TO: Members of the Troy City Council

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SUBJECT: 2015 Third Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the THIRD quarter of 2015 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. A new purchase offer was extended, based on the amended appraisal. The Court granted the City's request for an order of possession of the property on August 15, 2014. Discovery continues. Trial is now scheduled for August 24, 2015. Trial was adjourned until October 26, 2015.

2. *Troy v Behunin, et al* – This condemnation case was initiated on December 2, 2014 to acquire needed right of way from property owned by Kathleen and Michael Behunin. The property is located on John R. Road, between Square Lake Road and South Boulevard. The case was assigned to Oakland County Circuit Court Judge Martha Anderson. A hearing is set for January 14, 2015 at which the City will request an Order of Possession. On January 14, 2015, the Court granted the City's request for an order of possession. The case will proceed on the issue of just compensation. The parties are preparing documents to facilitate discovery exchange.

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. After picking a jury on June 10, 2014 and intense preparation for trial to begin on June 16, 2014, one of the Plaintiffs was hospitalized four days before the scheduled trial date. Trial has been rescheduled for October 6, 2014. The parties are preparing for the jury trial to begin on October 6, 2014. A week long jury trial was conducted from October 6, 2014 through October 15, 2014, in Federal District Court. After deliberating for 30 minutes, the jury returned a verdict of no cause of action, dismissing the case against the task force officers. The Judge also ordered payment of costs to all Defendants. Plaintiffs subsequently filed an appeal with the Sixth Circuit- U.S. Court of Appeals. Plaintiffs' appellate brief is due in April 2015. The Court of Appeals issued a briefing schedule in this matter. Plaintiff-Appellant's brief was filed on May 18, 2015, and the Troy Defendant-Appellee's brief is due on July 3, 2015.

2. *Terrell v City of Troy, et al.* Terrell Bishop filed a lawsuit against the City and individual Troy police officers and fire department employees, as well as Oakland County individuals and entities. The lawsuit is based on the City's investigation and prosecution of Plaintiff for arson and aggravated stalking. Plaintiff filed the case in Oakland County Circuit Court and it was assigned to Judge Phyllis McMillen. Plaintiff alleges false evidence was used against him and that defendants violated his constitutional rights. He claims he was unlawfully arrested and falsely imprisoned. He argues that he was deprived of life, liberty, and property without due process of law and that he was denied his right to equal protection of the law. Plaintiff brings this lawsuit under 42 USC Section 1983, seeking damages in excess of 30 million dollars. He is representing himself. The City will file a motion for summary disposition as its first responsive pleading, which is due on or before July 8, 2015.

3. *Hammond v. City of Troy, et al.* LeDell Hammond filed a lawsuit against the City of Troy, the Troy Police Department, 52-4 District Court, A&M Service Center & Towing, and Secretary of State in United States District Court, Eastern District/Southern Division. The case has been assigned to Judge Paul Borman. The lawsuit stems from the removal of Plaintiff's vehicle by the Troy Police Department. Mr. Hammond's 2005 Grand Prix was seized in August 2014, as part of an on-going armed robbery investigation. Plaintiff brings this lawsuit under 42 USC Section 1983, alleging Fourth, Fifth, and Fourteenth Amendment violations, as well as a violation of MCL 257.252, a RICO claim, and a negligence claim. In addition to Plaintiff's Complaint, he also filed an emergency motion requesting the Court grant a temporary restraining order to prevent the Troy Police Department from auctioning his vehicle. The City filed a timely response in opposition of Plaintiff's request for a temporary restraining order. The Court has not yet decided this issue. The City also intends to file a motion to dismiss as its first responsive pleading to Plaintiff's Complaint.

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. *Allstate Insurance Company v. City of Troy and Troy Fire Department.* This is a subrogation case, filed by Allstate Insurance Company against the City of Troy Fire Department, seeking reimbursement of Allstate's payment to its insured Rajkiran Panesar. Mr. Panesar's vehicle was damaged when he unexpectedly drove onto a fire hose that had fallen from a Troy Fire truck after dark on October 21, 2013. The Answer and Affirmative Defenses to the Complaint were due on July 17, 2014. The City filed a Motion for Summary Disposition on July 31, 2014 arguing that governmental immunity shielded the City from liability, and therefore the City was entitled to a dismissal of this case. Prior to entertaining this motion, Judge Asadoorian scheduled case evaluation for October 14, 2014. The City is waiting for the Court to schedule oral arguments on its Motion for Summary Disposition. On December 1, 2014, the Court entered an order denying Summary Disposition. The City filed an interlocutory appeal of this decision on December 5, 2014, which was assigned to Oakland County Circuit Court Judge

Leo Bowman. On December 18, prior to the receipt of the transcript or the lower court file, Judge Bowman dismissed the appeal, characterizing it as an application for leave to appeal instead of an appeal of right from a denial of governmental immunity. Instead of filing an application for leave to appeal with the Michigan Court of Appeals, the parties will proceed to trial, which is scheduled for February 20, 2015. This case proceeded to a bench trial, resulting in a verdict of $10,230. The City appealed the Court's denial of governmental immunity, and the case has now been assigned to Oakland County Circuit Court Judge Shalina Kumar. The City timely filed an appellate brief with the Oakland County Circuit Court. The Court scheduled oral argument on the appeal for July 15, 2015.

F. MISCELLANEOUS CASES

1. *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. On April 23, 2014, Plaintiff Home Builders filed an Application for Leave to Appeal with the Michigan Supreme Court. Troy's response was filed on May 19, 2014. The Michigan Supreme Court considered the application for leave to appeal and ordered that the matter be scheduled for oral argument. The Court also permitted the parties to submit supplemental briefs, which are due October 29, 2014**.** The City timely filed its supplemental brief with the Michigan Supreme Court. The parties are now waiting for the Court to set a date for oral argument on the application. The Michigan Supreme Court entertained oral arguments on the application for leave to appeal on March 11, 2015. On June 4, 2015, the Michigan Supreme Court reversed the decisions of the Court of Appeals and the Circuit Court and ruled there was no requirement for Plaintiffs to exhaust their administrative remedies. The case was remanded to Circuit Court for further proceedings. A status conference was held on June 18, 2015 with Judge Kumar. During the status conference, Judge Kumar scheduled a hearing for September 2, 2015, allowing the parties to address the issues that were previously raised in the motion for summary disposition but were not decided since the case was initially dismissed for failure to exhaust administrative remedies.

2. *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. The Court transferred the case to newly appointed U.S. District Court Judge Judith Levy, who has scheduled oral argument on the motion for summary

judgment for July 10, 2014. Subsequent to oral argument, the Court entered an order on July 23, 2014 dismissing Police Chief Gary Mayer and Count II as to all parties. The Court is expected to issue an order as to the first Count of Plaintiff's Complaint. On October 21, 2014, the Court entered its order in favor of the City, dismissing the case. Plaintiff subsequently filed an appeal with the Sixth Circuit Court of Appeals. Plaintiff/ Appellant's Corrected Brief was filed on March 6, 2015. The City's brief was filed on April 7, 2015. Oral argument is set for July 29, 2015.

3. *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. The Court granted in part and denied in part the City's Motion for Summary Disposition. Plaintiff filed a Claim of Appeal in the Michigan Court of Appeals on September 3, 2014. A briefing schedule has not been issued by the Court of Appeals. A timely response brief will be filed once the date is set by the Court. Plaintiff ordered the transcript of proceedings, and the date of the receipt of the transcript dictates the appellate briefing schedule. The parties are still waiting for the court transcript to be completed. The final transcript was filed with the Court on May 1, 2015. Plaintiff-Appellant's brief was due on May 19, 2015, but has not yet been filed.

4. *DiMario v. City of Troy, et al.*- Plaintiffs filed this case in Oakland County Circuit Court on November 5, 2014 to obtain a vacant piece of land next to Plaintiffs' home. Plaintiffs listed the City of Troy as a Defendant in the case because the City has easements on the property. The Plaintiffs also listed D&T Construction, Emerald Lakes Pointe Association, and the Oakland County Treasurer as Defendants. The City has filed an Answer to the Complaint, and is now waiting for the Court to issue a scheduling order. The Court issued its scheduling order. This case was removed from case evaluation through a stipulation of the parties. Trial is now scheduled for September 10, 2015.

5. *Jeremey Carter v Oakland County Jail, et al.* Plaintiff filed this claim against the City of Troy and an individual Troy police officer claiming he was wrongfully arrested and incarcerated. The case was filed in the United States District Court for the Eastern District of Michigan and assigned to the Honorable Judge Gershwin Drain who ordered Plaintiff to file an Amended Complaint by a date certain. Plaintiff missed his deadline, and a motion to dismiss is pending before the Court awaiting a decision. The parties are still waiting for a Court decision in this case.

6. ***Dandu and Mosutan v. City of Troy, et al.*** **Plaintiffs filed this Complaint in Oakland County Circuit Court against the City of Troy and the Oakland County Treasurer's Office. The case has been assigned to Judge Denise Langford Morris. Mr. Dandu purchased a foreclosed property (1369 E. Wattles Road) from Oakland County in August 2014, and Mr. Moustan purchased the property from him in October 2014. Through the lawsuit, the Plaintiffs are seeking the removal of a past due water bill lien in the amount of $17,230.63, since this bill represents charges incurred prior to their acquisition of the property.**

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.

There are no pending criminal appeals for this Quarter.

H. 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. Status reports were filed as of the deadline of May 1, 2014. The case continues to be held in abeyance. The Court issued an order on August 27, 2014, continuing the case in abeyance. The Court has continued to hold this case in abeyance, and has required status reports be filed on or before January 30, 2015. Status reports were timely filed. The Administrative Law Judge ordered a status conference, which was held on June 24, 2015. Since the parties could not reach an agreement, the Court scheduled an argument on motions for August 24.

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