


Memo

To: City Council

From: Alan L. Gabriel, City Attorney 

Copy To: Roger T. Hernstadt, City Manager

Re: City Attorney Matter Review

Date: October 17, 2016 City Council Meeting

During the period commencing from September 13th, 2016 through October 10th, 2016, the City Attorney's Office has participated in or has been working on the following matters:

- **General City Business**
 - Impervious Calculations Worksheet
 - Surface Ratio Worksheet And Regulations
 - Olde Marco Inn PUD
 - Police Department Internal Affairs Review
 - Police Department Performance Grievance
 - Records Request Re City Attorney Invoices
 - T3 Customer Agreement
 - Utility Testing Services Contracts
 - VALIC Annuity Asset Transfer
 - Utility Chemical Contracts

- **For Council Agenda Approval**
 - Resolution - Microsoft License Agreement
 - Resolution – Racquet Center Fees Adjustment
 - Resolution -- City Hall HVAC System
 - Resolution – Renewal of Employee Insurance Plans
 - Utility System Revenue Refunding Bonds Series 2016A

- **Council Matters/Inquiries**
 - Election Debates and Participation By Councilors
 - Candidate Forums
 - Application of Florida’s Sunshine Law (Section 286.011, F.S.)
 - Goodland Drive Proposal
 - Esplanade Improvements
 - City’s Comprehensive Plan
 - Editorials By City Officials
 - Election Signage
 - Veteran’s Park PUD Application
 - Co-Application by Small Brother Marco, LLC and the City of Marco Island. Consistent with the terms of the Co-Application Agreement, either party may withdraw the Application at any time without liability to the other part or any other person.
 - This Application, which is quasi-judicial in nature, is pending and is proceeding through the City’s PUD regulatory review process.

Councilors should refrain from commenting on the particulars of this pending Application.

- Private Property Rights
 - Chapter 70, Florida Statutes, entitled “The Bert J. Harris, Jr. Private Property Rights Protection Act”.
 - A statutory cause of action for compensation if specific local government regulation or actions “inordinately burdened” the existing use or a vested use of real property. Applies even if the impact does not rise to the level of a taking requiring compensation under the U.S. or Florida Constitutions. Upon a determination that a property owner is entitled to relief pursuant to this Act, relief may include compensation for the actual loss to the fair market value of the real property caused by the action of a government entity.

- **Planning Board**

- Veterans Park PUD
 - Zoning Transfer and Density Rights
 - Comprehensive Plan Review
- Joey’s Permitting
- Coast Guard Site Development Plan
- Absent Board Members Participation

- **Code Enforcement**

- Attendance At Magistrate Hearings On September 27th & 29th
- Administrative Search Warrant Requirements
- 1457 Butterfield Court Inspection Warrant
- 441 Pheasant Court Mitigation
- 1180 Bluebird Avenue – Sidewalk Repair And Nonconforming Regulations

- **Litigation Matters**

- ***Picayune Strand / Belle Meade Acquisition By South Florida Water Management District*** (SFWMD) - 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. Mitch Burnstein, the head of the Firm's Condemnation Department, has been assigned to handle this matter on behalf of the City, together with our partner, Pete Waldman. Mr. Burnstein is procuring the services of expert consultants and an appraiser to aggressively defend the City's interests.

Since the SFWMD proposes involuntary acquisition of the City's property, it is likely that the District will be responsible for payment of attorney's fees under Chapter 73, Florida Statutes. However, since the formal property acquisition process has not yet commenced, attorney and consultant fees are

not guaranteed under the law. The Firm customarily charges its condemnee clients hourly rates of \$450 for Mr. Burnstein and \$400 for Mr. Waldman's services. The Firm will accept payment from the City at its current hourly rate, with the understanding that the Firm will seek full payment of attorney's fees, experts' fees, and litigation costs from the SFWMD. Upon entry of final judgment, the Firm will reimburse the City any amount exceeding the aggregate payment (fees paid by the City and fees paid by the District) above a \$400 hourly blended rate ("Base Blended Rate"). It is also possible that the fee awarded by the Court will exceed the Base Blended Rate. If that was to occur, all attorneys' fees paid by the City will be reimbursed, and the Firm will be entitled to the attorney's fees paid by the District. The Firm will seek reimbursement to the City of all expert's fees and litigation costs from the District.

○ ***Edmund Stamm Workers Compensation Case No.: 16-016069 JAW.***

Claimant, a retired City Police Officer, was injured on August 21, 2012 and has been receiving workers compensation benefits since the date of the injury. Claimant is requesting that the City reduce its worker's compensation lien on his third party personal injury claim. City is currently responding to Claimant's related discovery requests.

- **Foreclosure Actions**
 - *Wells Fargo v. Gorrita* – Case No.: 11-2016-CA-001260-001-XX.
 - Answer Filed. Litigation is continuing.
 - *Bank of America v. Axios* – Case No.: 11-2016-CA-001514-9991-XX.
 - Answer Filed. Litigation is continuing.
 - *Chevy Case Funding v. Crystal Wilson* – Case No.: 11-016-CA-001017.
 - Answer Filed. Litigation is continuing.
- **Forfeiture Actions(Florida Contraband Forfeiture Act)**
 - *City v. Garcia* – Action is continuing.
- **WSH Legal Services Billing Summary**
 - August 2016 Legal Services are not yet available and will be included in next month's Report.