

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
February 18, 2025 City Council Meeting

Date: February 7, 2025

During the period commencing from January 14, 2025 through February 7, 2025, 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 Charter Referendum Requirements
- o Termination of Tommie Barfield Softball Use Agreement
- o Federal Executive Order Mandates
- o Fire Permit Requirements

For Council Agenda Approval

- o Resolution Approving Utility Easement Vacation At 917 N. Barfield Dr.
- o Ordinance Second Reading Amend. Police Officers Pension Plan
- o Ordinance First Reading Prohibiting Parking In Swales
- o Award of Contract To Kimley Horn For Grant Writing Services

Council Matters/Inquiries

- o Council Vacancy Appointment
- o Committee Appointment Procedures
- o Trimming Of Vegetation On Dunes
- o Review Draft Ordinance Related To Notification Of Use Of Qualifiers For Contractors

Planning Board

- o Ordinance To Prohibit Parking On Swales North Of Old Marco Lane

Code Enforcement

- o January 28, 2025, Magistrate Hearings
 - 26 Hearings
- o Miscellaneous Mitigation Requests

- o Miscellaneous Enforcement Matters

Labor and Employment Matters

- o Former Employee Arbitration Challenge (litigation)
- o Union Complaint Against Administration

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 18th 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 20th 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 4th 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 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 30th, and the Plaintiffs filed theirs on May 21st. Though this action remains open, the Court yet to rule on the pending Motions. However, 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"). Hearing Held on November

5, 2024, upon a counterclaim seeking confirmation of an arbitration award filed by Respondent, the City of Marco Island, and a motion to dismiss the City's Counterclaim for Failure to State a Cause of Action filed by Petitioner. Judge Brodie issued an Order ruling that the Arbitrator did not reinstate Tige Thompson when he rendered his arbitration award. Opposing Counsel filed a Motion for Rehearing which was denied. The employee filed a Notice of Appeal on December 16, 2024. Though Mr. Thompson is proceeding to appeal the ruling, this decision validates the City's position over the past 4 years – i.e., that the arbitrator did not reinstate Tige Thompson.

Risk Protection Orders

- *In Re: Risk Protection Order Marco Island Police Dept. v. Tracey Lynne Taylor*

On October 25th, 2022, the Respondent 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 a second time, for another year, and now expires on October 26, 2025. 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. The Order was to expire September 26, 2024. On September 19, 2024 the final order was extended a third time, now expiring on September 18, 2025.

- *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 - There is no new information to update. There are no pending court dates and no new petition has been filed. Monitoring the file as warranted.

- James Jay v. City of Marco Island - A private mediation has been scheduled for April 11, 2025, at which time we will attempt to settle this case in its entirety.
- Ricardo Ostos Salazar v. City of Marco Island - There is no new information to update. The case has been assigned for pre-suit liability review. No lawsuit has been filed as of this date.

WSH Legal Services Billings Summary
Bills Dated January 13, 2025 for December 2024 Legal Services

2914.001	Retainer	Inv. #295853	\$12,500.00
2914.003	Labor And Employment	Inv. #295854	\$880.00
2914.003-9	Thompson, Tige – 2nd Employment Matter	Inv. #295855	\$1,593.38
2914.006	Miscellaneous Matters	Inv. #295856	\$1,705.00
2914.007	Planning & Zoning	Inv.#295857	\$82.50
2914.008	Code Enforcement	Inv.#295858	\$550.00
2914.047	Hideaway Beach District Special Ad Valorem Tax (PO240243)	Inv.#295859	\$522.50
2914.057	North Marco Utility Co., Inc. – Purchase of Company	Inv. #295860	\$1,485.00