



**WEISS SEROTA HELFMAN
COLE & BIERMAN**

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

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 July 15, 2019 Council Meeting

Date: July 8, 2019

During the period commencing from June 1, 2019 through June 30, 2019, the City Attorney's Office has participated in or has been working on the following matters:

- **General City Business**
 - Key Marco User Fee's
 - Patel Records Requests
 - Marco Island Yacht Club
 - Marco Island Academy Sign
- **For Council Agenda Approval**
 - City Manager Interview
 - City Manager Contract
 - Sidewalk Ordinance Amendment
- **Council Matters/Inquiries**
 - McNees City Manager Agreement
 - Medical Cannabis Policy And Information
 - NCH Property Purchase
 - Short Term Rental Regulations
 - Governor Veto Of Plastic Straw Preemption Legislation
 - Prohibition Of Cargo Trailers On Private Driveways
- **Planning Board**
 - Site Plan Improvement Approval
 - June Planning Board Meeting
 - Review Dumpster Ordinance
 - Seawall Cut-in 672 Crescent Drive
 - Memorandum Regarding Olde Marco Inn PUD

○ **Code Enforcement**

- Attend Magistrate June 25, 2019 Hearings
- Preparation of Magistrate Orders
- Vehicle Damage To Species Protected Zone

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

- Removal of Personnel File Records
- General Employee Benefits
- On December 13, 2018, Heather Comparini, a Records Clerk at the Police Department, filed a Charge of Discrimination. In the Charge, Ms. Comparini claimed that she was discriminated against because of her gender and subjected to a hostile work environment by the former Chief of Police in violation of federal and state law. Ms. Comparini's allegations arose after information regarding an investigation was disclosed and Ms. Comparini was suspected as the source. The alleged discriminatory actions included the former Police Chief's questioning of Ms. Comparini about the information disclosure and limiting her access to his office thereafter. In the Charge, Ms. Comparini also attributed to the City certain local news publications that referred to her and the disclosure of the aforementioned information. We filed a response denying all claims that the City's treatment of Ms. Comparini was in any way based on her gender. We further argued that, even if true, those actions did not constitute discrimination or a hostile work environment.

On June 17, 2019, the EEOC issued a Dismissal and Notice of Rights, stating that it was unable to conclude that the City had violated any law with respect to its treatment of Ms. Comparini. Accordingly, the EEOC has dismissed the Charge and closed its investigation. Ms. Comparini has 90 days from the date of the determination to file a lawsuit based on federal discrimination laws. If she fails to do so, she has waived her right. As to her state law claims, the general four-year statute of limitations for violations of Florida statutes applies. Because this matter arose in 2018, the four-year period for Ms. Comparini's state claims commenced more than a year ago.

○ **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.

- ***Osborn v. City of Marco Island and Braun***

This is a matter involving a trip-and-fall at a displaced sidewalk. The insurance adjuster for the co-defendant homeowner contacted us to find out information. It appears that a section of the sidewalk settled, significantly, over a back-filled trench following a sewer project in 2012. The work was performed by a City contractor who agreed pursuant to the contract to defend and indemnify the City. The contractor has rejected the initial tender of defense, asserting that it turned over the sidewalk to the City and it has no further obligation. We are evaluating options for addressing the contractor's position before the matter proceeds further.

The relevant documents were provided to the insurance adjuster. No lawsuit has been served against the City at this time, but a notice of intent required by Florida Statutes Section 768.28 was sent to the City on January 27, 2017 and the plaintiff has sent demand letters to potential defendants, including the City. The claimed date of loss is December 29, 2016.

- ***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 in the process of 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. This case will remain active until the next calendar year; we will monitor for compliance.
- ***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; we will monitor for compliance.
- ***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, these discussions were not worthwhile. A Statement of Allowable Uses and settlement offer were emailed on June 21, 2019 and received June 24th, 2019.
- ***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. Trustee has issued a final report. A new search reveals she has not attempted to file bankruptcy again as of the date of this Report. 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. A hearing on Co-Defendant's Motion to Quash Service of Process was scheduled for hearing on June 6, 2019 and was subsequently cancelled. On June 11, 2019, an Order Denying the Motion to Quash Service and requiring Defendant Vazquez to file an Answer to the Complaint by June 14, 2019 was entered. Vazquez failed to file the Answer by June 14, 2019, and Plaintiff is moving for a default against Vazquez.

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WSH Legal Services Billings Summary
Bills Dated June 13, 2019, for May, 2019 Legal Services

2914.001	Retainer	Inv. #216790	\$10,000.00
2914.003	Labor and Employment	Inv. #216791	\$1,327.43
2914.003-3	Macciarolo, Nicholas – Misconduct IA	Inv. #216792	\$1,584.00
2914.003-04	Hennings, Kevin – Grievance Re Termination	Inv. #216793	\$3,635.40
2914.003-6	Thompson, Tige Employment Matter	Inv. #216795	\$1,650.00
2914.003-7	Tessarolo, Robert Anthony RPO	Inv. #216796	\$1,540.00
2914.006	Miscellaneous Matters	Inv. #216797	\$6,300.00
2914.007	Planning & Zoning	Inv. #216798	\$2,046.00
2914.008	Code Enforcement	Inv. #216799	\$1,695.00
2914.009	Litigation – Miscellaneous	Inv. #216800	\$66.00
2914.025	Tremont, Peter Domenick – Risk Protection Order	Inv. #216801	\$5,214.00
2914.026	Vazquez, Robert – Defense of Foreclosure	Inv. #216802	\$475.00

