




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
March 20th, 2023 Council Meeting

Date: March 14, 2023

During the period commencing from February 14, 2023, through March 13, 2023 the City Attorney has participated in or has been working on the following matters:

General City Business

- o Miscellaneous Public Records Requests
- o Bridge Records Request
- o Marco Beach Resort Vendor Application

For Council Agenda Approval

- o Resolution Approving FL DEP Hazard Mitigation Grant
- o Appeal of Walker Cay Land Use/Zoning Interpretation
- o Port Marco Interpretation Appeal
- o Ordinance Amending Water and Sewer Impact Fees

Council Matters/Inquiries

- o Police Officers Pension Plan Board
- o Firefighters Pension Plan Board
- o Transient Rental Registration Program

Planning Board

- o February 17, 2023 Hearing
- o Snook Inn Site Plan
- o Shipp's Landing Boat Deck Extension
- o Lot Line Adjustment – Scott Drive
- o Olde Marco PUD

Code Enforcement

- o February 28, 2023 Hearing
 - 16 New Cases
 - 2 Certification of Lien Cases
 - 1 Mitigation Case Re 945 N. Collier Blvd.
- o Mitigation Joint Stipulation Agreement
- o HSBC Banc v. City Foreclosure Case Re 1457 Butterfield Court
- o Lien Enforcement Re 1870 Apataki Court
- o Miscellaneous Enforcement Matters

Labor and Employment Matters

- o Employee Misconduct Investigation
- o Employee Arbitrations
- o Benefits Request by Former Employee
- o Survivor Benefits Request

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 has now been re-scheduled to be heard by Special Magistrate Scott Steady on March 24, 2023.

- **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 proceed.

- ***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.

Risk Protection Orders

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Derek Heuston.***

On July 12, 2022, Mr. Heuston verbally and physically assaulted his live-in girlfriend. During the assault, he racked a handgun multiple times and also threatened to harm her and her male friend. All firearms owned by the respondent were seized by the Collier County Sheriff's Office. A Final Risk Protection Order was entered on July 25, 2022, and expires on July 25, 2023. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches. Respondent has filed a motion to rescind the Order. A hearing on this Motion was held on January 23, 2023, and the Respondent's petition was denied. This Order remains intact until July 25, 2023.

- ***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, 25th, 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 15th, 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.

Worker's Compensation Matters

- ***Scott Edson v. City of Marco Island***

Final Hearing was scheduled for February 1, 2023. Prior to the Final Hearing taking place, Claimant filed a notice of resolution as to some issues as to one petition and voluntarily dismissing other petitions. As a result, the Final Hearing was canceled. There are no pending Court dates and we are continuing to monitor the file as needed.

- ***James Jay v. City of Marco Island***

Claimant filed a Petition for Benefits on January 12, 2023 requesting adjustment of Average weekly wage from 9/19/22 to include fringe benefits as well as authorization for purchase of a shower chair, penalties, interest costs and attorney's fees. The Court will be setting a mediation, pretrial and Final Hearing, due to the filing of the petition, but has not yet done so. We are working with the carrier to resolve these issues.

- ***Nicole Daley v. City of Marco Island***

Claimant filed a Petition for Benefits on December 9, 2022 requesting adjustment of average weekly wage as well as payment of Temporary

Partial Disability/Temporary Total Disability, authorization for medical treatment, penalties, interest costs and attorney's fees. The Court has set a mediation for March 29, 2023, pretrial for April 19, 2023 and Final Hearing for May 30, 2023. Discovery, including a request for production and deposition of Claimant, is proceeding.

[End of Narrative -- Billing Summary Follows]

WSH Legal Services Billings Summary
Bills Dated February 13, 2023 for January 2023 Legal Services

2914.001	Retainer	Inv. #265261	\$12,500.00
2914.003	Labor And Employment	Inv. #265262	\$908.32
2914.003-9	Thompson, Tige – Second Employment Matter	Inv. #265263	\$1,072.50
2914.006	Miscellaneous Matters	Inv. #265264	\$2,007.50
2914.007	Planning & Zoning	Inv. #265265	\$3,575.00
2914.008	Code Enforcement	Inv. #265266	\$2,667.50
2914.009-4	HSBC Bank USA as Trustee for Sequoia Mortgage Trust – Mortgage Pass-Through Certificates - Foreclosure	Inv. #265267	\$247.50
2914.027	Edson, Scott – Workers Comp – Claim #902233	Inv. #265268	\$10,135.15
2914.041	Vacation Rentals	Inv. #265269	\$385.00
2914.047	Hideaway Beach District Special Ad Valorem Tax	Inv. #265270	\$1,017.50
2914.048	Jay, James G – WC Claim #971846	Inv. #265271	\$570.00
2914.051	Heuston, Derek – Risk Protection Order	Inv. #265272	\$1,485.00
2914.053	Taylor, Tracey Lynne – Risk Protection Order	Inv. #265273	\$55.00
2914.054	Pace, Danielle Christian – Risk Protection Order	Inv. #265274	\$5,892.50
2914.055	Daley, Nicole – WC Claim #1127378	Inv. #265256	\$2,530.00