



TO: MAYOR AND MEMBERS OF CITY COUNCIL
FROM: LORI GRIGG BLUHM, CITY ATTORNEY
 ROBERT F. DAVISSON, ASSISTANT CITY ATTORNEY
 CAROLYN F. GLOSBY, ASSISTANT CITY ATTORNEY
 SUSAN M. LANCASTER, ASSISTANT CITY ATTORNEY
 ALLAN T. MOTZNY, ASSISTANT CITY ATTORNEY
DATE: April 11, 2005
SUBJECT: 2005 FIRST QUARTER LITIGATION REPORT

The following is the quarterly report of pending litigation and other matters of interest. **The accomplishments during the first quarter of 2005 are in bold.**

A. ANATOMY OF THE CASE

Once a lawsuit has been filed against the City or City employees, the City Attorney's office prepares a memo regarding the allegations in the complaint. At that time, our office requests authority from Council to represent the City and/or the employees. Our office then engages in the discovery process, which generally lasts for several months, and involves interrogatories, requests for documents, and depositions. After discovery, almost all cases are required to go through case evaluation (also called mediation). In this process, three attorneys evaluate the potential damages, and render an award. This award can be accepted by both parties, and will conclude the case. However, if either party rejects a case evaluation award, there are potential sanctions if the trial result is not as favorable as the mediation award. In many cases, a motion for summary disposition will be filed at the conclusion of discovery. In all motions for summary disposition, the Plaintiff's version of the facts are accepted as true, and if the Plaintiff still has failed to set forth a viable claim against the City, then dismissal will be granted. It generally takes at least a year before a case will be presented to a jury. It also takes approximately two years before a case will be finalized in the Michigan Court of Appeals and/or the Michigan Supreme Court.

B. ZONING CASES

These are cases where the property owner has sued for a use other than that for which the land is currently zoned and/or the City is suing a property owner to require compliance with the existing zoning provisions.

1. Troy v. Papadelis and Papadelis v Troy - This is a case filed by the City against Telly's Nursery, seeking to enjoin the business from using the northern parcel for commercial purposes. After a lengthy appellate history, an order has been entered in the Oakland County Circuit Court, requiring compliance on or before April 29, 2002. The Papadelis family failed to comply with the Court's order, and therefore a Contempt Motion was filed. Oakland County Circuit Court Judge Colleen O'Brien determined that the defendants were in contempt of court, and required them to pay \$1,000 to the City of Troy. However, the Court also determined that the defendants

were in compliance with the City of Troy zoning ordinances as of the date of the court decision. The Troy City Council authorized an appeal of this decision to the Michigan Court of Appeals. It was filed on September 27, 2002. The neighbors filed an application for leave to appeal, which was denied by the Michigan Court of Appeals on 2/10/03. After receiving criminal citations from the City for expansion of the business, Papadelis filed a federal lawsuit against the City of Troy, alleging civil rights violations and seeking an injunction against the prosecution and/or further expansion. The neighboring property owners have filed a Motion to Intervene, which was granted by Federal US District Court Judge Arthur Tarnow. Troy filed a counterclaim in the Federal Court case but it was dismissed by Judge Tarnow, who refused to exercise jurisdiction over the counter-complaint, since it would require him to interpret the opinion of the Oakland County Circuit Court Judge. Troy has subsequently filed two separate motions to dismiss the Papadelis complaint. One of the motions asserts the same jurisdictional claim that was raised against the counter-complaint. **The hearing on both motions is scheduled for 4/7/05. Discovery continues in the interim.**

2. Williams et. al v. City of Troy and Ken Freund- Some of the residents in the Middlesex Country Homesites Subdivision have filed this lawsuit against the City and developer Ken Freund. The lawsuit challenges that the City of Troy improperly approved the Freund Site Condominium project without requiring an official replat of the property. The Troy City Council granted preliminary approval of the site condominium plan on March 3, 2003. Each of the parties filed a Motion for Summary Disposition. On 9/3/03, Judge Kuhn heard oral arguments from all parties on the Motions for Summary Disposition. On 3/24/04, the Court entered an order that holds that a re-plat is not required for site condominium developments. This resulted in the Court granting Summary Disposition in favor of the City on Counts I and II of the Plaintiffs' Complaint. However, the Court failed to rule on Count III, a violation of substantive due process allegation. The City has filed a Supplemental Brief asking for dismissal of Count III. **Judge Warren has set a hearing date on the City's second Motion for Summary Disposition for May 2005.**
3. Rathka v. City of Troy – This lawsuit was filed by Roy Rathka, Jr. and concerns property he owns on Canham, a gravel drive located south of Square Lake Road and west of Livernois Road. Mr. Rathka claims he was wrongfully denied a building permit to build a duplex on Canham. The permit was denied pursuant to Section 40.10.01 of the Troy Zoning Ordinance that requires proposed building in one or two family residential districts to front on a public street that has been accepted for maintenance by the City. The City filed a motion for summary disposition, which was granted on 6/21/04. On 6/28/04, Plaintiff filed an appeal of the dismissal to the Michigan Court of Appeals. **Rathka has filed three motions for an extension of time to file his appellate brief. The first two motions**

were granted but the last motion was denied. Rathka has now filed a motion to hold the appeal in abeyance to allow him to pursue settlement negotiations with the City.

4. Long Lake Road Development Partners v. City of Troy – Plaintiffs served this zoning challenge against the City on March 29, 2004. Plaintiffs own the 14.5-acre parcel of property on the south side of Long Lake, west of Rochester Road. This property was the subject of an earlier zoning challenge, Goodman v. Troy, which was dismissed in favor of the City. The property is currently zoned R-1T (medium density residential). Plaintiffs requested a commercial re-zoning of the property, which was denied by City Council on January 26, 2004, in accordance with the Planning Commission recommendation of November 11, 2003. Plaintiffs argue that the refusal to re-zone the property to B-3 is arbitrary and capricious, and a violation of procedural due process, equal protection, and an unconstitutional taking of property. When Troy advised Plaintiffs it would be filing a motion to dismiss the case, the Plaintiffs voluntarily agreed to dismiss the case without prejudice. **The order for dismissal was entered 1/ 21/05.**

C. EMINENT DOMAIN CASES

These are cases in which the City wishes to acquire property for a public improvement and the property owner wishes to contest either the necessity or the compensation offered. In cases where only the compensation is challenged, the City obtains possession of the property almost immediately, which allows for major projects to be completed.

1. Parkland Acquisition (Sections 22, 24, 36)

Troy v. Premium Construction, L.L.C. – **A bench trial began on 2/22/05. The City has called seven of its thirteen witnesses. The Court has had to interrupt our bench trial proceedings with a number of criminal jury trials. We remain on stand-by status, ready to continue the trial at the Court's call.**

2. Big Beaver Improvements – Rochester to Dequindre

Troy v Saoud & Nidhal Jamo – **The City obtained an Order for Possession and Payment of Just Compensation into Escrow on 1/5/05. The case was filed since the City could not otherwise get clear title, due to a dispute between the mortgage company and the former property owners. As a result, the just compensation was escrowed with the City until a further Court**

order concerning the disbursement. The parties have agreed to release payment on one of the outstanding mortgages (Ameriquest). The remainder of the just compensation remains in escrow until the other parties reach a final resolution of all claims to the money.

D. CIVIL RIGHTS CASES

These are cases that are generally filed in the federal courts, under 42 U.S.C. Section 1983. In these cases, the Plaintiffs argue that their civil rights were somehow violated by the City and/or the police officers of the City of Troy.

Maria Elena Hunciag v. Troy- This is an alleged employment discrimination case filed on July 1, 2003. According to the complaint, Ms. Hunciag argues that she was denied the position of Troy Museum Curator due to alleged age, gender, and/or national origin discrimination. A Motion for Summary Judgment was filed with the Court, and the parties are waiting for the Court to schedule a hearing on the motion. **On January 12, 2005, Judge Victoria Roberts granted the Motion for Summary Judgment and dismissed all federal claims. Ms. Hunciag had also asserted some state law claims, which the Judge dismissed on jurisdictional grounds. The Court's dismissal of the state law claims allows Plaintiff to file a new complaint in the Oakland County Circuit Court, where the state law claims could still be adjudicated.**

E. PERSONAL INJURY AND DAMAGE CASES

These are cases in which the Plaintiff claims that the City or City employees were negligent in some manner that caused injuries and/or property damage. The City enjoys governmental immunity from ordinary negligence, unless the case falls within one of four exceptions to governmental immunity: a) defective highway exception, which includes sidewalks and road way claims; b) public building exception, which imposes liability only when injuries are caused by a defect in a public building; c) motor vehicle exception, which imposes liability when an employee is negligent when operating their vehicle; d) proprietary exception, where liability is imposed when an activity is conducted primarily to create a profit, and the activity somehow causes injury or damage to another; e) trespass nuisance exception, which imposes liability for the flooding cases.

1. Nancy Cook v. Troy and Makowski- The City was served with this lawsuit on 2/21/04. According to the complaint, Ms. Cook sustained a fall on the sidewalk at 561 Burtman Street, the home owned by co-defendant, Ronald Makowski. This fall allegedly occurred on 10/18/03. The complaint alleges that the City is liable for her injuries under the defective highway exception

to governmental immunity. The complaint alleges that the sidewalk was not kept in reasonable repair. The case was evaluated in September 2004 by an Oakland Circuit Court panel in the amount of \$35,000, which the City has rejected. The Court ordered the case into non-binding facilitation to encourage settlement, which failed to resolve the case. **By order dated 2/10/05, the Oakland Circuit Court Judge Michael Warren granted the City's Motion for Summary Disposition. An order closing the case was entered by the Court on 3/1/05.**

2. Doris and Morris Story v. Troy– The City was served with this lawsuit on 2/24/04. On the morning of 5/27/03, Doris Story, a California resident, was walking on the sidewalk in front of the residence at 5737 Patterson Drive. According to the complaint, she “tripped on an uneven and dangerous buckle in the defective sidewalk.” Her injuries from the fall include a fractured right wrist and arm, in addition to pain, limited range of motion, swelling, and scarring from surgery. Morris Story has asserted a claim for loss of consortium. **The case was ordered into facilitation by Judge Chabot, which occurred on 3/3/05 and failed to resolve the matter. A jury trial has been scheduled for 5/12/05.**

4. Estate of Leslie McPherson v. Troy - This case was filed against the City on behalf of the Estate of Leslie McPherson by Trudy McPherson as Personal Representative. The lawsuit is based on a sewer back up that occurred in August 2002 and is brought under the newly revised statutory exception to governmental immunity, MCL 691.1416, *et seq.* Plaintiff's alleged damages include claims of structural damage and diminution in value of the property, plus the costs of sanitizing and cleaning the home. Additionally, plaintiff claims Leslie McPherson's exposure to the backed up sewage resulted in his death. **The case has been settled for a nominal sum. An order of dismissal will be entered after Plaintiff signs a release and receives a settlement check.**

F. MISCELLANEOUS CASES

1. Catherine Norris and Kathleen Livingway v. City of Troy – This lawsuit is identical to lawsuits filed in 12 other communities in the State of Michigan. The complaint asserts that the revenue paid by cable television companies, pursuant to franchise agreements, constitutes an impermissible tax that is prohibited by the Headlee Amendment. A motion for summary disposition, in addition to a motion for class certification, was scheduled for 4/21/04. Plaintiffs have filed appeals in several of the lawsuits against some of the other twelve communities in the Michigan Court of Appeals. As a result, Troy's case is stayed until these appeals are concluded. The briefs on appeal have been filed.

2. Kent Fehribach v. City of Troy – In this lawsuit, there are two challenges to the City's political sign ordinance. Plaintiff is challenging the restriction of placing

political signs in residential areas more than 30 days prior to an election and the two sign per residence limit. Plaintiff filed a motion for a temporary restraining order, which was heard in Judge Gadola's absence by Judge Steeh. Judge Steeh temporarily restrained the City from enforcing the two provisions against the plaintiff until Judge Gadola entered a subsequent order. An Opinion and Order Granting Preliminary Injunction was entered on 10/18/04. **The City has filed its answer and affirmative defenses. Meanwhile, amendment of the sign ordinance is underway.**

3. RWT Building, LLC v Troy – The lawsuit was filed to amend the 1924 recorded plat for the Crestwood Site Condominium development, which was recently approved by City Council. The property cannot be developed in accordance with the original plat, since the lot sizes would not meet current City standards. **On 1/21/05, the Court entered a stipulated Order Vacating a Portion of Crestfield Subdivision. This matter is now closed.**
4. Sunset Excavating, Inc. v MDOT - Sunset has indirectly sued the City of Troy for an alleged change order in the Big Beaver Road Project (from I-75 to Rochester Road). Sunset argues that the unexpected requirement to remove some of the existing soil and replace it with a finer grade of soil justifies an additional \$190,000 in compensation. Since the Project was partially financed with federal funds, MDOT was required to serve as the coordinator of the project, and therefore signed the contract with Sunset Excavating, Inc. As the contracting party, MDOT is actually the named defendant in this lawsuit, even though it is the City of Troy that assumes all liability for the Project. **Discovery is on-going.**

G. CRIMINAL CASE APPEALS

1. People v. Douglas Cochran – Mr. Cochran was found responsible for a prohibited left turn at a formal hearing (a civil infraction action). He filed an appeal of this action with the Oakland County Circuit Court. He argues that he was justified in committing the civil infraction offense, due to alleged improper signage and a failure to warn at an on-going road construction project. When Mr. Cochran did not timely file his appeal brief, the court scheduled a show cause hearing. At that hearing, the court granted Mr. Cochran an extension of time to file his brief. Again, he failed to timely submit his brief. **On March 23, 2005, the Court entered an order, dismissing this appeal.**
2. People v. Vincent Ankawi – Mr. Ankawi was found guilty of Operating While Intoxicated. He has filed an appeal of his conviction with the Oakland County Court. **Appeal briefs have been filed and oral argument has been scheduled for 4/13/05.**

If you have any questions concerning these cases, please let us know.