



PERSSON, COHEN & MOONEY, P.A.
ATTORNEYS AND COUNSELORS AT LAW

M E M O R A N D U M

TO: Mayor Schneier and the Town Commission

FROM: Maggie D. Mooney, Town Attorney

DATE: March 16, 2021

RE: Special Counsel to the Planning & Zoning Staff in Quasi-Judicial Proceedings Relating to St. Regis Development (Amendments to Ordinance 2018-07 and Resolution 2018-01)

On March 5, 2021, Unicorp National Developments, Inc. (“Unicorp”) submitted an application to the Town’s Planning & Zoning Department seeking to amend the current land use approval Unicorp previously received from the Town in Ordinance 2018-07 and Resolution 2018-01 for the St. Regis project. Since that initial submittal, there has been a subsequent amended application filed by Unicorp on March 12, 2021. Town Staff has started reviewing the most recent submittal pursuant to applicable Town Code. Once Town Staff’s review of the application is complete, the St. Regis project will proceed to a Development Review Committee (“DRC”) meeting with Town Staff, and then quasi-judicial hearings before the Planning & Zoning Board (“PZB”) and the Town Commission will be scheduled. We do not know the timing of those hearings at the present time.

When Unicorp initially submitted its development application in 2017 for the St. Regis project on the former Colony property, due to the size of the development, the complexity of issues associated with the project, the public interest and anticipated controversy surrounding the former Colony property, the Town Manager and I recommended that special counsel be appointed to represent and defend the Town Staff’s interests leading up to and during the quasi-judicial proceedings. The recommendation was also made because the Florida Bar Rules of Professional Conduct limit a local government lawyer’s representation during quasi-judicial hearings. The Florida Bar rules prevent a local government lawyer from simultaneously representing the interests of the quasi-judicial board

that is presiding over a matter and serving as a counselor to the local government's staff presenting evidence during a quasi-judicial proceeding.

Many of the above stated factors that justified the engagement of special counsel for Town Staff in 2018 continue to exist. The St. Regis project and the requested amendments to the existing development orders may be complicated, it is anticipated there will continue to be great public interest and input in the proposed amendments, and the Town Attorney is not permitted to represent the quasi-judicial board and Town Staff during the upcoming hearings. For these reasons, the Town Manager and I are again recommending that Town Staff have special counsel engaged to assist them and represent their interests in the upcoming proceedings.

At the time of the initial March 2018 hearings on the St. Regis project, a local government attorney from a neighboring jurisdiction was engaged to represent Town Staff; however, that attorney is currently unavailable. Accordingly, I have reached out to another local government attorney who practices in the region, Jennifer Cowan with the law firm of Bryant Miller & Olive. Ms. Cowan currently serves as a City Attorney for the City of Treasure Island (in Pinellas County), has extensive land use experience and is accustomed to working with Planning Staff and in quasi-judicial proceedings. She is board certified by the Florida Bar in City, County and Local Government law. A copy of Ms. Cowan's background is enclosed.

Ms. Cowan has presented an engagement letter to serve as special counsel to Town Staff and quoted a billable rate of \$275/hr for her services, and any associate time will be bill at an hourly rate of \$245/hr. Other terms relative to the representation are set forth in an incorporated General Terms and Conditions sheet which includes provisions on the law firm's scope of duties, billing practices, costs and expenses, termination and records policies. I have discussed Ms. Cowan's engagement agreement with the Town Manager and he concurs with my recommendation to engage Ms. Cowan's services.

Recommendation: Authorize the Town Manager to execute the engagement agreement with Jennifer Cowan of Bryant Miller & Olive to provide special counsel services to represent Town Staff in upcoming quasi-judicial proceedings and land use matters relating to the St. Regis Development.

Att. (2):

- (1) March 15, 2021 Correspondence from Jennifer Cowan of Bryant, Miller & Olive -
Available in Town Clerk's Office
- (2) Bio Sheet on Jennifer Cowan, Esq. - Available in Town Clerk's Office



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M E M O R A N D U M

TO: Mayor Schneier and Town Commissioners
CC: Tom Harmer, Town Manager
FROM: Maggie D. Mooney, Esq., Town Attorney
DATE: March 29, 2021
RE: Special Litigation Counsel - Wastewater Spill Matters

In June 2020, the Town discovered a leak in its wastewater line that caused approximately 14 million gallons of wastewater to leak. The cause of the leak was due to corrosion of the wastewater line and the Town has incurred (and is anticipated to continue to incur) damages as a direct result of the leak. The Town Attorney's office believes that one or more parties may have liability and/or responsibility to contribute to the ongoing damages. On March 2, 2021, the Town Attorney's office transmitted a demand and indemnification letter to the consulting firm of Greeley and Hansen arising out of their firm's 2016 inspection of the condition of the Town's wastewater line. On March 18, 2021, the Town Attorney's office transmitted a demand letter to the Town's insurer relating to the Town's claim for insurance coverage for damages the Town incurred arising out of the wastewater line leak. While the Town Attorney's office is not suggesting that the Town Commission authorize litigation at the present time, we do believe that it is prudent to engage special litigation counsel to evaluate the Town's damages claims and assist in identifying other potentially responsible parties that should assist with the Town's damages.

Martin Garcia and Josh Dell were formerly with the law firm of Matthews Eastmoore (recently renamed Eastmoore, Crauwels & DeBose) and have previously provided litigation services to the Town on several litigation proceedings relating to the Colony's demolition, forfeiture action, and short-term rental litigation. Mr. Garcia and Mr. Dell recently opened their own litigation firm (Garcia Dell) located in downtown Sarasota. Both lawyers have extensive commercial and construction litigation experience in the Twelfth Circuit and are familiar with local government litigation. Copies of Mr. Garcia's and Mr. Dell's resumes/bios are attached.

Prior to representing the Town in the earlier litigation referenced above, while at the law firm of Matthews Eastmoore, both Mr. Dell and Mr. Garcia

disclosed in their engagement agreements with the Town that their firm represents Spectrum Underground, Inc. (the Town's contractor for the Longboat Pass Bridge waterline project. While the lawsuit of *Infrastructure Corporation of America v. Town of Longboat Key, Florida* was ultimately resolved and Spectrum Underground and the Town were co-defendants in that litigation, Spectrum and the Town have an unresolved liquidated damages/stoppage claim related to the final payment for the waterline construction project. There is no pending litigation between the Town and Spectrum, but there is an unresolved payment claim and Mr. Dell continues to represent Spectrum in that matter. This payment claim is wholly unrelated to potential claims and litigation arising from the wastewater line spill that occurred in June 2020. Nevertheless, under the Florida Bar Rules of Professional Conduct, the law firm of Garcia Dell is obligated to disclose the above-described conflict which may be waived by both clients. Should the Town Commission authorize the engagement of Garcia Dell as litigation counsel to the Town in matters relating to the wastewater spill such engagement includes a waiver of any conflict associated with their firm's Spectrum representation. The Town and Spectrum have waived this conflict in prior litigation representations, and we would request that the Town once again waive any potential conflict here as well.

Mr. Garcia and Mr. Dell have extensive litigation experience and have indicated that an anticipated governmental billable rate for their work at \$275/hour, and a paralegal rate of \$125/hour. A full copy of their engagement agreement is attached.

It is my recommendation and the Town Manager's recommendation that the Town Manager and Town Attorney be provided authorization to engage the services of Martin Garcia and Josh Dell with the law firm of Garcia Dell to provide special counsel litigation services arising out of potential claims relating to the wastewater line spill and be granted authority to execute appropriate engagement agreements with their firm. The engagement of special litigation counsel at this time will not be considered authorization to file a lawsuit. See Section 30.09 (stating "no civil complaint shall be filed in any court on behalf of the town unless authorized by the town commission."). Any requests for authorization to file a lawsuit on behalf of the Town will be specifically brought to the Town Commission at a public meeting for discussion and consideration.

Recommended Motion: Authorize the Town Manager to execute an engagement agreement with the law firm of Garcia Dell to provide advice and counsel as special litigation counsel in potential litigation associated with the wastewater line and to waive any potential conflict.

Att.: Engagement Letter (Available in the Town Clerk's office)

End of Agenda Item