




## 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, 2019 Council Meeting

**Date:** August 12, 2019

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During the period commencing from July 1, 2019 through July 31, 2019, the City Attorney's Office has participated in or has been working on the following matters:

- **General City Business**
  - Marco Island Yacht Club Sailing Agreement
  - FEMA Bid Requirements
  - Public Records Requests Re Popoff
  - Public Records Requests Re Comparini
  - Public Records Exemption Re Marcy's Law and HIPPA
  - Liquid Aluminum Sulfate Bankruptcy Notice
  - CCNA Procurement Requirements
  - Political Action Committees
  - Niblock Property/Evidence Return
  - Street Resurfacing Agreement
  - Information Technology Consulting Services Agreement
- **For Council Agenda Approval**
  - Fire Fleet Agreement
  - Collier County Advanced Life Support Interlocal Agreement
  - Hazmat Grant Agreement
  - Ordinance Amending Dumpster Regulations
  - Caxambas Drive Utility Easement Vacation
  - Strategic Planning
  - Ad Valorem Assessment Resolution
  - Arbitrage Rebate Services
  - AECOM Library Agreement
  - Local Agency Planning (LAP) Agreements
  - David Harden Consulting Agreement

- **Council Matters/Inquiries**
  - Recreational Marijuana Use And Ban Preemption
  - Political Action Committees
  - City Council Recording Policy
  - Sunshine Law Regulations
- **Planning Board**
  - Olde Marco Inn PUD Amendment
  - Ordinance Amending Section 30-1007 Re Trailers On Residential Lots
  - Easement Vacations
  - Adopted Land Use Legislation
- **Code Enforcement**
  - Attend Magistrate Hearings on July 23, 2019
  - Preparation of Magistrate Orders
  - Research Florida Statutes Regarding Heightened Fines
  - Flag Regulations and Restrictions
  - Trailer On Residential Lots
- **Miscellaneous Police and Fire Labor and Employment Matters**
  - Collective Bargaining for Police Unit Re 2019 – 2021 Successor Agreement
  - Demand for Arbitration – Re Tige Thompson
  - Arbitration Hearing – Re Kevin Hennings
  - General Employee Benefits
  - Use of Force General Order
  - Accommodation of Pregnant Employee
  - Charge of Discrimination – Re Heather Comparini  
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. We will continue to monitor this action as warranted.
- **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. We will continue to monitor this action as warranted.

- ***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. We will continue to monitor this action as warranted.
- ***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. **Update:** The mother of Respondent Tremont recently took out a restraining order protecting her from harm from the Respondent. A copy of this restraining order was filed with the Risk Protection Order Court, for evidence of City's eventual Motion for Extension of the Risk Protection Order.
- ***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 continue to 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 24<sup>th</sup>, 2019. There has been no further activity to date.

- **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. We will continue to monitor this action as warranted.
- **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. The Parties are working toward entering an agreed Final Judgment and getting a sale date for the property.
  - **JPMorgan Chase Bank N.A. v. James L. Karl, et al.** – 1849 Woodbine Court  
This is an action to foreclose upon a purchase money mortgage lien held by JPMorgan Chase. The City was sued on July 30, 2019 because it holds a special assessment lien ("Lien") arising from an expansion of the water and wastewater utility system. The City's Lien was recorded after the Bank's mortgage, but is nevertheless superior to the mortgage lien according to Florida law. The City is prepared to move to dismiss the action against it accordingly. The lawsuit is in its very early stages with no significant activity beyond the service of the pleadings. It is our opinion that the City should not be a named defendant in this action. The City's lien is superior to a mortgage lien as a matter of law because it secures payment of a special assessment. After discussion, the Bank has confirmed and has agreed to voluntarily drop the City as a party. Once a Notice is filed with the Court, the City will be dropped as a party and that will resolve this action.

**WSH Legal Services Billings Summary**  
**Bills Dated July 11, 2019, for June, 2019 Legal Services**

2914.001	Retainer	Inv. # 217929	\$10,000.00
2914.002	Building	Inv. #217930	\$220.00
2914.003	Labor and Employment	Inv. #217931	\$5,478.00
2914.003-6	Thompson, Tige Employment Matter	Inv. #217935	\$2,310.00
2914.003-7	Tessarolo, Robert Anthony RPO	Inv. #217936	\$1,166.00
2914.006	Miscellaneous Matters	Inv. #217937	\$3,938.00
2914.007	Planning & Zoning	Inv. #217938	\$4,246.00
2914.008	Code Enforcement	Inv. #217939	\$2,552.00
2914.009	Litigation – Miscellaneous	Inv. #217940	\$198.00
2914.021	Rodriquez, Sonia & Coastal Concrete Products – Premise Liability	Inv. #217941	\$44.00
2914.025	Tremont, Peter Domenick – Risk Protection Order	Inv. #217942	\$44.00
2914.026	Vazquez, Robert – Defense of Foreclosure	Inv. # 217943	\$132.00

