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CITY COUNCIL AGENDA ITEM

Date: January 5, 2021

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
Julie Quinlan Dufrane, Assistant City Attorney
Nicole F. MacMillan, Assistant City Attorney

Subject: 4th Quarter 2020 Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the FOURTH quarter of 2020 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. International Outdoor, Inc. v City of Troy. On February 3, 2017, International Outdoor, Inc. filed this lawsuit in the Federal District Court for the Eastern District of Michigan challenging the constitutionality of the City's sign ordinance. International argues, among other things, that since the City does not require permits for temporary signs or special event signs, the permit requirement to erect a billboard is a content based restriction, allegedly in violation of the 2015

Reed v. Town of Gilbert U.S. Supreme Court case. According to International, the ordinance is unconstitutional and should not have been applied as a basis to deny the permits for its requested billboards. International states it is seeking injunctive and declaratory relief and money damages, but the complaint does not request any specific remedy. However, the case was filed under 42 U.S.C. Section 1983, which allows for the recovery of attorney fees if the plaintiff prevails on any aspect of the case. The lawsuit was assigned to Judge George Caram Steeh. The City filed a motion to dismiss. A hearing on the motion was scheduled for June 26, 2017. On June 30, 2017, the Court entered its order granting in part and denying in part the City's motion to dismiss. The Court granted the City's motion to dismiss Count II of the complaint, which alleged the Sign Ordinance contained content based restrictions imposed without a compelling government interest. However, the Court denied the City's motion as to Count I, which alleged the variance provisions of the Sign Ordinance constituted an unconstitutional prior restraint because it gives the Building Code Board of Appeals unbridled discretion in deciding a variance request. The City filed a motion for reconsideration, which is still pending with the Court. On December 20, 2017, the Court entered its order denying the motion for reconsideration, but clarifying that the Court had not made a final decision on the validity of Troy's Sign Ordinance. The City must now file an answer to Count I of the complaint. The City filed its answer, and the parties are now engaging in discovery. Discovery is continuing. Plaintiffs scheduled depositions of former and select current members of the Building Code Board of Appeals, and the City objected. Plaintiff then filed a motion to compel the depositions, to which the City responded. The Court issued an order stating that there would not be oral argument on the motion, so we are now waiting for the Court's decision concerning these depositions**.** The Court denied Plaintiff's motion to compel depositions. Plaintiff has now filed a motion for summary judgment, and the City's response is due October 11th. The City filed a response to the motion for summary judgment and a cross motion for summary judgment in favor of the City. A hearing on both the Plaintiff's motion and the City's motion was held on January 16, 2019. On January 18, 2019, the Court issued its opinion and order denying Plaintiff's motion for summary judgment and granting the City's motion for summary judgment. The Court entered a final judgment in the case in favor of the City. Plaintiff has now filed an appeal with United States Court of Appeals for the Sixth Circuit in Cincinnati, Ohio. Plaintiff also filed a motion in the District Court, claiming entitlement to attorney fees based on the Court's rulings, some of which were favorable to the Plaintiff, even though the case was dismissed in favor of the City. The City timely responded to this motion, which is still pending. As required by the Sixth Circuit Court of Appeals, the parties participated in an unfruitful mediation conference call on March 6, 2019. Afterwards, the Sixth Circuit established its appellate briefing schedule, requiring Plaintiff's brief to be filed on or before April 29, 2019, and the City's response is due May 28, 2019. On April 1, 2019, District Court Judge Steeh issued his opinion and order denying the Plaintiff's motion for attorney fees. Plaintiff has filed a second appealing to challenge the denial of attorney fees. On motion of the Plaintiff, the second appeal was consolidated with the initial appeal and the briefing schedule was amended. Plaintiff filed its appellate brief, and the City timely filed its response. The case has been scheduled for oral argument on October 16, 2019 before the U.S. Court of Appeals for the Sixth Circuit in Cincinnati. The Court heard oral arguments on October 16, 2019, and the parties are now waiting for the Court to issue its opinion. As of March 31, 2020, the Court had not yet issued an opinion. The parties are still waiting for the Court to issue an opinion.

On September 4, 2020, the U.S. Court of Appeals issued an opinion affirming the dismissal of Count I of Plaintiff's complaint, but reversing the lower court's dismissal of Count II and remanding the case. Two judges joined the majority opinion, and the third judge issuing a dissenting opinion, indicating he would have affirmed the dismissal of Count II. The City has filed a motion for rehearing en banc, requesting rehearing before the entire panel of U.S. Sixth Circuit Court of Appeals judges, seeking an affirmation of the dismissal of Count II. **On December 21st, the Sixth Circuit Court of Appeals entered an order denying the City's motion for rehearing en banc.**

2. Tollbrook, LLC v City of Troy. Tollbrook submitted an application for a rezoning of three parcels on McClure, from one family residential zoning to Big Beaver Form Based District zoning. This application was proposed as a straight rezoning request, and was denied by Troy City Council, consistent with the recommendation from the Planning Commission. Plaintiff filed this Complaint, alleging substantive due process violations. Plaintiff filed it in Oakland County Circuit Court, and the City removed it to federal court, since the parties previously litigated a very similar case before Judge Goldsmith. Plaintiff then filed a motion to request a transfer of the case back to the Oakland County Circuit Court. This motion was briefed by the parties, and is pending. **The motion is still under advisement.**

3. Tollbrook West LLC. v City of Troy. Tollbrook West submitted an application to rezone two parcels located at 3109 Alpine and an adjacent vacant parcel from R-1B to Big Beaver District zoning. This straight rezoning application was denied by the Troy City Council on July 22, 2019, consistent with the Planning Commission recommendation. Plaintiff filed this Complaint, alleging substantive due process violations. Plaintiff filed it in Oakland County Circuit Court, and the City removed it to federal court, since the parties previously litigated a very similar case before Judge Goldsmith. Plaintiff then filed a motion to request a transfer of the case back to the Oakland County Circuit Court. This motion was briefed by the parties, and is pending. **The motion is still under advisement.**

4. Eureka Building Inc. v City of Troy. Eureka Building Inc. challenges the recent denial of a requested rezoning. Eureka owns three parcels of property located at 5395 Rochester Road in the City of Troy, and desires to have the current zoning changed. Initially, Eureka submitted a conditional rezoning request, requesting rezoning from R-1C (one family residential) to RT (medium density attached residential). With this request, Eureka wanted three separate buildings with up to four attached units in each building, but they would construct no more than ten total attached units. The Troy City Council denied the conditional rezoning request in July 2019. After the denial of this conditional rezoning request, Eureka submitted an application for a straight rezoning of the three parcels from one family residential zoning (R-1C) to one family attached zoning (RT). The Troy City Council denied the straight rezoning request at its February 10, 2020 meeting. This lawsuit follows that denial. Plaintiff's lawsuit alleges that the City of Troy violated its substantive due process rights under the Michigan Constitution and also the 5th and 14th Amendments of the United States Constitution. Plaintiff also alleges that

City Council's decision was arbitrary and capricious and not rationally related to the governmental interest of protecting public health, safety, and welfare. Plaintiff asserts that its rezoning request is consistent with the City's Master Plan and satisfies all of the criteria set forth in the City's Zoning Ordinance concerning rezoning, specifically Section 16.03(C)(1-5). Plaintiff also argues that the current zoning is "unconstitutional" because it "interferes with Plaintiff's legitimate use" of the property.

This case was filed in Oakland County Circuit Court and assigned to Judge Leo Bowman. However, due to the nature of the issues raised, where Eureka relies on federal law, the City intends to remove this case to the United States District Court in compliance with the Court rules. That removal is due on or before April 9, 2020. This case was timely removed to United States District Court on April 3, 2020. In lieu of filing an Answer to the Complaint, the City filed a Motion to Dismiss the Complaint as its first responsive pleading. The parties are still waiting for the Court to schedule oral argument on the City's motion and/or issue a decision on the City's motion to dismiss. **On November 24, 2020, Federal Court Judge Michaelson issued an order and opinion granting the City's motion to dismiss.**

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.

There are no pending eminent domain cases for this quarter.

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. Adam Community Center v. City of Troy et. al. and U.S. v. City of Troy- Plaintiff filed this lawsuit against the City of Troy, the Troy City Council, the Troy Planning Commission, the Troy Zoning Board of Appeals, and each of the individual members of the Troy Zoning Board of Appeals, challenging the ZBA denial of significant variance requests for the property at 3565 Rochester Road. Plaintiff needed these variances to have a place of worship, plus a library, gym, and banquet center. Plaintiff's eleven count complaint argues that the City of Troy, the Troy City Council and the Troy Planning Commission, as the entities responsible for Troy's zoning ordinance, violated ADAM's Constitutional First and Fourteenth Amendment rights (Exercise of Religion, Freedom of Speech and Freedom of Assembly), ADAM's Fifth Amendment Rights, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and also ADAM's Michigan Constitutional Rights. ADAM argues that there is no other Islamic house of

worship in the City, and therefore the City and/or the Defendants violated their First Amendment Rights and RLUIPA. Plaintiff's lawsuit also alleges that the City and the individual ZBA members engaged in discrimination in denying ADAM's variance requests. Plaintiff also asserts that there were procedural irregularities at the June 19, 2018 public hearing which allegedly entitle ADAM to injunctive and declaratory relief, as well as compensatory and punitive damages. Specifically, ADAM is seeking a Court order overriding the ZBA's variance denials and the City's zoning regulations for churches, plus damages. The City filed a motion to dismiss as its first responsive pleading, seeking dismissal of the entire case, and/or dismissal of some of the claims and defendants. On March 12, 2019, the Court entertained oral argument on the motion, and the parties are now waiting for a written decision from U.S. District Court Judge Nancy Edmunds, who is the presiding judge for this case. On April 4, 2019, the Court granted in part and denied in part the City's Motion for Dismissal. Plaintiff's state law claims were dismissed by Court order. The case is now proceeding through discovery. On September 19, 2019, the United States of America filed a lawsuit against the City in the United States District Court for the Eastern District of Michigan alleging RLUIPA violations. In its complaint, the United States claims it is basing its claim on the City's treatment of Adam Community Center in its effort to establish a place of worship in the City. The U.S. is seeking injunctive and declaratory relief. The case was assigned to Federal District Court Judge Paul Borman, and then consolidated with the ADAM case, handled by Judge Nancy Edmunds. The Court scheduled a settlement conference for the two consolidated cases for December 17, 2019. On October 16, 2019 and October 21, 2019, two of the individual ZBA members were dismissed from the case with Plaintiff's consent. Motions to dismiss the remaining individual ZBA members were filed on November 25, 2019 and November 26, 2019, and the Court scheduled its hearing on the summary judgment motions for January 15, 2020. The Court cancelled the hearing date on the motion to dismiss the individual defendants and rescheduled the hearing for March 4, 2020. After the oral argument, the parties are waiting a decision from the Court. Discovery is continuing on the case filed by the United States. The parties are continuing with discovery, including the scheduling of depositions. On August 26, 2020, Judge Edmunds granted the motion for summary judgment filed on behalf of the individual ZBA member defendants and dismissed those defendants from the case, finding that they were entitled to dismissal based on qualified immunity. Adam has filed a motion for rehearing with regard to the dismissal of ZBA member Glenn Clark only. The Court has indicated it will decide the motion without oral argument but is allowing a response to the motion to be filed by October 13. **On December 20th, the Court entered it Order Denying Adam's Motion for Reconsideration, so all individual defendants remain dismissed. The City filed a motion for summary judgment in both the Adam and USA case seeking a dismissal of all remaining claims against the City. Adam and the USA have also filed motions for summary judgment.**

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. Barnwell v. City of Troy et al. This suit was filed in Oakland County Circuit Court, and assigned to Judge Phyllis McMillen. Troy is one of several municipalities to be sued as a result of the massive rainstorm that occurred on August 11, 2014. Plaintiffs have asked for a class action certification to allow all Troy persons damaged by flooding to also make claims. In this lawsuit, the named Defendants are Troy and the Oakland County Water Resources Commissioner (and especially the George W. Kuhn Retention facility (GWK RTF). This lawsuit is very similar to lawsuits filed against Royal Oak, Madison Heights, Clawson, Oak Park, Hazel Park, Berkley, Huntington Woods, Ferndale, and Pleasant Ridge. The City filed a timely answer to the complaint, and the case is now in the discovery phase. The Court has issued a discovery order, governing all of the currently pending Oakland County flooding cases. The parties are currently engaging in the discovery process. This case is still in the discovery phase. The first phase of discovery is complete, and the City has reviewed all notice of claims. The Court has set a deadline for raising any legal issues about the claims that cannot be resolved prior to that time. After the latest status conference, the Court issued a scheduling order, setting deadlines for the parties to file motions concerning notices of claims. On November 2, 2018, the Court heard oral argument on a motion filed by Oakland County challenging the notice of claims. On November 20, 2018, the Court filed an opinion and order, denying Oakland County's Motion. On December 7, 2018, Oakland County filed a claim of appeal, which is pending. Oakland County's appeal is still pending, but the parties are also exploring facilitation of the case, as required by the Court's order staying the proceedings. The parties have scheduled a facilitation starting September 16, 2019. The City participated in the facilitation, which did not resolve the claims. Although Troy's case is stayed at this time, the Court held a conference on December 10, 2019 for all attorneys on a companion case involving most of the other municipal defendants. Although Troy's case remains stayed, several of the other municipal defendants have companion cases filed by Hanover Insurance Company that are not stayed. All of the parties continue the settlement dialogue. The parties have verbally negotiated a proposed global settlement of all cases, and are preparing a written document for presentation to the municipal defendants for approval. Written documentation to effectuate a proposed global class action settlement is being reviewed and revised. **All municipal defendants are presenting the proposed global settlement agreement to their respective governing bodies. If all governing bodies approve, the settlement will go before the Court for acceptance on January 20, 2021.**

2. Tschirhart v. Troy- Plaintiff filed this wrongful death lawsuit against the City, claiming that the City and individual City employees and contractors were responsible for the drowning death of Plaintiff's son, Shaun Tschirhart, at the Community Center pool on April 15, 2015. Shaun was a swimming in the pool that day as part of a Friendship Club activity, and unfortunately suffered a seizure while swimming. Plaintiff's complaint alleges gross negligence, and an alleged failure to property screen, train, and supervise City employees. The case is assigned to Oakland County Circuit Court Judge Daniel O'Brien. As its first responsive pleading, the City filed a motion for dismissal, arguing that Plaintiff had failed to assert a viable claim against the City. This motion is pending before the Court. The Court denied the City's motion, and the City immediately filed a claim of appeal with the Michigan Court of Appeals, challenging the denial of governmental immunity. A timely brief on appeal will be filed once the Court issues a briefing schedule. The City's brief on appeal is due February 7, 2019. A timely brief on appeal was filed by the City of Troy Defendants. Plaintiff's brief on appeal is expected to be filed by April 12, 2019. The briefs have been submitted, and the parties are waiting for the Court to schedule oral argument. Oral argument was held on December 6, 2019 in the Court of Appeals. On December 17, 2019, the Court issued an Opinion and Order reversing the trial court's decision, agreeing with the City that summary disposition should have been granted to the City of Troy and the individually named Troy defendants. The Court, however, remanded the case to the trial court, allowing Plaintiff an opportunity to seek leave to amend her Complaint. Plaintiff filed an application for leave to appeal with the Michigan Supreme Court. **The parties anticipate that oral argument will be scheduled for March or April 2021.**

3. Cioroiu v. City of Troy – Plaintiff's mother, acting as next of friend, has filed a Complaint against the City of Troy alleging negligent maintenance of a sidewalk at/near Big Beaver and Livernois. The claim stems from an incident that occurred on May 26, 2018, where Plaintiff alleges that he flipped his bike as a result of a discontinuity in the sidewalk. Plaintiff alleges that he fractured his clavicle and suffered kidney pain. The case is assigned to Judge Hala Jarbou in Oakland County Circuit Court. The parties have commenced the discovery process. The parties have completed depositions in this case. The City filed a motion for summary disposition, requesting that the Court dismiss the case under the open and obvious doctrine. It is scheduled for hearing on October 9, 2019. The Court granted the City's Motion for Summary Disposition under the open and obvious doctrine, and dismissed the case. Plaintiff subsequently filed an appeal with the Michigan Court of Appeals. Plaintiff—Appellant's brief is due in April. The City will file a timely response thereafter. Mr. Cioroiu filed his brief and reply brief to the City's timely response. The parties are waiting for the Court of Appeals to schedule oral argument. The Court of Appeals has not yet scheduled its date for oral argument. **The Court scheduled a virtual oral argument for February 4, 2021.**

4. **Grier v. City of Troy, et al – On November 19, 2019, Ms. Grier was in a U.S. post office vehicle parked on Robart Street. She reports that she was making a delivery, and a City of Troy truck was plowing snow, and the wing plow on the City's truck accidentally sideswiped the postal truck, causing a large indentation spanning the length of the postal vehicle. Plaintiff filed a complaint against the City, the City employee who was operating the snow plow, her auto insurance**

company, and the Michigan assigned claims fund. The case is assigned to Oakland County Circuit Court Judge Phyllis McMillen. The City has filed a timely answer to the complaint, and the parties are now engaged in the discovery process.

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. At the hearing on September 2, 2015, Judge Kumar allowed Plaintiffs to request additional discovery within 30 days. Thereafter, both parties are allowed to file supplemental briefs. Supplemental briefs have been filed and we are awaiting a decision. On February 5, 2015, Judge Kumar issued her opinion and order ruling in favor of the City and dismissing the case. Plaintiffs filed a Claim of Appeal with the Michigan Court of Appeals on February 23, 2016. The Plaintiffs and the City have both filed appellate briefs. Based on our request, the Michigan Municipal League Legal Defense Fund, Public Corporations Section of the State Bar of Michigan, Michigan Townships Association and also Safe Built have filed a motion asking for permission to file amicus briefs supporting the City's position. The Michigan Association of Realtors has sought permission to file an amicus brief supporting Plaintiffs' position. The Plaintiffs filed a reply brief. We are waiting for the Court of Appeals to rule on the motions for amicus briefs and to schedule a date for oral argument. Oral argument has not yet been scheduled**.** The parties presented oral arguments on September 7, 2017. On September 28, 2017, the Court of Appeals entered a two to one decision affirming the Circuit Court's grant of summary disposition in favor of the City. The Plaintiffs have filed an application for leave to appeal to the Michigan Supreme Court. The City timely filed an answer to the application. Additionally, the Michigan Municipal League's Legal Defense Fund, the Government Law Section of the State Bar of Michigan, and the Michigan Townships Association filed a motion to file an amicus curiae brief with the Supreme Court, supporting the City's position and asking for a denial of the application for leave to appeal. The Court granted the request for MML's amicus brief on January 5, 2018, and the brief was accepted for filing. The Michigan Realtor's Association filed a motion to file an amicus brief on behalf of Plaintiff Home Builders on February 23, 2018. On June 20, 2018, the Michigan Supreme Court entered an order granting the Michigan Realtor's Association's motion to file a brief amicus curiae. The Court also ordered that oral arguments be scheduled on Plaintiff's application for leave to appeal, and established a schedule for submitting supplemental written briefs. The Court accepted an amicus brief from the Michigan Health and Hospital Association and the Michigan Society of Association Executives, which was drafted by the attorney representing the Home Builders. The parties are now waiting for the Supreme Court to schedule oral argument. On December 19, 2018, the Michigan Manufacturers Association filed a motion to file a brief amicus curiae, and attached its proposed brief to the motion. On December 21, 2018, the Supreme Court granted the motion and accepted the brief that was submitted on December 19, 2018 for filing. The Michigan Supreme Court presided over the oral argument on March 7, 2019. After

oral argument, the Court granted a motion to file a late amicus curiae brief. The City filed a response seeking to address the arguments raised in that brief and attached a proposed response. On April 5, 2019, the Court granted the City's motion to file a response to the amicus curiae brief and accepted the City's response for filing. The parties are now waiting for the Supreme Court to issue its opinion. On July 11. 2019, the Michigan Supreme Court entered its decision holding that the use of the revenue generated by the City's building inspection fees to pay the Building Department's budgetary shortfalls in previous year's violates the State Construction Code Act. The Court reversed the decisions of the Court of Appeals and the Circuit Court and remanded the case back to the Circuit Court for further proceedings. On remand the City can still present evidence to justify the retention of a portion of the fees. The Court permitted additional discovery, as requested by Plaintiff, and the City has responded to the numerous discovery requests. The Plaintiffs sought additional discovery, which the City objected to. The Plaintiffs then filed a motion to compel additional discovery and the City filed a response to the motion. The parties resolved the motion without a hearing with a stipulated order in which the City agreed to provide some additional information, which has now been provided. The Plaintiffs have now indicated they would like to take some depositions. Because of the Emergency Declaration, and the difficulty in conducting depositions, Plaintiff filed a motion to extend the discovery deadline, and the City has not objected to this Motion. The Court has scheduled a new trial date. Plaintiffs filed a motion for summary disposition. The Court issued a scheduling order, requiring the City to respond on or before November 18, 2020, and scheduling the hearing for December 2. **Oral argument was held on the summary disposition motion on December 2nd. We are awaiting a decision from the Court.**

2. Roumayah Consulting, LLC and Kevin Roumayah v City of Troy. Plaintiff Roumayah LLC is the master tenant for property at 33611 Dequindre Road in Troy that it subleases for use by caregivers registered under the Michigan Medical Marihuana Act (MMMA) to cultivate medical marihuana. Plaintiff Kevin Roumayah is a registered caregiver under MMMA and uses one of the suites at 33611 for a medical marihuana grow operation. The Plaintiffs filed a lawsuit in Oakland County Circuit Court challenging the validity of the City of Troy Medical Marihuana Grow Operation License Ordinance, Chapter 104 that went into effect May 3, 2018. Plaintiffs claim they are entitled to injunctive relief because: 1) the ordinance is a zoning ordinance that was not adopted in accordance with the Michigan Zoning Enabling Act (MZEA); 2) the Plaintiffs have a valid nonconforming use under the MZEA; 3) the ordinance results in a taking of Plaintiffs property without just compensation and due process; 5) the ordinance deprives Plaintiffs of equal protection under the law; and 6) the ordinance is invalid because it is preempted by the MMMA. The Plaintiffs are seeking a declaratory judgment that the ordinance is invalid and an injunction to preclude enforcement of the ordinance. The case was assigned to Oakland County Circuit Court Judge Leo Bowman. Plaintiffs' request for a temporary restraining order and/or preliminary injunction was denied by the Court on June 13, 2018. The case is now in the discovery phase. During the pendency of this case, the Michigan Court of Appeals issued an opinion in a separate case the directly addressed the issue of whether a municipal ordinance is preempted by the MMMA. That case was appealed to the Michigan Supreme Court. The Supreme Court's decision on that appeal will have a direct impact on the outcome of this case. Thus, the Plaintiff and the City stipulated to a stay

of proceedings pending the outcome of the appeal to the Michigan Supreme Court. On December 12, 2018, Judge Bowman issued an order to stay the proceedings. On January 23, 2019, the Michigan Supreme Court granted the township's application for leave to appeal in the other case, as mentioned above, so the Supreme Court will likely determine whether a municipal ordinance is preempted by the MMMA. The parties are still waiting for the Michigan Supreme Court to issue its decision in the Byron Township case. The oral argument in the Byron Township case was scheduled for October 3, 2019. The Supreme Court has not yet issued its opinion in this case. As of March 31, 2020, the Supreme Court has not issued its opinion in the Byron Township case. The Supreme Court issued its opinion in DeRuiter v. Byron Township on April 27, 2020, which was favorable to the municipal defendant. Roumayah's attorney has not yet responded to the City's inquiry about Plaintiff's plans and/or potential reinstatement of the case after the DeRuiter decision.

3. Thomas Darling v. City of Troy. Plaintiff Thomas Darling filed this Whistleblower lawsuit against the City of Troy on October 10, 2019. It is assigned to Oakland County Circuit Court Judge Daniel P. O'Brien. Darling was the City's former finance director, and was terminated on July 15, 2019. He argues that his termination resulted from his participation in the 2016 Craig Lange investigation of Brian Kischnick and his assistance with the Plante & Moran forensic engagement. This case will be primarily handled by outside labor counsel/ insurance counsel. The City timely filed its answer to the complaint. The parties are conducting discovery. The parties are continuing with the exchange of discovery and scheduling depositions. After filing motions for summary disposition, one of Plaintiff's counts is dismissed, and the other remains pending. The City filed a motion for reconsideration as to the remaining count. The trial date is re-scheduled for January 2021. **Due to COVID restrictions, the Court adjourned the trial date from January to May 2021.**

4. Malloy v City of Troy. This claim and delivery action was filed by Plaintiff seeking a return of a firearm that was confiscated when Plaintiff was arrested for operating a vehicle under the influence of a controlled substance. The City filed an answer to the complaint and the motion for possession pending judgment. On August 26, 2020, 52-4 Judicial District Court Judge Maureen McGinnis denied the motion for possession pending judgment and scheduled the case for a pretrial conference, which is set for October 7, 2020. **The parties negotiated a consent order for the return of the firearm. This case is now concluded.**

5. **Kmiec v City of Troy. This claim and delivery action was filed by Plaintiff seeking a return of firearms turned over to the Police Department as a condition of bond when Plaintiff was charged with stalking. The City filed an answer to the complaint and the motion for possession pending judgment. The case was assigned 52-4 District Court Judge Maureen McGinnis. At the hearing on the motion for possession on December 2, 2020, the Court entered an order allowing for return of the firearms to the Plaintiff, who is no longer under the Court's jurisdiction. This case is now concluded.**

6. **Gregory v City of Troy. This claim and delivery action was filed by Plaintiff seeking a return of firearms confiscated when the Troy Police responded to a report that the Plaintiff was a potential harm to himself. The City filed an answer to the complaint and the motion for possession pending judgment. The case was assigned 52-4 District Court Judge Kirsten**

Nielsen Hartig, who ultimately entered an order allowing the firearms to be returned to Plaintiff in December, 2020. This case is now concluded.

7. **Fambrough v City of Troy. This claim and delivery action was filed by Plaintiff seeking a return of firearms and a machete confiscated when the Troy Police responded to a report that the Plaintiff's husband armed himself against a phantom burglar. Plaintiff's husband has dementia. The City filed an answer to the complaint and the motion for possession pending judgment, which was pending before 52-4 District Court Judge Maureen McGinnis. On December 2, 2020, the Court entered a negotiated order allowing for return of the firearms and machete to a third party. This case is now concluded.**

8. **Peeler v City of Troy. This claim and delivery action was filed by Plaintiff seeking a return of a firearm seized by the Troy Police Department when an individual carrying the Plaintiff's firearm was arrested for unlawfully possessing a concealed weapon. The City filed an answer to the complaint and the motion for possession pending judgment. 52-4 District Court Judge Maureen McGinnis denied the motion for possession on December 2, 2020, and scheduled the case for a pretrial on January 20, 2021.**

9. **Cook v City of Troy. This claim and delivery action was filed by Plaintiff seeking a return of a shotgun turned over to the Police Department in accordance with a Personal Protection Order that prohibited Plaintiff from possessing a firearms The case was filed in Oakland County Circuit Court and assigned to Judge Kumar. A hearing on the motion for possession was scheduled for January 6, 2021, but prior to the hearing, the parties agreed to entry of a consent judgment for return of the firearm. This case is now concluded.**

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.

1. City of Troy v. Tierra Posey- In 2016, Defendant pled guilty to possession of marijuana. Defendant failed to appear for her sentence date later in 2016, and remained in bench warrant status until July 2020. In the interim, the Michigan Regulation and Taxation of Marihuana Act was passed in 2018 (recreational marihuana). Defendant argued in District Court that although she was guilty of a crime in 2016, she could not be punished since marihuana is now legal. Judge McGinnis denied the Defendant's motion to dismiss the charge. Defendant filed an appeal with the Oakland County Circuit Court. The case has been assigned to Judge Rae Lee Chabot. The City filed a timely response to the appeal.

H. ADMINISTRATIVE PROCEEDINGS

There are no pending administrative proceedings at this time.

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