



500 West Big Beaver
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CITY COUNCIL AGENDA ITEM

Date: January 11, 2024

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: Fourth Quarter 2023 Litigation Report

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



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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. The City timely filed its motion for summary disposition, which is scheduled for argument on October 18, 2023. **In the interim, the Court ordered the parties to participate in a mandatory settlement conference, which was unsuccessful. The Court then granted the City's motion for summary disposition as to all of Plaintiff's remaining claims on October 25, 2023. Plaintiff subsequently filed a timely appeal to the Michigan Court of Appeals.**

2. 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



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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. The City timely filed its motion to dismiss, which is scheduled for oral argument on October 18, 2023. **In the interim, the Court ordered the parties to participate in a mandatory settlement conference, which was unsuccessful. The Court then granted the City's motion for summary disposition as to all of Plaintiff's remaining claims on October 25, 2023. Plaintiff subsequently filed a timely appeal to the Michigan Court of Appeals.**

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 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



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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. On July 25, 2023, Judge Goldsmith granted the City's Motion for Summary Judgment, but denied the individual Police Service Aid's motion. The Police Service Aide then timely filed an appeal of this decision with the Sixth Circuit Court of Appeals on August 21, 2023. **The Court issued a briefing schedule. Appellant's brief is due on November 1, 2023; Appellee's brief is due December 3, 2023.**

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 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



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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. On July 27, 2023, Plaintiff filed a Motion to Lift the Stay in the case. Plaintiff then filed another amended complaint on September 28, 2023. **The Court re-opened the case, but there has been a delay in entering the Court order memorializing this action.**

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. The City filed a motion for summary disposition, which is scheduled for a hearing in November. The parties participated in mandatory case evaluation, as well. **The City accepted the case evaluation award of \$30,000, but Plaintiff rejected it by not timely filing a response. Prior to the City's motion for summary disposition being heard, the parties negotiated a settlement offer for less than the case evaluation award, which will be presented to City Council on January 8, 2024.**



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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



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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



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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. 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,



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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. 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. On July 3, 2023, the City filed its Brief on Cross Appeal. On July 28, 2023, the Plaintiff filed its Appellate Brief. On August 2, 2023, the Plaintiff filed its Brief in Response to the City's Cross Appeal. On August 23, 2023, the City filed its Reply to Plaintiff's Response to the City's Cross Appeal. The City filed its Appellee Brief on September 1, 2023 and Plaintiff filed its Reply on September 15, 2023. The parties are now waiting for the Court of Appeals to schedule oral argument. **The parties are still waiting for the Court to schedule oral argument.**

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



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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. The case is proceeding with the other defendants. **The Court entered a final order on October 27, 2023 disposing of all claims. This case is now concluded.**

3. **West Maple Realty v. CE Gleeson**- This case was filed in Oakland County Circuit Court and assigned to Judge Warren. Plaintiff owns property located at 2565 and 2585 W. Maple Road, in the City of Troy. Co-Defendant Troy Senior Leasing owns the property to the west of Plaintiff's property, at 2785 W. Maple Road. In 2021, the City approved the plans submitted by Troy Senior Leasing for senior citizen apartments to be built on the property. Troy Senior Leasing hired Defendant C.E. Gleeson Constructors to build the apartments. Plaintiff's lawsuit alleges that CE Gleeson and Troy Senior Leasing changed the grade of the property at 2785 W. Maple Road, causing water to flow onto Plaintiff's property, resulting in damage. Specifically, Plaintiff filed this trespass claim for water damage that occurred on/about August 25, 2023. Plaintiff's Complaint is requesting the Court to require Troy Senior Leasing and C.E. Gleeson Constructors to take steps to prevent further flooding to Plaintiff's property. Plaintiff is also asking for an order preventing the City from issuing a certificate of occupancy. The City timely filed an answer to the Complaint, and will now begin engaging in discovery. **At the Court's urging, the parties agreed to facilitation on January 23, 2024. In the interim, the City issued a temporary certificate of occupancy to Troy Senior Leasing. Additionally, Troy Senior Leasing filed a motion for summary disposition arguing that the previous lawsuit between the parties precluded this lawsuit, and Plaintiff filed a response. The City was not a party in the previous lawsuit. The Court has not yet set a hearing date on the motion.**
4. **Kubisz v City of Troy**- This is a claim and delivery action seeking the return of three handguns and a knife that that were 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. **On November 8, 2023 assigned 52-4 District Judge Maureen M. McGinnis Court adjourned the hearing 30 days to allow the parties to negotiate a possible resolution. On November 30, 2023, the Court entered an order allowing the firearms and other property to be returned to a third party. 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 a misdemeanor ordinance prosecution case.

1. **People of the City of Troy v Theodore Joseph Pierfelice**. The Defendant Theodore Joseph Pierfelice was charged with domestic assault and battery. The case proceeded to jury trial and he was found guilty on June 26, 2023. Defendant was sentenced to 93 days in jail on July 25, 2023. Defendant requested court appointed counsel for an appeal on July 25,



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2023 and the Oakland County Indigent Defense Services Office (IDSO) appointed an attorney to represent him on appeal. A claim of Appeal was filed in the Oakland County Circuit Court on August 17, 2023, and the appeal was assigned to Judge Daniel P. O'Brien. The City Attorney's Office has filed an appearance. On September 27, 2023, the Defendant timely filed his Brief on Appeal. The City's brief is due October 19, 2023. Oral argument is scheduled for October 25, 2023. **The City timely filed its Appellee Brief on October 19, 2023. The Court adjourned the hearing to allow for Appellant to respond, and to facilitate the 52-4 District Court's submission of the entire record. At the oral argument on December 20, 2023, Defendant argued that his criminal conviction should have been reversed because the Court should not have allowed certain statements made by the victim to be admitted at trial. He also argued that the trial defense attorney was ineffective for failing to request a specific jury instruction concerning the victim as a missing witness. Judge O'Brien affirmed the trial court's decision admitting the victim's statements, but remanded the case back to allow the trial court judge to determine if the defendant's trial attorney was ineffective.**

2. **People of the City of Troy v Arthur Dore.** The Defendant, Arthur Dore, is charged with Operating While Intoxicated (OWI). Defendant filed a motion to suppress and dismiss challenging the constitutionality of the traffic stop that was initiated by a Troy police officer. The District Court granted Defendant's motion, essentially requiring a dismissal of the criminal charges. The City timely filed an appeal of this ruling to the Oakland County Circuit Court.

H. ADMINISTRATIVE PROCEEDINGS

The City Attorney's Office is working with the City Assessor in the following Tax Tribunal cases, where Property owners challenge the City Assessor's property valuation determinations or other determinations.

2022 CASES

Easton Investments, LLC, Case No. 22-001643

City timely filed an Answer and Affirmative Defenses. City also timely filed a prehearing statement and valuation disclosure. Petitioner also filed a Motion to consolidate the 2022 and 2023 Tax Years. The Tax Tribunal has scheduled a prehearing conference for October 16, 2023. **On November 2, 2023, the Tribunal entered an order dismissing the case, upholding the City's assessment.**

JC Penney (CTL Propco I LLC), Case No. 22-000353

City timely filed an Answer and Affirmative Defenses, as well as a Prehearing Statement and Valuation Disclosure. City also filed responses to motions filed by Petitioner. The parties have also participated in three pre-hearing conferences to date. The Tribunal has scheduled this for hearing starting May 6, 2024. **One of the issues in this case is the uncapping of Property. Petitioner**



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was contemplating a motion on this issue, but is not pursuing this because the values in its appraisal are similar to the amounts as capped. The City is preparing its case for hearing.

Woodbridge v. Troy- Case No. 22-001463

City timely filed its answer to the petition. The parties engaged in discovery. City timely submitted its prehearing statement and valuation disclosure. **The Tribunal held a prehearing conference and scheduled this case for hearing, starting February 22, 2024.**

2023 CASES

Office Ventures Troy I LLC, Case No. 23-000537

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation discovery are due January 3, 2024. The City submitted discovery to Petitioner. **The City timely filed its prehearing statement and valuation disclosure on December 28, 2023.**

OVT Wilshire Owner LLC, Case No. 23-000536

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation discovery are due January 3, 2024. The City submitted discovery to Petitioner. **The City timely filed its prehearing statement and valuation disclosure on December 28, 2023.**

Liberty Investments I LLC, Case No. 23-000697

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation discovery are due February 5, 2024. The parties will commence the discovery process. **The City is preparing the prehearing statement and valuation disclosure for timely submission.**

Saks Troy, LLC. Case No. 23-000835

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The Tribunal granted an extension of time. The prehearing statement and valuation disclosure are now due May 7, 2024.**

JC Penney (CTL Propco I LLC), Case No. 23-000917

The City timely filed its answer and affirmative defenses on July 14, 2023. The parties will commence the discovery process. **The Tribunal has held this case in abeyance pending a decision on the 2022 Tax Tribunal matter between the parties.**



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CITY COUNCIL AGENDA ITEM

Somerset Inn, LLC, Case No. 23-001014

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The City is responding to the Petitioner's formal discovery request, and Petitioner has provided information requested by the City. The prehearing statement and valuation disclosure are due April 19, 2024.**

Long Lake 2 LLC, Case No. 23-001209

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation discovery are due January 18, 2024. The parties will commence the discovery process. **The Tribunal granted an extension of time. The valuation disclosure and prehearing statement are now due April 19, 2024.**

Long Lake 2 LLC, Case No. 23-001212

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation discovery are due January 3, 2024. The parties will commence the discovery process. **The Tribunal granted an extension of time. The valuation disclosure and prehearing statement are now due April 19, 2024.**

1330 Coolidge Ventures, Case No. 23-001233

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The parties have exchanged some information, and submitted a joint motion to extend deadlines.**

Troy KS Development LLC, Case No. 23-001272

The City timely filed its answer and affirmative defenses on July 18, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due March 19, 2024.**

Troy KS Development LLC, Case No. 23-001274

The City timely filed its answer and affirmative defenses on July 18, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due March 19, 2024.**

Troy KS Development LLC, Case No. 23-001276

The City timely filed its answer and affirmative defenses on July 18, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due March 19, 2024.**



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CITY COUNCIL AGENDA ITEM

Troy KS Development LLC, Case No. 23-001277

The City timely filed its answer and affirmative defenses on July 18, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due March 19, 2024.**

Warrior Baseball Complex, Case No. 23-001282

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The Tribunal granted an extension of time. The prehearing statement and valuation disclosure are now due May 7, 2024.**

MT Troy Associates LLC, Case No. 23-001353

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due on February 5, 2024.**

Troy Crossing LLC, Case No. 23-001405

The City timely filed its answer and affirmative defenses on July 18, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due April 4, 2024.**

Flagstar Bank FSB, Case No. 23-001461

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The City's prehearing statement and valuation disclosure are due March 19, 2024.**

Troy 500 Stephenson, Case No. 23-001505

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due June 20, 2024.**

Troy 750 Stephenson, Case No. 23-001512

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due June 20, 2024.**

501 Stephenson, Case No. 23-001514

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The parties have exchanged some information, and submitted a joint motion to extend deadlines.**



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CITY COUNCIL AGENDA ITEM

Pentacentre, LLC, Case No. 23-001517

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due June 20, 2024.**

BBS Maple Research, Case No. 23-001544

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The Tribunal granted the parties' motion for an extension of deadlines. The prehearing statement and valuation disclosure are now due on June 4, 2024.**

BBS Maple Research, Case No. 23-001546

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The Tribunal granted the parties' motion for an extension of deadlines. The prehearing statement and valuation disclosure are now due on June 4, 2024.**

BBS Maple Research, Case No. 23-001547

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The Tribunal granted the parties' motion for an extension of deadlines. The prehearing statement and valuation disclosure are now due on June 4, 2024.**

BBS Maple Research, Case No. 23-001548

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The Tribunal granted the parties' motion for an extension of deadlines. The prehearing statement and valuation disclosure are now due on June 4, 2024.**

Troy Portfolio LLC, Case No. 23-001549

The City timely filed its answer and affirmative defenses on July 14, 2023. The parties will commence the discovery process. **The Tribunal granted an extension of time. The prehearing statement and valuation disclosure are now due June 4, 2024.**

Timberland 5455, Case No. 23-001670

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The City has been provided with some requested information. The prehearing statement and valuation disclosure are due June 4, 2024.**



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CITY COUNCIL AGENDA ITEM

Integrus Ventures-TCC DE LLC, Case No. 23-001671

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The City's prehearing statement and valuation disclosure are due on April 19, 2024.**

Troy Beaver Realty, Case No. 23-001745

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due June 20, 2024.**

Troy Lodging LLC, Case No. 23-001831

The City timely filed its answer and affirmative defenses on July 20, 2023. The parties will commence the discovery process. **The prehearing statement and the valuation disclosure are due June 20, 2024.**

2075 Associates Limited Partnership, Case No. 23-001835

The City timely filed its answer and affirmative defenses. The prehearing statement and valuation disclosure is due February 5, 2024. The parties will commence the discovery process. **The City is preparing its prehearing statement and valuation disclosure for timely submission.**

Nemer Troy, et al., Case No. 23-001877

The City timely filed its answer and affirmative defenses on July 14, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due June 20, 2024, and the prehearing conference scheduled for the docket starting October 16, 2024.**

Nemer Troy, et al., Case No. 23-001880

The City timely filed its answer and affirmative defenses on July 14, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due June 20, 2024, and the prehearing conference scheduled for the docket starting October 16, 2024.**

SCA-100, Case No. 23-001883

Petitioner submitted its appeal on May 31, 2023. **The Tribunal entered an order, finding Petitioner in default. Petitioner failed to correct its petition deficiencies, and the case was dismissed on November 27, 2023.**

Universal Property TMP LLC, Case No. 23-002023

The City timely filed its answer and affirmative defenses on August 2, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due July 5, 2024.**



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CITY COUNCIL AGENDA ITEM

Ubiquity Holdings LLC, Case No. 23-002072

The City timely filed its answer and affirmative defenses on July 14, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due April 19, 2024.**

Shankar Real Estate Holdings LLC, Case No. 23-002088

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due February 5, 2024.**

Woodbridge Sales & Engineering, Inc., Case No. 23-002102

The City timely filed its answer and affirmative defenses. The parties will commence the discovery process. **The prehearing statement and the valuation disclosure are due June 4, 2024.**

Quality Behavioral Health, Case No. 23-002182

The Tribunal dismissed the Petitioner's first two petitions for defects, but accepted the third petition, even though it also was defective. The City timely filed its answer and affirmative defenses on November 13, 2023. The Tribunal scheduled a status conference for January 11, 2024.

Noor International Academy, Case No. 23-002393

The City timely filed its answer and affirmative defenses on October 17, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due July 5, 2024. The parties are preparing motions for summary disposition, based on the tax exemption dispute between the parties.**

Troy Westington, Case No. 23-002586

The City timely filed its Answer and Affirmative Defenses. **The Prehearing Statement and Valuation Disclosure are due July 5, 2024.**

Penske Vehicle Service Inc, Case No. 23-002615

The City timely filed its answer and affirmative defenses on August 3, 2023. The parties will commence the discovery process. **The prehearing statement and valuation disclosure are due July 5, 2024.**



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CITY COUNCIL AGENDA ITEM

Akm Hasan, Case No. 23-002734

Petitioner was defaulted in this case, but the Tribunal entered an order reinstating the case on November 30, 2023.

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