

M E M O R A N D U M

Date: April 29, 2014

TO: Town Commission

FROM: Maggie Mooney-Portale, Town Attorney

SUBJECT: Discussion Regarding Engagement of Special Counsel Relating to Colony Public Nuisance Hearings.

In our office's Memorandum "Response to Questions Relating to the Colony Bankruptcy Proceedings, Non-Conforming Use Extensions and Public Nuisance Proceedings" dated March 14, 2014, I made the following recommendation regarding the Public Nuisance proceedings:

Finally, I anticipate making a recommendation to the Commission that the Commission consider engaging special litigation counsel to attend the continued upcoming public nuisance hearings so if there is a legal challenge of the Town Commission's findings or, alternatively, a need to seek enforcement of such Town Commission action in the circuit court, such special counsel will have been present for the underlying proceedings and be prepared to perform those litigation services immediately.

As a follow up to that discussion, the continued Colony property public nuisance quasi-judicial hearing is scheduled to begin May 28 and may be continued through May 30. The Town Commission should consider whether to engage special litigation counsel to attend the continued upcoming public nuisance hearings. While I will be sitting with and advising the Town Commission as the Town Attorney at the public nuisance hearings, I anticipate that significant litigation could arise out of these proceedings.

Specifically, it is conceivable that the Town will need to defend against challenges arising out of the quasi-judicial proceedings and need to respond to appeal(s) filed in Circuit Court. In such a scenario, a challenge may be filed within 30 days of the rendition of the Town Commission's decision in the Circuit Court in the form of a Writ of Certiorari. Alternatively, if the Town Commission hears evidence during the quasi-judicial proceedings that leads the Town Commission to enter finding(s) supporting condemnation and/or demolition, and assuming no other remedies are afforded to and completed by the property owner(s) (i.e, repair), then the Town will need to initiate a suit to obtain an order of condemnation and/or demolition from the Circuit Court.

Under either of the above litigation scenarios, the Town will need to engage special litigation counsel. Rather than engaging special litigation counsel to spend a considerable amount of time "reading" the verbatim court transcript and reviewing exhibits presented at hearing after the public nuisance hearings are

concluded, I would recommend having special litigation counsel physically present at the upcoming proceedings. Presence at these proceedings would afford an opportunity for litigation counsel to observe the proceedings and evidence presented, provide meaningful input on any legal issues that may arise, and would be a better use of Town resources.

Attached for your consideration as special litigation counsel is the CV of Arthur ("Art") Hardy from the law firm of Matthews Eastmoore. Mr. Hardy has a great deal of local government and litigation experience and currently serves as the Sarasota County School Board's attorney. Mr. Hardy had advised that neither he nor his law firm would have a conflict representing the Town's interest(s) in litigation that may arise out of this matter.

This item is placed on the May 5, 2014 Regular Meeting to seek Commission direction as to whether the Town Commission would like to proceed with engagement of special litigation counsel for the upcoming hearings.

ARTHUR S. HARDY

1626 Ringling Blvd.
Suite 300
Sarasota, Florida 34236
(941) 366-8888
ahardy@matthewseastmoore.com

LEGAL EMPLOYMENT

Attorney/Shareholder, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., Sarasota, Florida, October 1991 to present.

Board Certified Civil Trial Lawyer

Nominated by the Judicial Nominating Commission for a judgeship on the Second District Court of Appeal on two occasions, October 2008 and April 2009

AV Rated by Martindale-Hubbell

My practice has included:

- * serving as trial counsel for both plaintiffs and defendants in state and federal courts in cases involving negligence, products liability, and professional malpractice claims, commercial litigation, probate litigation, §1983 civil rights litigation, and employment litigation including Title VII, ADEA, and ADA claims;
- * drafting briefs and conducting oral arguments before state and federal appellate courts;
- * serving as counsel to the School Board of Sarasota County, Florida at public Board meetings, in administrative proceedings before the Division of Administrative Hearings, and in employee arbitration proceedings;
- * conducting annual collective bargaining negotiations for the School Board with the certified bargaining agent for its 5,300 employees; and
- * acting as a mediator and arbitrator in a variety of civil cases.

Special Counsel to United States Senator Bob Graham,
Washington, D.C., August 1999 to November 1999.

Attorney, Williams, Parker, Harrison, Dietz & Getzen,
Sarasota, Florida, July 1989 to September 1991.

FEDERAL JUDICIAL CLERKSHIP

Law Clerk, Honorable Wm. Terrell Hodges, Chief United
States District Judge, Middle District of Florida, Tampa,
Florida, June 1987 to June 1989.

LEGAL EDUCATION

University of Florida, Gainesville, Florida
J.D. with High Honors, May 1987
GPA: 3.66
Class Rank: 3 of 208

Honors and Activities

Order of the Coif
University of Florida Law Review

UNDERGRADUATE EDUCATION

Washington University, St. Louis, Missouri
A.B. in Secondary Education and Political Science, May 1984

ADMITTED TO PRACTICE

Florida (1987), United States District Court for the Middle
District of Florida (1988), and United States Court of
Appeals for the Eleventh Circuit (1991).

PROFESSIONAL ASSOCIATIONS

The Florida Bar
Sarasota County Bar Association, President 2005-06
Florida School Board Attorneys Association, Director 2013-
present
Judge John M. Scheb American Inn of Court, Master Emeritus;
(Treasurer, 1993 - 1998; President 2004-05;
Professionalism Award 2010)



End of Agenda Item