

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: January 24, 2019

The following is my report to the City Council on issues in which our office has been engaged since the last Council meeting:

1. **Roberts Real Estate of Charlotte Zoning Appeal**. On January 23, 2019, a hearing was held before the Honorable Janice Cunningham to consider the appeal of Roberts Real Estate from the decision of the Charlotte Zoning Board of Appeals. As this Council is aware, it affirmed the Planning Commission's prohibition of an outdoor speaker system at the newly renovated Dairy Queen.

At the beginning of the hearing, Judge Cunningham indicated that she had thoroughly reviewed all of the briefs, transcripts and other filings by the parties, and that she anticipated the oral statements by the attorneys would be brief. After the brief statements, Judge Cunningham exhaustively reviewed the file, and in particular focused on the letter presented by Roberts Real Estate from the installer of the outdoor speaker system. Judge Cunningham found very persuasive that letter and the statements made therein that the noise would not be audible beyond the property line of the Dairy Queen. She went through in great detail what she considered to be the flaws in the findings of the Zoning Board of Appeals and concluded, under the case law, that the Court was of a firm belief that a mistake had been made. Judge Cunningham concluded that she found the decision of the Zoning Board of Appeals arbitrary and capricious and in so doing, reversed the decision of the Zoning Board of Appeals. Under her order, Roberts Real Estate is entitled to install the outdoor speaker system.

Judge Cunningham's decision is subject to review by the Michigan Court of Appeals. I have reviewed the proposed order submitted by counsel for Roberts Real

Estate and the order accurately reflects the decision of Judge Cunningham. I anticipate that the order will be filed within the next several days, at which time the appeal period would run. The time for filing an appeal is 21 days from the date in which that final order is entered with the clerk's office.

TMH:ddy