




## 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  
September, 18, 2023 Council Meeting

Date: September 11, 2023

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During the period commencing from August 15, 2023, through September 10, 2023 the City Attorney has participated in or has been working on the following matters:

### General City Business

- o Miscellaneous Public Records Requests
- o Procurement Matters
- o Senate Bill 718 Re Initiative Process Prohibited
- o North Marco Utility Acquisition
- o Marco Ocean Beach Resort
- o Use of Right Of Way

### For Council Executive Attorney / Client Sessions

- o Florida Association of Realtors v. City
- o Gulfcoast & Atlantic Corp. v. City
- o Reitz, Clausen Property Rentals v. City
- o Ferrarie, et. al. v. City

### For Council Agenda Approval

- o Resolution Adopting Tentative FY 2024 Millage Rate
- o Resolution Adopting Tentative FY 2024 Budget
- o Resolution Approving Variance At 790 & 800 820 Bald Eagle Drive
- o Resolution Approving Appointment To Budget Advisory Committee
- o Declaration of Emergency Proclamation
- o Termination of Emergency Proclamation

#### Council Matters/Inquiries

- Operating Budget Workshop
- Vacation Rental Registration Program
- Vacation Rental Additional Opinion
- Park Naming Regulations
- Charter Revisions

#### Planning Board

- Easement Vacation For Property At 910 Beaver Court
- Home Based Businesses

#### Code Enforcement

- August 28, 2023 Hearings Cancelled Due To Hurricane Idalia
- HSBC Banc v. City Foreclosure Case Re 1457 Butterfield Court
- Lien Enforcement Re 1870 Apataki Court
- Mitigation Case #23-715
- Lien Foreclosure Complaints
- 300 LampLighter Mitigation
- Miscellaneous Enforcement Matters

#### Labor and Employment Matters

- Employee Misconduct Investigation
- Benefits Request by Former Employee
- Revision Of Personnel Regulations
- Former Employee Arbitration Challenge
- Employee Complaint and Inquiry
- Employment Services Agreement
- Representation Certification Petition
- Collective Bargaining
- Key Staff Inc. Agreement

#### 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.
- *A.A. v. City of Marco Island, et. al. (PGCS Claim)*  
Plaintiff filed her Complaint against the City on October 29, 2021. The Plaintiff brought claims against the City for (1) vicarious liability; (2) negligent hiring; (3) negligent retention; and (4) negligent supervision. These claims are based on allegations of misconduct involving a former City firefighter from whose misconduct the Plaintiff alleges to have incurred damages. Discovery in this matter is ongoing. The Court ordered Non-Binding Arbitration in this matter to occur by March 21, 2023. The Court also entered an Order setting trial for the three-week period beginning on August 7, 2023. The Court also ordered the deadline for Mediation as

April 26, 2023. The parties conducted the mandatory non-binding arbitration per the Courts Order on April 13, 2023. The parties proffered facts and legal arguments, the Arbitrator's ruling was received on May 11, 2023. The parties having clarified the arbitration award submitted the revised award to the Court for approval. The revised arbitration award was approved and a final judgment was entered by the Court finding that the City and co-defendant each pay \$25,000 to the Plaintiff. Awaiting receipt of pending Court dismissal order upon which this matter will be concluded.

- 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. This Motion remains pending, and the matter has been set on a May 2024 trial docket.
- 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.

#### 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.

- **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.
- **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 has not filed a response to the Complaint, a temporary extension to reply to the Complaint 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.
- **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

#### Risk Protection Orders

- *In Re: Risk Protection Order Marco Island Police Dept. v. Kayla Nicol Jobin*  
On October 2, 2022 during a domestic dispute, Ms. Jobin threatened to harm herself with a firearm. All her firearms were seized, and a final Risk Protection Order was entered on October 12, 2022. The Order expires on October 11, 2023. 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. 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 expires on November 3, 2023. 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 Department v. Danielle Christian Pace.**  
On December 15<sup>th</sup>, 2022, during a domestic dispute, Ms. Danielle Christian Pace threatened to kill herself by driving off the bridge. Police responded to the residence while Ms. Pace was in her vehicle in the driveway, with her minor child in the back seat. All accessible firearms were seized, and a final Risk Protection Order was entered on December 30, 2022. The Order expires on December 30, 2023. The City will continue to monitor for compliance and for the need for an extension as the 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. 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.

#### Worker's Compensation Matters

- ***Scott Edson v. City of Marco Island***  
We have resolved the issues in the outstanding petition and the outstanding petition has been dismissed, with the Final Hearing scheduled for August 31, 2023 canceled. The case remains open, but there are no remaining issues and/or open Court dates. We will continue to monitor this file as needed.

- *James Jay v. City of Marco Island*  
Still no pending petitions or issues and no Court dates scheduled. We are attempting to schedule a second mediation to continue efforts to settle claim in its entirety.

[CURRENT INVOICES NOT AVAILABLE, WILL BE ON NEXT MONTH'S REPORT]