



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: July 25, 2023

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: Second Quarter 2023 Litigation Report

The following is the quarterly report of pending litigation and other matters of interest.
Developments during the SECOND quarter of 2023 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



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

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,



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

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. The case was remanded to the District Court. Judge Steeh directed the parties to file supplemental briefs on remand. The City filed its supplementary brief and a reply to Plaintiff's supplementary brief. We are awaiting a decision from the Court. On April 6, 2021, the Court entered an Order Dismissing Count II of Plaintiff's Complaint and Denying Plaintiff's Motion for Attorney Fees and it entered a Judgment in favor of the City. On April 19, 2020, the Plaintiff filed a motion for reconsideration of the Court's April 6, 2021 decision. On May 5, 2021, the Court denied Plaintiff's motion for reconsideration. On June 1, 2021, Plaintiff filed an appeal in United States Court of Appeals for the Sixth Circuit. Plaintiff filed its appellate brief, and the City timely responded. The parties are now waiting for the Sixth Circuit U.S. Court of Appeals to either grant oral argument or take other action. The Court has not scheduled oral argument or taken other action. The parties are still waiting for the Court's action. The Court has scheduled oral argument for June 14, 2023. The Court has also notified the parties that they may file supplemental briefs by May 1, 2023 to address whether a recent U.S. Supreme Court decision (*City of Austin, Texas v Reagan National Advertising of Austin, LLC*) has any bearing on the appeal. **On June 14, 2023, the Court held oral argument on Plaintiff's appeal. We are awaiting a decision from the Sixth Circuit U.S. Court of Appeals.**

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. On March 5, 2021, Judge Goldsmith entered an Order, remanding the case to the Oakland County Circuit Court. Plaintiff submitted a proposed confidential settlement offer that was considered and rejected by City Council. The City subsequently filed a Motion for Consolidation and Request for Transfer which was denied by the Circuit Court. This case is now in the discovery phase. The City of Troy filed a motion to dismiss with oral argument scheduled for March 9, 2022. The Court adjourned oral argument on its own motion. The parties are waiting for the Court to



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

either reschedule argument or issue an opinion and order. The Court entered an Order reassigning this case to Judge Matis of the Oakland County Circuit Court. Plaintiff subsequently filed a motion objecting to the reassignment which will be argued on July 6, 2022. The Court also scheduled a pre-trial conference for the same date to discuss scheduling the City's outstanding Motion to Dismiss. At the pre-trial, Plaintiff's counsel asked the Court for permission to file a supplemental brief. The Court granted that request. Plaintiff then filed a brief which included some additional affidavits, and the City timely responded. The Court scheduled oral argument for October 12, 2022. The Court issued an opinion on December 13, 2022 granting in part and denying in part the City's Motion to Dismiss. The Court dismissed Plaintiff's Substantive Due Process claim, but ruled that Plaintiff's Takings Claim could proceed. The parties will engage in the discovery process pursuant to a scheduling order to be entered by the Court. Discovery continues in this case. **Discovery continues in this case and will close on July 17, 2023. Thereafter, the City plans to file a motion to dismiss.**

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. On March 5, 2021, Judge Goldsmith entered an Order, remanding the case to the Oakland County Circuit Court. Plaintiff submitted a proposed confidential settlement offer that was considered and rejected by City Council. The City subsequently filed a Motion for Consolidation and Request for Transfer which was denied by the Circuit Court. This case is now in the discovery phase. The City of Troy filed a motion to dismiss with oral argument scheduled for March 9, 2022. The Court adjourned oral argument on its own motion. The parties are waiting for the Court to either reschedule argument or issue an opinion and order. The Court entered an Order reassigning this case to Judge Matis of the Oakland County Circuit Court. Plaintiff subsequently filed a motion objecting to the reassignment which will be argued on July 6, 2022. The Court also scheduled a pre-trial conference for the same date to discuss scheduling the City's outstanding Motion to Dismiss. At the pre-trial, Plaintiff's counsel asked the Court for permission to file a supplemental brief. The Court granted that request. Plaintiff then filed a brief which included some additional affidavits, and the City timely responded. The Court scheduled oral argument for October 12, 2022. The Court issued an opinion on December 13, 2022 granting in part and denying in part the City's Motion to Dismiss. The Court dismissed Plaintiff's Substantive Due Process claim, but ruled that Plaintiff's Takings Claim could proceed. The parties will engage in the discovery process pursuant to a scheduling order to be entered by the Court. Discovery continues in this case. **Discovery continues in this case and will close on July 17, 2023. Thereafter, the City plans to file a motion to dismiss.**



500 West Big Beaver
Troy, MI 48084
troymt.gov

CITY COUNCIL AGENDA ITEM

4. Safet Stafa v. City of Troy- Plaintiff's case against the City of Troy seeks equitable relief from the Oakland County Circuit Court. Specifically, Plaintiff asks for a writ of mandamus or alternatively superintending control, requiring the City to grant Plaintiff's preliminary site plan application for a townhome project located on the northwest corner of Crooks and Wattles Roads. The Troy Planning Commission denied the preliminary site plan application because it found that the site plan was not compatible with adjacent properties and that it did not provide adequate transition to adjacent properties. Plaintiff appealed the Planning Commission's denial to the Troy Zoning Board of Appeals (ZBA). In a split vote of 4-3, the ZBA affirmed the Planning Commission decision. The City initially filed a Motion to Dismiss, but instead of responding to that motion directly, Plaintiff was allowed to file an Amended Complaint, which the City will ask to dismiss. Five Troy citizens, including one current member of the Troy Planning Commission, filed a Motion to Intervene in the lawsuit. The Court has scheduled oral argument for the residents' motion to intervene and the motion to dismiss for October 27, 2021. The City of Troy filed its Motion to Dismiss Plaintiff's Amended Complaint, which was granted by the Court on November 17, 2021. Plaintiff subsequently filed a Claim of Appeal with the Court of Appeals, which is in the process of being perfected. Plaintiff is continuing to complete the preliminary matters in the Court of Appeals. Plaintiff filed his Brief on Appeal on May 18, 2022. The City's Brief on Appeal is due on July 15, 2022. The City timely filed its Brief on Appeal, and the parties are waiting for the Court to schedule argument. The parties are still waiting for the Court of Appeals to schedule oral argument or in the alternative, issue its opinion in lieu of holding oral argument. The Court of Appeals scheduled oral argument for April 5, 2023. **The Court of Appeals affirmed the lower court's dismissal of the claims against the City. Plaintiff filed a timely application for leave to appeal with the Michigan Supreme Court. The City timely filed its Answer to Plaintiff's Application for Leave to Appeal.**

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. Gillman v. Troy et. al - Steven Gillman filed this lawsuit on November 29, 2021, as the Personal Representative of the Estate of Megan Miller. Ms. Miller died after being detained in the City's lock up facility on an alleged parole violation and also because Troy police officers



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

wanted to speak with her about the death of her infant child. The Complaint alleges that while Miller was in custody, the City and its employee knew or should have known that she was suffering from a serious medical need associated with recent drug use. The Complaint alleges that the City and its employee were deliberately indifferent to Miller's serious medical needs, and that the City maintained an unconstitutional custom, policy, practice or custom and/or inadequately trained its personnel which resulted in the wrongful death of Miller while she was in the City's custody. Plaintiff's 42 U.S.C. Section 1983 claims are asserted under the Eighth and Fourteenth Amendments of the United States Constitution. Plaintiff also asserts a state law claim against the individual employee for alleged gross negligence. The City timely filed its answer to the Complaint. The Court held a scheduling conference and the parties are engaging in the discovery process. The discovery process continues. Discovery continues. Plaintiff filed a Motion to Extend Discovery which was granted by the Court, so discovery continues and depositions have been scheduled. Discovery closed in this matter on February 10, 2023. The City timely filed its Motion for Summary Judgment on February 17, 2023. **The parties are waiting for the Court to issue an opinion in this matter. The Court also issued a new scheduling order in this case moving trial to March of 2024.**

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. 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 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 properly 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



CITY COUNCIL AGENDA ITEM

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. The Michigan Supreme Court did not schedule this matter for its March, April, or May docket, so the parties are hoping that oral argument on the application will happen in June 2021. The parties are still waiting for the Michigan Supreme Court to schedule oral argument in this matter. The Michigan Supreme Court scheduled oral arguments for November 9. The Supreme Court issued its opinion, remanding this case back to the Oakland County Circuit Court for a decision consistent with part of the Court of Appeals' decision. Plaintiff filed a motion in Oakland County Circuit Court to lift the stay entered in this matter which was granted by the Court on March 23, 2022. Subsequently, Plaintiff filed a motion seeking leave to file an amended Complaint in this matter. The City filed a motion opposing this request. The Court will hear oral argument on this motion on April 20, 2022. On April 20, 2022, the Court denied plaintiff's motion seeking leave to amend the Complaint, dismissing the case. Plaintiff filed an appeal of this decision. Plaintiff filed a motion to extend the time for filing the brief on appeal with the Court of Appeals, and then timely filed her appellate brief on September 23, 2022. The City will file a timely Brief on Appeal. The City timely filed its Brief on Appeal, and the parties are waiting for the Court of Appeals to schedule oral argument. The Court of Appeals scheduled oral argument for May 2, 2023. **The Court of Appeals reversed the lower court's decision and remanded the case to the Oakland County Circuit Court to permit Plaintiff to file an Amended Complaint.**

2. Angela Blanchard v. City of Troy, et al. – Plaintiff filed a lawsuit against the City and an individual police officer, alleging that she sustained injuries from an automobile accident. The officer driving approximately 10 mph through the intersection crossing Big Beaver Road, in pursuit of another speeding vehicle. Although he activated his overhead lights, there was a collision with Plaintiff's vehicle. Plaintiff alleges negligence and gross negligence, and damages in excess of \$25,000. The case is assigned to Oakland County Circuit Court Judge Jeffrey S. Matis. The City timely filed its answer to the complaint and asserted affirmative defenses. **The parties are currently engaged in discovery.**

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



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

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



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

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



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

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. The Court granted Plaintiffs' motion to file supplemental information. Plaintiffs then filed a supplementary brief, and the City filed its response. We are awaiting a decision by the Court on the summary disposition motion. On May 26, 2021, the Court entered its opinion and order denying both requests for summary disposition. The Court ruled that the Michigan Association of Home Builders had standing to pursue a claim under the Headlee Amendment but it dismissed the Headlee Amendment claims of Associated Builders and Contractors of Michigan and Michigan Plumbing and Mechanical Contractors Association on the basis those Plaintiffs did not establish standing. The case will now proceed to trial unless otherwise resolved through facilitation. The Court has scheduled a status conference for June 30th. The Court ordered facilitation, which was unsuccessfully accomplished on September 15, 2021. The Court also allowed the Plaintiff to take a late deposition of the City's Chief Financial Officer Rob Maleszyk, who was not employed during by the City prior to the discovery cut-off date. The case will now proceed to trial, and the Court has scheduled a status conference for October 19, 2021. The Court adjourned the status conference to November 2, 2021 and subsequently adjourned it to January 14, 2022. The case was re-assigned to visiting Judge Sosnick since Judge Kumar was appointed to serve as a Judge in Federal Court. The status conference was then adjourned to March 1, 2022. However, the case was then re-assigned to the newly appointed Judge Cohen and the status conference was rescheduled for April 5, 2022. On April 5, 2022, Judge Cohen held a status conference, and he scheduled trial for August 2, 2022. The trial commenced on August 2, 2022 and the testimony was concluded on August 3, 2022. Rather than hear closing arguments, the Court directed the parties to submit closing argument briefs within two weeks after a transcript of the testimony is prepared. The Court reporter has notified the parties the transcript will not be available until late October, 2022. The transcript of the trial was filed with the Court, and the parties were then required to simultaneously file written closing arguments, which were timely filed.



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Afterwards, the City filed a motion asking for permission to file a supplemental response to Plaintiff's closing argument and the Plaintiff opposed that motion. On November 30th, Judge Cohen granted the City's motion, and allowed Plaintiff to file a supplemental response too, and these were timely filed. We are now awaiting a decision from the Court. On February 2, 2023, Judge Cohen issued his opinion and order after bench trial. He found in favor of the Plaintiff on its Construction Code claim and enjoined the City from considering the work of non-building department employees in the calculation of building department expenses when determining what to charge for building permits. However, the Court ruled in favor of the City on Plaintiff's Headlee Amendment claim and ruled the Plaintiff did not establish standing and dismissed that claim. Plaintiff then filed a motion to amend the judgment or for a new trial, and the City responded. The trial Court denied Plaintiff's motion. On March 2, 2023, Plaintiff filed a claim of Appeal in the Michigan Court of Appeals appealing Judge Cohen's decision to dismiss Plaintiff's Headlee Amendment Claim and his denial of the motion to amend judgment. On March 9, 2023, the City filed a Claim of Cross Appeal appealing the previous decision of Judge Kumar denying the City's request for summary disposition and Judge Cohen's decision finding in favor of Plaintiff on the Construction Code claim.

2. R.W. Development, LLC and Stutz Investment v. City of Troy, et al. – Plaintiff R W Development filed this re-plat lawsuit in Oakland County Circuit Court, and it has been assigned to Judge Daniel P. O'Brien. As required by State Law, all parties with property interests within 300 feet of the proposed re-plated area are required to be named as defendants unless they provide written consent to the requested re-plat. Plaintiff is proposing new development at 1700 Stutz, in the City of Troy. The proposed re-plat seeks to vacate an easement for public utilities and vehicular access over the most westerly 40 feet and northerly 50 feet of the property. The vacation is necessary in order for Plaintiff to proceed with its proposed development. Plaintiff has been obtaining consents to the plat revision from some of the co-defendants, and the City Council will be asked to take action in January 2023 on the requested re-plat and vacation of the public utility easement. Plaintiff has experienced some delays in seeking relief from the State of Michigan. **On May 3, 2023, the Court entered an order vacating the easement and dismissing the City of Troy only.**
3. Harden v City of Troy- This is a claim and delivery action seeking the return of three handguns that were turned over to the Troy Police Department as a condition of bond after Plaintiff was charged with domestic assault. The City filed an answer to the complaint, and an answer to Plaintiff's motion seeking immediate possession of the firearms. At the March 29, 2023 scheduled hearing on the motion for immediate possession, 52-4 District Judge Kirsten Nielsen Hartig rescheduled the case for hearing on April 19, 2023, since there was not enough time to conduct a full hearing on that day. **On May 9, 2023, a consent order was entered allowing the guns to be returned to a third party. This case is now concluded.**
4. Dozier-Giles v City of Troy- This is claim and delivery action seeking the return of a firearm that was confiscated by Troy police officers when they responded to a welfare



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

check on Plaintiff after she sent disturbing text messages to her friend. The City filed an answer to the complaint, and an answer to Plaintiff's motion seeking immediate possession of the firearm. At the March 29, 2023 hearing on the motion for immediate possession, 52-4 District Judge Kirsten Nielsen Hartig adjourned the hearing until April 19, 2023 to allow the parties an opportunity to work out a resolution. **On April 19, 2023, a consent order was entered allowing the firearm to be returned to a third party. This case is now concluded.**

5. **Rogers v City of Troy-** This is a claim and delivery action seeking the return of a handgun that that was confiscated when Plaintiff was arrested for operating a vehicle while intoxicated and carrying a concealed pistol while intoxicated. The City filed an answer to the complaint, and an answer to Plaintiff's motion seeking immediate possession of the firearm. The Court scheduled a hearing on the motion for immediate possession for June 21, 2023 before 52-4 District Judge Maureen M. McGinnis. On June 21, 2023, the Court denied Defendant's motion for immediate possession and scheduled a pretrial conference for July 12, 2023.
6. **Compton v City of Troy-** This is a claim and delivery action seeking the return of a handgun that that was confiscated when Plaintiff was arrested for unlawfully possessing a concealed pistol in a vehicle. The City filed an answer to the complaint, and an answer to Plaintiff's motion seeking immediate possession of the firearm. The Court scheduled a hearing on the motion for immediate possession for June 21, 2023 before 52-4 District Judge Kirsten Nielsen Hartig. On June 21, 2023, the Court adjourned the hearing on Plaintiff's motion to allow the parties to discuss a possible resolution. The hearing on the motion was rescheduled for July 12, 2023.

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 or district court appeals.

H. ADMINISTRATIVE PROCEEDINGS

The City Attorney's Office has filed appearances in eleven Tax Tribunal cases which challenge the City Assessor's determinations for the 2022 Tax Year. Many of these cases are scheduled for hearings.

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