



TO: Members of the Troy City Council

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SUBJECT: 2014 First Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the FIRST quarter of 2014 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.

There are no pending zoning cases for this quarter.

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. Troy v. Grand Sakwa et. al.- This condemnation case was initiated on December 16, 2013, to re-acquire the 2.7 acre transit center parcel from Grand Sakwa after the Michigan Supreme Court denied Troy's application for leave to appeal. Although the City was deeded the property in 2000, and initially prevailed against developer Grand Sakwa's motion seeking a reversion of the property, this decision was reversed by the Michigan Court of Appeals on the basis that the transit center was allegedly not funded by the June 2, 2010 reversion date in the consent judgment. Since the Court of Appeals decision became final upon the Michigan Supreme Court's refusal to hear the case, the condemnation complaint requests possession dating back to June 2, 2010. The independently appraised value for the property is \$550,000, which is well below the federal appropriation set aside for the project under the Federal Transit Administration. **The City filed a Motion seeking an order confirming title and possession, based on the fact that the Defendants waived the ability to challenge necessity. Defendants filed a response to this motion, seeking a dismissal of the case based on the fact that the property appraisal date was for 2010 (the date of reversion as declared by the Court of Appeals opinion). The Court entered a dismissal order on February 21, 2014, based on his conclusion that there needed to be an appraisal of the improved property as of 2014 (the date of filing the condemnation case). The City immediately requested an amended appraisal.**

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 the City and/or police officers of the City of Troy somehow violated their civil rights.

1. Burley v. Gagacki. This is an excessive force case filed against a Troy police officer who was participating on a federal task force executing search warrants. The task force divided up and simultaneously executed search warrants on two houses located some distance from each other. Plaintiffs argue that they were injured by unidentified task force members at one of the houses. The incident report fails to specify which task force members were at Plaintiff's house and which task force members were simultaneously executing the search warrant at the other house. The Troy police officer and other task force members were initially represented by an Assistant U.S. Attorney, who obtained a dismissal of the case. Plaintiffs then successfully appealed to the Sixth Circuit Court of Appeals, which reinstated the case. The second trial is scheduled for February 2014. Due to a retirement of the Assistant U.S. Attorney and the possibility of conflicts between the task force team members, our office has assumed a more active role in the litigation, and will defend the Troy police officer task force member. **The Court granted the request of one of the co-defendants to**

adjourn the trial, which is now scheduled to start on June 16, 2014. The parties have been addressing procedural items and preparing for trial.

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.

There are no pending personal injury and damage cases for this quarter.

F. MISCELLANEOUS CASES

1. *Frank Lawrence v City of Troy* – Mr. Lawrence is the brother of Thomas Lawrence who was issued two civil infraction traffic citations on October 4, 2008 for “no proof of insurance” and “failure to change address on driver’s license”. Frank Lawrence filed a FOIA request with Troy Police Department asking for a number of items, including but not limited to: all video recordings, radio transmissions, records and the officer’s disciplinary file (if any), and the police policy on issuing “quota’ tickets. Under Michigan Court Rule 2.303 (A)(3) discovery is not permitted in civil infraction actions. Additionally, FOIA does not require the release of information which would constitute an unwarranted invasion of personal privacy or law enforcement information such a, but not limited to, disciplinary files of police officers, personal telephone numbers, and operational manuals. Mr. Lawrence’s FOIA was denied for these reasons. Instead of filing an appeal of the FOIA denial to the City Manager, Mr. Lawrence appealed the denial to the Oakland County Circuit Court. Mr. Lawrence filed a Motion for Summary Disposition and the City responded. Without requiring oral arguments, Judge Steven Andrews denied Mr. Lawrence’s Motion for Summary Disposition in an Opinion and Order dated December 1, 2008. Judge Andrews also granted Summary Disposition in the City’s favor. Mr. Lawrence filed a Claim of Appeal with the Michigan Court of Appeals on December 22, 2008. The Court of Appeals in an unpublished opinion partially reversed the trial court, and remanded the matter for further proceedings including a determination by the trial court of whether or not specific documents are exempt from disclosure. The parties are waiting for the Court to schedule a court date. The Court held an evidentiary hearing on June 17, 2010, and has indicated that a written opinion will be issued. The Court granted in part, denied in part Plaintiff’s request for information. Plaintiff also filed a Motion for

Reconsideration, which the Court denied. The Court entered a final order, which was appealed by Plaintiff to the Michigan Court of Appeals. The parties have filed appellate briefs, and are now waiting for an oral argument date. Oral argument was held on August 3, 2011. On February 14, 2012, the Court of Appeals affirmed in part and reversed in part the decision of the Oakland County Circuit Court, and remanded the case. Plaintiff has now filed an application for leave to appeal with the Michigan Supreme Court. Both parties submitted briefs on the issues. The Michigan Supreme Court agreed with the City that the questions presented should not be reviewed by the Court and denied Plaintiff's application for leave to appeal on July 25, 2012. The case was remanded to the Oakland County Circuit Court. Judge Bowman issued his opinion on remand on April 29, 2013, denying Plaintiff's request for punitive damages. Plaintiff then appealed this decision to the Michigan Court of Appeals. Briefs were filed and the Court of Appeals heard oral arguments on January 14, 2014. **The Court of Appeals issued an unpublished opinion on January 30, 2014 affirming the decision of the Oakland County Circuit Court in favor of the City. The Plaintiff did not timely file an application for leave to appeal the decision with the Michigan Supreme Court, so this matter is now closed.**

2. *Michigan Association of Home Builders; Associated Builders and Contractors of Michigan; and Michigan Plumbing and Mechanical Contractors Association v. City of Troy* – The Plaintiffs filed a complaint for Declaratory and Injunctive Relief in the Oakland County Circuit. On the date of filing the Plaintiffs also filed a Motion for Preliminary Injunction and Order to Show Cause. The Plaintiffs allege that the City of Troy has violated Section 22 of Michigan's Stille-DeRossett Hale Single State Construction Code Act by collecting fees for building department services that are not reasonably related to the cost of providing building department services. They are alleging that the City of Troy has illegally entered into a contract with Safe Built of Michigan, Inc. for building services that provides that 20% of each building permit fee be returned to the City to cover services that are not "reasonably related to the cost of building department services," as required by state statute. The Plaintiffs also assert a violation of the Headlee Amendment, arguing that the 20% returned to the City is a disguised tax that was not approved by voters. The Plaintiffs are asking for a declaratory judgment, as well as a return of any "surplus" building department service funds collected to date. Plaintiffs also request an order requiring the City to reduce its building department fees. The City of Troy was served with the Complaint and the Motion for Preliminary Injunction and Order for Show Cause on Wednesday, December 15, 2010. The parties were required to appear at Court on Wednesday, December 22, 2010, but the Court did not take any action at that time. Instead, the Court adjourned the matter to January 19, 2011. In the interim, the parties may engage in preliminary discovery in an attempt to resolve this matter. The parties are conducting discovery. The parties have completed discovery. Trial in this matter is scheduled for January 30, 2012. After being presented with motions for summary disposition, the Court ordered the parties to engage in mediation with a neutral municipal audit professional. Financial documents concerning this case are now being reviewed by an independent CPA. It is expected that the April 19, 2012 trial date will be postponed until after this review

is complete. Mediation was unsuccessful in resolving this case, and therefore the Court is expected to issue an order on the pending Summary Disposition Motions. The trial date has been adjourned. On November 13, 2012, Oakland County Circuit Court Judge Shalina Kumar issued her order in favor of the City, and dismissed this case. Plaintiffs filed an appeal, which is now pending in the Michigan Court of Appeals. Appellant's brief is expected to be filed soon. The parties timely filed their appellate briefs, and are now waiting for the Court of Appeals to schedule a date for oral argument. The Court of Appeals has not yet scheduled oral argument for this case. The parties are still waiting for a date for oral argument. **Oral argument was held on March 4, 2014. On March 13, 2014, the Court of Appeals issued its opinion ruling in the City's favor and affirming the Circuit Court's decision dismissing the case.**

3. *T.R. Pieprzak v. City of Troy.* This case has been filed by the successful bidder for the Section 9 water main replacement contract, seeking approximately \$900,000 over the contract bid for alleged additional work, unanticipated conditions and delays that Plaintiff attributes to the City of Troy. Plaintiff filed a Motion for Partial Summary Disposition, which the City responded to. Argument on this Motion is scheduled for July 6, 2011. The Court denied Plaintiff's Motion for Partial Summary Disposition. The case is now in discovery. Case evaluation for the case took place on November 17, 2011. The City and the Plaintiff each filed Motions for Summary Disposition at the close of discovery. The Court agreed with the amount the City claimed was due on the contract and entered an Order on March 9, 2012 that dismissed Plaintiff's claims seeking damages in excess of that amount. The Order is a final order and closes the case. T.R. Pieprzak filed a Motion for Reconsideration on March 29, 2012. The Court has not yet issued an opinion on Pieprzak's Motion for Reconsideration. On January 17, 2013, Judge Nichols entered his Opinion and Order denying the Plaintiff's Motion for Reconsideration. The Plaintiff has now filed a Claim of Appeal with the Michigan Court of Appeals. Plaintiff filed its appellate brief, and the City's brief is due July 18th. The City has filed its responsive brief and Plaintiff filed a reply brief. The case will now be scheduled for oral argument. **The parties are still waiting for a date for oral argument, which could be scheduled as early as June 2014.**
4. *Troy Police Officers Association v. City of Troy and Act 78 Civil Service Commission.* Plaintiff TPOA Union has filed this lawsuit against the City and also the Act 78 Civil Service Commission, seeking a hearing on behalf of one of its members, Todd Michael. Mr. Michael seeks a hearing before the Civil Service Commission, where he can have the chance to establish that he was constructively discharged from the City; or in the alternative that he was improperly disciplined by the City. In addition to seeking a court order mandating a hearing for Todd Michael, Plaintiff is also seeking an order requiring the City to amend its rules to allow for hearings in similar circumstances. The Amended Complaint was filed on May 21, 2012. On September 18, 2012, Plaintiff filed a Motion for Summary Disposition, which is scheduled for hearing on November

21, 2012. On December 5, 2012, the Court granted in part, denied in part the cross motions for summary disposition. This case is now pending in the Michigan Court of Appeals. Appellant's brief has been filed with the Court of Appeals. Appellee timely filed its brief, and the City filed a reply brief in response. The parties are now waiting for the Court of Appeals to schedule a date for oral argument. The Court of Appeals has not yet scheduled oral argument on this case. **The parties are still waiting for a date for oral argument, which could be scheduled as early as June 2014.**

5. Todd Michael v. City of Troy et. al. Todd Michael has filed this lawsuit against the City, the Troy Police Department and the Troy Police Chief. Through this lawsuit, Plaintiff alleges that he was discriminated against in his employment with the City, in violation of the Americans With Disabilities Act. He also alleges that he suffered retaliation for his alleged disability. He is asking to be reinstated as a Troy Police Officer. He is also asking for additional compensation, punitive damages, costs and attorney fees. The answer to the complaint and affirmative defenses were filed on September 27, 2012. The Court has issued a scheduling order in this case, and discovery is on-going. The parties are continuing in the discovery phase. The Court has extended the discovery cut off in this matter, and the parties continue to take depositions in this case. The City will be filing a Motion for Summary Judgment. A Motion for Summary Judgment was filed on October 14, 2013. Plaintiff filed its Response on November 21, 2013, and the City's reply brief was filed on December 12, 2013. **The parties are still waiting for the Court to either issue an opinion or schedule a date for oral argument on the Motion.**

6. Citizens United Against Corrupt Government v. Troy City Council- This is a lawsuit filed by the Citizens Against Corrupt Government, which is a Michigan Non-Profit Corporation formed by Robert Davis. In this lawsuit, Plaintiff alleges that the City violated the Open Meetings Act in holding a closed session on August 15, 2012, as part of the City Manager Search process. Through this lawsuit, Plaintiff is seeking a declaration that the City Council violated the Open Meetings Act. Plaintiff also asked for injunctive relief, and asked for an immediate hearing. The Court, after hearing arguments from the parties, denied the request for Injunctive relief with an order dated September 13, 2012. Immediately thereafter, Plaintiff attempted to schedule depositions of individual City Council members and other members of City Administration and the search consultant. The City filed a Motion for a Protective Order on September 28, 2012. On that day, the City also filed a Motion for Summary Disposition, arguing that Plaintiff does not have a viable case against the Troy City Council. On November 21, 2012, Judge O'Brien issued her order granting the City's Motion for Summary Disposition and dismissing this case. Plaintiff appealed this decision, which is now pending in the Michigan Court of Appeals. It is anticipated that Appellant will file its legal brief in the immediate future. Plaintiff missed the deadline for filing its appellate brief, but the Court of Appeals may allow a late brief. The Court allowed Plaintiff to file a late brief, but ordered that due to the late filing

Plaintiff would not be allowed to present oral argument. The City timely filed its responsive brief. The Court will schedule the case for oral argument. The parties are still waiting for a date for oral argument. **Oral argument was held on February 7, 2014. The Court of Appeals has not yet issued an opinion in this case.**

7. Troy Police Officers Association v. City of Troy and Troy Employee Retirement System Board of Trustees- This lawsuit was served on the City on January 9, 2013. The Troy Police Chief, on behalf of former Troy Police Officer Todd Michael, filed a disability retirement request with the Troy Employee Retirement System Board of Trustees. Mr. Michael had not worked for the City since January 10, 2010, as a result of three independent neuropsychological examination reports. TPOA filed this lawsuit to prevent the Employee Retirement System Board of Trustees from considering this retirement request. An ex parte temporary restraining order was entered by the Court at the time that the complaint was filed, with a show cause hearing date of January 16, 2013. At that time, the parties agreed to engage in facilitation. The Court scheduled a court date for April 24, 2013 in the event that the case was not resolved prior to that time. Facilitation of this and companion cases was unsuccessful, and the Court scheduled a hearing for July 10, 2013, where Plaintiff would need to demonstrate entitlement to its requested relief. The Court rescheduled the evidentiary hearing for October 16, 2013. The Court rescheduled the evidentiary hearing for February 12, 2014. **Prior to the scheduled evidentiary hearing, this case was voluntarily dismissed by a stipulated Court order on February 10, 2014.**
8. Edward Belczak v City of Troy. This lawsuit was filed against the City on May 28, 2013. Through this lawsuit, Plaintiff seeks a reversal of an Order issued by a District Court Judge which froze certain assets held in a Merrill Lynch account. The assets were frozen pending the investigation of a claim of embezzlement and other crimes against Plaintiff. In essence, Plaintiff claims his Fourth Amendment rights were violated because the assets in the account were illegally seized, and he was not afforded due process. Plaintiff seeks the return and/or “unfreezing” of the assets in the Merrill Lynch account. The parties are engaging in discovery. Plaintiff filed a motion seeking to quash the subpoena, which was heard by the Court on December 18, 2013. At that time, the Court scheduled a hearing for January 2014. **Just prior to the scheduled hearing, federal agents obtained a Court order freezing Plaintiff’s assets at Merrill Lynch. As a result, Plaintiff agreed to voluntarily dismiss the case against the City, and an order of dismissal was entered on January 22, 2014.**
9. Daniel E. Katayama v City of Troy. Plaintiff filed this lawsuit under the Freedom of Information Act (FOIA) claiming that the City did not fully comply with a FOIA request he submitted on March 26, 2013. Plaintiff’s FOIA request sought particular documents related to his arrest on suspicion of driving while intoxicated. The City filed an Answer to the Complaint, and the parties are conducting discovery. Discovery continues. **The Court scheduled a mandatory settlement conference for March 10, 2014. The City filed a Motion for Summary Disposition on**

February 14, 2014. The Court scheduled oral argument on this Motion for June 5, 2014.

10. Mark R. Morin v City of Troy. Plaintiff filed a small claims case against the City in the 52-4 District Court. This case involves repairs made to the sidewalk in front of Plaintiff's home at 6804 Meadow Court, for which he was invoiced in the amount of \$1,257.69. Plaintiff claims the repairs were unnecessary. Since Plaintiff's complaint did not specify the remedy he was seeking or the basis for his claim that the City should be liable, the City has filed a Motion for a More Definite Statement. On October 29, 2013, the Court granted the City's Motion for a More Definite Statement. The Plaintiff filed a More Definite Statement alleging that City employees were negligent in determining that the repairs to the sidewalk were necessary. On November 22, 2013, the City filed a Motion for Summary Disposition. The hearing on the motion is scheduled on January 16, 2014 before Judge Bolle. **The hearing was adjourned to January 23rd at Plaintiff's request. On January 23, 2014, the Court granted the City's Motion for Summary Disposition and dismissed the case.**
11. Georgia Lee Sasscer and Patrick Hoose v City of Troy. Plaintiffs filed this lawsuit in the Oakland County Circuit Court, seeking return of firearms that were seized by the Troy Police from the home of Patrick Hoose in December 2004. The case was assigned to Judge Colleen O'Brien. The Court has scheduled a trial date in this case for June 23, 2014. **The case was scheduled for case evaluation on March 5, 2014. On February 13, 2014, a consent judgment was entered allowing for the return of the firearms to a third party. This case is now concluded.**
12. John M. Boozer v City of Troy Police Department. Plaintiff filed this claim and delivery action in the 52-4 District Court seeking the return of a pistol that was turned over to the Troy Police when it was found by Plaintiff's wife. Since the pistol has never been registered as required by law, there is no evidence as to its ownership. The City filed an answer to the complaint and a response to Plaintiff's motion for possession pending final judgment. On December 19, 2013, Judge Bolle agreed with the City's position, and denied Plaintiff's interim motion for possession pending final judgment. The Court is expected to schedule a trial date on the remaining issues. **On January 23, 2014, the Court entered judgment in favor of the City. This order required the City to retain the pistol and dispose of it in accordance with Police Department policy.**
13. Helen Keats v Troy Police Department. Plaintiff filed this claim and delivery action in the 52-4 District Court seeking the return of several firearms that were confiscated from her home when her husband was arrested for attempted murder. Her husband David Keats was convicted of Assault with Intent to Murder and sentenced to a minimum of 51 months in prison and a maximum of 20 years. Mr. Keats has appealed his conviction. Because of this conviction, the weapon used in the commission of the crime cannot be returned. Mrs. Keats is asking for a return of the gun her husband used in the crime, as well as all other confiscated firearms. The

City filed an answer to the complaint and a response to Plaintiff's interim motion for possession. On December 2, 2013, Judge Hartig agreed with the City's position, and denied Plaintiff's motion. At that time, the Court indicated that she would reconsider the motion if Mr. Keats were successful in his appeal and if Mrs. Keats could provide proof that she owns the firearms in question. **The Court scheduled a pre-trial for February 3, 2014, and on that date, Plaintiff was granted a stay of the district court case so that she could pursue an appeal.**

14. **Mondrain Properties (Belleclair) v. City of Troy et. al.- This is a case filed on February 26, 2014. Plaintiff is seeking a revision to the plat recorded with the Oakland County Register of Deeds. This plat revision is necessary for Plaintiffs to complete the proposed Belleclair Development at Wattles/ Rochester Road. Plat revisions are required to be filed against all public entities and utilities having an easement or other property interest, as well as any other property owner within 500 feet of the property that is proposed for redeveloped. We timely filed our answer to the complaint.**

G. CRIMINAL APPEALS/ DISTRICT COURT APPEALS

These are cases involving an appeal from a decision of the 52-4 District Court in an ordinance prosecution case.

Our office has responded to many motions in the district court on behalf of the People of the City of Troy. However, there are no criminal appeals pending in the Oakland County Circuit Court at this time.

ADMINISTRATIVE PROCEEDINGS

1. **In the matter of the Petitions on National Pollution Discharge Elimination Systems (NPDES Phase II General Permits).** The City has joined several other municipalities in challenging several of the mandates in the NPDES Phase II General Permit, which was recently issued by the MDEQ. The new NPDES permit requires some storm water management techniques that exceed the federal mandates, and/or are not justified, based on the high cost of the mandate, in relation to the nominal environmental benefits. A status conference for the parties is set for October 1, 2008. The municipalities are currently exploring the coordination of efforts with other parties. Community representatives are meeting with representatives from the MDEQ to discuss possible resolutions of this matter without the necessity of a full blown administrative hearing. The parties are continuing to negotiate with the MDEQ. The City of Riverview filed a class action complaint in the Ingham County Circuit Court, challenging the permit requirements as unfunded mandates. The petitioners to the NPDES permit administrative proceeding are named as participants in the proposed class action lawsuit. As a result, the class action determination may have an impact on the administrative proceeding. The motion for class certification is scheduled for October 15, 2009. Class certification was

granted. Hearings regarding the procedure for the new class action are set for January 2010. The Court granted class action status, and the administrative proceedings are now being delayed. Status reports have been filed and reviewed, and we continue to monitor any new developments. On October 14, 2010, the Michigan Court of Appeals reversed the order granting a stay of the contested cases. On November 19, 2010, the Ingham County Circuit Court (the class action lawsuit) entered an order granting in part the dismissal of some of the claims. The remaining claims, including a Headlee claim, will be decided by the Court. Subsequently, the Assistant Attorney General, on behalf of the Michigan Department of Natural Resources and Environment (MDNRE) attempted to withdraw all of the remaining NPDES permits, which would mean that the whole process would need to be started from scratch. Since this action would likely result in a significant delay and a duplication of all efforts to date, several municipalities filed objections to this unilateral action. The MDNRE was given until December 22, 2010 to file a formal motion seeking a dismissal of the remaining NPDES permits. On August 9, 2011, the Administrative Law Judge held the case in abeyance, due to pending case at the Michigan Court of Appeals. The parties will continue to provide status reports in the interim. The Court is continuing to receiving status reports, with the next one due on December 19, 2012. Status reports were timely filed on January 6, 2013 and March 22, 2013. Additional status reports were submitted on June 24 and 25, 2013. The Court issued an order on September 10, 2013, continuing to hold the matter in abeyance pending resolution of the constitutional issues. Status reports were timely filed on December 18, 2013. **Administrative Law Judge Plummer issued an order on January 29, 2014, continuing the case in abeyance, and ordering quarterly status reports to be filed.**

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