



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 May 4, 2020 Council Meeting
Date: April 24, 2020

During the period commencing from March 1, 2020 through April 24, 2020 matters:

- **General City Business**
 - Farmer's Market
 - Winterberry Bridge Design Agreement
 - Water Facility Agreement
 - Public Records Requests
 - Delcor Development Public Records Request
 - Marco Island Academy Exhibit
 - Black And Veech Agreement
- **For Council Agenda Approval**
 - COVID-19 Pandemic Emergency Orders and Policy
 - Delcor Zoning Appeal to Council
 - Taxable Utility System Revenue Refunding Bond
 - As City Attorney, we acted as Issuer's Counsel, reviewing and providing comments on all documents including PNC Bank's Proposal, the Series Resolution, the Escrow Deposit Agreement, the Verification Report and all closing documents, opinions and closing certificates that were executed by the City.
 - Sign Code Amendment
 - Surtax Municipal Interlocal Agreement
 - Fruit Farm Creek Mangrove Restoration Contract
 - LMS Adoption Resolution
 - Hideaway Beach District Ordinance Amendment
 - FEMA Procurement

- **Council Matters/Inquiries**
 - Councilor Young Resignation
 - Cancellation of April 20, 2020 Council Meeting
 - COVID-19 Pandemic
 - City's Emergency Orders And Policy Options
 - Governor's Executive Orders
 - Virtual Public Meetings
 - Vacation Rental Closures
 - Waiver of Sunshine Regulations
 - Stay At Home Mandate
 - Hotel Restrictions
 - Utility Funds
 - Parking In Swales
 - Sign Code
 - Gift Reporting Requirements
 - Marijuana Ordinance Prohibition Petition
 - Supervisor Of Elections Certification
 - Ballot Submittal Deadlines
 - Manager's Sufficiency Certification
 - Charter Requirements
 - Ballot Review
- **Planning Board**
 - March 6, 2020 Regular Hearing
 - Marco Town Center Temporary Sign Variance
 - Comprehensive Plan Amendment
 - Seawall Construction Ordinance
 - Special Permit For A Dock Extension On Giralda Court
- **Code Enforcement**
 - Regular Hearings Cancelled Due To Covid-19
 - Mitigation Order For 891 S. Joy Circle
- **Miscellaneous Police and Fire Labor and Employment Matters**
 - Administrative Investigation - Internal Discrimination Complaint
 - Arbitration Hearing, Petition to Reopen Hearing, And Post-Hearing Brief - Terminated Police Officer
 - Arbitration Hearing - Officer Qualifications
 - Disciplinary Action – Officer Untruthfulness And Neglect Of Duty
 - Public Records Law And Active Investigations
 - Trademark Inquiry
 - Public Records Exemptions
 - Trespass On Public Property

- Application of Firefighter Cancer Benefit
- Civilian Employee Extended Absence
- Law Enforcement of Executive Orders
- Employee Pandemic Benefits
- Status of Injured Employee
- Police Pension Ordinance Amendment
- Fire Pension Ordinance Amendment
- **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.

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.

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.

- ***Scott Edson v. City of Marco Island (Johns Eastern Claim #90223)***

The last petition for benefits has been resolved and all court dates have been canceled, as there are no current pending issues. Claimant is currently on no work status and receives temporary total disability benefits. He also continues to receive medical treatment from relating to his work injuries from exposure to chlorine. The third party administrator and legal counsel will continue to monitor this matter as warranted.

- ***Joseph Mack v. City of Marco Island***

This matter was inactive for a considerable amount of time. Claimant recently relocated to Montana and continues to receive medical treatment from his work injuries. The last petition for benefits has been resolved and all court dates have been canceled, as there are no current pending issues. We will continue to monitor this matter as warranted.

- ***Chadd Chustz v. City of Marco Island (PGIT Claim # 329498)***

Plaintiff, Chadd Chustz, initiated this action in the United States District Court for the Middle District of Florida on September 4, 2018. Plaintiff seeks to hold the City liable for allegedly terminating him from his employment with the City in retaliation for exercising his First Amendment right to freedom of speech. On November 2, 2018, the City moved to dismiss Plaintiff's Complaint. Four days later, Plaintiff filed an Amended Complaint, and the City again moved to dismiss that amended pleading. On January 22, 2019, the Court denied the City's motion to dismiss the Amended Complaint, based solely upon the requirement that the Court view the Amended Complaint in the light most favorable to Plaintiff. The City filed its Answer and Affirmative Defenses on February 5, 2019. The parties attended Court-ordered mediation on January 3, 2020, which ended in an impasse. On January 10, 2020, the City moved for summary judgment. On February 26, 2020, the Court entered final summary judgment in favor of the City. We are now seeking to tax costs against the Plaintiff. The Plaintiff has not filed an appeal in exchange for the City's agreement not to pursue costs. We are in the process of finalizing a settlement agreement.

- ***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 the Restraining Order was filed with the Risk Protection Order Court, for evidence of City's Motion for Extension of the Risk Protection Order, which Order was extended for another year.

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Tessarolo***
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 Mr. Tessarolo's firearms were seized. Efforts by the police department lead to the judge issuing a final order of protection, which is good for one year expiring May 2020. We will continue to monitor for compliance.
- ***In Re: Risk Protection Order Marco Island Police Dept. v. Jonathan Deak***
On November 15, 2019, Jonathan Deak expressed to family a threat to kill himself, and to shoot his girlfriend. Mr. Deak was Baker Acted by the Police. Temporary, then Final Orders of Protection were granted by the Court. We will continue to monitor for compliance.
- ***In Re Risk Protection Order Marco Island Police Department v. Everett J. Cook.***
Mr. Cook, who suffers from dementia, and multiple health issues for which he takes multiple medications, threatened to kill himself. He owns several firearms. Police were called, they Baker Acted Mr. Cook, and took his firearms in for safekeeping. The Court granted Temporary and Permanent Risk Protection Orders. Police will monitor compliance with Court Order for the coming year.
- ***In Re: Risk Protection Order for Lawrence Oswald*** – Mr. Oswald, a 91 year old resident of Marco Island, was arrested for Aggravated Assault with a firearm after he pointed a handgun at his home healthcare nurse in a threatening manner. The Judge denied the temporary risk protection order. A hearing in pursuit of a final risk protection order is scheduled for February 11, 2020. A final risk protection order was issued. City will monitor compliance.
- ***Wienclaw v. City of Marco Island, et. al. (PGIT Claim #351992)***
Plaintiff claims to have tripped and fallen on a cracked sidewalk located in front of 124 Landmark Street. Plaintiff is said to have hit her head a suffered a large contusion on her forehead, along with neck and back pain, mental anguish, disability, disfigurement, permanent and significant scarring, medical expenses, etc. The homeowners were brought in as co-defendants. The Complaint has been answered and discovery responded to. Discovery propounded upon Plaintiff, and City is awaiting responses.
- ***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. 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 has been 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 as of April 10, 2020 by or on behalf of the Debtor to reinstate the case. Trustee has issued a final report. The case was administratively closed on July 26, 2019. We will continue to monitor this action as warranted.
- ***Dayton, Regina L. and Ray Seward v. City of Marco Island, Florida, et.al (PGIT Claim #'s 366085 and 36608)*** The Defendant to this action were served on April 15, 2020, the action is currently under review by the City’s Insurance Defense Counsel.
- ***Delcor Development, LLC & Southdale, Inc. v. City of Marco Island***, In the Circuit Court of the Twentieth Judicial Circuit In and For Collier County, Florida, Appellate Division.

This matter is a petition for writ of certiorari filed in the Appellate Division, filed on April 14, 2020. It challenges City Council’s quasi-judicial decision to uphold a decision of the Community Development Director concluding that the petitioners’ use permit and site development plan had expired. The City will have an opportunity to respond to the petition, but not until the Appellate Division issues an order to show cause directing the City to respond. Petitioners have also requested oral argument.

WSH Legal Services Billings Summary
Bills Dated March 6, 2020 for February 2020 Legal Services

2914.001	Retainer	Inv. #225967	\$10,011.08
2914.003	Labor and Employment	Inv. #225968	\$2,117.55
2914.003-4	Hennings, Kevin – Grievance Re Termination	Inv, #225969	\$1,170.00
2914.003-6	Thompson, Tige - Employment Matter	Inv. #225970	\$6,535.00
2914.003-8	Derrig, John – Grievance Re Termination	Inv. #225971	\$4,642.00
2914.0004	Public Works	Inv. #225972	\$308.00
2914.006	Miscellaneous Matters	Inv. #225973	\$3,278.45
2914.007	Planning	Inv. #225974	\$4,972.00
2914.008	Code Enforcement	Inv, #225975	\$352.00
2914.022	Mack, Joesph – Worker’s Comp. Claim No. 792277	Inv. #225976	\$801.00
2914.025	Tremont, Peter Domenick – Risk Protection Order	Inv. #225977	\$330.00
2914.027	Edson, Scott – Worker’s Comp. Claim No. 902233	Inv. #225978	\$321.57
2914.030	Cook, Everett, J. Risk Protection Order	Inv. #225979	\$292.90
2914.032	Oswald, Lawrence Howard Risk Protection Order	Inv. #225980	\$2,684.00

WSH Legal Services Billings Summary
Bills Dated April 9, 2020 for March 2020 Legal Services

2914.001	Retainer	Inv. #227118	\$10,006.80
2914.003	Labor and Employment	Inv. #227119	\$2,375.72
2914.003-4	Hennings, Kevin – Grievance Re Termination	Inv, #227120	\$685.92
2914.003-6	Thompson, Tige - Employment Matter	Inv. #227121	\$968.19
2914.003-7	Tessarolo, Robert Anthony Risk Protection Order	Inv. #227122	\$242.00
2914.003-8	Derrig, John – Grievance Re Termination	Inv. #227123	\$66.00
2914.006	Miscellaneous Matters	Inv. #227125	\$1,080.00
2914.007	Planning	Inv. #227126	\$4,070.00
2914.008	Code Enforcement	Inv, #227127	\$1,672.00
2914.025	Tremont, Peter Domenick – Risk Protection Order	Inv. #227130	\$1,650.00
2914.035	COVID-19 Pandemic	Inv. #227132	\$6,160.00