

COMMISSION AGENDA:  
7.27.10 # 21

TO: The Honorable Chairman and Members of the  
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Consent to Engage in Dual Legal Representation for Rogers Towers P.A.

DATE: July 27, 2010

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS GRANT CONSENT TO ROGERS TOWERS P.A. TO ENGAGE IN DUAL LEGAL REPRESENTATION AND AUTHORIZE THE CHAIR TO SIGN THE CONSENT.

DISCUSSION: The County Attorney's office policy on Legal Representation of Multiple Clients, approved by the Board of County Commissioners, proscribes outside legal counsel from simultaneously representing Pinellas County and other clients in matters involving Pinellas County unless otherwise approved by the Board of County Commissioners at a Board meeting. Because Rogers Towers P.A. previously represented the County on matters relating to billboards, as well as the expertise and experience of the attorney that will provide legal services in this matter, it is recommended that the firm be retained to provide representation related to ongoing matters regarding billboards. However, as disclosed in the attached correspondence, the firm also represents clients in matters involving Pinellas County, and has requested that Pinellas County consent to the firm engaging in dual legal representation as described in the correspondence attached. Based on the fact that the legal matters are unrelated, and that the firm will establish an ethical screen, it is recommended that the Board of County Commissioners consent to this dual legal representation.

JLB:DRL:sme

Attachment

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July 23, 2010

James L. Bennett, Esquire  
County Attorney  
Pinellas County  
315 Court Street  
Clearwater, FL 33756

Re: Conflict Waiver Request

Dear Mr. Bennett:

This firm previously served as outside counsel in several matters involving land development regulations involving signage and related matters, including but not limited to the negotiation of three settlement agreements. These agreements were finalized in 2002 and 2003 and involved litigation brought and/or threatened by National Advertising Company n/k/a CBS Outdoor, Inc., Infinity Outdoor of Florida, Inc., Viacom Outdoor, Inc., The Lamar Company, L.L.C., Clear Channel Outdoor, Inc., and others. This firm successfully defended Pinellas County in a federal court action filed by KH Outdoor, L.L.C., et al. in 2004. The latter action was dismissed with prejudice in March 2005. We have also represented local governments in the area in connection with the defense against legal challenges, and those governments include Hillsborough County, Manatee County, City of Clearwater, City of Oldsmar, City of St. Pete Beach, City of New Port Richey, and City of Pinellas Park.

In furtherance of your inquiry as to my availability to once again provide legal services and advice to Pinellas County in connection with land development regulations involving signage and related matters involving one or more of the settlement agreements referenced above (hereinafter the "Proposed Scope of Services/Sign Regulations"), I am pleased to advise you that I have the capacity to provide the legal services that you described and to do so in a prompt manner if so engaged.

The scope of the engagement would extend to providing legal advice in connection with land development regulations involving signage and related matters involving one or more of the settlement agreements referenced above. The engagement would call upon my expertise in the field of land use law, First Amendment law, and state and federal laws and regulations involving outdoor advertising, as well as my knowledge of the background and context of the prior negotiations leading to the three existing settlement agreements referenced above.

From time to time, this law firm is involved in providing legal services in a range of matters to clients throughout the state, including clients involved in banking and financial services. At the present time, our firm is representing Wells Fargo in unrelated matters (the Eminent Domain Proceedings) to the Proposed Scope of Services/Sign Regulations and it is expected that we may

represent them in the future in unrelated matters. The current Wells Fargo matters include two eminent domain proceedings identified as follows:

1. Pinellas County v. DDRM Bardmoor Shopping Center LLC, Case No. 09-001861-CI-19, in the Circuit Court, Sixth Judicial Circuit, in and for Pinellas County.
2. Pinellas County v. GE Capital Franchise Finance Corporation, Case No. 09-006560-CI-21, in the Circuit Court, Sixth Judicial Circuit, in and for Pinellas County.]

The existing representations do not involve sign regulations or any of the three above-referenced settlement agreements.

If we provide legal services to Pinellas County in connection with the Proposed Scope of Services/Sign Regulations and as a condition to providing those services, we would secure an appropriate waiver from Wells Fargo in connection with the unrelated matters wherein we represent Wells Fargo's interests. Furthermore, this firm will continue to represent Wells Fargo's interests diligently without influence from the fact of its representation of Pinellas County in connection with the Proposed Scope of Services/Sign Regulations, which is an unrelated matter.

In no event would Rogers Towers, P.A. share any confidential information it has concerning Pinellas County with any third party, including Wells Fargo, nor would Rogers Towers, P.A. share any confidential information it has concerning Wells Fargo with Pinellas County.

Our representation of Pinellas County in connection with the Proposed Scope of Services/Sign Regulations will be dependent upon both Wells Fargo and Pinellas County agreeing to waive any potential conflict of interest. Rogers Towers, P.A. does not believe that its representation of Wells Fargo in the Eminent Domain Proceedings would adversely affect in any manner its ability to represent Pinellas County in the Proposed Scope of Services/Sign Regulations. Rogers Towers, P.A. does not believe that its representation of Pinellas County in the Proposed Scope of Services/Sign Regulations would adversely affect in any manner its ability to represent Wells Fargo.

Consistent with the practice of other law firms undertaking representation of Pinellas County in situations where the law firms also represent persons with interests adverse to Pinellas County in unrelated matters, we have agreed to establish an Ethical Screen which will prevent the exchange of any information identified as "Confidential" by Pinellas County beyond those attorneys, paralegals, and employees with responsibility for the matters covered by Proposed Scope of Services/Sign Regulations. In implementing the Ethical Screen, we will follow the procedures set forth below as to any written or electronic information identified as "Confidential" by Pinellas County:

- An Ethical Screen memorandum will be distributed via e-mail to the affected attorneys and paralegals being screened, and those individuals will be the attorneys and paralegals providing services to Wells Fargo;

- The Ethical Screen memorandum will be acknowledged by each of the aforementioned affected individuals;
- All files affected by the Ethical Screen will be labeled in a manner indicating that an Ethical Screen is in place;
- The Loss Prevention Partner will collect the acknowledgements of the Ethical Screen memoranda and will follow up with any individual who does not respond;
- The Ethical Screen will be implemented in the firm's document management system, preventing access to electronically stored "Confidential" documents by anyone other than those persons assigned to the matter;
- All physical files that are deemed or identified as Confidential and subject to the Ethical Screen will be labeled to indicate that a screen is in place; and
- Attorneys and staff subject to the Ethical Screen are isolated from information identified as "Confidential."

We believe that the above measures are more than sufficient to ensure that no information identified as "Confidential" by Pinellas County could be used to the detriment of Pinellas County in any Wells Fargo representation wherein certain attorneys and paralegals of this firm represent Wells Fargo. Furthermore, as previously described, the Wells Fargo representations are matters unrelated to the Proposed Scope of Services/Sign Regulations.

We would ask that Pinellas County sign two originals of this letter in the space following my signature confirming the foregoing and consenting to Rogers Towers, P.A.'s continuing representation of Wells Fargo and its affiliates in current and future matters unrelated to our representation of Pinellas County should Pinellas County engage the firm in the Proposed Scope of Services/Sign Regulations. Please return one original to the undersigned and retain the other for your files.

Please do not hesitate to call if you have any questions.

Respectfully,



William D. Brinton

Consented to:

Date: \_\_\_\_\_, 2010

Pinellas County

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_