

Mayor

Joe Coviello

Council Members

District 1: John Gunter

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout

District 4: Jennifer I. Nelson

District 5: Dave Stokes

District 6: Richard Williams

District 7: Jessica Cosden



1015 Cultural Park Blvd.
Cape Coral, FL

City Manager

John Szerlag

City Attorney

Dolores Menendez

City Auditor

Andrea R. Butola

City Clerk

Rebecca van Deutekom

AGENDA FOR THE SPECIAL MEETING OF THE CAPE CORAL CITY COUNCIL

October 24, 2018

2:00 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

VIDEO

1. MEETING CALLED TO ORDER

A. MAYOR COVIELLO

2. INVOCATION/MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

A. MAYOR COVIELLO, COUNCIL MEMBERS CARIOSCIA,
COSDEN, GUNTER, NELSON, STOKES, STOUT, WILLIAMS

5. CHANGES TO AGENDA/ADOPTION OF AGENDA

6. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters concerning the City Government; 3 minutes per individual.

7. BUSINESS

A. Consideration of Waiver of Conflict of Interest from the Law Firm of
Manson Boves Donaldson Varn for the Representation of the City
of Sanibel and Fort Myers Beach

8. TIME AND PLACE OF FUTURE MEETINGS

- A. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, November 5, 2018 at 4:30 p.m. in Council Chambers

9. MOTION TO ADJOURN

This agenda should not be viewed as containing definitive information on matters of law with respect to ordinance and resolution summaries.

**GENERAL RULES AND PROCEDURES REGARDING
THE CAPE CORAL CITY COUNCIL AGENDA**

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state or local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT CASES**

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.

2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Item Number: 7.A.
Meeting Date: 10/24/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consideration of Waiver of Conflict of Interest from the Law Firm of Manson Bolves Donaldson Varn for the Representation of the City of Sanibel and Fort Myers Beach

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision?
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The law firm of Manson Bolves Donaldson Varn ("MBDV") currently represents the City of Cape Coral in a rule challenge proceeding adverse to the South Florida Water Management District ("SFWMD"). Attorney Craig Varn of MBDV has requested Waivers of Conflict of Interest so the firm may represent the City of Sanibel and the Town of Fort Myers Beach, in a limited capacity, in the same rule challenge proceeding adverse to the SFWMD.

The positions of the City of Cape Coral, the City of Sanibel, and the Town of Fort Myers Beach are currently aligned and MBDV's representation of the City of Sanibel and the Town of Fort Myers Beach is not adverse to the City of Cape Coral. Should the positions of the Cities of Cape Coral and Sanibel and the Town of Fort Myers Beach change, MBDV's representation of all three cities could create a diverse interest requiring further disclosure and waiver of conflict or withdrawal. MBDV will immediately notify the City should such a situation arise.

LEGAL REVIEW:

Dolores D. Menendez, City Attorney

EXHIBITS:

Waiver of Conflict of Interest - City of Sanibel
Waiver of Conflict of Interest - Town of Fort Myers Beach

Additional Backup Items:

MBDV Waiver of Conflict of Interest for approval by the City of Sanibel

MBDV Engagement Letter - City of Sanibel

MBDV Waiver of Conflict of Interest for approval by Town of Fort Myers Beach

MBDV Engagement Letter - Town of Fort Myers Beach

PREPARED BY:

Division- Department- City
 Attorney

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▢ Waiver of Conflict of Interest - (City of Sanibel)	Exhibit
▢ Waiver of Conflict of Interest - (Town of Fort Myers Beach)	Backup Material
▢ MBDV Waiver of Conflict of Interest for approval by the City of Sanibel	Backup Material
▢ MBDV Engagement Letter - City of Sanibel	Backup Material
▢ MBDV Waiver of Conflict of Interest for approval by the Town of Fort Myers Beach	Backup Material
▢ MBDV Engagement Letter - Town of Fort Myers Beach	Backup Material



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October 22, 2018

Joe Coviello
Mayor
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

Re: Waiver of Potential Conflict of Interest under Applicable Florida Bar Rules

Dear Mr. Coviello:

This letter is written to you to discuss the applicability of and our obligation to consult with you regarding Rule 4-1.7 of the rules regulating The Florida Bar. Please find attached a copy of Rule 4-1.7 for your reference. Manson Bolves Donaldson Varn, P.A. ("MBDV") is currently providing ongoing counsel and litigation services to the City of Cape Coral, Florida (the "City"). In that capacity we are currently representing the City in a rule challenge proceeding adverse to the South Florida Water Management District ("District").

As you know, MBDV also supplies legal services to numerous other local governments, special purpose governments, state agencies and companies throughout Florida. From time to time our practice also lends itself to assisting other parties in an advisory capacity. We have been asked by the City of Sanibel to represent them, in a limited capacity, in the same rule challenge adverse to the District. While the positions of the City of Sanibel and the City of Cape Coral are currently aligned, there is always the possibility that this could change and create a potential for conflict.

Our representation of the City of Sanibel is conditioned upon their understanding that we intend to continue our representation of the City of Cape Coral and a conflict waiver from the City of Sanibel. However, unless a waiver is obtained from the City of Cape Coral, Florida Bar Rule 4-1.7 generally prohibits an attorney from representing a client in a matter, if such representation could be directly adverse to the interests of either client. Because we represent the City in the pending administrative matter, we will not be able to work for the City of Sanibel without first obtaining your written consent to do so. While our proposed representation of the City of Sanibel will not be adverse to the City of Cape Coral, it is possible that such representation could create a diverse interest requiring further disclosure and waiver of the conflict or withdrawal. Should such a situation arise, we will immediately notify the City.

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Based upon our prior discussions it is our understanding that the City is willing to waive this conflict to allow MBDV to represent the City of Sanibel in this limited capacity. If our understanding is correct, please sign the attached waiver form. Please feel free to call with any questions or concerns.

Sincerely,

MANSON BOLVES DONALDSON VARN

Craig Varn

WAIVER OF CONFLICT OF INTEREST

For purposes of Rule 4-1.7 of the Rules regulating the Florida Bar, the undersigned, on behalf of the City of Cape Coral, Florida hereby consents to Manson Bolves Donaldson Varn's representation of the City of Sanibel as special counsel. This waiver of conflict of interest is signed by me after consultation with Manson Bolves Donaldson Varn, P.A. and in-house legal counsel regarding this matter.

Joe Coviello
Mayor



October 24, 2018

Joe Coviello
Mayor
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

Re: Waiver of Potential Conflict of Interest under Applicable Florida Bar Rules

Dear Mr. Coviello:

This letter is written to you to discuss the applicability of and our obligation to consult with you regarding Rule 4-1.7 of the rules regulating The Florida Bar. Please find attached a copy of Rule 4-1.7 for your reference. Manson Bolves Donaldson Varn, P.A. ("MBDV") is currently providing ongoing counsel and litigation services to the City of Cape Coral, Florida (the "City"). In that capacity we are currently representing the City in a rule challenge proceeding adverse to the South Florida Water Management District ("District").

As you know, MBDV also supplies legal services to numerous other local governments, special purpose governments, state agencies and companies throughout Florida. From time to time our practice also lends itself to assisting other parties in an advisory capacity. We have been asked by the Town of Fort Myers Beach to represent them, in a limited capacity, in the same rule challenge adverse to the District. While the positions of the Town of Fort Myers Beach and the City of Cape Coral are currently aligned, there is always the possibility that this could change and create a potential for conflict.

Our representation of the Town of Fort Myers Beach is conditioned upon their understanding that we intend to continue our representation of the City of Cape Coral and a conflict waiver from the Town of Fort Myers Beach. However, unless a waiver is obtained from the City of Cape Coral, Florida Bar Rule 4-1.7 generally prohibits an attorney from representing a client in a matter, if such representation could be directly adverse to the interests of either client. Because we represent the City in the pending administrative matter, we will not be able to work for the Town of Fort Myers Beach without first obtaining your written consent to do so. While our proposed representation of the Town of Fort Myers Beach will not be adverse to the City of Cape Coral, it is possible that such representation could create a diverse interest requiring further disclosure and waiver of

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the conflict or withdrawal. Should such a situation arise, we will immediately notify the City.

Based upon our prior discussions it is our understanding that the City is willing to waive this conflict to allow MBDV to represent the Town of Fort Myers Beach in this limited capacity. If our understanding is correct, please sign the attached waiver form. Please feel free to call with any questions or concerns.

Sincerely,

MANSON BOLVES DONALDSON VARN

Craig Varn

WAIVER OF CONFLICT OF INTEREST

For purposes of Rule 4-1.7 of the Rules regulating the Florida Bar, the undersigned, on behalf of the City of Cape Coral, Florida hereby consents to Manson Bolves Donaldson Varn's representation of the Town of Fort Myers Beach as special counsel. This waiver of conflict of interest is signed by me after consultation with Manson Bolves Donaldson Varn, P.A. and in-house legal counsel regarding this matter.

Joe Coviello
Mayor



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October 22, 2018

Mr. Kevin Ruane
Mayor
City of Sanibel
800 Dunlop Road
Sanibel, FL 339577

VIA E-MAIL: Kevin.Ruane@mysanibel.com

Re: Waiver of Potential Conflict of Interest under Applicable Florida Bar Rules

Dear Mr. Ruane:

This letter is written to you to discuss the applicability of and our obligation to consult with you regarding Rule 4-1.7 of the rules regulating The Florida Bar. Please find attached a copy of Rule 4-1.7 for your reference. Manson Bolves Donaldson Varn, P.A. ("MBDV") is currently providing ongoing counsel and litigation services to the City of Cape Coral, Florida (the "City"). In that capacity we are currently representing the City in a rule challenge proceeding adverse to the South Florida Water Management District ("District").

The City of Sanibel has requested our representation in the same matter. Because we currently represent the City of Cape Coral in this administrative position, this may create a potential for conflict. We have requested a conflict waiver from the City of Cape Coral. Unless a waiver is obtained, Florida Bar Rule 4-1.7 generally prohibits an attorney from representing a client in a matter, if such representation could be directly adverse to the interests of either client. Therefore, in addition to requiring the consent of the City of Cape Coral, we will not be able to work on this matter for the City of Sanibel without first obtaining your written consent to continue our representation of the City of Cape Coral. While our proposed representation of the City of Sanibel will not be adverse to the City of Cape Coral, it is possible that such representation could create a diverse interest requiring further disclosure and waiver of the conflict or withdrawal. Should such a situation arise, we will immediately notify the City of Sanibel.

Though we believe our engagement letter is clear in its limited scope, we want to make clear that our engagement is limited to the current rule challenge in DOAH Case No. 18-5114RP (*City of Sanibel, et al. v. South Fla. Water Mgmt. Dist.*) and that upon termination

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of that litigation our representation of the City of Sanibel will end. Therefore, nothing in this representation will preclude MBDV from representing another party in a future proceeding adverse to the City of Sanibel, including future representation of the City of Cape Coral. To the extent necessary, this waiver would include future representation adverse to the City of Sanibel.

Based upon our prior discussions it is our understanding that the City of Sanibel is willing to waive this conflict to allow MBDV to continue to represent the City of Cape Coral. If our understanding is correct, please sign the attached waiver form. Please feel free to call with any questions or concerns.

Sincerely,

MANSON BOLVES DONALDSON VARN

Craig Varn

WAIVER OF CONFLICT OF INTEREST

For purposes of Rule 4-1.7 of the Rules regulating the Florida Bar, the undersigned, on behalf of the City of Sanibel, Florida hereby consents to Manson Bolves Donaldson Varn's representation of the City of Cape Coral as special counsel. This waiver of conflict of interest is signed by me after consultation with Manson Bolves Donaldson Varn, P.A. and the City of Sanibel's legal counsel regarding this matter.

Kevin Ruane
Mayor, City of Sanibel



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October 22, 2018

Mr. Kevin Ruane
Mayor
City of Sanibel
800 Dunlop Road
Sanibel, FL 339577

VIA E-MAIL: Kevin.Ruane@mysanibel.com

Re: Environmental Legal Services

Dear Mr. Ruane:

This will serve as a proposal of the terms under which our firm will provide limited legal services to the City of Sanibel, in DOAH Case No. 18-5114RP (*City of Sanibel, et al. v. South Fla. Water Mgmt. Dist.*), including any appeals, regarding proposed rule 40E-8.221(2), Florida Administrative Code. Upon conclusion of this legal proceeding, including appeal, this representation will terminate without the need for further action. This letter is intended to explain briefly our billing practices and procedures.

Our fees will be based upon the ethical rules governing our practice. The amount of our statement will be the fair value of the services provided taking into account the time spent by the lawyers involved, the type of service we are being asked to perform, any special level of expertise required, the size and scope of the matter, the results obtained, and other relevant considerations.

Currently, our hourly rates range from \$185.00 per hour for our most junior associates to \$350.00 per hour for our most senior partner. Based upon our current representation of the City of Cape Coral, for purposes of this limited engagement, we are willing to limit our maximum hourly rate to \$200 for associates and \$250 for partners. Other lawyers, law clerks, and legal assistants of our firm will participate in the representation to the extent appropriate. We use associates and paralegals whenever advisable so we can provide legal services more economically.

It is our policy to provide to you the most effective support systems available, while at the same time allocating the costs of such systems in accordance with the usage of the services by individual clients. Therefore, in addition to our fees for legal services, we also charge separately for certain costs and expense disbursements, including messenger, courier and other communication costs; long-distance telephone; document reproduction; secretarial overtime when required by the matter's timing; and computer research

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facilities. Large disbursement billings may be forwarded by us to you for direct payment by you to the supplier.

In order to simplify billing the City of Cape Coral has agreed to be responsible for payment of our services. It is our understanding that the two cities have reached some agreement on sharing the expenses. However, we are neither a part of nor responsible for that agreement. Our billing statements to the City of Cape Coral will be rendered on a monthly basis and are due and payable upon receipt. We will make every effort to include disbursements in the statement for the month in which the disbursements are incurred. Some disbursements are not available to us until the following month in which case a supplemental statement will be rendered for these additional charges.

We appreciate the opportunity to be of service to you in this matter. Our goal is to provide legal services to you on the most cost efficient basis possible. If at any time you wish to either discuss our billing policies and procedures generally, or a particular statement specifically, we encourage you to contact us.

Finally, because we are currently representing and intend to continue representing the City of Cape Coral, our representation of the City of Sanibel is conditioned upon receiving waivers of potential conflicts from both the City of Cape Coral and the City of Sanibel. The City of Sanibel's letter is provided concurrent with this. Please indicate your understanding of the agreement to the above-described engagement by signing and dating this letter in the spaces provided below. Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

MANSON BOLVES DONALDSON VARN

A handwritten signature in black ink, appearing to read "C. D. Varn", written over a horizontal line.

Craig Varn

ACKNOWLEDGED AND AGREED:

Kevin Ruane
Mayor, City of Sanibel

Dated: _____

CDV/dlr



October 23, 2018

Mr. John Turner
City Attorney
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Re: Waiver of Potential Conflict of Interest under Applicable Florida Bar Rules

Dear Mr. Turner:

This letter is written to you to discuss the applicability of and our obligation to consult with you regarding Rule 4-1.7 of the rules regulating The Florida Bar. Please find attached a copy of Rule 4-1.7 for your reference. Manson Bolves Donaldson Varn, P.A. ("MBDV") is currently providing ongoing counsel and litigation services to the City of Cape Coral, Florida (the "City"). In that capacity we are currently representing the City in a rule challenge proceeding adverse to the South Florida Water Management District ("District").

The Town of Fort Myers Beach has requested our representation in the same matter. Because we currently represent the City of Cape Coral in this administrative position, this may create a potential for conflict. We have requested a conflict waiver from the City of Cape Coral. Unless a waiver is obtained, Florida Bar Rule 4-1.7 generally prohibits an attorney from representing a client in a matter, if such representation could be directly adverse to the interests of either client. Therefore, in addition to requiring the consent of the City of Cape Coral, we will not be able to work on this matter for the Town of Fort Myers Beach without first obtaining your written consent to continue our representation of the City of Cape Coral. While our proposed representation of the Town of Fort Myers Beach will not be adverse to the City of Cape Coral, it is possible that such representation could create a diverse interest requiring further disclosure and waiver of the conflict or withdrawal. Should such a situation arise, we will immediately notify the Town of Fort Myers Beach.

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18-5114RP (*Town of Fort Myers Beach, et al. v. South Fla. Water Mgmt. Dist.*) and that upon termination of that litigation our representation of the Town of Fort Myers Beach will end. Therefore, nothing in this representation will preclude MBDV from representing another party in a future proceeding adverse to the Town of Fort Myers Beach, including future representation of the City of Cape Coral. To the extent necessary, this waiver would include future representation adverse to the Town of Fort Myers Beach.

Based upon our prior discussions it is our understanding that the Town of Fort Myers Beach is willing to waive this conflict to allow MBDV to continue to represent the City of Cape Coral. If our understanding is correct, please sign the attached waiver form. Please feel free to call with any questions or concerns.

Sincerely,

MANSON BOLVES DONALDSON VARN

Craig Varn

WAIVER OF CONFLICT OF INTEREST

For purposes of Rule 4-1.7 of the Rules regulating the Florida Bar, the undersigned, on behalf of the Town of Fort Myers Beach, Florida hereby consents to Manson Bolves Donaldson Varn's representation of the City of Cape Coral as special counsel. This waiver of conflict of interest is signed by me after consultation with Manson Bolves Donaldson Varn, P.A. and other outside legal counsel regarding this matter.

John Turner
City Attorney
Town of Fort Myers Beach



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October 23, 2018

Mr. John Turner
City Attorney
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Re: Legal Services - Rule Challenge

Dear Mr. Turner:

This will serve as a proposal of the terms under which our firm will provide limited legal services to the Town of Fort Myers Beach, in DOAH Case No. 18-5114RP (*Town of Fort Myers Beach, et al. v. South Fla. Water Mgmt. Dist.*), including any appeals, regarding proposed rule 40E-8.221(2), Florida Administrative Code. Upon conclusion of this legal proceeding, including appeal, this representation will terminate without the need for further action. This letter is intended to explain briefly our billing practices and procedures.

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Finally, because we are currently representing and intend to continue representing the City of Cape Coral, our representation of the Town of Fort Myers Beach is conditioned upon receiving waivers of potential conflicts from both the City of Cape Coral and the Town of Fort Myers Beach. The Town of Fort Myers Beach's waiver letter is provided concurrent with this engagement letter. Please indicate your understanding of the agreement to the above-described engagement by signing and dating this letter in the spaces provided below. Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

MANSON BOLVES DONALDSON VARN

Craig Varn

ACKNOWLEDGED AND AGREED:

John Turner
City Attorney

Dated: _____

CDV/dlr