Miscellaneous Matters	Inv. #287756	\$3,135.00
2914.007	Planning & Zoning	Inv. #287757	\$2,365.00
2914.008	Code Enforcement	Inv. #287758	\$1,760.00
2914.009-4	HSBC Bank USA	Inv. #287768	\$1,677.50
2914.027	Edson, Scott – Workers Comp – Claim 302233	Inv. #287759	\$2,942.50
2914.028	Community Parks Foundation	Inv. #287760	\$803.75
2914.048	Jay, James G. – WC Claim 971846	Inv. #287761	\$2,612.50
2914.056	Nelson, Chad Jason – Risk Protection Order	Inv. #287766	\$1,567.50
2914.057	North Marco Utility Co. Inc. – Purchase of Company	Inv. #287762	\$1,017.50
2914.061	Gallup, Matthew – Unfair Labor Practice Charge	Inv. #287767	\$7,590.00