



**VILLAGE OF INDIANTOWN
AGENDA
REGULAR VILLAGE COUNCIL MEETING**

July 26, 2018
6:30 PM
at the INDIANTOWN CIVIC CENTER
15675 SW Osceola Street, Indiantown, FL 34956

VILLAGE COUNCIL
SUSAN GIBBS THOMAS, MAYOR
GUYTON STONE, VICE MAYOR
JACKIE GARY CLARKE
ANTHONY D. DOWLING
JANET HERNANDEZ

ADMINISTRATION
TERESA LAMAR-SARNO, VILLAGE MANAGER
PAUL J. NICOLETTI, VILLAGE ATTORNEY
CHERIE WHITE, VILLAGE CLERK

Civility: Being "civil" is not a restraint on the First Amendment right to speak out, but it is more than just being polite. Civility is stating your opinions and beliefs, without degrading someone else in the process. Civility requires a person to respect other people's opinions and beliefs even if he or she strongly disagrees. It is finding a common ground for dialogue with others. It is being patient, graceful, and having a strong character. That's why we say "Character Counts" in Indiantown. Civility is practiced at all Village meetings.

Special Needs: If anyone attending this meeting requires a special accommodation, please contact Cheryl White, Village Clerk, by telephone at (772) 597-9900 or by email at cwhite@indiantown.org. If you are hearing impaired, please contact the Florida Relay Service, Dial 711, or call 800-682-8706 (English); 800-682-8786 (Espanol); 800-855-2886 (TTY).

Quasi-Judicial Hearings: Some of the matters on the Agenda may be "quasi-judicial" in nature. Village Council Members are required to disclose all ex-parte communications regarding these items and are subject to voir dire by any affected party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment, without being sworn. Unsworn comment will be given its appropriate weight by the Village Council.

Appeal of Decision: If a person decides to appeal any decision made by the Village Council with respect to any matter considered at this meeting, he or she will need a record of the proceeding, and for that purpose, may need to ensure that a verbatim record of the proceeding is made, which record includes any testimony and evidence upon which the appeal will be based.

Consent Calendar: Those matters included under the Consent Calendar are typically self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by a single motion. If discussion on an item is desired, any Village Council Member, without a motion, may "pull" or remove the item to be considered separately. If any item is quasi-judicial, it may be removed from the Consent Calendar to be heard separately, by a Village Council Member, or by any member of the public desiring it to be heard, without a motion.

ROLL CALL

INVOCATION

1. Reverened Anthony Zwiener

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, AWARDS AND SPECIAL PRESENTATIONS

2. Introduction to the Council on Aging of Martin County at the Kane Center
3. VILLAGE ATTORNEY SEARCH REPORT

COMMENTS BY VILLAGE COUNCIL MEMBERS

COMMENTS BY VILLAGE MANAGER

APPROVAL OF AGENDA

-A motion is adopted to approve the Agenda as it appears, or as modified by motion of the village council.

| | | | | |
|---------|---------|---------------------------|-------------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
|---------|---------|---------------------------|-------------------|-------|

PUBLIC COMMENT

*-The public is invited to comment for up to 3 minutes **on any item not on the Agenda.** Questions are typically deferred to staff, and if civility is not practiced, the Mayor may rule the person out of order, and may require the person be removed from the meeting.*

CONSENT CALENDAR

4. Village Council Minutes of Budget Workshop and Regular Council Meeting of July 12, 2018 for approval.
5. RECEIVE AND FILE INDIANTOWN COMMUNITY DEVELOPMENT DISTRICT FY 2019 BUDGET
6. (CONTINUE TO AUGUST 9, 2018) Ordinance No. 004-2018; AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF

THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE TAXING UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE PARKS AND RECREATION SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

7. RESOLUTION No. 030-2018A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA APPROVING AN EXTENSION OF CONTRACT WITH THE INTERIM VILLAGE MANAGER; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.
8. RESOLUTION No. 031-2018: A RESOLUTION OF THE VILLAGE OF INDIANTOWN HONORING FIFTY YEARS OF MUNICIPAL HOME RULE IN THE FLORIDA CONSTITUTION AND COMMITTING TO AN EDUCATIONAL INITIATIVE TO HELP FLORIDIANS UNDERSTAND THIS BENEFICIAL RIGHT; AND PROVIDING FOR AN EFFECTIVE DATE.

| | | | | |
|---------|---------|------------------------|----------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
| | | | | |

REGULAR AGENDA

FIRST READING ORDINANCES

9. ORDINANCE No. 005 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING A NEW LOCAL COMMUNICATION SERVICES TAX RATE; PROVIDING FOR THE ADOPTION OF A NEW LOCAL COMMUNICATION SERVICES TAX RATE; PROVIDING FOR ADJUSTMENT OF TAX RATE FOR PERMIT FEES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

| | | | | |
|---------|---------|------------------------|----------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
| | | | | |

10. ORDINANCE NO. 006 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING A "ZONING IN PROGRESS" PROCEDURE FOR THE VILLAGE OF INDIANTOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

| | | | | |
|---------|---------|------------------------|----------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
| | | | | |

11. ORDINANCE NO. 007 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING AN ADMINISTRATIVE VARIANCE PROCEDURE FOR THE GROWTH MANAGEMENT CODE OF THE VILLAGE OF INDIANTOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

| | | | | |
|---------|---------|------------------------|----------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
|---------|---------|------------------------|----------------|-------|

SECOND READING ORDINANCES

12. ORDINANCE NO. 001-2018 AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE BENEFIT UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE FIRE RESCUE SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

| | | | | |
|---------|---------|------------------------|----------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
|---------|---------|------------------------|----------------|-------|

13. ORDINANCE No. 0002 (2018) AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF INDIANTOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

| | | | | |
|---------|---------|------------------------|----------------|-------|
| Motion: | Second: | Discussion by Council: | Public Comment | Vote: |
|---------|---------|------------------------|----------------|-------|

DISCUSSION ITEMS

ANNOUNCEMENTS

NEXT REGULAR MEETING

ADJOURNMENT

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE:

AGENDA ITEM TITLE: Reverened Anthony Zwiener

SUMMARY OF ITEM:

RECOMMENDATION:

PREPARED BY: Cherie White

DATE: 7/19/2018

REVIEWED BY:

DATE:

APPROVED BY:

DATE:

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Presentation

AGENDA ITEM TITLE: Introduction to the Council on Aging of Martin County at the Kane Center

SUMMARY OF ITEM: Presented by Karen Ripper, President and CEO.

RECOMMENDATION: n/a

PREPARED BY: Teresa Lamar-Sarno, Village Manager

DATE: 7/20/2018

REVIEWED BY:

DATE:

APPROVED BY:

DATE:

VILLAGE OF INDIANTOWN, FLORIDA AGENDA MEMORANDUM

MEETINGDATE: July 26, 2018

MEETING TYPE: Presentation

AGENDA ITEM TITLE: VILLAGE ATTORNEY SEARCH REPORT

SUMMARY OF ITEM: On Friday, July 13th, the solicitation for a new Village Attorney closed. We had received 8 applications at that time. The firms which applied are:

1. Vose Law Firm, LLP (Wade Vose)
2. John Anastasio
3. William T. Toohey PLLC (Bill Toohey)
4. Torcivia, Donlon, Goddeau & Ansay, PA (Brian Shutt)
5. Caldwell Pacetti Edwards Schoech & Viator, LLP (Bill Doney)
6. Weiss Serota Helfman Cole & Bierman and Davis & Ashton, PA (Matthew Ramenda)
7. Fox McCluskey Bush Robison PLLC (Tyson Waters)
8. Brandenburg & Associates (Gary Brandenburg)

On Wednesday, July 18th, the Applicant Review Committee (ARC) composed of Martin County Commissioner Harold Jenkins, Stuart City Attorney Michael Mortell, and Interim Village Attorney Paul Nicoletti met to review and discuss the 8 applications. At the conclusion of the meeting, it was decided to recommend 3 firms for interview by the Village Council.

NOTE: ATTORNEY GARY OLDEHOFF OF STUART, SENT AN APPLICATION VIA EMAIL ON JULY 19, 2018, AND WAS TOLD THAT HE COULD BE CONSIDERED IF ONE OF THE 8 APPLICANTS WAS NOT SELECTED

The Remainder of the Schedule is as follows:

August 14-15 Attorney Interviews & Special Meeting to Make Offer
August 16 Interim Village Attorney Negotiates Contract
August 23 Resolution adopting Contract and Appointment

RECOMMENDATION:

PREPARED BY: Teresa Lamar-Sarno

DATE: 7/19/2018

REVIEWED BY: P. Nicoletti

DATE: 7/20/2018

APPROVED BY:

DATE:

ATTACHMENTS:

Description

Village Attorney Applicant Spreadsheet

Vose Application

Torcivia et al (Shutt & Ansay) Application

Brandenburg Application

Anastasio Application

Toohey Application

Calwell Pacetti (Doney) Application

Fox McCluskey (Waters) Application

Weiss Serota (Ramenda) Application

Oldehoff Letter of Interest

VILLAGE ATTORNEY APPLICANT REVIEW

| FIRM | VOSE LAW FIRM LLP | JOHN J. ANASTASIO | WILLIAM T. TOOHEY PLLC | TORCIVIA, DONLON, GODDEAU & ANSAY, PA | CALDWELL PACETTI EDWARDS SCHOECH & VIATOR LLP | WEISS SEROTA HELFMAN COLE & BIERMAN; AND DAVIS & ASHTON, PA | FOX McCLUSKEY BUSH ROBISON PLLC | BRANDENBURG & ASSOCS. |
|--|---------------------------------|-----------------------------|-------------------------------|---------------------------------------|---|---|--|--|
| OFFICE LOCATION | Winter Park, FL 407-645-3735 | Stuart, FL 772-286-3336 | Palm City, FL 516-509-1372 | West Palm Beach, FL 561-686-8700 | West Palm Beach, FL 561-655-0620 | Boca Raton, FL 561-835-2111 | Stuart, FL | North Palm Beach, FL 561-799-1414 |
| LAWYERS ASSIGNED: | WADE C. VOSE GRETCHEN VOSE | JOHN ANASTASIO | BILL TOOHEY | R. BRIAN SHUTT* CAROLYN ANSAY* | WILLIAM P. DONEY CHARLES SCHOECH | MATTHEW RAMENDA MILTON COLLINS | TYSON WATERS**** | GARY M. BRANDENBURG |
| | | | | PAMALA RYAN* | FRANK S. PALEN** | SUSAN TREVARTHEN* / ** BRETT SCHNEIDER*** KEITH DAVIS* JENNIFER ASHTON | | |
| LAWYERS IN FIRM | 4 | 1 | 1 | 9 | 9 | 70 + 2 | 7 | 1 |
| BAR DISCIPLINE | NONE | YES, 4 CASES | NONE | NONE | NONE | NONE | NONE | NONE |
| MUNICIPAL EXPERIENCE | EXTENSIVE | LIMITED; NEW JERSEY | LIMITED; NEW YORK | EXTENSIVE | EXTENSIVE | EXTENSIVE | LIMITED; 2.5 YRS MARTIN COUNTY | EXTENSIVE |
| MUNICIPAL CLIENTS (as GENERAL COUNSEL) | | | | 8 | | 7 + 9 | 0 | 2 (Pahokee & Clewiston) |
| OVERALL EXPERIENCE | EXTENSIVE | BROAD; 70 APPEALS | BROAD; POLICE LIEUT. | EXTENSIVE; UTILITIES | EXTENSIVE | EXTENSIVE | BROAD; REAL ESTATE | EXTENSIVE |
| CONFLICTS | NONE | UNSTATED | NONE | NONE | NONE | NONE | NONE | NONE |
| LEGAL WRITING | YES, SCHOLARLY | YES, AGGRESSIVE | YES, SCHOLARLY | YES, PROFICIENT | YES, SCHOLARLY | YES, PROFICIENT | NOT SUBMITTED | YES, PROFICIENT |
| HOURLY RATE OR | NOT OFFERED | \$200-\$275 /HR | \$165 /HR | \$200/HR +3% ANNUAL | \$200/\$275/\$100/HR | \$200/HR or | \$300/HR | AS BUDGETED |
| MONTHLY RATE | \$12,000/MO | NOT OFFERED | NOT OFFERED | \$12,000/MO = 60 HRS | NOT OFFERED | \$15,000/MO | NOT OFFERED | \$12,000/MO = 60 HRS |
| ADDITIONAL FEES | NONE, EXCEPT DIRECT COSTS | NOT STATED | NONE, EXCEPT DIRECT COSTS | NONE, EXCEPT DIRECT COSTS | ALL EXPENSES TO BE CHARGED | ALL EXPENSES TO BE CHARGED | ALL EXPENSES TO BE CHARGED | NONE, EXCEPT DIRECT COSTS |
| AVAILABILITY | IMMEDIATE | IMMEDIATE | IMMEDIATE | IMMEDIATE | IMMEDIATE | IMMEDIATE | 4TH THURS CONFLICT | IMMEDIATE |
| RELEVANT FACTORS | SOUTH FLORIDA EXPERIENCE | MARTIN COUNTY EXPERIENCE | MARTIN COUNTY EXPERIENCE | TREASURE COAST EXPERIENCE | TREASURE COAST EXPERIENCE | TREASURE COAST EXPERIENCE | MARTIN COUNTY & MC SCHOOL BOARD EXPERIENCE | FORMER COUNTY ATTORNEY FOR INDIAN RIVER & PALM BEACH LIVES IN PALM CITY |
| REASONS FOR APPLYING | DEPTH, EXPERTISE | BLUEPRINT | AVAILABILITY | TEAM APPROACH | DEPTH, EXPERTISE | JOINT VENTURE | AVAILABILITY | WELL-SUITED |
| RESUME(S) | YES | YES | | YES | YES | YES | YES | YES |

VILLAGE ATTORNEY APPLICANT REVIEW

| | | | | | | | | |
|--------------------|---------|----|---------|---------|---------|----------------------------|---------|---------|
| PROF LIABILITY INS | \$2 MIL | NO | \$1 MIL | \$1 MIL | \$2 MIL | \$3 MIL (WEISS); ? (DAVIS) | \$4 MIL | \$1 MIL |
|--------------------|---------|----|---------|---------|---------|----------------------------|---------|---------|

PROPOSAL FOR

VILLAGE ATTORNEY SERVICES

FOR THE

VILLAGE OF INDIANTOWN, FLORIDA

BY



Contact Person: **Wade C. Vose, Esquire**
 Vose Law Firm LLP
 324 W. Morse Blvd.
 Winter Park, FL 32789
 Phone: 407-645-3735
 Toll-Free: 1-866-789-VOSE
 Fax - 407-628-5670
 E-mail: wvose@voselaw.com
 Web: www.voselaw.com

Dated: July 12, 2018

Proposal for Village Attorney Services
Village of Indiantown, Florida

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July 12, 2018

Village of Indiantown
ATTN: Village Attorney Search
PO Box 398
16550 W Warfield Blvdy
Indiantown, FL 34956-0398

Re: Village Attorney Services for the Village of Indiantown, Florida

Dear Mayor and Village Council Members:

Overview of Firm and Local Government Representation Experience

It is with pleasure that the Vose Law Firm LLP makes this proposal to provide legal services to the Village of Indiantown, Florida. The attorneys of our firm, Becky Vose, Wade Vose, Nancy Stuparich, and Lonnie Groot have extensive local government, land development and litigation experience and have provided legal counsel to one hundred ten (110) local governmental agencies, including holding the position and serving as City Attorney, Town Attorney and County Attorney of twenty five (25) different Florida local governments, and having collective local government, land development and litigation experience of over one hundred twenty (120) years. Lonnie Groot is Board Certified by the Florida Bar in the area of City, County and Local Government Law.

In both 2009 and 2010, the Vose Law Firm was honored by being named "Reader's Choice - Best Law Firm" by the readers of the Orlando Business Journal. The Vose Law Firm is rated A-V by Martindale-Hubbell, which is the highest rating awarded by that legal directory, and the firm has been listed in Martindale-Hubbell's Register of Pre-Eminent Lawyers. All attorneys in our firm are licensed by and in good standing with The Florida Bar. In addition to our professional practice, our attorneys are committed to their communities. Our firm was recently the recipient of the Business of the Year Award by the Seminole County Regional Chamber of Commerce.

Availability and reasons why Vose Law Firm should be chosen as Village Attorney

We would be honored and thrilled to be a part of the infancy and growth of Florida's newest municipality. It appears that the Village of Indiantown may be in

immediate need for legal services and the attorneys of the Vose Law Firm are ready, willing and able to immediately take over the representation of the Village. Because of our extensive local government, land development and litigation experience, we are used to taking over the legal representation of a municipality upon a moment's notice, without the municipality or the firm missing a beat.

The Vose Law Firm has a fast paced and active practice; however, rest assured that we have the time, ability, desire, commitment and passion to provide prompt, high quality legal services to the Village of Indiantown as its Village Attorney at an affordable price. Because of our extensive history of representing municipalities, the attorneys of the Vose Law Firm have a thorough understanding of the scope of work that will be required of the Village Attorney.

Although Vose Law Firm's main office is in Winter Park, this would not present an impediment to providing legal services in the Village of Indiantown. As illustrated on the map following this letter of interest, the attorneys of our firm are used to traveling significant distances to serve our clients. In fact, there are numerous advantages to a municipality in hiring a truly "out of town" law firm to be village attorney. The Vose Law Firm will definitely never have a conflict of interest with the Village of Indiantown. Our firm never has, and never will, represent landowners or potential commercial interests in Indiantown. The attorneys of our firm are essentially immune from pressure that might come to bear upon attorneys and firms with practices located closer to Indiantown.

If chosen to represent the Village of Indiantown, it is proposed that the Vose Law Firm will be the City Attorney, with primary joint responsibility in Wade Vose and Becky Vose for managing the relationship with the City and attending Village Council and other Village meetings. Both Lonnie Groot and Nancy Stuparich will also be available to weigh in on Village of Indiantown matters whenever needed. This collaborative approach to our representation of local government clients has historically worked extremely well to ensure uninterrupted, thorough and expert representation of our local government clients.

At any time, the full resources of the Vose Law Firm will be available to the Village of Indiantown for one reasonable fixed fee monthly payment. That includes the active involvement and representation by four (4) highly experienced and competent local government, land development, and litigation lawyers of the firm. The depth of field and legal expertise as to local government, land development and litigation law representation will be the best available in Florida.

Due to our unique billing arrangement of fixed fee billing, there will never be any hesitancy on the part of elected officials or staff to contact our attorneys as to each and

every matter in which there may be a legal issue involved. Also, due to our extensive background of representation of municipalities, we can provide practical advice as to the functioning and operation of the Village, in addition to purely legal advice.

Based on our firm's broad experience in local government, land development and litigation representation, and representation of municipalities, we feel that our firm is uniquely well qualified to fulfill the duties of Village Attorney for the Village of Indiantown.

Summary of Individual Attorney's Local Government Experience (Resumes later in Proposal)

Wade Vose is the managing partner of the Vose Law Firm. He has been continuously practicing local government law for the last 15 years after graduating from law school with honors from the University of Florida. He is currently the City Attorney for the City of Bunnell in Flagler County, Co-City Attorney for Cocoa Beach in Brevard County, Co-City Attorney for Brooksville in Hernando County, Town Attorney for the Town of Pierson in Volusia County, Outside Counsel to the Seminole County Tax Collector, Special Magistrate for the City of Satellite Beach and Counsel to the Pinellas County County Attorney Oversight Committee. Mr. Vose has recently completed serving as the General Counsel to the Pinellas County Charter Review Commission, General Counsel to the Orange County Charter Review Commission, General Counsel to the Brevard County Charter Review Commission, and General Counsel to the Clay County Charter Review Commission.

Becky Vose is the Founding Partner of the Vose Law Firm. She is currently the Co-City Attorney of Cocoa Beach in Brevard County, the City Attorney of Anna Maria in Manatee County, and Co-City Attorney of Brooksville in Hernando County. Ms. Vose graduated number one in her law school class at the University of Florida in 1973, where she was Senior Class President, Chairperson of the Council of Ten, and on the editorial staff of the Law Review. She began her career as an Assistant City Attorney for Orlando and has continuously practiced local government law, land development law, and litigation for 45 years, and has served as City Attorney for eleven (11) Florida cities, as well as representing numerous other local government entities. Becky Vose was also the founding partner of the Orlando branch office of Shutts & Bowen, a statewide law firm which was the first law firm in the City of Miami, before founding the Vose Law Firm.

Nancy Stuparich has been licensed by The Florida Bar since 1987 and currently serves as City Attorney for Dade City, Assistant City Attorney for Anna Maria, Assistant City Attorney for Cocoa Beach, Assistant City Attorney for the City of Bunnell and Special Magistrate for the City of Davenport. She is the former County Attorney of DeSoto County,

Assistant County Attorney for Escambia County, Assistant General Counsel to the Florida League of Cities, Attorney for the Marco Island Planning Board, Land Use and Environment Special Magistrate for Lake County, Florida Staff Attorney to the Second District Court of Appeals, and Director of Growth Management for Escambia County. In addition to having a law degree from the University of Florida, (Go Gators!), Ms. Stuparich has masters degrees (MPA and MSP) in Public Administration and Urban Planning from Florida State University (Go 'Noles!).

Lonnie Groot is currently the City Attorney of the cities of Sanford and Oviedo both in Seminole County, and Daytona Beach Shores in Volusia County, and has historically been the City Attorney for eleven (11) different Florida cities, and has held numerous other local government legal positions. Mr. Groot was the in-house attorney for the City of Palm Coast, and also served for fifteen (15) years as the Deputy County Attorney/Assistant County Attorney for Seminole County. In addition, Mr. Groot is Board Certified by the Florida Bar in the area of City, County and Local Government Law. Mr. Groot is a proud former Army lawyer with the Judge Advocate General's Corps.

Summary of Fee Proposal

The Request for Proposals for the Village Attorney position indicated that the work required as Village Attorney would approximate 50 billable hours per month. From our experience, that is most likely accurate, assuming that the work merely involves the normal functioning of the Village, and there is no court or administrative litigation work required, and assuming that there are no major issues that necessarily involve a great deal of additional legal work. This is an optimistic assumption, particularly for a newly created municipality. From our experience, litigation cannot always be avoided, and sometimes litigation is needed to proactively protect the best interests of the municipality. Those are the times when legal expenses can get out of hand if the municipality is paying for its legal services by the hour. Our clients believe that paying a fixed fee each month to ensure budgetary certainty and prevent the frightening experience of out of control legal costs is the wise choice.

Our firm typically provides legal services to our municipal clients on a fixed fee, all-inclusive basis. The Vose Law Firm would provide *all legal services* for the Village of Indiantown including general legal services, attendance at meetings, litigation, local bond counsel work, labor and employment law, and representation of its enterprise funds, but not including insurance defense and general bond counsel work, for the monthly retainer of \$12,000 per month, (\$144,000 per year). (Your draft Village budget as of June 28, 2018 listed a budget line for legal services of \$159,166.) Out of pocket costs (such as court filing fees, and court reporter fees), would be billed at cost, with no mark-

up or multiplier. There would be no separately billed copying charges unless copies are made through a third party copying firm, and if needed, that would be cleared in advance with the appropriate Village official. There would be no charge for travel time, telephone, facsimile or word processing charges, and no charge for Westlaw, Lexis, or other legal research fees. No “overhead factor” or “administrative fees” would be charged.

This arrangement would provide budgetary certainty and would result in the Village of Indiantown having *unlimited* access to and support from four highly skilled and experienced local government/land development and litigation attorneys. This arrangement would take the fear of litigation costs out of the equation when third parties threaten litigation if the Village does not meet the demands of that third party. It also makes sense based on the fact that the Village has no significant history on which it can realistically base its expected cost of legal services, and most likely currently does not have sufficient reserves to utilize if hourly legal charges due to litigation or other reasons occurs.

The attorneys of the Vose Law Firm have realized over the years that an all-inclusive retainer results in more frequent contact between the attorneys on one side, and the staff and elected officials on the other, which almost always results in less “false starts,” and unintentional legal errors. The end result in having the municipality’s lawyers involved in projects and work from the very beginning, is that litigation is avoided, and legal work to “fix” a problem is kept to a minimum. The attorneys of the Vose Law Firm wish to truly be a part of the Village of Indiantown and work diligently to keep the Village out of trouble, and ensure the smooth running of the Village without unnecessary litigation or problems.

The attorneys of our firm also understand that a municipality that has a reputation of vigorously defending its interests will be the object of fewer lawsuits. Therefore, our firm strives to maintain the delicate balance of providing legal advice that serves the best interests of the municipality while avoiding unnecessary litigation. But if litigation becomes necessary, the Vose Law Firm vigorously provides a strong and effective offense or defense as needed. It is our firm’s belief that our best interests are inexorably tied to the best interests of our clients. If our clients benefit, so do we.

Insurance and Indemnification

Our firm currently carries professional liability insurance in the amount of two (2) million dollars (\$2,000,000.00) with CNA. Professional liability insurance protects the insured from financial loss due to a variety of claims based on including but not limited to negligent acts, errors and omissions, etc. A copy of the firm’s Professional Liability Insurance Coverage Page is attached at the end of this Proposal. The firm currently

carries general liability insurance for protection of financial loss with Nationwide in the amount of one (1) million dollars (\$1,000,000.00) per occurrence and two (2) million dollars (\$2,000,000.00) in the aggregate. In addition, the firm carries auto liability insurance as part of each occurrence limit of insurance.

The Vose Law Firm will hold harmless, indemnify and defend the Village of Indiantown for losses, costs and expenses arising from liability claims resulting from alleged negligence. The Vose Law Firm will agree to defend, indemnify, and hold harmless, the Village of Indiantown and its officers, employees and agents, from and against all claims which arise out of the performance of the position of Village Attorney as well as negligence in the performance of the position of Village Attorney. Please note that none of the attorneys of the Vose Law Firm have ever had a malpractice claim during their extensive careers.

Because of our vast experience representing municipalities, we have a full understanding of the scope of work expected of the Indiantown Village Attorney. We affirmatively commit that if chosen, we will perform the Village's legal work in a timely and professional manner, and you will be exceptionally satisfied with our legal services.

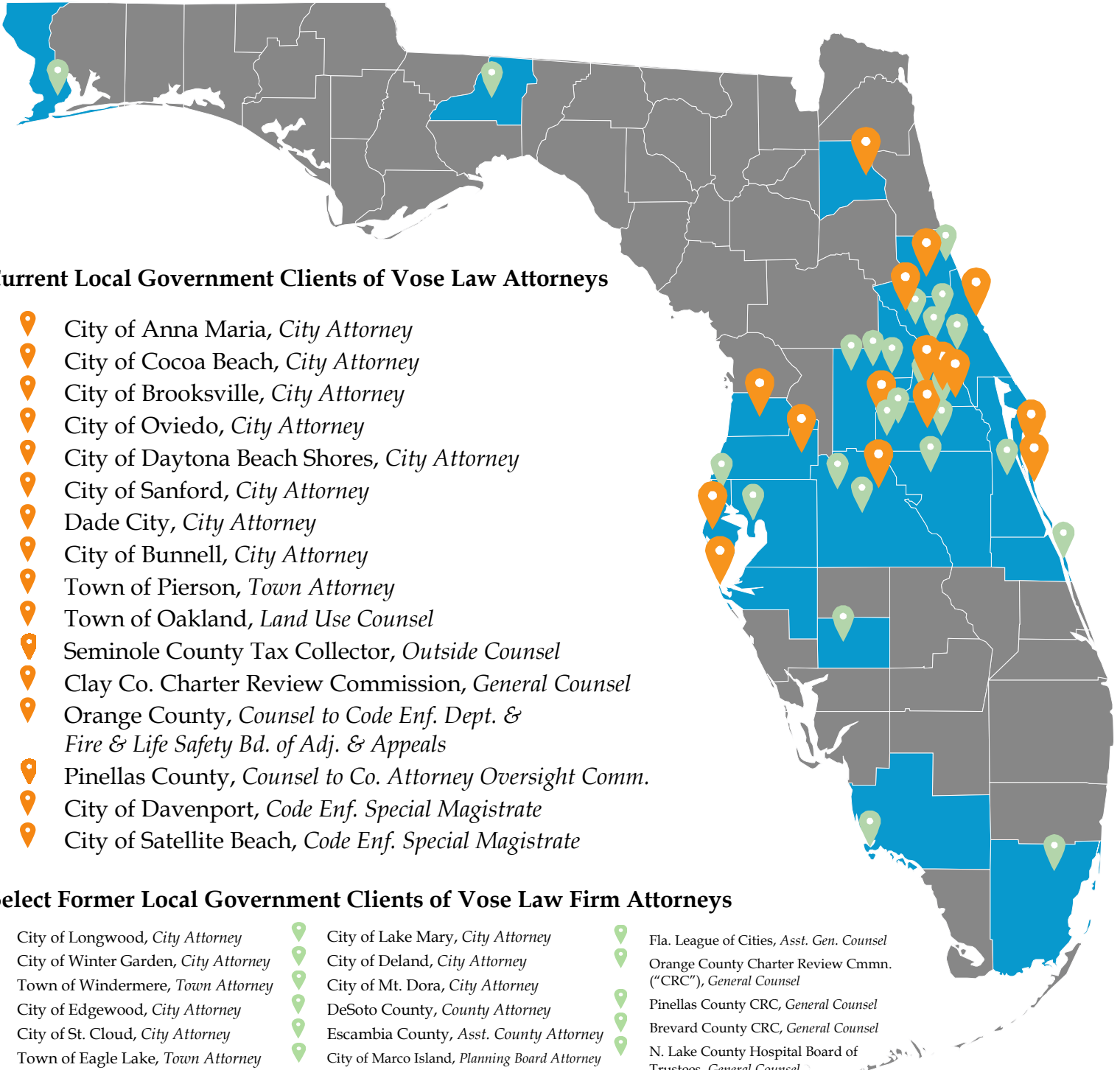
Thank you in advance for your review and consideration of our proposal.

Sincerely,



Wade C. Vose, Managing Partner
Vose Law Firm, LLP

Current & Former Local Government Clients



Current Local Government Clients of Vose Law Attorneys

- City of Anna Maria, *City Attorney*
- City of Cocoa Beach, *City Attorney*
- City of Brooksville, *City Attorney*
- City of Oviedo, *City Attorney*
- City of Daytona Beach Shores, *City Attorney*
- City of Sanford, *City Attorney*
- Dade City, *City Attorney*
- City of Bunnell, *City Attorney*
- Town of Pierson, *Town Attorney*
- Town of Oakland, *Land Use Counsel*
- Seminole County Tax Collector, *Outside Counsel*
- Clay Co. Charter Review Commission, *General Counsel*
- Orange County, *Counsel to Code Enf. Dept. & Fire & Life Safety Bd. of Adj. & Appeals*
- Pinellas County, *Counsel to Co. Attorney Oversight Comm.*
- City of Davenport, *Code Enf. Special Magistrate*
- City of Satellite Beach, *Code Enf. Special Magistrate*

Select Former Local Government Clients of Vose Law Firm Attorneys

- | | | |
|---|--|--|
| City of Longwood, <i>City Attorney</i> | City of Lake Mary, <i>City Attorney</i> | Fla. League of Cities, <i>Asst. Gen. Counsel</i> |
| City of Winter Garden, <i>City Attorney</i> | City of Deland, <i>City Attorney</i> | Orange County Charter Review Cmmn. ("CRC"), <i>General Counsel</i> |
| Town of Windermere, <i>Town Attorney</i> | City of Mt. Dora, <i>City Attorney</i> | Pinellas County CRC, <i>General Counsel</i> |
| City of Edgewood, <i>City Attorney</i> | DeSoto County, <i>County Attorney</i> | Brevard County CRC, <i>General Counsel</i> |
| City of St. Cloud, <i>City Attorney</i> | Escambia County, <i>Asst. County Attorney</i> | N. Lake County Hospital Board of Trustees, <i>General Counsel</i> |
| Town of Eagle Lake, <i>Town Attorney</i> | City of Marco Island, <i>Planning Board Attorney</i> | Lake County, <i>VAB Magistrate</i> |
| City of Deltona, <i>City Attorney</i> | Town of Indian River Shores, <i>Special Land Use Counsel</i> | Hillsborough Co., <i>VAB Magistrate</i> |
| City of Orange City, <i>City Attorney</i> | City of Miami Lakes, <i>Asst. City Attorney</i> | Lake County, <i>Land Use Special Magistrate</i> |
| City of Casselberry, <i>City Attorney</i> | Green Swamp Land Authority, <i>General Counsel</i> | |

Methodology and Approach to Providing Legal Services to the Village of Indiantown

The most important services a city attorney can provide are: i) timely, accurate and thorough legal services that fully meet the needs of the municipality; and ii) proactive resolution of new legal issues and pending claims to resolve issues before they become a problem for the municipality and to prevent future claims against the municipality. There are a myriad of ways to accomplish these dual goals, and the attorneys of the Vose Law Firm are skilled in achieving excellent results for their clients, and in keeping their clients out of unnecessary litigation.

One way that the attorneys of the Vose Law Firm ensure timely, accurate and thorough legal services for their clients is the use of a collaborative approach to the rendering of services. The attorneys and paralegals of the firm have regular weekly meetings to discuss pending issues and cases. As new issues arise, informal meetings are held on a daily basis to discuss them. In this way, at any one time, more than one attorney in the firm is fully cognizant of outstanding issues.

In the unlikely event that the attorney who is primarily responsible to a client is unavailable to deal with an emergency situation, there will always be a back-up attorney to provide the needed services. Since our legal services are typically based on a fixed monthly fee for services, Clients are not charged for time spent discussing client matters at weekly and daily meetings. Opinions rendered by the attorneys of the firm are typically reviewed by another attorney in the firm before such opinion is issued; therefore, our clients regularly have more than one local government/land development attorney weigh in on every issue. All legal services are driven by client need and clients priorities.

This is the same manner and approach utilized by the firm in its representation of our large client base of local governments. It is common that similar issues arise in multiple local governments, and our clients benefit, both financially and substantively from the collaborative representation by multiple attorneys in our firm. The axiom, “two heads are better than one,” is almost always true, and four heads are even better!

An example of proactive and client-centered legal work provided by the Vose Law Firm was for the City of Anna Maria when the firm took over as City Attorney in 2015. Anna Maria had been told by its previous city attorney that there was nothing that could be done about the burgeoning problems with vacation rentals that were plaguing the city. Approximately half of the beloved “bungalows” in Ann Maria that had been the historic

residence of choice in the over hundred year history of that city had already been torn down, and been replaced with what the native Anna Maria citizens pejoratively referred to as “McMansions”. Most “McMansions” held vacation rentals that housed up to 22 people each on small (50’ x 100’) bungalow lots. The problems with vacations rentals were tearing the city apart. At the direction of the Anna Maria City Commission the attorneys of the Vose Law Firm drafted a comprehensive vacation rental ordinance that imposed reasonable, but strict, restrictions on vacation rentals. The Vose Law Firm successfully defended the ordinance in three different court challenges, and settled with \$0 paid to any claimants, over 100 Bert Harris claims. Now, three years later, the city has the vacation rental issues completely resolved to the satisfaction of the city commission, city residents, and vacation rental owners and agents.

An example of proactive and aggressive litigation technique that greatly benefitted a former local government client of the Vose Law Firm is the *Manji v. City of Deltona* case. When the Vose Law Firm became the city attorney of Deltona, (a city with a population of over 87,000), the firm inherited numerous lawsuits. One of those cases was the *Manji* case which was an inverse condemnation action in which there was a claim of damages against the city in excess of \$1 Million. The case had been pending for seven years, and four different attorneys had worked on it for the city, but there had been little substantive progress on the case during that time.

After thoroughly reviewing the case, and talking with the City Manager, the Vose Law Firm recommended noticing the case for trial, and at the same time making an offer of judgment of \$50,000. This was approved by the City Commission. The offer of judgment was declined by the plaintiffs and Becky Vose tried the case in a two day trial. The city won the case, and the court found that the city had no liability whatsoever. The Vose Law Firm then filed a motion to assess fees and costs against the plaintiffs based on the offer of judgment, and at mediation of that motion, **the plaintiffs agreed to pay the City of Deltona \$100,000**, even though the legal fees charged to Deltona by the Vose Law Firm were approximately one-third of that amount. Several other cases that had been languishing under previous Deltona city attorneys were also successfully resolved by the Vose Law Firm through negotiation and mediations.

Another example of the Vose Law Firm’s successful local government representation is litigation involving a proposed RaceTrac service station in the Town of Oakland. Oakland had held firm in its position to prevent direct access from State Road 50 to the site of the proposed RaceTrac, and instead required access via a signalized side street. This was in spite of RaceTrac having received a conditional permit for the state road access from the FDOT. After being turned down by the town, the owner of the property to be utilized by RaceTrac, represented by the Lowndes Drosdick law firm, filed a petition for certiorari in the Orange County Circuit Court and litigation ensued. The

Vose Law Firm was successful in that litigation and the court ruled that the Town of Oakland had the right to deny direct access from a state road despite a conditional permit from the FDOT.

The attorneys of our firm understand that a city that has a reputation of vigorously defending its interests will be the object of fewer lawsuits. Therefore, our firm strives to maintain the delicate balance of providing legal advice that serves the best interests of the city while avoiding unnecessary litigation. But if litigation becomes necessary, the Vose Law Firm vigorously provides a strong and effective offense or defense as needed. It is our firm's belief that our best interests are inexorably tied to the best interests of our clients. If our clients benefit, so do we.

The Vose Law Firm has a fast paced and active practice; however, rest assured that we have the time and ability to provide prompt, high quality legal services to the Village of Indiantown. Because of their extensive history of city attorney and land development work, the attorneys of the Vose Law Firm have a thorough understanding of the scope of work that will be required of the Village Attorney of Indiantown.

As illustrated by the map on the next page, the Vose Law Firm often represents local governments not in the immediate geographic area of its law firm's offices. Being somewhat geographically distant from our governmental clients is often an advantage since conflicts virtually never occur and local pressure from non-client persons or entities is extremely unlikely.

Specific Municipal and other Local Government Experience by Topic

The following is a summary of specific qualifications of the Vose Law Firm in local government representation:

A) Successful handling of City Attorney and other local government attorney matters.

The Vose Law Firm and its attorneys have successfully handled all aspects of City Attorney and local government attorney work for the last 42 years, including acting as and holding the following positions:

- 1) City Attorney, Anna Maria, Florida
- 2) City Attorney, Cocoa Beach, Florida
- 3) City Attorney, Palm Coast, Florida
- 4) City Attorney, Lake Helen, Florida
- 5) City Attorney, Oviedo, Florida
- 6) City Attorney, Orange City, Florida
- 7) City Attorney, Casselberry, Florida
- 8) City Attorney, Daytona Beach Shores, Florida
- 9) City Attorney, Lake Mary, Florida
- 10) City Attorney, Sanford, Florida
- 11) City Attorney, Deland, Florida
- 12) City Attorney, Brooksville, Florida
- 13) City Attorney, Bunnell, Florida
- 14) City Attorney, Dade City, Florida
- 15) City Attorney, Edgewood, Florida
- 16) City Attorney, St. Cloud, Florida
- 17) City Attorney, Eagle Lake, Florida
- 18) City Attorney, Longwood, Florida
- 19) Town Attorney, Windermere, Florida
- 20) Town Attorney, Oakland, Florida
- 21) City Attorney, Winter Garden, Florida
- 22) City Attorney, Deltona, Florida
- 23) City Attorney, Mount Dora, Florida
- 24) Town Attorney, Town of Pierson, Florida
- 25) County Attorney, DeSoto County, Florida
- 26) General Counsel to the Seminole County Tax Collector
- 27) General Counsel to the Pinellas County County Attorney Oversight Committee

- 28) Assistant General Counsel, Florida League of Cities
- 29) Special Counsel to City of Indian River Shores to rewrite Land Development Code
- 30) Assistant County Attorney, Escambia County, Florida
- 31) Assistant City Attorney Marco Island, Florida
- 32) Assistant City Attorney Miami Lakes, Florida
- 33) Assistant City Attorney, City of Orlando, Florida
- 34) Two terms on Panel of Three Experts to Review Proposed Amendments to Brevard County Charter
- 35) Counsel to the City of Palm Coast Charter Review Committee
- 36) Counsel to the City of Oviedo Charter Review Committee
- 37) City Prosecutor for City of Orlando
- 38) City Prosecutor for City of Edgewood
- 39) City Prosecutor for City of Winter Garden
- 40) General Counsel to 2016 Orange County Charter Review Commission
- 41) General Counsel to 2012 Orange County Charter Review Commission
- 42) General Counsel to 2015-2016 Pinellas County Charter Review Commission
- 43) General Counsel to 2015-2016 Brevard County Charter Review Commission
- 44) Counsel to the City of Bunnell Charter Review Committee
- 45) Counsel to the City of Deltona Charter Review Committee
- 46) Counsel to the City of Longwood Charter Review Committee
- 47) Counsel to the City of Winter Garden Charter Review Committee
- 48) Counsel to the City of St. Cloud Charter Review Committee
- 49) Counsel to the Town of Pierson Charter Review Committee
- 50) Counsel to the Town of Oakland Charter Review Committee
- 51) Counsel to the Town of Edgewood Charter Review Committee
- 52) Counsel to the City of Sanford Charter Review Committee
- 53) Counsel to the City of Lake Helen Charter Review Committee
- 54) General Counsel to the Supervisor of Elections, Seminole County, Florida
- 55) General Counsel to Seminole County Expressway Authority
- 56) Attorney for Seminole County Canvassing Board
- 57) Counsel to the Redistricting Committee of the City of Sanford
- 58) Counsel to Planning and Zoning Board of the City of Oviedo
- 59) Counsel to the Planning and Zoning Commission of Seminole County
- 60) Attorney for Metropolitan Transportation Agency for Seminole County
- 61) Counsel to City of Sanford Historic Preservation Board
- 62) Counsel to the City of Maitland Code Enforcement Board
- 63) Special Magistrate for Seminole County
- 64) Counsel to the City of Maitland Lakes Advisory Committee
- 65) Special Magistrate for City of Palm Coast
- 66) Counsel to the Seminole County Code Enforcement Board
- 67) Counsel to Orange/Seminole County Wastewater Transmission Authority

- 68) Counsel to the City of Sanford Planning and Zoning Board
- 69) Counsel to the City of Palm Coast Code Enforcement Board
- 70) Counsel to City of Orlando Civil Service Board
- 71) Counsel to Eagle Lake Planning and Zoning Board
- 72) General Counsel for Green Swamp Land Authority
- 73) Special Counsel to City of Ocoee
- 74) Counsel to the City of Casselberry Code Enforcement Board
- 75) Counsel to the Redistricting Committee of the City of Palm Coast
- 76) Counsel to City of Lake Helen Planning and Land Development Regulation Board
- 77) Special Counsel to Citrus County
- 78) Counsel to City of St. Cloud Planning and Zoning Board
- 79) Counsel to the Escambia County Planning Board
- 80) Special Counsel to City of Casselberry
- 81) Counsel to City of Orlando Historic Preservation Board
- 82) Counsel to the City of Deltona Collective Bargaining Committee
- 83) Special Counsel to Orange County as to Environmental Claims
- 84) Counsel to the City of Orlando Zoning Board
- 85) Counsel to the City of Deltona Planning and Zoning Board
- 86) Counsel to City of Orlando Board of Adjustments
- 87) Counsel to City of St. Cloud Civil Service Board
- 88) Counsel to the City of St. Cloud Code Enforcement Board
- 89) Special Litigation Counsel to Orange County Property Appraiser
- 90) Counsel to City of Longwood Code Enforcement Board
- 91) Attorney for Orange County Fire & Life Safety Code Board of Adjustments & Appeals
- 92) Counsel to City of Longwood Planning and Zoning Board
- 93) Counsel to City of St. Cloud Pension Board
- 94) Counsel to the City of Orlando Board of Adjustments and Appeals
- 95) Special Counsel to Orange County as to §1983 Civil Rights Litigation
- 96) Attorney to the Orange County Code Enforcement Department
- 97) Special Counsel to the Orange County Sheriff's Office
- 98) Special Counsel to the Town of Oakland as to land development and litigation matters
- 99) Attorney for North Lake County Hospital Board of Trustees
- 100) Special Counsel to City of Orlando as to Eminent Domain matters
- 101) Special Counsel to Orange County as to Code Enforcement Foreclosures
- 102) Special Magistrate to the Lake County Value Adjustment Board
- 103) Special Magistrate to the Hillsborough County Value Adjustment Board
- 104) Special Magistrate to the City of Satellite Beach
- 105) Eminent Domain Mediation Services for Florida Turnpike Authority, FDOT, Seminole County, Orange County, Hillsborough County, Lake County, Polk

- County
- 106) Staff Attorney, Second District Court of Appeals, Florida
 - 107) Trial Court Law Clerk, 10th Judicial Circuit, Florida
 - 108) Trial Court Law Clerk, 9th Judicial Circuit, Florida
 - 109) Director of Growth Management, Escambia County, Florida
 - 110) Attorney to the Board of Adjustment, Escambia County, Florida
 - 111) Attorney to the Escambia County Canvassing Board, Florida

B) Land use law including, but not limited to, Florida's Comprehensive Growth Management Act, zoning, redevelopment districts, code enforcement, development agreements, development orders, developments of regional impact, the Bert J. Harris, Jr., Private Property Rights Protection Act, and enterprise zones

The Vose Law Firm and its attorneys have practiced in the field of land use law as part of their representation of Orlando, Pierson, Longwood, St. Cloud, Deltona, DeSoto County, Escambia County, Edgewood, Eagle Lake, Windermere, Oakland, Anna Maria, Winter Garden, and Bunnell, and have represented numerous private clients before various local governmental agencies. Nancy Stuparich is the former Director of Growth Management for Escambia County, and, in addition to having a law degree from the University of Florida, Ms. Stuparich has masters degrees (MPA and MSP) in Public Administration and Urban Planning from Florida State University.

The attorneys of the Vose Law Firm have extensive experience writing and interpreting zoning and land use ordinances and dealing with Florida's Comprehensive Growth Management Act, zoning, redevelopment districts, code enforcement, development agreements, development orders, developments of regional impact, and enterprise zones. The Vose Law Firm recently completed a re-write of the Town of Indian River Shores land development code. They have been involved in significant land use litigation on behalf of public clients as well as private clients. The reported case of *City of Orlando vs. The School Board of Orange County* was handled by Ms. Vose and helped establish the appellate law in Florida relating to the effect of municipal zoning on other public uses.

C) General legal counsel to local officials including such duties as advice, opinions and direction on matters including, but not limited to:

1. *Attendance and legal representation at City Council, City Commission, County Commission and other board meetings*
2. *The "Sunshine Law" and "Public Records Law"*
3. *The ethical standards of elected officials*
4. *Home Rule*
5. *Exercise of police power*
6. *Practices and procedures of local governments*

7. *Legislative vs. Quasi-judicial matters*
8. *Voting conflicts*
9. *Full and public disclosure of financial interest*
10. *Other matters relating to public service as an elected official*
11. *All other areas of municipal law*

The Vose Law Firm and its attorneys have provided such counsel to all the local governmental agencies represented by them including: the cities of Orlando, Longwood, St. Cloud, Edgewood, Winter Garden, Deltona, Eagle Lake, Windermere, Oakland, Pierson, and Bunnell, as well as the non-elected boards represented including the Green Swamp Land Authority, and the North Lake County Hospital Board of Trustees, the Orange County Charter Review Commission and the Brevard County Charter Review Commission, the Pinellas County County Attorney Oversight Committee.

D) The drafting of and revisions to ordinances, resolutions, contracts, inter-local agreements, franchise agreements, settlement agreements, development agreements, litigation pleadings, legal opinions and real estate documents of all types.

The attorneys of Vose Law Firm have extensive experience drafting a plethora of legal documents (routine and specialized) on virtually all subjects dealt with by local government agencies.

E) Representation of local governments in diverse litigation in state, federal and appellate courts, and Alternative Dispute Resolution experience.

The Vose Law Firm has handled litigation for all local governments represented by the firm. The firm currently is handling certain civil litigation for Orange County, land use litigation for the Town of Oakland, land use litigation, Bert Harris defense, and ordinance defense for the City of Anna Maria, and various pieces of litigation for Bunnell. Becky Vose recently won a hotly contested inverse condemnation case which had been pending for seven years. Prior attorneys for that city had repeatedly delayed the trial of that case. When Ms. Vose was appointed City Attorney, she fast-tracked the case, and went to trial. The judgment in the case was completely in favor of the City of Deltona, and eliminated a possible liability of the City of approximately \$1 Million. The Vose Law Firm was successful in recovering \$100,000 for the reimbursement to the City of Deltona of costs, expert witness fees, and attorney's fees against the losing parties in that suit.

All of the attorneys of the Vose Law Firm have significant experience with alternative dispute resolution techniques. Becky Vose became certified as a certified circuit court mediator in the 1990s and has mediated hundreds of cases, most of which involved at least one governmental agency.

F) Condemnation (Eminent Domain) under Florida law

The Vose Law Firm's eminent domain experience includes the full range of eminent domain practice including initial pre-litigation advice and drafting of resolutions, preparation of all pleadings, numerous contested as well as uncontested Order of Taking hearings, settlement negotiations and drafting of settlement documents, mediations, jury trials and appeals. In addition, they have extensive experience dealing with issues of public use, incidental private use, necessity, inverse condemnation, business damages, severance damages, damages to non-profit entities, historically significant properties, cost to cure, consolidation of parcels and down-zoning issues. The firm has recently successfully completed eminent domain proceedings for the City of Deltona.

As both an Assistant City Attorney for Orlando and as Special Counsel to the City of Orlando, Ms. Vose represented the City of Orlando for over 15 years in eminent domain litigation. During that time, she represented the City as to numerous acquisitions including rights-of-way, pedestrian walkways, park lands, land for parking areas, easements for sewage transmission lines, sites for public utility facilities, as well as many other public use projects. As Special Counsel to the City, she handled on a contract basis the acquisition of the property for the Gertrude Walk pedestrian walkway through downtown Orlando as well as the City of Orlando Arena property, (Phases II and III). Ms. Vose also has extensive experience as counsel to property owners of condemned land, and has acted as a certified circuit court mediator in over 100 eminent domain mediations.

G) Counsel and legal services to local government pension boards, and work with employee pension plans including Florida Statutes, Chapter 175 and Chapter 185 Special Risk Plans

The attorneys of the Vose Law Firm have provided legal services to the Cities of Winter Garden, Longwood, Deltona, Edgewood, Eagle Lake and St. Cloud relating to employee pension plans including Florida Statutes, Chapter 175 and Chapter 185 Special Risk Plans.

H) Utility taxes and utility franchise agreements as they relate to Florida municipalities

The Vose Law Firm has extensive experience rendering legal advice and drafting documents relating to utility taxes and utility franchise agreements. The representation of the cities of Deltona, St. Cloud, Longwood, Winter Garden, Eagle Lake, and Edgewood included the drafting and reviewing of numerous franchise agreements with various utility companies. The representation of the City of St. Cloud included handling the complex transaction between the Orlando Utilities Commission and St. Cloud as to the "take over" of the St. Cloud electrical system by the OUC.

I) All aspects of construction law and public works issues

The attorneys of the Vose Law Firm have extensive experience representing both public and private clients as to virtually all aspects of construction law including bid solicitations, bid protests, construction contracts, construction litigation, warranty issues, delay damages, etc. The firm has provided legal services as to Public Works issues for each city represented by the firm.

J) Code enforcement liens and special assessment collection and liens

The Vose Law Firm provided general legal services in the areas of special assessments and special assessment collection and liens for each of the cities represented by the firm. In addition, the firm did extensive work for the City of Longwood in reviewing and collecting long over-due special assessments, and the firm has represented Orange County as to CEB lien foreclosures and settlements for the last 20 years.

K) The creation and administration of Tax Increment Financing Districts (CRAs)

The Vose Law Firm provided legal services to the cities of Cocoa Beach, Dade City, Winter Garden, Longwood, Edgewood, Deltona, Bunnell, and St. Cloud relating to Tax Increment Financing Districts (CRAs). In addition, as general counsel for the North Lake County Hospital Board of Trustees, the firm had significant experience challenging the authority of municipal tax increment financing districts from imposing charges on the special taxing district.

L) The creation and administration of Impact Fee Ordinances and collection of said fees

The Vose Law Firm represented the cities of Orlando, Winter Garden, St. Cloud, Edgewood and Longwood relating to the creation, amendment and administration of impact fee ordinances concerning transportation, public safety, recreation and open space, and drainage.

M) Environmental law including representation before and negotiations with, various State and Federal regulatory agencies

The attorneys of Vose Law Firm have represented public and private clients with regard to environmental matters in conjunction with governmental representation and private real estate practice. As counsel to the Green Swamp Land Authority, such representation included extensive dealings with the Florida Department of Environmental Protection, the

Department of Community Affairs, and two water management districts. While an Assistant City Attorney for Orlando, Ms. Vose worked on the permitting for the Iron Bridge Road Sewage Treatment Plant and for various drainage and other public works projects. As the City Attorney for Longwood, the firm represented the City in matters relating to a RCRA site on City property and was responsible for negotiations with the Florida Department of Environmental Regulation, [now the Florida Department of Environmental Protection (DEP)], and for matters relating to negotiations with the environmental company hired to evaluate the clean-up of the property.

The attorneys of Vose Law Firm have been extensively involved in the permitting of various environmental features have also represented numerous property owners in negotiations with the FDEP and in litigation over environmental contamination issues. Ms. Vose co-authored the book, *Environmental Survival Kit for Realty Professionals*, a book designed to protect realty professionals from losses due to environmental problems. The Florida Board of Realtors purchased the rights to such publication for purposes of including the publication among its educational materials.

N) *Collective bargaining*

The Vose Law Firm has represented local governments it has represented as to numerous collective bargaining matters. The attorneys of the firm are now handling the collective bargaining negotiations for the City of Deltona relating to the negotiations with I.A.F.F. Local 2913, and recently successfully concluded collective bargaining negotiations with the Fraternal Order of Police on behalf the City of Bunnell.

O) *Municipal and County Charters*

The Vose Law Firm and its attorneys have extensive experience in representing cities and counties with regard to charter government, including but not limited to charter amendments, charter review, and the interaction of municipal and county ordinances under governing county charter provisions. Notably, Wade Vose and Vose Law Firm LLP have twice served as General Counsel to the Orange County Charter Review Commission, joining former Orange County Mayor and U.S. Senator Mel Martinez as the only other attorney to have served twice as General Counsel to the Orange County Charter Review Commission. Mr. Vose prepared the ballot title, ballot summary, and amended charter language for each of the 2012 and 2016 CRC-initiated charter amendments, with a specific focus on both clarity of the ballot language for the voter, and strict compliance with the exacting standards of Section 101.161, Fla. Stat. and the extensive specialized case law governing the wording of ballot referenda.

In 2013-2014, Mr. Vose served as counsel to the City of Bunnell Charter Review

Committee, which was engaged in a comprehensive review of its city charter. Mr. Vose provided substantial legal and procedural guidance to that committee throughout its deliberations, resulting in Mr. Vose preparing the ballot titles, ballot summaries, and charter amendment language for seven (7) charter referendum questions placed on the municipal ballot. In 2014, Mr. Vose also served as counsel and facilitator to the City of Deltona Charter Review Committee, which resulted in three (3) charter referendum questions prepared by Mr. Vose placed on the municipal ballot. Mr. Vose recently completed assisting the Town of Pierson with a comprehensive review and rewrite of its town charter, which had not been revised or modernized since 1929.

Mr. Vose and the Vose Law Firm also served as General Counsel to the 2016 Pinellas County (home of St. Petersburg, Clearwater, and Largo) Charter Review Commission, notably the formative first time that CRC has chosen an attorney unaffiliated with the Pinellas County Attorney's Office. Pinellas County is the most urbanized county in the State of Florida, and Mr. Vose and the Vose Law Firm represented that CRC as it reconsidered the balance of power between the County and its 24 municipalities, as well as between the County and its constitutional officers. In addition, Mr. Vose and the Vose Law Firm served as General Counsel to the 2016 Brevard County Charter Review Commission.

P) Representation of Trail Towns

The Vose Law Firm and its attorneys have extensive experience representing towns and cities on the subject trails and related interconnectivity and development. The Town of Oakland is directly on the West Orange Trail and hosts that trail until it hits the border with Lake County. The attorneys of the Vose Law Firm have been actively involved in the legal issues relating to that trail system, its spurs, and related development. The firm's attorneys were also instrumental in providing legal services and obtaining grant funds to implement trails in the City of Deltona.

Q) Representation of Cities relating to gambling issues and "Internet Cafes"

The Vose Law Firm and its attorneys have represented local governments in matters relating to gambling and Internet Cafes. Both the cities of Bunnell and Deltona have faced numerous issues as to illicit gambling activities in the city limits and the Vose Law Firm has provided expert legal services which successfully addressed those issues.

R) Medical Marijuana issues

The attorneys of the Vose Law Firm have made numerous presentations on the subject of medical marijuana and the appropriate manner for local governments to deal with

matters related to that subject. Wade Vose has made numerous public presentations to groups of local government officials on this subject, and has been on several television presentations on this issue. Both Wade Vose and Becky Vose have drafted medical marijuana ordinances for the respective cities they represent. Each municipality has dealt with the issue in a different way dependent upon the respective concerns of each of the local governments represented.

S) *Bert J. Harris Act matters*

The attorneys of the Vose Law Firm are currently heavily involved in Bert J. Harris litigation. The City of Anna Maria has received in the last year over 100 Bert J. Harris claims and all three local government lawyers at the Vose Law Firm have been actively involved in handling those claims. So far, the majority of those claims have been settled with no financial payments by the City, and it is expected that the remainder of the claims will be similarly resolved.

T) *Vacation Rental Issues*

The City of Anna Maria hired the Vose Law Firm as its City Attorney in the middle of its life and death struggle with Vacation Rentals that were about to “take over” the City. The Vose Law Firm drafted one of the State of Florida’s first Vacation Rental Ordinances and successfully defended that ordinance (which evolved over time) in four different legal challenges. The City of Anna Maria has one of the few Vacation Rental Ordinances that has withstood multiple legal challenges, and the City is now flourishing with well-regulated Vacation Rentals. The Vose Law Firm is currently writing a Vacation Rental Ordinance for the City of Cocoa Beach, which has very different concerns regarding Vacation Rentals.

U) *Cities that function as county seats and have colleges*

The City of Bunnell is the County seat of Flagler County and as such, there are numerous issues that arise in the representation of that city that are unique due to the interaction of the city and county. The Vose Law Firm represented the City of Deltona for six years and during that time, many issues arose relating to the interaction between the City and two colleges that were located within the city limits.

V) *Other specific local government experience not listed above*

The Vose Law Firm has also represented cities relating to the following matters:

- i) Civil rights defense – USCA, Title VII litigation
- ii) Litigation relating to qualifications for election

- iii) Redistricting to comply with Federal Court Orders
- iv) Disputes between governmental entities relating to zoning and land use
- v) Intergovernmental agreements
- vi) FEMA reimbursement issues
- vii) Labor law, employee disputes, and employee discharge hearings
- viii) Historic Preservation
- ix) Construction Industry Board of Appeals - establishment and representation
- x) Public Employee Relations Commission hearings and appeals
- xi) Adult entertainment and bookstore ordinances; bingo regulation
- xii) Trap, Neuter, Release feral cat control
- xiii) Plasmapheresis facility regulation
- xiv) Arbor ordinances and regulation
- xv) Sexual harassment litigation
- xvi) Age discrimination litigation
- xvii) Police legal advisor issues
- xviii) Alarm ordinance regulation
- xix) Cable TV regulation
- xx) Cell phone tower regulations
- xxi) Leasing of public property for private use
- xxii) Local counsel for bond issues
- xxiii) Land banking for future public use
- xxiv) Federal grant applications and administration
- xxv) Defense of inverse condemnation claims due to restrictive zoning
- xxvi) Marina leases
- xxvii) Sale/lease back agreements for city
- xxviii) Code Enforcement foreclosures
- xxix) Annexation disputes
- xxx) Noise ordinances
- xxxi) Inverse condemnation actions relating to environmental damages
- xxxii) Residential Prison Diversion Programs
- xxxiii) Mortgage Foreclosure Registration
- xxxiv) Rental Regulatory Ordinances
- xxxv) HUD Uniform Relocation Act requirements
- xxxvi) Construction Regulation Boards
- xxxvii) ADA compliance issues
- xxxviii) Customary Beach Use Ordinances
- xxxix) Declarations of Emergency
- xl) Dogs on the beach regulations and ordinance

GRETCHEN R. H. ("BECKY") VOSE

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EDUCATION AND BAR DATA

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|-----------------------|--|
| Law Degree: | J.D. with High Honors. 1973 University of Florida College of Law Gainesville, Florida |
| Grade Average: | 3.6 (four point system) Number 1 in Class |
| Undergraduate Degree: | B.A. in English with High Honors. 1970 Emory University, Atlanta, Georgia |
| Member/Admitted: | Florida Bar – Member in Good Standing since December 14, 1973 – Bar No. 169913 U.S. District Court, Middle District of Florida U.S. Fifth Circuit Court of Appeals U.S. Eleventh Circuit Court of Appeals U.S. Court of Appeals for Federal Circuit Orange County Bar Association |
| Rated: | AV by Martindale-Hubbell (highest rating awarded) Listed in Martindale-Hubbell Bar Register of Preeminent Lawyers |

BAR RELATED ACTIVITIES AND HONORS

City, County & Local Government Law Section of Florida Bar
Chairperson, Women in Law Committee, Orange County Bar Association
Fee Arbitration Committee, Orange County Bar Association
Central Florida Association of Women Lawyers
Member, Eminent Domain Committees, Florida Bar and American Bar
Volunteer Guardian Ad Litem Orange Co. Legal Aid Soc. - Cited for Exceptional Service

Volunteer to Homeless Advocacy Program of Orange County Bar – Cited for Exceptional Service

LAW SCHOOL POSITIONS AND HONORS

Editorial Board, University of Florida Law Review

Order of the Coif

University of Florida Law School, Senior Class President

Law Center Scholarship

Chairperson of Council of Ten

Verdict staff

Judicial Intern

Foundation Press Award

Co-chairman from Florida Bar Law Student Division to Young Lawyers Section Bar Review Study Course Committee

PUBLICATIONS

Politics Proof Estate Planning & Asset Protection (Book – Published Jan. 2009 by HamiltonBlaine) A guide to shielding your family, businesses, and assets from the legal and financial chaos brought on by 21st Century politics.

Environmental Survival Kit for Real Estate Professionals (Book and disk. Purchased in the 1990's by the Florida Board of Realtors to be used for continuing education purposes.)

PROFESSIONAL AND GOVERNMENTAL POSITIONS HELD

Assistant City Attorney, Orlando, Florida

Managing Partner/ Chairperson, Real Estate Department, Shutts & Bowen Orlando office

Senior Partner, Vose Law Firm, LLP

City Attorney, City of Cocoa Beach

City Attorney, City of Anna Maria

City Attorney, City of Brooksville

City Attorney, City of Winter Garden

City Attorney, City of Edgewood

City Attorney, City of St. Cloud

City Attorney, City of Eagle Lake

City Attorney, City of Longwood

City Attorney, City of Windermere

City Attorney, City of Deltona

Town Attorney, Town of Oakland

General Counsel for North Lake County Hospital Board of Trustees

Attorney for City of Orlando Code Enforcement Board

Special Counsel to City of Orlando as to Eminent Domain matters
Special Counsel to City of Ocoee
Special Counsel to City of Casselberry
Special Counsel to Orange County Sheriff's Office
City Prosecutor for City of Orlando
City Prosecutor for City of Edgewood
City Prosecutor for City of Winter Garden
Special Counsel to Orange County as to Code Enforcement Foreclosures
Special Counsel to Orange County as to Environmental Claims
Special Litigation Counsel to Orange County Property Appraiser
General Counsel for Green Swamp Land Authority
Counsel to Orange County Fire and Life Safety Code Board of Adjustments and Appeals
Special Counsel to Orange County as to §1983 Civil Rights Litigation
Eminent Domain Mediation Services for:
 Florida Department of Transportation
 Florida Turnpike Authority
 Seminole County
 Orange County
 Hillsborough County
 Lake County
 Polk County
Certified Circuit Court Mediator
Nominated for Appointment to Fifth District Court of Appeal

BIOGRAPHICAL SKETCH

GRETCHEN R. H. ("BECKY") VOSE

Ms. Vose graduated first in her law school class at the University of Florida College of Law, in 1973. While a law student, she was Senior Class President, Chairperson of the Council of Ten, on the editorial board of the University of Florida Law Review, recipient for three years of a Law Center Scholarship, recipient of the Foundation Press Award, member of the Verdict (law school newspaper) staff, Judicial Intern, and Co-Chairman from the Florida Bar Law Student Division to Young Lawyers Section Bar Review Study Course Committee. Upon graduation, Ms. Vose was tapped for membership in Order of the Coif.

In 1973, Ms. Vose was admitted to the Florida Bar and began her legal career as an Assistant City Attorney for Orlando. Thereafter she formed the law firm that is the predecessor to the Vose Law Firm. In 1981, Ms. Vose was recruited by Shutts & Bowen to open a branch office in Orlando. Ms. Vose opened the office and served as its first managing partner and partner in charge of the Real Estate Department. While at Shutts & Bowen, Ms. Vose was honored by being nominated by the Judicial Nominating Commission for a seat on the Fifth District Court of Appeal. After 10 years of partnership in Shutts & Bowen, Ms. Vose withdrew from that firm and moved her law practice to Winter Park.

Over the years, Ms. Vose represented numerous large corporate entities, such as Walgreens, BellSouth Telecommunications, Regions Bank, and M&I Bank, innumerable smaller and regional corporations, individuals, and governmental agencies. Ms. Vose has held the positions of City Attorney for the cities of Cocoa Beach, Anna Maria, Brooksville, Winter Garden, Edgewood, Longwood, Windermere, Oakland, Eagle Lake, St. Cloud, and Deltona, and has also done major work for Orange County government as to matters ranging from complex environmental litigation and the defense of §1983 Civil Rights claims. She also represented the Orange County Property Appraiser (OCA) in a multi-year complex intellectual property lawsuit about the software utilized by the Property Appraiser's office.

Ms. Vose has taught at numerous continuing legal education seminars and presentations to other attorneys relating to a variety of business and legal topics. In addition, Ms. Vose has regularly presented seminars and instructional sessions for employees and officials of both private and governmental clients.

Both Ms. Vose and the Vose Law Firm are rated A-V, which is the highest rating given by Martindale-Hubbell. Ms. Vose and the Vose Law Firm have also been listed in

the Martindale-Hubbell Bar Register of Preeminent Lawyers. The Vose Law Firm was honored by being named “Reader’s Choice – Best Law Firm, 2009” and “Reader’s Choice – Best Law Firm, 2010”, by the readers of the Orlando Business Journal.

WADE CHRISTOPHER VOSE

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Cell: (321) 299-2289
Facsimile: (407) 628-5670
Email: wvose@voselaw.com



EDUCATION AND BAR DATA

| | |
|----------------------|---|
| Legal | University of Florida College of Law Gainesville, FL J.D. with Honors, May 2003 Book Awards: Environmental Law Intellectual Property Law Family Law Recipient of the Levin College of Law Leonard Scholarship |
| Undergraduate | University of Florida Gainesville, FL B.A. in Political Science, with Honors, May 2000 National Merit Scholar / Florida Academic Scholar Omicron Delta Kappa Leadership Honorary |
| Preparatory | Bishop Moore Catholic High School Orlando, FL Graduated with Highest Honors, May 1996 Student Body President Valedictorian |
| Admitted | Florida Bar – Admitted and Member in Good Standing – Bar No. 685021 U.S. District Court, Middle District of Florida U.S. District Court, Northern District of Florida Orange County Bar Association City, County, and Local Government Law Section – Florida Bar |

PROFESSIONAL EXPERIENCE

Vose Law Firm LLP (Winter Park, FL)

Partner - As partner in an AV-rated law firm focusing in local government representation, real estate and development law, and complex business litigation, responsible for every segment of the representation and litigation process, including representation of government boards, client counseling, evaluation of claims and defenses, development of litigation strategies, preparation of pleadings, discovery, motions, and memoranda, and argument before trial and appellate courts. January 2004 to present.

City of Bunnell, Florida (Bunnell, FL)

City Attorney - As City Attorney for this Flagler County city that serves as county seat and is the second largest city geographically in Florida (after Jacksonville), responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments including planning, finance, police, grants, and public works, drafting city ordinances and resolutions, handling real estate transactions, and conducting litigation on behalf of the City. October 2013 to present.

Town of Pierson, Florida (Pierson, FL)

Town Attorney - As Town Attorney for the Town of Pierson, a small Volusia County town known as the "Fern Capital of the World," responsible for providing legal advice to the Town Council and other Town boards at public meetings, advising all Town staff, drafting ordinances and resolutions, and conducting litigation on behalf of the Town. June 2015 to present.

City of Anna Maria, Florida (Anna Maria, FL)

City Attorney - Vose Law Firm, Becky Vose, and Wade Vose jointly serve as City Attorney to the City of Anna Maria, an idyllic coastal city on Anna Maria Island in the Gulf of Mexico. Responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments, drafting city ordinances and resolutions, and conducting litigation on behalf of the City. March 2015 to present.

City of Cocoa Beach, Florida (Cocoa Beach, FL)

City Attorney - Vose Law Firm, Becky Vose, and Wade Vose jointly serve as City Attorney to the City of Cocoa Beach, a vibrant beach city on a barrier island off the east coast of Florida. Responsible for providing legal advice to City Commission and other City boards at public meetings as needed, advising all city departments, drafting city ordinances and resolutions, and conducting litigation on behalf of the

City. July 2017 to present.

Seminole County Tax Collector (Sanford, FL)

Outside Counsel – Responsible for providing legal advice and representation concerning compliance with all statutory and regulatory requirements relating to the rights and duties of Tax Collector under Florida law, initiating, maintaining, and defending lawsuits on behalf of the Tax Collector, land use and construction law matters relating to the siting, construction and maintenance of branch offices, labor law matters relating to Tax Collector employees, legal representation relating to statutorily-governed interactions with the Seminole County Property Appraiser and the Seminole County Clerk of the Circuit Court, legal representation relating to Department of Revenue budgeting and budget amendment processes, representation, advice, and preparation of proposed legislation relating to legislative affairs matters, and all other related matters as requested by the Tax Collector. January 2017 to present.

Pinellas County, Florida (Clearwater, FL)

Counsel, County Attorney Oversight Committee – The County Attorney Oversight Committee is a unique collegial body created pursuant to Section 4.02 of the Pinellas County Charter, consisting of the seven members of the Pinellas County Commission, plus the five Pinellas County constitutional officers (Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court), organized to select, terminate, and annually review, the Pinellas County Attorney. As Counsel to the Committee, responsible for providing outside and impartial legal advice throughout its process of selection, termination, and annual review of the Pinellas County Attorney. February 2017 to present.

City of Satellite Beach, Florida (Satellite Beach, FL)

Special Magistrate – As the first Code Enforcement Special Magistrate for the City of Satellite Beach, a coastal city located near Patrick Air Force Base in Brevard County, responsible for serving as an impartial magistrate to adjudicate violations of the City of Satellite Beach code of ordinances. February 2017 to present.

City of Deltona, Florida (Deltona, FL)

Chief Assistant City Attorney – Vose Law Firm and its Founding Partner, Becky Vose, served for over half a decade as City Attorney to the City of Deltona, an 87,000 resident community in Volusia County. As Chief Assistant City Attorney, responsible for providing legal advice to City Commission and other City boards at public meetings, as necessary, drafting of city ordinances and ordinance amendments, and litigation on behalf of the City. June 2011 to February 2017.

2016 Orange County Charter Review Commission (Orlando, FL)

General Counsel - As General Counsel to the commission empowered by the Orange County Charter to conduct a comprehensive study of all phases of county government and place proposed charter amendments on the ballot for voter approval, responsible for advising the 2016 Orange County Charter Review Commission ("CRC") as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, preparation of charter amendment and ballot language, and preparation of CRC final report. March 2015 to November 2016.

2016 Pinellas County Charter Review Commission (Clearwater, FL)

General Counsel - As General Counsel to the commission empowered by the Pinellas County Charter to review, on behalf of the citizens of Pinellas County, the operation of county government in order to recommend amendments to the Pinellas County Charter, responsible for advising the 2016 Pinellas County Charter Review Commission ("CRC") as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. September 2015 to November 2016.

2016 Brevard County Charter Review Commission (Viera, FL)

General Counsel - As General Counsel to the commission empowered by the Brevard County Charter to review and propose amendments to the Brevard County Charter, responsible for advising the 2016 Brevard County Charter Review Commission ("CRC") as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, and preparation of charter amendment and ballot language. October 2015 to November 2016.

2012 Orange County Charter Review Commission (Orlando, FL)

General Counsel - As General Counsel to the commission empowered by the Orange County Charter to conduct a comprehensive study of all phases of county government and place proposed charter amendments on the ballot for voter approval, responsible for advising the 2012 Orange County Charter Review Commission ("CRC") as to all legal matters, including legality and constitutionality of CRC actions and proposed charter amendments, representation of CRC at public meetings, preparation of charter amendment and ballot language, and preparation of CRC final report. August 2011 to November 2012.

Eighth Judicial Circuit State Attorney's Office (Gainesville, FL)

Certified Legal Intern – Responsible for prosecution of criminal cases as the sole Certified Legal Intern in the Bradford County, Florida office of the Eighth Circuit State Attorney’s Office. January 2003 to May 2003.

Ninth Judicial Circuit of Florida (Orlando, FL)

Judicial Law Clerk - Clerked for Circuit Judge Walter Komanski. Responsible for conducting legal research, drafting legal memoranda, final judgments and other judicial orders, and assisting the judge throughout a variety of trials and hearings. May 2001 to August 2001.

PROFESSIONAL ACTIVITIES, AWARDS, AND COMMUNITY INVOLVEMENT

Orange County Government

Authority Member – Orange County Industrial Development Authority (November 2014 to May 2018) – Serve as one of five governing members of an industrial development authority responsible for issuing industrial development revenue bonds for the purpose of financing the costs of industrial or manufacturing plants, research and development parks, agricultural processing or storage facilities, warehousing or distribution facilities, headquarters facilities, tourism facilities, educational facilities, commercial projects in enterprise zones, and health care facilities.

Chairman – Neighborhood Grants Advisory Board (Chairman – Oct. 2008 to Oct. 2009, Vice Chairman – Oct. 2007 to Oct. 2008, Member – Aug. 2006 to May 2011) – Responsible for approving criteria for neighborhood grant programs, overseeing the application review process, approval of recommended grant recipients, hearing appeals from grant applications, and monitoring progress of grant recipients.

Board Member – Orange Blossom Trail Development Board (August 2007 to Oct. 2010) – Responsible for promoting the economic, social, and aesthetic revitalization of the south Orange Blossom Trail area.

City of Maitland

Member – Board of Zoning Adjustment (November 2014 to December 2016) – Responsible for reviewing requests for variances from the regulations of each City of Maitland zoning district as they relate to area, size of structures, yards and open spaces, heights, etc., with the only appeal of their rulings to the Orange County Circuit Court.

Orlando Business Journal

Forty Under 40, Class of 2009 – Recipient of the Orlando Business Journal’s prestigious Forty Under 40 Award, spotlighting forty of the Central Florida

region's top young business and civic leaders who demonstrate consistent, outstanding professional achievement and a commitment to community service.

"Reader's Choice - Best Law Firm, 2009 & 2010" - Voted by the readers of the Orlando Business Journal.

The Federalist Society - Orlando Lawyer Division

Vice President (2003 to 2008) - The Federalist Society is an organization of 25,000 lawyers, law students, and scholars dedicated to the purpose of sponsoring fair, serious, and open debate about the proper role of the courts, the rule of law, and the need to enhance individual freedom.

Winter Park Chamber of Commerce

Member, Government Affairs Committee - Member of the Winter Park Chamber committee responsible for advocacy on behalf of the Winter Park business community at the local and state level and educating Chamber membership about current affairs effecting the Winter Park business community.

BusinessForce - Orlando Regional Chamber of Commerce

Alumnus, Class 1 - Central Florida Political Leadership Institute - Member of the exclusive 25-person inaugural class of Business Force's Political Leadership Institute, a program designed to identify and equip Central Florida's next generation of elected leaders before they formally choose to run for a specific public office.

Rotary Club of Winter Park

Member of Board of Directors (July 2011 to June 2012)

Leadership Winter Park

Class Member, Class 20 (September 2009 to August 2010)

Leadership Orlando

Alumnus, Class 72 (March 2007 to October 2007)

Leadership Apopka

Alumnus, Class 1 (January 2008 to November 2008)

Orange County Bar Association

Committee Member - Young Lawyers Oath of Admissions Committee (June 2004 to September 2005)

Tiger Bay Club of Central Florida

Member (January 2005 to present)

Apopka Area Chamber of Commerce

Businessman of the Year 2008-2009

Chairman - Apopka Area Political Alliance (Apopka Chamber PAC) (August 2008 to February 2012)

Chairman - Issues & Government Affairs Committee (August 2007 to August 2009)

Member of Board of Directors (June 2007 to February 2012)

NANCY ANN M. STUPARICH

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EDUCATION

Florida State University, B.A., cum laude, 1982. (Government/International Affairs)
University of Florida, J.D., 1985 (Law)
Florida State University, MPA & MSP, 1997 (Public Administration/Urban Planning)

PROFESSIONAL POSITIONS

Public Sector Representation:

City Attorney, Dade City, Florida. Primary attorney of the Vose Law Firm responsible for representation of the City of Dade City, Florida, as required by contract, including but not limited to attendance at all public meetings of the Dade City Commission, Dade City appointed boards and committees; drafting ordinances, resolutions, contracts; working with Charter Officers and city staff on issues that arise; monitoring pending insurance claims; working with outside counsel; and other duties as needed.

County Attorney, DeSoto County, Florida. Responsibilities included independently providing legal services to the DeSoto County Board of County Commissioners; participation in public hearings; drafting ordinances and negotiation of contracts; defending the county in litigation matters; working with outside legal counsel; and other duties as needed.

Assistant City Attorney, City of Anna Maria, Florida. Responsibilities include handling of 112 Bert J. Harris claims filed relating to recently enacted restrictions on occupancy of Vacation Rentals. So far over 80 of the claims have been settled at no monetary cost to the City, and it is anticipated that the remainder of the claims will be similarly settled.

Assistant County Attorney, Escambia County, Florida. Responsibilities included representing the county on general local government matters; drafting ordinances, resolutions and contracts; coordination of real estate acquisition and disposal; serving as

the attorney to the Board of Adjustment and the Escambia County Canvassing Board; responding to questions from staff and County Commissioners regarding local government issues; and other projects as assigned by the County Attorney.

Assistant General Counsel, Florida League of Cities. Responsibilities included legislative lobbying; serving as a liaison to the Governor's Property Rights Study Commission II; general legal research concerning municipal issues; preparing appellate briefs; preparing the Florida Municipal Attorneys Newsletter; assisting in purchase of headquarters building; serving as staff to the Juvenile Justice/Criminal Policy Committee; responding to correspondence and questions from member city officials; and other duties as assigned.

Director Growth Management, Escambia County, Florida. Responsibilities included directing and managing the Escambia County Department of Growth Management, which at the time consisted of the Divisions of Development Services (development order approval), Long-Range Planning (county-wide growth management planning) and Technical Services (management functions); presentations to the Board of County Commissioners and other public groups; and other duties as assigned by the County Administrator.

Of Counsel, Weiss, Serota, Helfman, Pastoriza, Cole, & Boniske, P.L. Responsibilities included providing legal services to various municipalities regarding land use and local government matters; representing quasi-judicial boards; drafting ordinances and resolutions; researching municipal codes, and other duties as assigned.

Staff Attorney, Second District Court of Appeal. Responsibilities included preparing legal memoranda; reviewing appellate briefs and pleadings; presenting oral argument waived cases to panels of three appellate judges; and assisting in drafting & proofing appellate opinions for the Honorable Judge John Scheb (deceased.).

Trial Court Law Clerk, 10th Judicial Circuit. Responsibilities included reviewing civil complaints and pleadings; preparing legal memoranda and providing assistance to several circuit civil judges on complex litigation; and other duties as assigned.

Private Sector Representation:

General Counsel, Maruti Fleet Management, Inc. Responsibilities included management of pending insurance claims with adjusters, mediation and settlement of pending litigation, contract review, personnel issues, business development; other duties as required.

Risk Manager, Florida Lawyers Mutual Insurance Company. Responsibilities included developing and delivering a risk management service to insured attorneys to avoid potential legal malpractice claims; presentation of continuing legal education seminars to attorneys; drafting a risk management newsletter and digital risk alerts; other duties as required.

Associate, Freeman, Haber, Rojas & Stanham, LLP. Responsibilities included closing real estate transactions involving primarily foreign clients; drafting corporate documents, agreements and real estate documents; review of title and land use issues; review of commercial leases; supervision of paralegals; legal research; and other duties as assigned.

Underwriting Counsel, Attorneys Title Insurance Fund, Inc. Responsibilities included identifying and resolving title defects; teaching attorneys and paralegals real estate closing procedures using ATIDS and DoubleTime software program; publication of legal articles for THE FUND CONCEPT; speaking and participating as a panelist at the Fund's Annual Assembly and Affiliate Assembly; and other duties as assigned.

Title Attorney, Lawyers Title Insurance Corporation. Responsibilities included coordinating and closing commercial real estate transactions; reviewing and preparing real estate documents in conjunction with the issuance of title insurance; responding to underwriting questions; and other duties as assigned.

PROFESSIONAL, COMMUNITY AFFILIATIONS, PUBLICATIONS & ACTIVITIES:

CURRENT: Appointed to serve as a Florida Land Use & Environmental Dispute Resolution Special Magistrate for Lake County, Florida, appointed member of the City of Clermont Community Redevelopment Association; appointed member of the 18th Judicial Circuit Unauthorized Practice of Law Committee "B"; member of the South Lake Chamber of Commerce Economic and Policy Committee, member of the Lake County Wellness Way Leadership Committee. **FORMER:** graduate of the City of Oviedo Citizens Police Academy, member of the Executive Council of the City, County and Local Government Section of The Florida Bar; member of the LOMAS Advisory Board; The Florida Bar Convention Committee; former member of The Florida Bar Senior Committee, The Florida Bar Diversity Committee and other bar committees; Certified Circuit Court Mediator (24865R); participant in the Hillsborough County Guardian Ad Litem Program; co-chair of the International Energy Conference, Rio de Janeiro, Brazil, member of Leadership Miami; member of the Northwest Florida Water Management District Board and chair of the Board's Lands Committee and Secretary to the Board; member of the American Planning Association; chair of the Organizing Committee for the Quietwater Thunder Formula One/Two Power Boat Grand Prix Race, Pensacola Sports Association (1999); graduate Leadership Pensacola; adjunct professor, University

of West Florida, Legal Administration Program; member, Junior League of Pensacola; sustainer in Miami Junior League; graduate, City of Pensacola Citizens Police Academy; graduate, Escambia County Sheriff's Citizens Law Enforcement Academy; member of Five Flags Rotary International; member of Panhandle Tiger Bay Club; commissioner, City of Pensacola Planning Board; member Escambia and Santa Rosa County Bar Association; member of Pensacola Runners Association, race director, 1997 Downtown Christmas 5K Run & inaugural 1998 PRA Downtown Christmas Parade Dash; co-author of "Private Property Rights: Regulating the Regulators" published in The Florida Bar Journal, January 1996; Tallahassee Women Lawyers Board Member (1993-1995); **PERSONAL:** single; raised in Tampa, Florida; runner/triathlete, member of 50 States Marathon Club, finisher of the Great Floridian Triathlon (Clermont, Florida).

Lonnie N. Groot

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EDUCATION AND CERTIFICATION

Florida State University College of Law, Juris Doctor degree, 1976

Florida State University, Bachelor of Science degree, (Criminology Major/Government Minor) 1973

Board Certified by The Florida Bar in the area of City, County, and Local Government Law

Completed Special Master's Training with the Florida Conflict Resolution Consortium.
Completed Circuit Mediator Training

Attended numerous continuing legal education courses on local government law, growth management law, land use law, administrative and environmental law and numerous other subjects

Graduate of Judge Advocate General's School, Charlottesville, Virginia, and also attended numerous other short courses at the school; numerous advanced courses at Judge Advocate General's School; numerous courses U.S. Army Infantry Officers Basic Course.

PROFESSIONAL EXPERIENCE

October, 2008 - Present:

Emphasis in municipal law, governmental and land use law. Serve as primary legal counsel to the cities of Sanford, Oviedo, Daytona Beach Shores, Lake Helen, and Mount Dora. Appointed to serve as special magistrate for Seminole County. Served as one of the three attorneys serving on the legal expert review panel for the Brevard County, Florida Charter review issues (second appointment to this position). Also, represent, from time-to-time, other municipal governments in various capacities. Additionally, engage in a

Proposal for Village Attorney Services
Village of Indiantown, Florida

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*V*OSE LAW FIRM LLP
ATTORNEYS & COUNSELORS AT LAW

general practice focusing on real estate and development matters. Work involves day-to-day relationships and interactions with paralegals and legal assistants. I am teaching business law classes as an adjunct professor at Embry Riddle Aeronautical University and Seminole State College.

March, 2008 – September, 2008:

Worked in Tallahassee, Florida, mostly on a diverse array of Gadsden County governmental matters. Worked on development issues and retained as expert witness in land use and planning matters.

December 1, 2006 –February 29, 2008:

City Attorney; City of Palm Coast, Florida. Chief legal officer and Charter officer of the City

July 1, 2001 - November 30, 2006:

Emphasis in municipal law, governmental and land use law. Represented numerous municipalities and other governmental entities, such as the Seminole County Supervisor of Elections, Seminole Community College, the Orange/Seminole County Wastewater Transmission Authority, Seminole County, Sanford, Oviedo, Lake Mary, Casselberry, DeLand, Daytona Beach Shores, Orange City, Lake Helen, Lake County, Maitland, Edgewood, Palm Coast, Titusville, and Citrus County. Appointed Acting City Manager of Oviedo for a period of two months. Served as Acting City Manager for Sanford on two occasions. Served as one of the three attorneys serving on the legal expert review panel for the Brevard County Charter Review Commission.

January, 2000 to June 30, 2001:

Partner, Shutts & Bowen, LLP. Specializing in land use, governmental affairs, and real property matters. City Attorney for the City of Lake Helen. Represented the Florida Republican Party in litigation involving Seminole County and Martin County after the 2000 Presidential Election.

July, 1985 to December 1999:

Deputy County Attorney/ Assistant County Attorney, Seminole County, Florida. Served as General Counsel for the Seminole County Expressway Authority. In addition to representing the Board of County Commissioners of Seminole County, represented and advised, from time-to-time, the Clerk of Circuit Court, Supervisor of Elections, Seminole

County Tax Collector, Seminole County Property Appraiser, Seminole County Code Enforcement Board, Seminole County Canvassing Board, Metropolitan Transportation Agency and the City of Lake Mary.

While with Seminole County, had major involvement in major land use/comprehensive planning cases, drafted major parts of the Seminole County Comprehensive Plan and implementing land development regulations, and was lead counsel to all of the County's planning and land use departments and divisions.

July, 1979 to July, 1985:

Army Lawyer, Judge Advocate General's Corps. Served as Judge Advocate, U.S. Army Missile Command, Redstone Arsenal, Alabama; U.S. Army Command, Berlin, Germany; and the XVIII Airborne Corps at Fort Bragg, North Carolina. Criminal Prosecutor and defense counsel, military magistrate, legal assistance attorney, claims and hospital advisor, and administrative law attorney.

COMMUNITY INVOLVEMENT, PUBLIC SERVICE

Appointed by Governor Crist to serve on the East Central Florida Regional Planning Council. Former member of the Board of Directors of Boys and Girls Club of Volusia/Flagler. Very active in Florida Law Related Education programs including membership on Board of Directors of Florida Law Related Education, Inc. Former member of Sanford Housing Authority, City of Deltona City Manager Selection Committee, numerous Volusia County School committees, three time County Council appointee to the Deltona Municipal Services District Advisory Board, County Council appointee to the Forever Volusia Natural Lands Acquisition Committee, and City of Deltona Charter Review Commission. Volunteer Mediator, Seminole County Bar Association, Board of Advisors, Boston Avenue School for the Handicapped (DeLand, Florida), Board of Directors, Southwest Volusia County YMCA, and various other *ad hoc* activities.

AWARDS

President's Volunteer Service Award (2010); National Association of Counties Award for Innovative Litigation Strategies in Eminent Domain Litigation (1997); George Washington Medals of Honor, 1983 and 1984 (Freedom's Foundation of Valley Forge, Pennsylvania); Army Commendation Medal, 1985 (U.S. Army Missile Command); Meritorious Service Medal, 1982 (XVIII Airborne Corps); Army of Occupation Medal, 1983 (Berlin); Army Service Ribbon, 1979 (JAG School); and various other certificates and

commendations for job performance and public service.

PUBLICATIONS

"Suspension and Recall of Municipal Officials," 2002 Florida Municipal Attorneys Annual Seminar; column in Brechner Report; Article "Fights Between The Family; Watch Your Steps!" (regarding Chapter 164, Florida Statutes), County Attorney's Newsletter (August, 1990); Article "Comprehensive Planning: "Local Zoning and the DRI Process, "11th Annual Local Government Law in Florida Seminar (The Florida Bar, 1988). Numerous newspaper articles on law and public policy subjects. Drafted Model Specification for Sexual Harassment Charge, U.S. Army "Trial Counsel Journal" (1983).

PERSONAL

Born September 6, 1950, Tampa, Florida
Married with seven daughters

FEE PROPOSAL

All Inclusive Retainer for City Attorney Legal Services Including All Legal Services, Litigation and Local Bond Counsel Work

The Vose Law Firm would provide all legal services for the Village of Indiantown including general legal services, attendance at meetings, litigation, local bond counsel work, labor and employment law, and representation of its enterprise funds, but not including insurance defense and general bond counsel work, for the monthly retainer of \$12,000 per month, (\$144,000 per year).

This arrangement would provide budgetary certainty and would result in the Village of Indiantown having unlimited access to and support from four highly skilled and experienced local government/land development and litigation attorneys.

The attorneys of the Vose Law Firm have realized over the years that an all-inclusive retainer results in more frequent contact between the attorneys on one side, and the staff and elected officials on the other, which almost always results in less “false starts,” and unintentional legal errors. The end result in having the City’s lawyers involved in projects and work from the very beginning, is that litigation is avoided, and legal work to “fix” a problem is kept to a minimum. The attorneys of the Vose Law Firm wish to truly be a part of the Village of Indiantown and work diligently to keep the City out of trouble, and ensure the smooth running of the City without unnecessary litigation or problems.

The attorneys of our firm also understand that a city that has a reputation of vigorously defending its interests will be the object of fewer lawsuits. Therefore, our firm strives to maintain the delicate balance of providing legal advice that serves the best interests of the City while avoiding unnecessary litigation. But if litigation becomes necessary, the Vose Law Firm vigorously provides a strong and effective offense or defense as needed. It is our firm’s belief that our best interests are inexorably tied to the best interests of our clients. If our clients benefit, so do we.

Out of pocket costs (such as court filing fees, and court reporter fees), would be billed at cost, with no mark-up or multiplier. There would be no separately billed copying charges unless copies are made through a third party copying firm, and if needed, that would be cleared in advance with the appropriate City official. There would be no charge for travel time, telephone, facsimile or word processing charges, and no charge for Westlaw, Lexis, or other legal research fees. No “overhead factor” would be charged.

The Request for Proposals for the Village Attorney position indicated that the work required as Village Attorney would approximate 50 billable hours per month. From our experience, that is most likely accurate, assuming that there is no court or administrative litigation work required, and assuming that there are no major issues that necessarily involve a great deal of additional legal work. This is an optimistic assumption, particularly for a newly created municipality. From our experience, litigation cannot always be avoided, and sometimes litigation is needed to proactively protect the best interests of the municipality. Those are the times when legal expenses can get out of hand if the municipality is paying for its legal services by the hour. Our clients believe that paying a tiny bit more each month to ensure budgetary certainty and prevent the frightening experience of out of control legal costs is the wise choice.

REFERENCES

City Attorney, City of Anna Maria

City of Anna Maria

10005 Gulf Drive

Post Office Box 779

Anna Maria, FL 34216-0779

Reference: **Dan Murphy, Mayor**
(P) 941-708-6130 ext. 124

City Attorney, City of Cocoa Beach

City of Cocoa Beach

P.O. Box 322430

Cocoa Beach, FL 32932-2430

References: **Ben Malik, Mayor**
(P) 321-794-6668

James McKnight, City Manager
(P) 321-868-3248

Former City Attorney, City of Deltona

City of Deltona

2345 Providence Blvd.

Deltona, FL 32725

References: **Hiedi Herzberg, Vice-Mayor**
(P) 386-299-2896

Jane Shang, City Manager
(P) 386-279-2401

Special Counsel for the Town of Oakland for Land Development and Litigation

Town of Oakland

220 N. Tubb Street

Oakland, FL 34760

References: **Dennis Foltz, Town Manager, Town of Oakland**
 (P) 407-656-1117 ext. 2103

Kimberly Gay, Town Clerk, Town of Oakland
 (P) 407-656-1117 ext. 2104

Signed Certification of **No Bar Discipline or Court Sanctions**

Pursuant to the requirements of the Request for Proposals, this statement certifies that no Bar discipline has been sustained and no court sanctions have been levied against any attorney with Vose Law Firm LLP.



Wade C. Vose, Managing Partner
Vose Law Firm, LLP



**LAWYERS PROFESSIONAL LIABILITY POLICY
DECLARATIONS**

Agency:
700324

Branch:
912

Policy Number:
169671583

Insurance is provided by Continental Casualty Company,
333 S. Wabash Ave. Chicago IL 60604
A Stock Insurance Company.

- 1. NAMED INSURED AND ADDRESS:**
Vose Law Firm, LLP
324 West Morse Boulevard
Winter Park, FL 32789

NOTICE TO POLICYHOLDERS:

This is a Claims Made and Reported policy. It applies only to those claims that are both first made against the insured and reported in writing to the Company during the policy period. Please review the policy carefully and discuss this coverage with your insurance agent or broker.

2. POLICY PERIOD:

Inception: 01/01/2018

Expiration: 01/01/2019

at 12:01 A.M. Standard Time at the address shown above

3. LIMITS OF LIABILITY:

Inclusive of Claims Expenses

Each Claim: \$2,000,000

Aggregate: \$2,000,000

Death or Disability and Non-Practicing
Extended Reporting Period Limit of Liability:

Each Claim: \$1,000,000

Aggregate: \$2,000,000

4. DEDUCTIBLES:

Inclusive of Claims Expenses

Aggregate: \$10,000

5. POLICY PREMIUM:

Annual Premium:

\$18,312.00

Total Amount:

\$18,312.00

Includes CNA Risk Control Credit of

\$- 350.00

Includes Lawyers Data Breach and Network Security Premium, see coverage endorsement if applicable

6. FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:

G-118011-A (Ed. 06/2015), G-118012-AC (Ed. 03/1999), G-118016-ACC (Ed. 12/2011), G-118024-A (Ed. 04/2008),
G-118039-A09 (Ed. 09/2012), G-118065-A09 (Ed. 06/2015)

7. WHO TO CONTACT:

To report a claim:

CNA – Claims Reporting

P.O. Box 8317

Chicago, IL 60680-8317

Fax: 866-773-7504 / Online: www.cna.com/claims

Email: SpecialtyProNewLoss@cna.com

Lawyers Claim Reporting Questions: 800-540-0762

Authorized Representative

11/17/2017

Date

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

FLORIDA GULF COAST VACATION
HOMES, LLC, d/b/a ANNA MARIA
VACATIONS, a Florida limited liability
company

Case No. 2016 CA 000629

Plaintiff,

v.

CITY OF ANNA MARIA, a municipality
of the State of Florida,

Defendant.

**MOTION FOR FINAL SUMMARY JUDGMENT
WITH INCORPORATED MEMORANDUM OF LAW
IN SUPPORT OF MOTION AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT**

COMES NOW, the Defendant, CITY OF ANNA MARIA, a municipality of the State of Florida, and files this Motion for Final Summary Judgment with Incorporated Memorandum of Law in Support of Motion and In Opposition to Plaintiff's Motion for Final Summary Judgment under Fla. R. Civ. P. 1.510(c), and states:

1. Under Florida law, summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law. See: *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla. 2000). Where the material facts are not in dispute, "it is the court's duty to enter summary judgment." *Castellano v. Raynor*, 725 So.2d 1197, 1199 (Fla. 2d DCA 1999).

2. Plaintiff filed a voluntary dismissal as to Counts II and III of its Complaint, leaving only Count I for adjudication.

3. Plaintiff also filed its Motion for Final Summary Judgment, and therein narrowed its Count I to a claim that “Sec. 108-53 of Article 3 of the City of Anna Maria’s (‘City’) Ordinance is null and void as it is in conflict with, and preempted by, Fla. Stat. § 509.032(7).” [The City of Anna Maria’s Vacation Rental Ordinance will be referred to herein as the “VRO”.]

4. Florida Statutes, Section 509.032(7) provides:

“(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

5. Plaintiff does not allege that the VRO regulates the duration or frequency of rental of vacation rentals, and in fact, the VRO does not do so. Instead, the Plaintiff alleges that the occupancy limits on vacation rentals constitute a prohibition of vacation rentals.

6. Plaintiff states in paragraph 6 of its motion that “[i]t is self-evident that the Ordinance **forbids the vacation rentals with more than eight persons** and, therefore, prevents, precludes and severely hinders vacation rentals.” [Emphasis supplied.] Exactly what constitutes “the vacation rentals with more than eight persons” is perplexing. Vacation rentals, by their very definition, are dwellings that are used for *short term* rental. The ordinance that is being challenged specifically exempts from its application, rentals pursuant to rental agreements that were entered into before the enactment of the VRO.¹ Therefore, the number of persons in a vacation rental that is regulated by the VRO is totally dependent upon the number of overnight

¹ Section 108-64 of the VRO provides in part: “Notwithstanding any other provision of this ordinance, rental agreements with prospective Occupants for Vacations Rentals that were pre-existing as of the enactment of this Chapter 108, (November 19, 2015), (hereinafter “Pre-existing Agreements”) are exempt from the provisions of this ordinance.”

guests the owner of the vacation rental allows in their vacation rental pursuant to a rental agreement entered into *after* the adoption of the VRO.

7. There is no such thing as a vacation rental that necessarily *must* be rented to more than eight persons. There are vacation rentals in Anna Maria that have in the past been rented to eight or more persons. In fact, the ordinance anticipates those situations by grandfathering vacation rentals for a period of five years based upon allowing occupancy of two persons per bedroom for an unlimited number of bedrooms.

8. If a vacation rental has historically rented to more than eight persons, it can still be rented as a vacation rental, perhaps with a lower occupancy than in the past, depending upon the number of bedrooms in the vacation rental, and whether a grandfather application was filed. The restriction to eight persons is a *regulation*, not a *prohibition*. There is not even one vacation rental in Anna Maria that cannot continue to operate as a vacation rental after the effective date of the VRO due to the limitation on occupancy.

9. Vacation Rental owners are not without a remedy in the event their investment based expectations are damaged by any aspect of the VRO, including the occupancy limitations. They can file Bert J. Harris actions to attempt to obtain concessions or compensation from the City of Anna Maria to compensate for those perceived damages.

10. The only substantive material Plaintiff cites to this Honorable Court in support of its bald allegation that limiting occupancy to eight constitutes a prohibition of vacation rentals is the official statement of legislative intent of Laws of Florida 2014-71, Senate Bill 356, as reflected in the House of Representatives' Final Bill Analysis, dated June 19, 2014, which states that the "Effect of the Bill" is as follows:

"The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government

regulations have included noise, parking, registration, and signage requirements for vacation rentals.

“The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

“The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulation passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced.”

11. Plaintiff then asserts that “[s]imply put, the City’s prohibition of vacation rentals with more than eight persons is the type of regulation which expressly remains preempted to the state.” But why? The quoted language is not part of the statute itself, and it merely states that it is the intent of the statute that local governments are allowed to create regulations that distinguish vacation rentals from other residential property. It goes on to state that “[i]n the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.” It in no way states that these are the only regulations that are allowed, but merely references some of the regulations that have been implemented *in the past*.

12. In fact the statute itself only restricts local governments from imposing three types of restrictions on vacation rentals – outright prohibitions, regulations as to the duration of vacation rentals, and regulation of the frequency of rental of vacation rentals. Had the legislature intended to prevent a local government from imposing regulations as to vacation rental occupancy, (a regulation that would certainly not be unexpected, or that is particularly creative), the legislature would have inserted that word in the statute. But it did not. The case at bar is clearly a case that is based upon statutory construction of Florida Statutes, Section 509.032(7).

13. In *Citizens Property Insurance Corp. v. Perdido Sun Condominium Assoc., Inc.*, 164 So. 3d 663 (Fla. 2015), the Florida Supreme Court recently set forth the proper method for a

court to analyze a statute that lists certain categories, and one or more other categories are left out of the list. The court in *Citizens*, at page 667 held:

In applying principles of statutory construction, courts must “begin with the ‘actual language used in the statute.’ ” *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So.3d 186, 190 (Fla.2013) (quoting *Borden v. E.–European Ins. Co.*, 921 So.2d 587, 595 (Fla.2006)). A court, in construing a statute, is required to “give effect to legislative intent, which is the polestar that guides the court in statutory construction.” *Id.* (quoting *Gomez v. Vill. of Pinecrest*, 41 So.3d 180, 185 (Fla.2010)).

* * *

The clearest expression of legislative intent is found in the listed exceptions to Citizens' immunity. See § 627.351(6)(s) 1., Fla. Stat. Although the Legislature codified Citizens' duty to handle claims in good faith, see § 627.351(6)(s) 2., Fla. Stat., **the Legislature never listed statutory first-party bad faith claims as one of the exceptions to Citizens' immunity.** To the contrary, the Legislature chose to immunize Citizens for “any action taken by [it] in the performance of [its] duties or responsibilities under ... subsection [627.351(6)(s)],” which necessarily includes a breach of the duty of good faith.

If the Legislature had intended to exempt first-party bad faith claims from Citizens' statutory immunity, listing this category within section 627.351(6)(s) 1. would have been a simple and explicit way to indicate this. Certainly, the Legislature knew how to accomplish an exception to the immunity because it created a specific exception to the immunity for attorney's fees, as authorized by section 627.428, Florida Statutes. See § 627.351(6)(s) 1.e., Fla. Stat.

As this Court has recognized, where the Legislature made one exception clearly, if it had “intended to establish other exceptions it would have done so clearly and unequivocally.” *Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla.1952). Accordingly, where the Legislature articulates clear exceptions to a statute, “no other exceptions may be implied.” *Garfinkel*, 25 So.3d at 65. As *Garfinkel* observed, “because the Legislature identified five exceptions to its grant of immunity, there is no reason to think that another grant would show up in a nearby but separate paragraph, unless specifically identified as such.” *Id.* The Legislature has not included statutory first-party bad faith claims among the limited exceptions to Citizens' immunity when it could have easily chosen to do so.”

* * *

However, legislative intent must be determined primarily from the language of the statute and not from this Court's view of the best policy. See, e.g., *Rollins v. Pizzarelli*, 761 So.2d 294, 299 (Fla.2000) (“An interpretation { "pageset": "S18 of a

statutory term cannot be based on this Court's own view of the best policy.”); *State v. Ashley*, 701 So.2d 338, 343 (Fla.1997) (“[T]he making of social policy is a matter within the purview of the legislature—not this Court.”). [Emphasis supplied.]

14. The Second District Court of Appeal also addressed this imperative of statutory construction in *In Re: CN*, 51 So.3d 1224 (Fla. 2nd DCA 2011) as follows:

“This review of section 39.806 demonstrates that the statute establishes multiple grounds for the termination of parental rights based either on the parent's status as a recidivist or a sexual predator, or on the parent's commission of certain specifically designated crimes. So a proper interpretation of the statute cannot authorize its expansion to include all criminal conduct as a ground for the termination of parental rights. **“When a statute enumerates the things upon which it is to operate, it should be construed as excluding from its operation things of the same class or category which it does not mention.”** *Mingo v. ARA Health Servs., Inc.*, 638 So.2d 85, 86 (Fla. 2d DCA 1994) (citing *James v. Dep't of Corrections*, 424 So.2d 826 (Fla. 1st DCA 1982)). It follows that a circuit court may not expand indefinitely the list of crimes for which the termination of parental rights is authorized in the statute by inserting a no-new-law-violation task into the case plan. To approve such a reading of section 39.806 would amount to judicial legislation that is contrary to the separation of powers that characterizes our system of government.”

15. Similarly, in the case of *United Automobile Insurance Co. v. Salgado*, 22 So.3d 594 (Fla. 3^d DCA 2009), the court held:

“It is, of course, a general principle of statutory construction that the mention of one thing implies the exclusion of another; expression unius est exclusio alterius. Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.” *Thayer v. State*, 335 So.2d 815, 817 (Fla.1976); *see also Young v. Progressive Se. Ins. Co.*, 753 So.2d 80, 85 (Fla.2000) (**“Under the principle of statutory construction, expression unius est exclusio alterius, the mention of one thing implies the exclusion of another.”**).

Following that principle, we must conclude that if the Legislature had intended to exclude no-fault insurance from Part II, Chapter 627, it would have included that type of insurance in the list enumerated in section 627.401. *See Vargas v. Enter. Leasing Co.*, 993 So.2d 614, 618 (Fla. 4th DCA 2008) (“ ‘The starting point for [the] interpretation of a statute is always its language,’ so that ‘courts must presume that a legislature says in a statute

what it means and means in a statute what it says there.’ [redacted] ” (quoting *Garcia v. Vanguard Car Rental USA, Inc.*, 510 F.Supp.2d 821, 829–30 (M.D.Fla.2007), *aff’d*, 540 F.3d at 1242 (11th Cir.2008))); *Haskins v. City of Ft. Lauderdale*, 898 So.2d 1120, 1123 (Fla. 4th DCA 2005) (“**A basic canon of statutory interpretation requires us to ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’**” (quoting *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253–254, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992))).

As such, “[w]here, as here, the language of the statute is clear and unambiguous and conveys a clear and definite meaning, the statute should be given its plain and obvious meaning.” *City of Miami v. Valdez*, 847 So.2d 1005, 1008 (Fla. 3d DCA 2003).

16. Plaintiffs concede at paragraph 6 in their motion that local governments have the right to regulate by ordinance numerous issues regarding vacation rentals, including parking. While the regulation limiting overnight occupancy of a vacation rental to no more than eight persons (unless otherwise grandfathered) could in no way completely prohibit the renting of a vacation rental, a regulation relating to parking would certainly have that possibility. If an ordinance regulating vacation rentals contained a requirement for a specific number or type of parking for each vacation rental, it is foreseeable that some vacation rentals could not operate under such regulation if they lacked room for such required parking. Therefore, even something as benign as parking regulations could result in a vacation rental not being able to operate. Not so, with the occupancy requirements of Anna Maria’s VRO. The most restrictive possible limit on occupancy under the Anna Maria VRO would be on a vacation rental with zero (0) bedrooms. In that case, the vacation rental could still be rented to two overnight guests at a time, since the regulation limits occupancy to 2 persons per bedroom, plus 2 persons, with a limit of 8 persons, unless otherwise grandfathered. It is in the nature of regulations, that if the regulated entity does not comply with the regulations, they are in violation and cannot operate. But there is no compulsion for a vacation rental owner to rent their vacation rental to more than the permissible

number of occupants, and therefore the restriction on the number of occupants certainly is not the equivalent of prohibiting vacation rentals.

17. Plaintiff claims that Sec. 108-53 of Article 3 of the City of Anna Maria's ('City') Ordinance (the section imposing the occupancy requirements) is null and void. The claim as stated is couched as a "facial challenge" to the ordinance provision, rather than an "as applied challenge". Plaintiffs fail to state any particular facts as they relate to any particular vacation rental which would cause the section of the ordinance to be null and void as it is applied to that particular vacation rental, but rather attempt to get the entire section found to be null and void as to *all* vacation rentals.

18. The difference between an "as applied challenge" and a "facial challenge" is described by the court in *Cashatt v. State*, 873 So.2d 430 (Fla. 1st DCA 2004) as follows:

"A facial challenge to a statute is more difficult than an "as applied" challenge, because the challenger must establish that no set of circumstances exists under which the statute would be valid. Except in a First Amendment challenge, the fact that the act might operate unconstitutionally in some hypothetical circumstance is insufficient to render it unconstitutional on its face; such a challenge must fail unless no set of circumstances exists in which the statute can be constitutionally applied. A facial challenge considers only the text of the statute, not its application to a particular set of circumstances, and the challenger must demonstrate that the statute's provisions pose a present total and fatal

conflict with applicable constitutional standards. See *People v. Hsu*, 82 Cal.App.4th 976, 99 Cal.Rptr.2d 184, 189 (2000); *People v. Foley*, 94 N.Y.2d 668, 709 N.Y.S.2d 467, 731 N.E.2d 123,128, *cert. denied*, 531 U.S. 875, 121 S.Ct. 181, 148 L.Ed.2d 124 (2000); *Hatch v. Superior Court*, 80 Cal.App.4th 170, 94 Cal.Rptr.2d 453, 470 (2000). [Emphasis supplied.]

19. Plaintiff's challenge to the VRO's occupancy requirements is clearly couched in terms of a "facial challenge". There are no specifics as to any particular vacation rental that could cause it to be considered to be an "as applied" challenge. Plaintiff has failed completely to

even allege, let alone, prove, that there is no set of circumstances under which the VRO's occupancy limitation would be valid.

20. Case law in Florida is clear that municipal ordinances that have been regularly enacted are presumed valid. See: *Kuvin v. City of Coral Gables*, 62 So.3d 625, 632 (Fla. 3d DCA 2010) in which the court opined:

“municipal zoning ordinances, which are legislative enactments, are presumed to be valid and constitutional. See *Orange County v. Costco Wholesale Corp.*, 823 So.2d 732, 737 (Fla.2002) (specifying that ordinances reflecting legislative action are entitled to a presumption of validity); *State v. Hanna*, 901 So.2d 201, 204 (Fla. 5th DCA 2005) (holding that statutes and ordinances are presumed to be constitutional and all reasonable doubts must be resolved in favor of constitutionality).

“Statutes and ordinances in Florida not only enjoy a presumption in favor of constitutionality, the Florida Supreme Court and this Court have repeatedly held that zoning restrictions must be upheld unless they bear no substantial relation to legitimate societal policies or it can be clearly shown that the regulations are a mere arbitrary exercise of the municipality's police power. See *Dep't of Cmty. Affairs v. Moorman*, 664 So.2d 930, 933 (Fla.1995) (“[W]e have repeatedly held that zoning restrictions must be upheld unless they bear no substantial relationship to legitimate societal policies.”); *Harrell's Candy Kitchen, Inc. v. Sarasota–Manatee Airport Auth.*, 111 So.2d 439, 443 (Fla.1959) (holding that zoning regulations are presumptively valid, “and the burden is upon him who attacks such regulation to carry the extraordinary burden of both alleging and proving that it is unreasonable and bears no substantial relation to public health, safety, morals or general welfare”); *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3d DCA 1974) (“A zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without reference to public health, morals, safety or welfare.”).

“A zoning regulation also must be upheld if reasonable persons could differ as to its propriety. In other words, “[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.” *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303 (1926); *Bd. of County Comm'rs of Brevard County v. Snyder*, 627 So.2d 469, 472 (Fla.1993); *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So.2d 364 (1941).

“The fairly debatable rule has its basis in the deference that the judicial power owes the legislative function under [REDACTED] { "pageset": "S5c" the separation of powers doctrine inherent in our form of government and expressly embodied in our state and federal constitutions.” *Albright v. Hensley*, 492 So.2d 852, 856 (Fla. 5th DCA 1986) (Cowart, J., dissenting). Thus, “[t]he fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety.” *Martin County v. Yusem*, 690 So.2d 1288, 1295 (Fla.1997).

21. As held by the Second District Court of Appeal in *Manatee County v. 1187 Upper James of Florida, LLC*, 104 So.3d 1118 (Fla. 2nd DCA 2013),

“ ‘[o]ne attacking the validity of an ordinance has the burden of establishing its invalidity when such ordinance appears on its face to have been regularly enacted.’ *City of Miami Beach v. Texas Co.*, 141 Fla. 616, 194 So. 368, 377 (1940); see also *Sandstrom v. City of Fort Lauderdale*, 133 So.2d 755, 758 (Fla. 2d DCA 1961); *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Invs., LLC*, 64 So.3d 716, 719 (Fla. 3d DCA 2011).”

22. The Florida Supreme Court in *License Acquisitions, LLC v. DeBary Real Estate*, 155 So.3d 1137 (Fla. 2014), explained the mandatory obligations of a court in construing a legislative act, (such as a validly adopted ordinance), when such act has been challenged as follows:

“The Court is obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever reasonably possible. See, e.g., *Scott*, 107 So.3d at 384; *State v. Adkins*, 96 So.3d 412, 416–17 (Fla.2012); *Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc.*, 978 So.2d 134, 139 (Fla.2008); *Bush v. Holmes*, 919 So.2d 392, 405 (Fla.2006); *Fla. Dep't of Revenue v. Howard*, 916 So.2d 640, 642 (Fla.2005). “[E]ven where the statute is reasonably susceptible of two interpretations, one of which would render it invalid and the other valid, we must adopt the constitutional construction.” *State v. Lick*, 390 So.2d 52, 53 (Fla.1980); see also *Dep't of Ins. v. Se. Volusia Hosp. Dist.*, 438 So.2d 815, 820 (Fla.1983); *Miami Dolphins, Ltd. v. Metro. Dade Cnty.*, 394 So.2d 981, 988 (Fla.1981) (“Given that an interpretation upholding the constitutionality of the act is available to this Court, it must adopt that construction.”); *Corn v. State*, 332 So.2d 4, 8 (Fla.1976) (holding that the Court has a duty “to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity”); *Overstreet v. Blum*, 227 So.2d 197, 199 (Fla.1969) (citing *1147 *Redwing*

Carriers, Inc. v. Mason, 177 So.2d 465, 467 (Fla.1965)). **Thus, where terms in a statute are ambiguous and the statute “may reasonably be construed in more than one manner, this Court is obligated to adopt the construction that comports with the dictates of the Constitution.”** Vildibill v. Johnson, 492 So.2d 1047, 1050 (Fla.1986). **In that circumstance, we will adopt the construction that will effect a constitutional outcome so long as it is a fair construction of the statute consistent with legislative intent.** See State v. Globe Commc'ns Corp., 648 So.2d 110, 113 (Fla.1994).

23. It is clear under Florida law that there is a profound distinction between the term “prohibit” and “regulate,” whereas it appears that the Plaintiff believes that the terms “prohibit” and “regulate” are synonymous. The Federal District Court for the Southern District of Florida opined in *Florida Public Telecommunications Assn., Inc. v. City of Miami Beach*, 2001 WL 36406296 (S.D. Fla. 2001) [affd. in part, rev. in part on other grounds at 321 F. 3d 1046 (11th Cir. 2003)], as to the definition of “prohibit,” and referred to the definition contained in Black’s Law Dictionary, 6th Edition, as follows:

“The essential word in the phrase “may prohibit or have the effect of prohibiting” is of course “prohibit.” Black’s Law Dictionary defines “prohibit” as: “[t]o forbid by law; to prevent;—not synonymous with ‘regulate.’ “ Black’s Law Dictionary 1212 (6th ed.1990). **Thus, FPTA must first show that Miami Beach’s ordinances effectively forbid or prevent payphone providers from operating in Miami Beach. Merely showing that Miami Beach regulates payphone providers is insufficient.**”

24. In addition, the Florida Supreme Court in *World Fair Freaks and Attractions, Inc. v. Hodges*, 267 So.2d 817, 819 (Fla. 1972) drew a distinction between regulate and prohibit stating that “[t]he power to regulate is not synonymous with the power to prohibit absolutely.”

25. This view is consistent with the views of sister courts. In *Mullins v. Marathon Petroleum Co., LP*, 2014 WL 467240 (E.D. Ky. 2014), the court addressed a claim by an employee of Marathon regarding a Kentucky statute (KRS § 237.106) which prohibits an employer from “prohibiting any person who is legally entitled to possess a firearm from possessing a firearm, part of a firearm, ammunition, or ammunition component in a vehicle on the property”. The court held that:

“Pursuant to the unambiguous wording of the statute, a cause of action will only lie under KRS 237.106 if an employer ‘prohibits’ employees from keeping weapons in their vehicle.

“Marathon’s Weapons Policy does not prohibit Kentucky employees from storing weapons in their vehicles. The Kentucky Addendum to the policy states ‘for Kentucky sites only, **employees or contractors who lawfully possess a weapon may store such a weapon in his or her own privately owned vehicle,**’ **provided certain administrative requirements are met, including the requirement that the employee complete and have on file a current Weapons Approval Form disclosing the weapon.**

“It cannot be disputed that Marathon does not “prohibit” employees from keeping weapons in their vehicle. * * * As such, contrary to Plaintiffs’ allegations, this policy cannot be read to contravene KRS 237.106.

“Plaintiffs contend that the statute ‘plainly does apply’ and gives (Mr. Mullins) the right to keep a weapon in (his) vehicle. **Plaintiffs misconstrue the statute by assuming that it applies to all forms of regulation, up to and including outright prohibition. However, ‘prohibit’ is not synonymous with ‘regulate.’ See e.g. Mitchell v. Univ. of Ky., 366 S.W. 3d 895, 901 n.5 (Ky. 2012) (distinguishing universities’ right “to prohibit the carrying of concealed deadly weapons....” If the Kentucky legislature had intended to limit an employer’s right to require the disclosure of weapons, they would have done so. They did not. KRS 237.106 does not regulate ‘approval’ or ‘disclosure’ requirements at all. It only addresses prohibition. Marathon’s policy does not fall within the purview of the statute. Thus Mr. Mullins has not alleged facts that could demonstrate a violation of the statute.**”

26. Similarly, in the case at bar, the City of Anna Maria in no way prohibits vacation rentals that have historically been rented to more guests than is permitted under the occupancy regulations set forth in the VRO. The limitations on occupancy are regulations that do not impinge in any way on the forbidden regulatory subjects of frequency or duration of rental; therefore, such regulations are not preempted to the state under Florida Statutes, Section 509.032(7).

WHEREFORE, Defendant, City of Anna Maria, respectfully requests that this Honorable Court enter final summary judgment in the favor of the City of Anna Maria, and denying

Plaintiff's Motion for Final Summary Judgment, and granting such other and further relief as this court deems just and proper.

Respectfully Submitted,

/s/ Gretchen R.H. Vose
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2016 a true and correct copy of the foregoing Motion for Final Summary Judgment was filed electronically with the Florida Courts E-filing Portal, which will email a copy to all attorneys of record as specified in the service list below.

SERVICE LIST

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Counsel for Plaintiff

M E M O R A N D U M

TO: 2016 Brevard County Charter Review Commission
FROM: Wade C. Vose, Esq., General Counsel
DATE: February 27, 2016
SUBJECT: Analysis of Legality and Constitutionality of Section 2.9.3.1 of the Brevard County Charter, Providing for Limitations on Growth in Ad Valorem Tax Revenues

Pursuant to the Commission's request, this office has prepared an analysis of the legality and constitutionality of Section 2.9.3.1 of the Brevard County Charter, providing for limitations on growth in ad valorem tax revenues.

History of Charter Tax Caps in Brevard County

Prior to 2004, the Brevard County Charter included a provision at Section 5.4 that stated:

“Brevard County shall not increase its ad valorem tax revenue for operating funds (exclusive of revenues from new construction and improvements) in any one year by more than three percent (3%) or the percentage change in the Consumer Price Index for the previous year, whichever is less, over the ad valorem revenues in the previous year, without approval of a majority of the electors of the County voting thereon at a general election or special election called for purposes of such approval.”

An action was brought in Brevard County Circuit Court challenging the constitutionality of this provision. A final judgment was entered in that case holding that this charter provision was inconsistent with Chapters 129 and 200, Florida Statutes, and therefore violative of Article VIII, section 1(g) of the Florida Constitution.

The Fifth District Court of Appeal in *Ellis v. Burk*, 866 So.2d 1236 (Fla. 5th DCA 2004), *rev. denied*, 879 So.2d 621 (Fla. 2004), affirmed the circuit court decision, holding that the “trial court correctly concluded that section 5.4 of the Brevard County Charter is unconstitutional as being in conflict with Chapters 129 and 200, Florida Statutes, which set forth the statutory framework by which counties are to establish budgets and millage rates.” *Id.* at 1237.

In reaching this conclusion, the court in *Ellis* quoted and adopted the trial court's finding that “The Second District Court of Appeal [in *Charlotte County Board of County Commissioners v. Taylor*, 650 So.2d 146 (Fla. 2d DCA 1995)] found that Chapters 129 and 200 set forth the exclusive statutory scheme for establishing the budget and the resulting millage rate.” *Ellis*, 866 So.2d at 1238. [Emphasis supplied.] The *Ellis* court further quoted with approval the trial court's interpretation that “the [Florida] Supreme Court [in *Board of County Commissioners of Dade County v. Wilson*, 386 So.2d 556 (Fla. 1980)] found that Chapter 200 set forth the exclusive manner by which to set countywide millage rates.” *Ellis*, 866 So.2d at 1238. [Emphasis supplied.]

Thereafter, in 2007, the Florida Legislature enacted a special act, Chapter 2007-310, Laws of Florida, that provided in pertinent part:

“Section 1. Brevard County may cap, through a provision in its charter, the annual growth in ad valorem tax revenues. Any such cap may not restrict the annual growth at a rate below the lesser of 3 percent or the percentage change in the Consumer Price Index as provided in section 193.155(1)(b), Florida Statutes. Any such cap specified in a county charter must allow for the cap to be overcome by a finding of necessity due to emergency or critical need by a super majority vote of the county commission. In applying the increase or growth cap, the county shall compute a millage rate that, exclusive of new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year. It is the rate that shall be subject to any cap in growth or increase in ad valorem revenues established by county charter.

It is important to note that the special act did not itself impose a cap on ad valorem tax revenues or millage rates within Brevard County. Rather, the special act purported to authorize Brevard County, through a provision in its county charter, to impose such a cap, and then set parameters on how that authority could be exercised. As a result, the special act does not prohibit the repeal of any such charter tax cap, and it does not prohibit an amendment of the terms of such tax cap, so long as the provision continues to be consistent with the requirements of the special act.

The special act was subsequently approved by a vote of the electors at referendum on January 29, 2008, pursuant to a referendum requirement conditioning its effectiveness on passage as set forth in sections 2 and 3 of the special act.

Thereafter, an amendment to the Brevard County Charter was prepared, proposed, and approved by a vote of the electors on November 4, 2008, creating Section 2.9.3.1 of the Brevard County Charter, which provides the following:

“2.9.3.1. Limitations on growth in ad valorem tax revenues.

“(a) Unless otherwise allowed by this subsection 2.9.3.1, the Board of County Commissioners shall not impose any ad valorem tax for county purposes at a millage rate which causes the budgeted revenue therefrom to the County to increase over the budgeted ad valorem revenue for the previous fiscal year by more than the lesser of: (1) three percent, or (2) the percentage change in the Consumer Price index from the preceding calendar year, as measured in accordance with Section 193.155(1)(b), Florida Statutes (as that Section exists in 2008 or may thereafter be amended or transferred).

“(b) Unless otherwise allowed by this subsection 2.9.3.1, the Board of County Commissioners shall not impose any ad valorem tax for municipal purposes within any municipal services taxing unit, or for district purposes of any district for which the Board has the power to fix or approve the millage rate, at a rate which, for such unit or district, causes the budgeted revenue of the unit or district from ad valorem taxes to increase over the budgeted ad valorem revenue for the previous fiscal year by more than the lesser of (1) three percent, or (2) the percentage change in the Consumer Price Index from the preceding calendar year, as measured in accordance with Section 193.155(1)(b), Florida Statutes (as that Section exists in 2008 or may thereafter be amended or transferred).

“(c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year.

“(d) In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

“(e) Nothing in this subsection shall authorize imposition of a millage rate which exceeds the rate prohibited by the constitution or general laws of Florida, or prohibit imposition of a millage rate which is required by the constitution or general laws of Florida or by any final order of a court of competent jurisdiction. Nothing in this subsection shall apply to any millage necessary to the payment of general obligation bonds in accordance with all bond covenants, or to any other millage approved by referendum of the electors, whether before or after the effective date of this subsection.”

The tax cap and procedures set forth in Section 2.9.3.1 are plainly inconsistent with general law as provided in Chapters 129 and 200, Florida Statutes. Most obviously, Chapter 200, Fla. Stat., does not contain limitations on millage rates such that revenue increases are limited to the lesser of 3% or CPI. More subtly, however, the tax cap specified in Section 2.9.3.1 applies independently to each individual millage levied by the county, each individual millage levied by a county municipal services taxing unit, and each individual millage levied by a county

dependent special district.¹ In stark contrast, Section 200.065(5)(b), Fla. Stat., allows counties the flexibility to raise any individual millage rate above the statutory maximum millage rate (basically, the roll back rate adjusted for change in per capita personal income) so long as a decrease in one or more other levies causes the total county aggregate levy to not exceed a maximum aggregate levy.

In light of Section 2.9.3.1's patent inconsistency with general law, any analysis of the legality of Section 2.9.3.1 must include an analysis of and be contingent upon the validity (in particular, the constitutionality and legality) of the special act itself.

Constitutionality of Chapter 2007-310, Laws of Florida

Generally, when a valid special law and a general law conflict, the special law prevails. *Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72, 77 (Fla. 1984). However, that general proposition would not hold true if the special law were not itself valid, i.e., constitutionally permissible.

The Florida Constitution contains a section entitled "Prohibited Special Laws", at Article III, Section 11, which provides in part:

- (a) There shall be no special law or general law of local application pertaining to:
 - (2) assessment or collection of taxes for state or county purposes, including extension of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability"

Accordingly, an analysis of the special act is necessary to determine whether it is a "prohibited special law" under Article III, Section 11(a)(2) of the Florida Constitution.

¹ It may not be immediately apparent from a review of the special act that this cap on each individual millage is authorized or contemplated by the terms of the special act. Indeed, most of the language of section 1 of the special act refers to the nouns "cap" and "rate" in the singular. However, the individual millage caps appear consistent with the computation methodology provided in the fourth sentence of section 1, stating "In applying the increase or growth cap, the county shall compute a millage rate that... will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year." While "the county" and "a millage rate" are both referred to here in the singular, reference to "for each taxing authority" appears to indicate, if obliquely, a contemplation of a separate cap for the county general fund, each MSTU, and each dependent special district. While it may seem that there is only one "taxing authority" involved (the county), pursuant to Rule 12D-17.002, F.A.C., the term "taxing authority" "includes, but is not limited to, any county, municipality, authority, special district... or other public body of the state, [or] municipal service taxing or benefit unit (MSTU or MSBU)..." Notably, it appears that if any one taxing authority levied two or more millages subject to Section 2.9.3.1, an inconsistency would arise between the special act and the charter provision, as the special act appears to apply a limit on a per-taxing-authority basis, while the charter provision applies a limit on a per-millage basis. It appears this clash would have arisen had Section 2.9.3.1(e) not exempted "any millage necessary to the payment of general obligation bonds in accordance with all bond covenants, or to any other millage approved by referendum of the electors" (roughly, the categories of county millage other than general county millage under Section 200.001(1), Fla. Stat.).

There is support for a broad reading of the term “assessment” as used in the phrase “assessment... of taxes”.² As set forth in *Jackson Lumber Co. v. McCrimmon*, 164 F. 759, 763-764 (N.D. Fla. 1908):

The word “assessment,” as used in tax statutes, does not mean merely the valuation of the property for taxation. It includes the whole statutory mode of imposing the tax. It embraces all the proceedings for raising money by the exercise of the power of taxation from the inception to the conclusion of the proceedings.

Only a small set of appellate cases have endeavored to interpret Article III, Section 11(a)(2) and its identical antecedent, Article III, Section 20, of the Florida Constitution of 1885. Taken together, these cases hold that the prohibition on a special law pertaining to the assessment of taxes for county purposes is interpreted to prohibit any local enactment that effects the manner or method of assessing taxes, that interferes with the uniformity of the assessment and collection process, or that bears upon the mechanics of tax assessment and collection, but does not prohibit special acts that empower a local government to levy or impose a tax. *Wilson v. Hillsborough County Aviation Authority*, 138 So.2d 65 (Fla. 1962); *Metropolitan Dade County v. Golden Nugget Group*, 448 So.2d 515 (Fla. 3d DCA 1984); *McMullen v. Pinellas County*, 90 Fla. 398 (Fla. 1925); *Kroegel v. Whyte*, 56 So. 498 (Fla. 1911).

Ch. 2007-310, Laws of Florida, does not authorize or empower Brevard County to impose a tax. Rather, the special act purports to authorize the Brevard County Charter to modify central portions of the uniform assessment process, namely, the uniform processes provided by Chapters 129 and 200, Florida Statutes, for establishing the budget and the resulting millage rate. Accordingly, at first glance it would appear that Chapter 2007-130, Laws of Florida, may be a prohibited special law.

However, there is a forty year old appellate opinion that, without setting forth any legal reasoning whatsoever, held that a special act providing for a tax cap in Broward County, Ch. 74-434, Laws of Florida, did not violate Article III, Section 11(a)(2), of the Florida Constitution. See *Coe v. Broward County*, 327 So.2d 69, (Fla. 4th DCA), *affd.*, 341 So.2d 762 (Fla. 1976). On appeal, the Florida Supreme Court, in a two sentence affirmance, cited *Wilson v. Hillsborough County Aviation Authority*, 138 So.2d 65 (Fla. 1962) as authority without discussion. In the absence of any legal reasoning whatsoever for the Fourth DCA’s holding, *Wilson* must be examined in an attempt to determine whether Ch. 2007-310, Laws of Florida, would fall under the ambit of the holding in *Coe*.

The court in *Wilson* opined that “[t]he provision of Section 20, Article III, Florida Constitution, proscribing local laws for ‘the assessment and collection of taxes’ for county purposes was designed merely to provide uniformity in the assessment and collection process.”

² See *Metropolitan Dade County v. Golden Nugget Group*, 448 So.2d 515 (Fla. 3d DCA 1984) (noting that Article III, Section 11(a)(2), Fla. Const., concerns “the assessment of taxes”, clarifying that “of taxes” modifies the word “assessment” as well as “collection”).

It merits noting that the tax cap in *Coe* was specifically imposed by the Florida Legislature in the special act itself, rather than purporting to grant to Broward County the authority to enact its own version of a tax cap. Accordingly, the requirement for “uniformity”, apparently integral to the Florida Supreme Court’s interpretation of Article III, Section 11(a)(2) in *Wilson*, and presumably by extension in *Coe*, is maintained, in that only one body, the Florida Legislature, is vested with the authority to specify the assessment process.

While this may seem like a low bar, it nonetheless fails to be satisfied by the Chapter 2007-310, Laws of Florida. Where the Florida Legislature merely purports to assign the option to impose a tax cap to Brevard County (exercisable and repealable in Brevard County’s own discretion, and in amounts subject to its control), this mandated “uniformity” would appear to be lost, as the Florida Legislature has not specified the assessment process in such an instance. Accordingly, the option to elect to self-impose a tax cap set forth in Chapter 2007-310, Laws of Florida, appears distinguishable from the *Coe* case and the Broward County tax cap imposed directly by the Florida Legislature, and thus may yet be a prohibited special law in violation of Article III, Section 11(a)(2) of the Florida Constitution.

Legal Interaction of Chapter 2007-310, Laws of Florida and Chapter 200, Florida Statutes

As stated *supra*, it is generally the case that when a valid special law and a general law conflict, the special law prevails. *Rowe*, 461 So. 2d at 77. However, where a general act is intended as an overall restatement of the law on the same subject, this precedence does not necessarily maintain. *See Floyd v. Bentley*, 496 So.2d 862, (Fla. 2d DCA 1986), *rev. denied*, 504 So.2d 767 (Fla. 1987) (effectiveness of more specific act is retained unless general act is intended as overall restatement of the law on the same subject). *See also State v. Dunmann*, 427 So. 2d 166, 168 (Fla. 1983) (focusing such an analysis on the “manifest intent” of the general law).

As recognized by the Fifth DCA in *Ellis v. Burk*, “Chapters 129 and 200 set forth the exclusive statutory scheme for establishing the budget and the resulting millage rate.” 866 So.2d at 1238. Moreover, in at least two places, Chapter 200, Fla. Stat., clearly manifests the specific intent of such general law to regulate the chapter’s interaction with special acts.

First, Section 200.001(7), Fla. Stat. provides:

“Millages shall be fixed only by ordinance or resolution of the governing body of the taxing authority in the manner specifically provided by general law or by special act.”

This statutory provision explicitly requires that millages must be fixed only “in the manner specifically provided by general law or by special act”, and thus appears to require that the “manner” be “specifically provided” within the four corners of the general law or special act. However, the Brevard tax cap is not contained within the four corners of a special act, but rather is specified in Section 2.9.3.1 of the Brevard County Charter. This section was enacted under the stated authority of a special act, which purported to provide Brevard County with an option to self-impose a tax cap (exercisable and repealable in Brevard County’s own discretion, and in

amounts subject to its control), but the actual terms of the millage cap were not “specifically provided” by the special act, but by the charter provision itself. Notably, the magnitude of the tax cap was left in the discretion of Brevard County to set by charter amendment, subject only to a floor below which revenue increases could not be prohibited.

This distinction is analogous to that recognized by the court in *Pinellas County v. City of Key Largo*, 964 So.2d 847, 854-55 (Fla. 2nd DCA 2007), which held that where Section 171.044(4), Fla. Stat. specified that an exclusive method of voluntary annexation may be provided for in a county charter, it was nonetheless legally impermissible for a Pinellas County Charter provision to purport to empower the Pinellas County Commission to enact an exclusive method of voluntary annexation by ordinance. In that case, the exclusive method of annexation was not set forth within the four corners of the charter itself, but only purported to authorize an ordinance outside the charter enacting an exclusive method of voluntary annexation. Stated differently, where a statute specifically indicates that a “manner” or “method” must be set forth within a particular type of legislative instrument, it is not legally permissible that such instrument purport to authorize yet another legislative instrument to specify such “manner” or “method”. *See id.*

Therefore, although Section 200.001(7), Fla. Stat. allows millages to be fixed “in the manner specifically provided... by special act”, it does *not* provide that they can be fixed “in the manner specifically provided” by a provision of a county charter.

In addition, Section 200.065, Fla. Stat., (Method of fixing millage) provides at subsection 15:

(15) The provisions of this section shall apply to all taxing authorities in this state which levy ad valorem taxes, and shall control over any special law which is inconsistent or in conflict with this section, except to the extent the special law expressly exempts a taxing authority from the provisions of this section. This subsection is a clarification of existing law, and in the absence of such express exemption, no past or future budget or levy of taxes shall be set aside upon the ground that the taxing authority failed to comply with any special law prescribing a schedule or procedure for such adoption which is inconsistent or in conflict with the provisions of this section.

This provision manifests the clear legislative intention that this section “shall control over any special law which is inconsistent or in conflict with” it, notwithstanding the fact that it is a general law, and provides an exception only “to the extent the special law expressly exempts a taxing authority from the provisions of this section.”

An examination of Ch. 2007-310, Laws of Florida, reveals that such special act does not appear to “expressly exempt” Brevard County or any taxing authority from the provisions of Section 200.065, Fla. Stat. There is no language within the special act that references the words “exempt” or “exemption” or any synonyms thereof. Indeed, Brevard County continues to be required to comply with each requirement of Section 200.065, Fla. Stat. However, it must also comply with the additional requirements of Section 2.9.3.1. Conceivably, it could be asserted that the special act “impliedly” exempts Brevard County from Section 200.065, Fla. Stat., to the

extent that the requirements of the charter provision it purports to authorize are inconsistent as containing requirements in addition to those set forth in Section 200.065, Fla. Stat. However, the Legislature's use of the words "expressly exempts" appears to draw a clear distinction with any thought that such a hypothetical "implied exemption" would actually satisfy the requirement of "express exemption" set forth clearly and repeatedly in Section 200.065(15), Fla. Stat.

Notably, the specific special act requirements of both Section 200.001(7) and 200.065(15), Fla. Stat., harmonize perfectly with the Florida Supreme Court's holding as recognized by the Fifth DCA in *Ellis* that "Chapter 200 set[s] forth the exclusive manner by which to set countywide millage rates." 866 So.2d at 1238 (citing *Board of County Commissioners of Dade County*, 386 So.2d at 560). In particular, these two provisions specify that millages will be set in a manner set forth in the chapter directly, or in a manner complying with the chapter's particular requirements that any changes to the general process be "specifically provided" within such a special act, and requiring that any such special act "expressly exempt[]" a taxing authority from the provisions of Section 200.065, Fla. Stat. As discussed above, Section 2.9.3.1 and Chapter 2007-310, Laws of Florida, fail to satisfy either of these requirements.

In addition, these specific special act requirements also harmonize with the distinction drawn *supra* with respect to the *Coe* case and the uniformity protected by the prohibition on special laws pertaining to the "assessment or collection of taxes", by lodging only with the Florida Legislature the authority to specify the assessment process, via processes "specifically provided" in general law or within the four corners of a special act, and requiring that any such special act "expressly exempt[]" a taxing authority from the provisions of Section 200.065, Fla. Stat.

However, it must be noted that a court could yet decide that the most recent expression of legislative will should control, notwithstanding this manifest intent of legislative will set forth in the seemingly mandatory requirements for special acts modifying the assessment process set forth in Section 200.001(7) and Section 200.065(15), Fla. Stat. *See Palm Beach Cty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000) ("The more recently enacted provision may be viewed as the clearest and most recent expression of legislative intent."). Ch. 2007-310, Laws of Florida, was enacted in 2007, while both Section 200.001(7) and Section 200.065(15), Fla. Stat. predate its enactment. Accordingly, it is not clear whether a court would find more convincing the recency of Ch. 2007-310, Laws of Florida, or the manifest intent of the Section 200.001(7) and Section 200.065(15), Fla. Stat. to regulate the effect of special acts on the manner of fixing millages, in ruling on which has precedence.

Based on the above analysis, it appears that there is a persuasive argument that Section 2.9.3.1 of the Brevard County Charter is illegal because it violates Section 200.001(7), Fla. Stat., in that it provides for millages to be fixed in a manner other than "specifically provided" in either general law or by a special act, and because the special act purporting to authorize it, Chapter 2007-310, Laws of Florida, conflicts with the clear expression and manifest intent of legislative will ("The provisions of this section... shall control over any special law which is inconsistent or in conflict with this section") set forth in Section 200.065(15), Fla. Stat., because it does not "expressly exempt" Brevard County or any taxing authority from the provisions of Section 200.065, Fla. Stat. However, a court may find that the more recent enactment of the special act nonetheless

overrides the manifest intent of Chapter 200, Fla. Stat. to regulate the effect of special acts on the manner of fixing millages.

M E M O R A N D U M

TO: 2016 Pinellas County Charter Review Commission
FROM: Wade C. Vose, Esq., General Counsel
DATE: January 4, 2016
SUBJECT: Preliminary Legal Analysis of Proposed Recall Provision Relating to County Commissioners and Constitutional Officers

Pursuant to the Commission's request, I have prepared a preliminary analysis of legal issues relating to amending the Pinellas County Charter to provide for the recall of county commissioners and constitutional officers.

Recall of County Commissioners

As noted in the chart titled "Comparison of Counties on Recall Vote" prepared by Meiller & Associates, 18 of Florida's 20 charter counties specifically provide for the recall of county commissioners in their county charters. Notwithstanding its prevalence among county charters and its absence from Pinellas' charter, it is important to note that the members of the Pinellas County Commission are presently subject to recall pursuant to Florida law.

Section 100.361(1), Fla. Stat. provides in its first sentence that "[a]ny member of the governing body of a municipality or charter county, hereinafter referred to in this section as "municipality," may be removed from office by the electors of the municipality." The statute goes on to specify procedures for conducting a recall petition and election, together with related provisions. Subsections 11 and 12 of the statute go on to clarify the applicability of the statute to the governing bodies of all charter counties:

(11) INTENT. – It is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charter and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of this conflict.

(12) PROVISIONS APPLICABLE. – The provisions of this act shall apply to cities and charter counties whether or not they have adopted recall provisions.

Subsection 12 of the statute was amended by the Legislature in 1990 (Ch. 90-315, Laws of Florida), after the Florida Supreme Court found that the prior wording of the subsection rendered only those cities and charter counties that had specifically adopted a recall provision subject to the statute. *See In re Recall of Koretsky*, 557 So.2d 24 (Fla. 1990).

Accordingly, the addition of a recall provision to the Pinellas County Charter would not have an immediate effect on whether the members of the Pinellas County Commission are subject to recall. However, in the event that the Legislature subsequently reverses course and once again makes the recall statute applicable only to those cities and charter counties that opt in, the

addition of a recall provision to the Pinellas County Charter would have the effect of subjecting the members of the Pinellas County Commission to recall in the wake of such a change.

Recall of Constitutional Officers

In contrast to the 18 charter counties that provide for the recall of their county commissioners, only eight county charters address the recall of county constitutional officers. These counties fall into two general categories. Four counties (Brevard, Duval, Miami-Dade, and Orange) subject their elected charter officers to recall. That is, these county charters provide for the availability of recall as to those offices that have been abolished as constitutional offices and the duties transferred to offices created under the county charter, pursuant to Article VIII, Section 1(d) of the Florida Constitution. The other four counties (Clay, Columbia, Polk, and Sarasota) directly subject their five county constitutional officers to recall without converting them to charter officers.

Section 100.361, Fla. Stat. does not address the recall of county constitutional officers, but rather subjects only “member[s] of the governing body of a municipality or charter county” to removal by the electors. Section 100.361(1), Fla. Stat. However, the Attorney General has found that the fact that an officer is omitted from this statute does not preclude the officer from being subject to recall via charter provision. See Op. Att’y Gen. Fla. 82-82 (1982). No other provision of the Florida Statutes or the Florida Constitution subjects county constitutional officers to recall.

Accordingly, the first question presented is whether a county charter can subject county constitutional officers to recall, and under what conditions or prerequisites (e.g., conversion to charter officers).¹ The second question is whether the Pinellas County constitutional officers can be subjected to recall via an amendment to the Pinellas County Charter proposed by the Pinellas County Charter Review Commission, in light of the unique protections provided to the constitutional officers in Sections 2.06, 4.03, and 6.04 of the Pinellas County Charter.

***Telli v. Broward County* - County Charter’s “broad authority... regarding county officers”**

As to the first question, while there is no direct case law on point, recent appellate authority would suggest that a county charter can subject its county’s constitutional officers to recall, and that it is unnecessary to convert them to charter officers to do so.

In *Telli v. Broward County*, 94 So.3d 504 (Fla. 2012), the Florida Supreme Court receded from its opinion rendered ten years earlier in *Cook v. City of Jacksonville*, 823 So.2d 86 (Fla. 2002), which had held that county charters could not impose term limits on county officers. In so ruling, the Court in *Telli* discussed with approval substantial portions of Justice Anstead’s dissent

¹ The fact that seven other charter counties have provisions in their charters purporting to subject their constitutional or charter officers to recall is not necessarily strong evidence that such provisions are legal. At best, it may indicate that others have believed that such provisions are legal. Just as likely, it may simply be that sufficient cause to expend the funds and effort to challenge such a provision has not arisen.

in *Cook*, and even went so far as to state, “we now agree with Justice Anstead’s dissenting opinion, and recede from *Cook*...” *Telli*, 94 So.3d at 512. As stated in Justice Anstead’s dissent, a substantial portion of which was quoted in *Telli*:

The autonomy of local governments is at the heart of these two sections of the Florida Constitution (referring to Art. VIII, Secs. 1(d) and 1(g), Fla. Const.), and the two sections vest broad authority in charter counties regarding charter governments and county officers. This broad language was obviously intended to allow charter counties wide latitude in enacting regulations governing the selection and duties of county officers. For example, article VIII, section 1(d), specifies that county officers may be elected or chosen in some other manner, and that any county office may even be abolished. By these provisions, it is apparent that the framers intended for charter counties to be self-governing in both providing for county officers and in providing for the manner in which county officials will be selected. Additionally, article VIII, section (1)(g), specifies that charter counties exercise their powers in a way that is “not inconsistent with general law.” The term limit provisions in the charters in these cases are not inconsistent with any provision of general law relating to elected county officers. Given this grant of broad authority and consistency with general law, I can find no legal justification for concluding that charter counties should not be allowed to ask their citizens to vote on eligibility requirements of local elected officials, including term limits, since they could abolish the offices completely or decide to select the officers in any manner of their choosing.

Cook, 823 So.2d at 96 (*Anstead, J. dissenting*).

Justice Anstead went on to refer to “charter counties... exercising their authority over county officers by imposing term limits.” *Id.*

While neither *Telli* nor Justice Anstead’s dissent in *Cook* explicitly refer to subjecting constitutional officers to recall, these authorities appear to suggest that subjecting county officers to recall via county charter would survive constitutional scrutiny, either as an exercise of the county charter’s power over the manner of selecting county officers, or a more general exercise of a county charter’s “broad authority... regarding county officers”.

As to the relevance of the distinction between constitutional and charter officers in this context, the *Telli* Court, in receding from *Cook*, affirmatively stated that it should have affirmed *Pinellas County v. Eight is Enough in Pinellas*, 775 So.2d 317 (Fla. 2d DCA 2000). 94 So.3d at 512. Further, Justice Anstead’s dissent said that he would have affirmed the case. *Cook*, 823 So.2d at 96 (*Anstead, J. dissenting*). *Eight is Enough in Pinellas* is discussed in further detail *infra*, but for present purposes it is noteworthy that the case found constitutional the imposition of term limits on county constitutional officers that had not been converted to charter officers. This suggests that the “broad authority... regarding county officers” of county charters described by Justice Anstead and adopted by the Florida Supreme Court in *Telli* encompasses both constitutional county officers and charter officers.

Applicability of Charter Protections for Pinellas County Constitutional Officers

As to the second question (whether the protections for the constitutional officers in the Pinellas Charter change the above result), the matter is substantially less clear. Three separate sections of the Pinellas County Charter provide unique protections for the Pinellas County constitutional officers. Section 2.06 of the Pinellas County Charter states in pertinent part:

The county shall not have the power, under any circumstances, to abolish any municipality or in any manner to change the status, duties, or responsibilities of the county officers specified in section 1(d), art. VIII of the state constitution.

Section 4.03 of the Pinellas County Charter states:

This document [Charter] shall in no manner change the status, duties, or responsibilities of the [following] county officers of Pinellas County: The clerk of the circuit court, property appraiser, tax collector, sheriff, and supervisor of elections.

Finally, Section 6.04 of the Pinellas County Charter states in pertinent part:

Any other section of the Pinellas County Charter, chapter 80-590, Laws of Florida, notwithstanding, except for any proposed amendments affecting the status, duties, or responsibilities of the county officers referenced in §§ 2.06 and 4.03 of this Charter, charter amendments proposed under § 6.01 (proposed by Pinellas County Commission), § 6.02 (proposed by citizens' initiative), or § 6.03 (proposed by a Charter Review Commission) shall be placed directly on the ballot for approval or rejection by the voters and it shall not be a requirement that any such proposed amendments need to be referred to or approved by the Legislature prior to any such placement on the ballot.

Taken together, these three provisions prohibit both Pinellas County and the Pinellas County Charter from “chang[ing] the status, duties, or responsibilities” of the Pinellas County constitutional officers, and imply that any amendment to the Pinellas Charter “affect[ing] the status, duties, or responsibilities” of the constitutional officers may only be placed on the ballot after referral to and approval by the Florida Legislature.

Accordingly, the relevant question is whether subjecting the constitutional officers to recall via amendment to the Pinellas County Charter “change[s] the status, duties, or responsibilities” of those officers.

Eight is Enough in Pinellas, supra, appears to be the only appellate case that has directly analyzed the application of the phrase “change the status, duties, or responsibilities” with respect to the Pinellas County constitutional officers.

As noted above, *Eight is Enough in Pinellas* was subsequently quashed by the Florida Supreme Court in *Cook*. Ten years later, in *Telli*, the Florida Supreme Court receded from *Cook*, stating that “[t]he opinions of the First and Second (*Eight is Enough in Pinellas*) districts should have been affirmed.” At least one trial court has found this statement to mean that the referenced cases are once again good law. See *City of Jacksonville v. Fuller*, Circuit Court Case No. 10-2012-CA-8211 (Final judgment entered August 10, 2012). In any event, it is likely that trial and appellate courts having jurisdiction over Pinellas County will look to *Eight is Enough in Pinellas* in analyzing the phrase in question.

In *Eight is Enough in Pinellas*, the Second DCA provided the following analysis regarding an amendment to the Pinellas County Charter imposing term limits on the constitutional officers:

The County contends that the charter itself precludes the amendments at issue. Sections 2.06 and 4.03 of the charter state that neither the county nor the charter may change the “status, duties or responsibilities of the county officers specified in section 1(d), art. VIII of the state constitution.” Thus, the charter does prohibit certain amendments. *Term limits, however, do not affect the status, duties or responsibilities of a county officer, only the total length of time in which the officer could maintain status or perform duties and responsibilities.*

775 So.2d at 319-20.

The use of the phrase “the total length of time in which the officer could maintain status” appears to indicate that the court in *Eight is Enough in Pinellas* conceived of the term “status” as referring to an individual officer’s status as an office holder. Use of the phrase also seems to indicate that in the court’s analysis, affecting the length of time a county officer can maintain his status as an office holder does not impermissibly “affect the status... of a county officer”. Extrapolating from this reasoning, this case could be read to support the proposition that subjecting the Pinellas County constitutional officers to recall only affects the length of time a county officer can maintain his status as an office holder (contingent upon a successful recall effort), and thus by distinction does not impermissibly “affect the status... of a county officer”.

However, caution must be exercised in attempting to stretch the small bit of reasoning provided by the Second DCA in *Eight is Enough in Pinellas*. In its briefs before the Florida Supreme Court, the Pinellas County Attorney’s Office argued that “status” did not refer to any individual person’s status as an office holder, but rather referred to “the status of Charter versus non-Charter Officers” or “his or her status as a sovereign and autonomous Constitutional Officer.” The County further cited to an Attorney General’s Opinion that used the term “status” in this way, commenting on a contemplated Hillsborough County charter proposal wherein “the constitutional officers denominated in s. 1(d), Art. VIII, are not included as charter officers but retain their present status as constitutional officers...” Op. Att’y Gen. Fla. 81-7 (1981).

Under this reading, any invasion into the independence and autonomy of the constitutional officers could be seen as “chang[ing]” or “affecting” the status of Pinellas County’s constitutional officers. While apparently not adopted by the Second DCA in *Eight is Enough in*

Pinellas, the County’s prior arguments in this regard are by no means insubstantial. As proposals relating to the Pinellas County constitutional officers range further afield from the four corners of *Eight is Enough in Pinellas*, there is a potential that a trial or appellate court will limit *Eight is Enough in Pinellas* to its facts and adopt a broader definition of “status”.

Vacation Rental Update

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July 28, 2017¹

A. Recent History of Preemption of Short-Term Rental Regulation²

2011 Vacation Rental Legislation – Preemption of Home Rule Authority

Until June 1, 2011, local governments had virtually unfettered home rule authority to regulate short-term rentals. In 2011, the situation changed dramatically when the Florida Legislature preempted regulation of short-term rentals to the state. Ch. 2011-119, Laws of Florida, amended Sec. 509.242(1), Fla. Stat., to introduce the concept of a “vacation rental”, initially defining it as:

any unit or group of units in a condominium, cooperative, or timeshare plan³ or any individually or collectively owned single-family, two-family, three-family or four-family house or dwelling unit that is also a transient public lodging establishment.

This new definition incorporated a preexisting definition for “transient public lodging establishment,” defined in Sec. 509.013, Fla. Stat., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.”

The heart of the 2011 preemption was the addition of Sec. 509.032(7)(b), Fla. Stat. (2011), which provided in pertinent part:

A local law, ordinance or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply

¹ Special thanks to my law partner, Nancy Stuparich, for her assistance with these materials, and to Flagler County Attorney Al Hadeed, who is a wealth of information on vacation rental issues.

² The terms “short-term rental” and “vacation rental” are used interchangeably as the context requires.

³ Chapter 2014-71, Laws of Florida, later amended this definition by removing reference to “timeshare plan” and appending the phrase “but is not a timeshare project.”

to any local law, ordinance, or regulation adopted on or before June 1, 2011.”

The preemption came just as websites like AirBnB, HomeAway, and Vacation Rental By Owner (VRBO), were becoming popular and made it easier to advertise and rent these properties, and resulted in an exponential growth in the number of vacation rentals statewide. Coastal communities were especially hard hit. Quaint beach bungalows were demolished by the scores, and 6 to 8 bedroom McMansions thrown up in their place. Traffic, noise, and parking issues quickly began to overwhelm the resources of many communities, threatening local governments’ ability to deliver municipal services to its permanent residents. Many smaller communities felt that the fundamental character of their cities was at risk. What had been traditional single-family residential neighborhoods in quiet coastal towns were swiftly transforming into weekend party venues, playing host to, for example, 26 frat boys in a single house partying all night, just next door to retirees.

Local governments struggled for ways to manage these issues in the face of the 2011 preemption. One potential option was the “grandfathering” language of the last sentence of Sec. 509.032(7)(b), Fla. Stat. (2011), exempting from the preemption “any local law, ordinance, or regulation adopted on or before June 1, 2011.” Some cities and counties had regulations of short-term rentals that predated the preemption. However, many local governments took the conservative view that such regulations were “frozen” in their terms as of June 1, 2011, and could not be amended, lest both the amendment, and potentially the regulation as a whole, be the subject of a challenge. As a result, just as vacation rentals were fundamentally changing in scale and character thanks to technological and business innovations, such jurisdictions were stuck with regulations that could not keep pace with modern reality.

Some jurisdictions attempted to apply their preexisting zoning codes, which contained no explicit reference to short-term rentals, to prohibit vacation rentals in single-family residential areas as a commercial use. Such an attempt proved unsuccessful for the City of Fort Lauderdale in 2012 in *Dal Bianco v. City of Fort Lauderdale*.⁴ There, the circuit court, on an appeal from a code enforcement board order, effectively found that in the absence of “an ordinance preventing a homeowner from conducting short-term leasing of a single-family home” or even a definition of what the city considered impermissible “short-term” leasing, the city could not apply its zoning code to prohibit vacation rentals.

The Florida Attorney General reached a similar conclusion in an informal opinion to Flagler County Attorney Al Hadeed in 2013, in which the Attorney General

⁴ *Dal Bianco v. City of Ft. Lauderdale* (Fla. 15th Jud. Cir., May 9, 2012), Cert. denied No. 4D12-2028 (June 21, 2012). Opinion available at <http://www.voselaw.com/files/vr/dalbianco.pdf>.

advised that “a local zoning ordinance for single-family homes adopted prior to June 1, 2011 could not be interpreted to restrict the rental of such property.”⁵

Nonetheless, because codes of ordinances can vary widely among jurisdictions, a careful review of existing regulations should still be conducted when contemplating vacation rental regulations, on the off chance that a prohibition or regulation of such use can be found, even if not styled under the relatively recent term “vacation rental.”

2014 Vacation Rental Legislation – Limited Return of Home Rule

In response to concerns raised by local governments, the Florida Legislature by Ch. 2014-71, Laws of Florida, amended Sec. 509.032(7)(b), Fla. Stat. in 2014 to enhance a local government’s ability to regulate vacation rentals. Section 509.032(7)(b), Fla. Stat. (2014) now provided that:

A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.⁶

As a result, several local governments enacted ordinances that required the registration of vacation rentals, which assisted in the management of municipal resources, i.e. fire safety, police, traffic, parks, solid waste, etc., that are impacted when the use of a dwelling changes to a short-term rental, as well as other regulation not otherwise pre-empted by Section 509.032(7)(b).

Example of Post-2014 Vacation Rental Regulation – City of Anna Maria

The City of Anna Maria is an idyllic barrier island community located at the northern tip of Anna Maria Island in the Gulf of Mexico, just to the south of Tampa Bay and to the west of Bradenton. The average number of full-time occupants per residential dwelling was 1.9 persons according to the 2010 census.

The City historically had many seasonal occupants, usually “snowbirds,” who spent the winter months in Anna Maria and returned each year when the weather “up North” grew cold, and Central Florida residents who had houses in Anna Maria who used those houses for family vacations. The full-time residents of the City never felt the need to enact ordinances to regulate those part time residents because neither the snowbirds nor the family vacation homes caused any disruption in the day-to-day life of the full time residents.

⁵ AG Informal Opinion to Flagler County (October 23, 2013). Opinion available at <http://www.voselaw.com/files/vr/flaglerinformalopinion.pdf>.

⁶ A summary of state regulation of vacation rentals and other public lodging establishments is included in a recent Bill Analysis and Fiscal Impact Statement prepared by the staff of the Florida Senate Committee on Rules. <https://www.flsenate.gov/Session/Bill/2017/188/Analyses/2017s00188.rc.PDF>

However, when the 2011 Legislature enacted the ban on vacation rental regulation, everything changed in Anna Maria. What had once been a sleepy beach town with historic bungalows and quiet streets, began to transform. Huge numbers of bungalows were torn down and replaced with very large vacation homes. Streets that formerly had little traffic, became clogged when two or three families (or a college soccer team) would vacation together in one vacation rental (bringing numerous cars along with the people), and a transient population of up to 22 people would occupy a space that had formerly been occupied by 2 people. There was a great deal of money to be made in the vacation rental market, and developers and rental agents worked fast to transform the area.

Finally, when the Florida Legislature granted local governments some powers to regulate vacation rentals in 2014, the City of Anna Maria realized they needed to do something. In early 2015, my firm was hired as City Attorney and charged with the task of taking action to stem the tide of vacation rentals that were taking over the City.

On April 9, 2015, the Anna Maria City Commission adopted Ordinance No. 15-788, which implemented a number of regulations related to vacation rental properties. The ordinance was challenged in circuit court,⁷ and thereafter amended a number of times. The final version was adopted on November 19, 2015 as Ordinance 15-807.⁸

Ordinance 15-807 contained a number of regulations regarding vacation rental properties, including a maximum occupancy restriction of two persons per bedroom plus two persons, or eight persons per parcel, whichever is less. In order to qualify for the “two persons per bedroom”, a bedroom had to be a minimum of 100 square feet. A bedroom with no less than 70 square feet but less than 100 square feet, qualified for one person. The Ordinance also contained registration and inspection requirements, rental agreement and posting requirements, duties of vacation rental owners and allowing agents. In addition, the ordinance included a “grandfathering” provision, which allowed an owner of a vacation rental to rent to more than 8 occupants (based upon 2 persons per bedroom) for a period of only 5 years. At the end of the 5 year period, the maximum allowable occupancy is reduced to the lesser of 8 persons or 2 persons per bedroom plus 2 persons. Also, rental agreements existing as of the date of the enactment of the ordinance were exempted from the requirements of the ordinance.

Common Legal Issues Under the 2014 Vacation Rental Legislation

It is important to note at the outset that as of the date of this writing, there are no reported appellate opinions directly interpreting or applying the language of the 2014

⁷ *Iafolla v. City of Anna Maria*, 2015-CA-2419 (Fla. 12th Cir. Ct., filed May 22, 2015); *Pine Avenue Restoration, LLC v. City of Anna Maria*, 2015-CA-3558 (Fla. 12th Cir. Ct., filed July 28, 2015); *AMI Breeze, LLC v. City of Anna Maria*, 2015-CA-2121 (Fla. 12th Cir. Ct., filed May 5, 2015).

⁸ A Microsoft Word version of Anna Maria’s Ordinance 15-807 is available at <http://www.voselaw.com/files/vr/annamariaordinance15-807.docx>.

version of the vacation rental statute. Practitioners have had to rely on a few attorney general's opinions, trial court orders passed around among local government attorneys, legislative staff analyses, and arguments from general principles of law to breathe life and meaning into the 2014 statutory amendment. This section is intended to address some common legal issues that have been raised under the 2014 legislation, drawing primarily on the litigation experiences of the City of Anna Maria and Flagler County.

Argument: Despite 2014 Legislation, Regulation of Vacation Rentals Still Entirely Preempted to State

A typical first line of attack upon post-2014 vacation rental ordinances is the proposition that notwithstanding the 2014 amendment of Sec. 509.032(7)(b), Fla. Stat., regulation of vacation rentals remains entirely preempted to the state. The argument is premised on the language of Sec. 509.032(7)(a), Fla. Stat., which both before and after the 2011 preemption amendment, and after the 2014 amendment, substantially read in pertinent part:

- (a) The regulation of public lodging establishments... is preempted to the state.

As noted above, a "vacation rental" is statutorily defined as a species of "public lodging establishment," and so, the argument goes, all regulation of vacation rentals is preempted to the state.

This exact argument was raised by the plaintiffs in challenges to Flagler County's⁹ and Anna Maria's¹⁰ vacation rental ordinances. In the Flagler County case's "Order on Plaintiffs' Motion for Preliminary Injunction"¹¹ (required reading for any local government practitioner dealing with vacation rentals), the court engaged in extensive analysis of the statutory history of the section, and found no blanket preemption, stating:

The Legislature is presumed to know the existing law when it enacts a statute. *See, e.g., Williams v. Jones*, 326 So.2d 425, 435 (Fla. 1976); *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d 263, 266 (Fla. 5th DCA 1987). Despite the language of preemption in the pre-June 2011 version of section 509.032(7), the Legislature saw fit to amend the statute to prohibit local governments from regulating or restricting vacation rentals. If the preemption language of the then-existing statute already prohibited local regulation, then it would have been unnecessary for the Legislature to add section 509.032(7)(b). The Court cannot conclude that the Legislature

⁹ 30 *Cinnamon Beach Way, LLC v. Flagler County*, 2015-CA-167 (Fla. 7th Cir. Ct. June 1, 2015), *aff'd*, 183 So. 3d 373 (Fla. 5th DCA 2016) (*per curiam*).

¹⁰ *Iafolla v. City of Anna Maria*, 2015-CA-2419 (Fla. 12th Cir. Ct., filed May 22, 2015).

¹¹ A copy of the court's order is available at <http://www.voselaw.com/files/vr/flaglercountyorder.pdf>.

amended the statute for nothing; it clearly meant for the amendment to accomplish something the original statute did not. Likewise, the 2014 amendment to section 509.032(7)(b) was obviously undertaken with knowledge of what the statute then said. The Legislature removed the language prohibiting local governments from restricting the use of vacation rentals or regulating vacation rentals. It instead substituted a prohibition only against regulating the duration or frequency of rental of vacation rentals.

Based on the foregoing, the Court cannot conclude that the State has by virtue of section 509.032(7)(a) completely preempted the field of regulating short-term vacation rentals, their inclusion in the definition of "transient public lodging establishments" notwithstanding. The 2014 amendment of section 509.032(7)(b) allows local governments to regulate short-term vacation rentals, so long as they do not prohibit them, regulate the duration of rentals, or regulate the frequency of rental. Were the County to attempt overriding the State's regulatory efforts by imposing lesser standards on short-term vacation rentals, such an attempt would be preempted by the terms of section 509.032(7)(a). To read section 509.032(7) any differently would render the Legislature's actions in amending the statute in 2011 and 2014 meaningless surplusage.

Additional arguments on this point were raised in Anna Maria's litigation. As discussed at length in *Larimore v. State*, 2 So.3d 101, 106, 112-114 (Fla. 2008), it is a "basic rule of statutory construction... that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." The court in *Larimore* further noted that "the title of an act is properly considered in determining legislative intent." Notably, the title of Chapter 2014-71, Laws of Florida, Senate Bill 356, reads as follows:

An act relating to the regulation of public lodging establishments and public food service establishments; amending s. 509.032, F.S.; revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals; providing an effective date. (emphasis supplied)

In addition, when there are two conflicting sections of a statute, that section should ordinarily prevail that can be considered as the latest expression of the legislature. *Hillsborough County Com'rs v. Jackson*, 58 Fla. 210, 50 So. 423 (Fla. 1909); *Lykes Bros. v. Bigby*, 21 So.2d 37 (Fla. 1949).

Finally, it is notable that the Florida House of Representatives' Final Bill Analysis¹², dated June 19, 2014, lists the "Effect of the Bill" as follows:

The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

While one can anticipate that this argument will continue to be raised based on a facile reading of Sec. 509.032(7)(a), Fla. Stat. (2014) until an appellate opinion addresses the matter definitively, the tools exist for the local government practitioner to soundly overcome it.

Argument: Constitutional Violation - Impairment of Contracts

Bookings for vacation rentals can typically occur months in advance of a guest's stay, and so what of the permissible applicability of a vacation rental ordinance that may impair a vacation rental owner's ability to perform on the terms of that booking? The trial court in Flagler County's vacation rental litigation accurately described the issue:

"No... law impairing the obligation of contracts shall be passed." Art. I, §10, Fla. Const. As Plaintiffs point out, "An impairment... occurs when a contract is made worse or diminished in quantity, value, excellence or strength." See Motion for Temporary Injunction at 14 (quoting *Lawnwood Medical Center, Inc. v. Seeger*, 959 So. 2d 1222 (Fla. 1st DCA 2007). The risk of unconstitutionally impairing contract rights comes into play when a statute or ordinance is given retroactive effect to contracts already in place. See, e.g., *Cenvill Investors, Inc. v. Condominium Owners Org. of Century Village East, Inc.*, 556 So. 2d 1197, 1200 (Fla. 4th DCA 1990). There exists a presumption that parties who enter into a contract do so in contemplation of existing law. *Id.* As a result, the issue of impairment of contract does not apply to rental agreements entered into after the effective date of the Ordinance. As to contracts in existence at the time a law is enacted, however, Florida law follows the principle that "virtually no degree of contract impairment is tolerable". *Pomponio v. Claridge of Pompano*

¹²<https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0307z1.BPRS.DOCX&DocumentType=Analysis&BillNumber=0307&Session=2014>

Condominium, Inc., 378 So. 2d 774, 780 (Fla. 1979); *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d 557, 559 (Fla. 1975).

In the Flagler County litigation, the court found that a vesting process set out in the ordinance, whereby a pre-existing vacation rental contract would become “vested” or grandfathered so long as the vacation rental owner submits an application for a short-term rental certificate and the contract successfully survives a “vesting hearing process,” was too burdensome on preexisting contracts, and granted a limited injunction against the enforcement of the ordinance against contracts that predated the ordinance.

Argument: “Prohibit” versus “Regulate”

Section 509.032(7)(b), Fla. Stat. states in pertinent part, “A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.” Accordingly, a typical line of attack of a party challenging a vacation rental ordinance is to attempt to characterize a challenged provision as a “prohibition.”

This was the essential approach employed by the plaintiff in *Florida Gulf Coast Vacation Homes, LLC v. City of Anna Maria*.¹³ In particular, the plaintiff argued that Anna Maria’s occupancy regulation of 2 persons per bedroom, plus 2, for a maximum of 8 persons, *prohibits* “the vacation rentals with more than 8 persons” and thus was impermissible under Section 509.032(7)(b), Fla. Stat. (2014). The plaintiff also asked the court to adopt and apply as a definition of “prohibit” a secondary definition listed in the 10th edition of Black’s Law Dictionary, “to prevent, preclude, or severely hinder,” with obvious heavy reliance on “severely hinder,” and inviting a slippery slope to equating “prohibit” and “regulate.”

Anna Maria maintained that while there were vacation rentals in the city that had, in the past, been rented to more than 8 persons, there is no such thing as a vacation rental that necessarily must be rented to more than 8 persons. Anna Maria further noted that under its ordinance formula, there was not even one vacation rental in the city that could not continue to operate as a vacation rental after the effective date of the city’s ordinance due to the limitation on occupancy.

As to the definitional question, Florida law recognizes a profound distinction between “prohibit” and “regulate.” See *World Fair Freaks and Attractions, Inc. v. Hodges*, 267 So.2d 817, 819 (Fla. 1972) (“[t]he power to regulate is not synonymous with the power to prohibit absolutely.”) See also *Florida Public Telecommunications Assn., Inc. v.*

¹³ *Florida Gulf Coast Vacation Homes, LLC v. City of Anna Maria*, 2016-CA-000629 (Fla. 12th Cir. Ct. April 8, 2016).

City of Miami Beach, 2001 WL 36406296 (S.D. Fla. 2001) [affd. in part, rev. in part on other grounds at 321 F. 3d 1046 (11th Cir. 2003)], which states in pertinent part:

The essential word in the phrase “may prohibit or have the effect of prohibiting” is of course “prohibit.” Black's Law Dictionary defines “prohibit” as: “[t]o forbid by law; to prevent;—not synonymous with ‘regulate.’ “ Black's Law Dictionary 1212 (6th ed.1990). **Thus, FPTA must first show that Miami Beach's ordinances effectively forbid or prevent payphone providers from operating in Miami Beach. Merely showing that Miami Beach regulates payphone providers is insufficient.**

The court in *Florida Gulf Coast* granted final summary judgment in favor of Anna Maria¹⁴, holding:

The Ordinance does not prohibit vacation rentals that have historically been rented to more guests than is permitted under the occupancy regulations set forth in the Ordinance. The limitation on occupancy is a regulation that does not impinge in any way on the regulatory subjects of frequency or duration of rental as outlined in Section 509.032(7). Therefore, the regulation of the Ordinance is not in conflict with and is not preempted by Section 509.032(7).

“Prohibit” versus “Regulate” - Two Attorney General’s Opinions

The line between prohibiting vacation rentals and regulating them is not always as clear as in *Florida Gulf Coast*, as illustrated in the following two Attorney General’s Opinions.

In AGO 2014-09, the Attorney General was asked the following two questions: 1) Does Section 509.032(7)(b), Florida Statutes permit the city to regulate the location of vacation rentals through zoning? and 2) Can a city prohibit vacation rentals, which fail to comply with the registration and licensing requirements in Section 509.241, Florida Statutes?¹⁵ The Opinion concluded that a local government cannot use zoning to prohibit vacation rentals in a particular area where residential use is otherwise allowed. The Opinion also stated that “a local government cannot prohibit the operation of a vacation rental that does not have proper licensure by the state.”

In AGO 2016-12, the Attorney General was asked “[d]oes section 509.032(7), Florida Statutes prohibit the city from: (A) Implementing distance separation requirements between vacation rentals; or (B) Limiting the percentage or number of vacation rentals on city streets or in city neighborhoods?¹⁶ The Opinion stated that “a

¹⁴ A copy of the court’s order is available at <http://www.voselaw.com/files/vr/floridagulfcoast.pdf>.

¹⁵ <http://www.myfloridalegal.com/ago.nsf/Opinions/5DFB7F27FB483C4685257D900050D65E>

¹⁶ <http://www.myfloridalegal.com/ago.nsf/Opinions/3AF7050D48068C10852580440051386C>

city may not impose spacing or proportional regulations that would have the effect of preventing eligible housing as defined in Section 509.242, Florida Statutes, from being used as a vacation rental.”

2017 Legislative Session - Various Attempts at Further Statutory Revision, Both Pro- and Anti-Home Rule

The 2017 legislative session generally embodied the most frontal assault on home rule in decades, and the hot issue of vacation rentals was no exception. Fueled by the well-funded vacation rental industry, a flurry of bills and amendments proposed revisions to the limited home rule permitted under the 2014 statute. Primarily these focused on rolling back home rule, either with an outright repeal of the 2014 reforms, or a more subtle, but equally stifling, proposal that local governments be required to regulate all residential properties uniformly, whether vacation rentals or not. Such superficially fair sounding language willfully ignores the differential impacts vacation rentals have in residential communities that drive local governments to regulate them.

In addition, the topic of allowing jurisdictions with pre-2011 grandfathered short-term rental regulations to revise and/or loosen some of those regulations was repeatedly raised. As noted above, such jurisdictions have been hesitant to revise such ordinances for fear that the grandfathering would be found to have been lost, and many such jurisdictions lobbied for such a revision. However, it is notable that such language repeatedly found its way into bill drafts also proposing a roll-back of home rule for post-2011 jurisdictions, presumably as a way to split the pre-2011 jurisdictions from solidarity in the lobbying efforts against the home rule roll-back.

In the end, all of the vacation rental bills proposed in the 2017 session died, one only on the second to last day of session. The vacation rental industry has made clear that it will be back next year, seeking a roll-back of home rule on short-term rentals.

B. Vacation Rental Regulation and the Bert J. Harris Jr., Private Property Rights Protection Act

The Bert J. Harris Jr., Private Property Rights Protection Act, Sec. 70.001, Fla. Stat., (“Harris Act”) has become a popular tool for property owners subject to local government regulation of short-term rentals. This section is not intended to be a comprehensive review of the Harris Act, but to touch on some practice points relevant to short-term rental regulations. In effect, the Harris Act allows a property owner to seek relief “when a specific action of a government entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property.”

It is important to understand a few key terms in the Harris Act in order to effectively defend a Harris Act claim resulting from short-term rental regulations. For example, the Harris Act requires a property owner to establish an “existing use” or

“vested right” was “inordinately burdened” by the short-term rental regulation. The Harris Act as applied to a vacation rental ordinance claim would require a property owner to demonstrate either that (1) the property was in actual, present use as a short-term rental; or (2) the use of the property as a short-term rental was reasonably foreseeable, non-speculative, suitable, compatible with adjacent properties, and also created a fair market value that was greater than the actual, present use.

To support a property owner’s claim, a short-term rental regulation must create an “inordinate burden” as defined under the Harris Act. In particular, the short-term rental regulation must have “directly restricted or limited the use of real property such that (1) the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or (2) the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of the burden imposed for the good of the public, which in fairness should be borne by the public at large.” Sec. 70.001(3)(e), Fla. Stat.

The Harris Act requires a property owner claiming under the Act to “present a claim in writing” to the governmental entity “[n]ot less than 150 days prior to filing an action under this section...” Sec. 70.001(4)(a), Fla. Stat. “The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property.” *Id.*

Once a valid claim is submitted, the ball is in the local government’s court to, during the 150 day notice period, “make a written settlement offer to effectuate”:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.
11. No changes to the action of the governmental entity.

This exhaustive list is restated here to drive home the fact that while relief under the Harris Act can include financial compensation, the Act contemplates, and specifically authorizes, a great deal of flexibility and creativity in formulating a solution that “prevent[s] the governmental regulatory effort from inordinately burdening the real property.” This flexibility is loosely bounded by Sec. 70.001(4)(d)(1), Fla. Stat., which requires that:

When a governmental entity enters into a settlement agreement under this section which would have the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

A local government’s settlement offer is very important in the context of subsequent litigation of a property owner’s Harris Act claim if a settlement is not reached. It is taken into account by the court in determining whether the property remains inordinately burdened by the regulation, and by the jury in determining compensation for the reduction in fair market value of the property. It also plays a crucial role in the award of attorneys fees, providing for an award to the property owner if the settlement offer “did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim,” and for an award to the government if the government prevails and the property owner did not accept a bone fide settlement offer.

Bert Harris Vacation Rental Example – Anna Maria

To date, 110 Harris Act claims have been filed with the City of Anna Maria relating to its vacation rental ordinance, all of which were premised upon Anna Maria’s limitation on vacation rental occupancy (2 person per bedroom, plus 2, for a maximum of 8). The aggregate claimed damages for all of these claims amounts to over \$100 million, a fact that the local press (and the Florida Legislature in its committee meetings) reveled in incessantly repeating.

Presently 80 of these claims have been settled by the City, each with a variance to the occupancy limit, as determined on a case-by-case basis.¹⁷ To date, no compensation has been paid to any property owner as a result of a vacation rental Harris Act claim, nor is any presently anticipated.

¹⁷ An example of one of Anna Maria’s executed settlement agreements is available at <http://www.voselaw.com/files/vr/annamariasettlementagreement.pdf>.

Practical Tips – Vacation Rentals and Bert Harris Claims

- 1. Warn your Commissioners and Manager, and keep them in the loop.** Be up front and frank with your commissioners and your city manager that the city will likely receive Harris Act claims when a vacation rental ordinance is passed, especially if it limits occupancy. When aggregate claims start adding up to 10s or 100s of millions of dollars, elected officials can get nervous and will feel the need to respond to their constituents. Have a plan for how to negotiate and resolve your Harris Act claims without payment of compensation.
- 2. Send the notice.** Sec. 70.001(11), Fla. Stat. provides for a one-year statute of limitations from the time “a law or regulation is first applied by the governmental entity to the property at issue.” The default is that the one year starts “when there is a formal denial of a written request for development or variance,” which means the risk could linger for years. However, Sec. 70.001(11)(a)(1), Fla. Stat. allows a jurisdiction to start the one year ticking immediately by mailing an appropriate notice to an affected property owner. Sending the notice may prompt a slew of Harris Act claims at the outset, but will allow for quick closure on the issue after the year elapses. Anna Maria sent the notice to each and every property owner in the City.
- 3. Verify that the Harris Act claim is timely and complete.** In particular, review the sufficiency of the appraisal attached to the Harris Act claim and determine if it contains an evaluation of the loss of the property owner’s investment backed expectations. The appraisal must be attached to the claim. The appraisal must also be timely and demonstrate the value before the regulation was enacted, and the value after the regulation was imposed, with the difference being the claim amount. This is necessary to establish the existence of an “inordinate burden.” See *Turkali v. City of Safety Harbor*, 93 So. 3d 493 (Fla. 2d DCA 2012).
- 4. Be creative.** As discussed above, the Harris Act allows for substantial flexibility in resolving claims.
- 5. Consider offering to purchase the vacation rental as a part of a Bert Harris settlement offer.** Depending upon the local real estate market, the “fair market value,” (what a willing seller and a willing buyer, neither under any compulsion to buy or sell, would buy and sell for on the open market), of the vacation rental may be significantly higher than the “before” value in the Bert Harris appraisal of the vacation rental¹⁸. This was consistently the situation in the City of Anna Maria. Because the fair market values for vacation rental (and other) properties in Anna Maria are so high, and generally

¹⁸ For Bert Harris appraisal purposes, the “before” value of the vacation rental property is generally determined by an appropriate capitalization rate applied to the net annual rental stream before the adoption of the vacation rental restrictions. The “after” value is generally determined by the capitalization rate applied to the net annual rental stream as anticipated to be reduced due to any limitations due to the vacation rental ordinance.

greatly exceed the actual return on investment values based on vacation rental returns, Anna Maria was able to comfortably offer to purchase many of the vacation rentals as an alternative offer of a Bert Harris settlement. So far, no property owner in Anna Maria has accepted an offer to purchase their vacation rental property at the “before” price set forth in the Bert Harris appraisal. This offer to purchase at the “before” price puts the City in a very favorable position if a Bert Harris offer is not accepted, since it would be difficult for a property owner to argue in court that its investment backed expectation is not fulfilled when the City has offered to purchase their property based upon the appraised value of their property in the “before” situation. Before this technique is utilized, a local government must make sure that it has the funds (or access to the funds) to actually make the purchases, and must make sure that in fact, it can re-sell the properties (hopefully at a profit) readily.

6. Put your local government’s carrier on notice. Notify your local government’s insurance carrier at the same time you provide the required notice to the Attorney General of the Harris Act claim and keep them informed of the status of a possible pre-suit settlement of the claim. You’re always in a better spot with your carrier when you keep them in the loop early and often.

**TORCIVIA, DONLON,
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R. Brian Shutt*
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Melissa P. Anderson*

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

July 12, 2018

Via Email: (HR@indiantown.org)
Mayor and Village Council
Village of Indiantown
P.O. Box 398
16550 SW Warfield Blvd.
Indiantown, FL 34956-0398

RE: Village Attorney Search

Dear Mayor & Village Council:

We are pleased to submit our proposal to represent the Village of Indiantown as the Village Attorney.

Torcivia, Donlon, Goddeau & Ansay, P.A. has been providing legal services to governmental entities for nearly three decades. We are widely known as the largest local government law firm situated between Broward County and Greater Orlando. Eight of our nine attorneys have been practicing law for more than twenty years. We represent a number of municipalities and local governments in Martin, Palm Beach and St. Lucie Counties. Currently, we serve as the named City/Town/Village Attorney for eight municipalities and provide contracted legal services to more than ten additional municipalities and special districts. We have successfully represented local governments in federal and state court litigation and appeals, as well as in mediation and arbitration. Our extensive experience in advising and representing local governments will ensure the Village of Indiantown obtains efficient and cutting edge legal representation.

Our firm understands the special needs of local governments and we are committed to providing quality representation and advice in an efficient and timely manner. We offer the Village a full range of general counsel services in all aspects of municipal law, including ethics, public records and sunshine law, land use and zoning matters, code enforcement, procurement, contracts, utilities

including water and waste water, construction law, labor and employment law, drafting and interpreting personnel regulations and policies, preparation of ordinances and resolutions, forfeitures, parliamentary procedures, and litigation. We will also actively monitor and oversee the activities of outside counsel, including bond counsel, insurance counsel and workers' compensation counsel. We will provide appropriate guidance and advice to the Mayor and Village Council and other Boards of the Village of Indiantown as well as Village staff. Our services will be provided both at Village Hall with dedicated office hours as well as all other times wherever and whenever necessary to serve the Village's best interests.

Experience

While the Village of Indiantown will benefit from the service of all the attorneys in our firm, Brian Shutt would serve as the primary Village Attorney. Mr. Shutt is Board Certified in City, County and Local Government Law and has over 25 years of experience as set forth in the information below.

The Village of Indiantown would also benefit from the extensive experience of the remaining eight attorneys in our firm. Carolyn Ansay, Christy Goddeau, Pamala Ryan and Melissa P. Anderson are also Board Certified in the field of City, County and Local Government law. Our firm employs three legal assistants and has an extensive law library and full access to Lexis Nexis, an integrated, on-line legal research engine. All attorneys are trained and skilled in the use of Lexis Nexis and other on-line search engines for researching legal issues and drafting documents. Our legal assistants are also highly trained in a variety of computer programs and preparing documents. Through our on-line research and constant review of new case law, we provide advice and representation based on the most current laws and court decisions. In addition, we possess a detailed bank of legal briefs and memoranda addressing numerous and varied governmental issues. This detailed compilation assists us in rendering knowledgeable and timely advice. All attorneys have extensive experience in negotiating and drafting contracts in a variety of contexts; drafting diverse ordinances and resolutions; and in reviewing and drafting a myriad of documents related to local government law. Our resources permit us to provide accurate and prompt legal service to our governmental clients.

Availability and Conflicts

Our firm is available to serve in the position and meet the needs of Indiantown. Additionally, there are no potential or actual conflicts of interest which would impact the firm's ability to represent the Village.

Compensation/Fees/Costs

Our firm proposes a compensation amount and fee structure consistent with the current Village Attorney Contract. Alternatively, we would be willing to serve as Village Attorney for an hourly rate

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West Palm Beach, Florida 33407 (561) 686-8700 - (561) 686-8764 (facsimile)

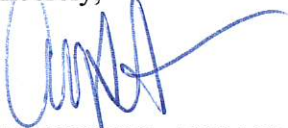
of \$200 per hour with a 3% annual adjustment beginning in October of 2019.

Detailed Reasons for Selection

Our firm takes a team approach to providing services for our clients. While the Village Attorney will be the lead attorney for the Village, all attorneys in our firm will be available to provide services to the Village of Indiantown. Our team approach ensures that we provide the most efficient and timely services to each of our clients. A summary of the specific areas of practice and experience for each of the attorneys on our team is set forth in Exhibit A. Additionally, a list of references is set forth in Exhibit B.

We look forward to working with the Village to ensure that the Village of Indiantown receives the highest quality representation in all legal matters in a cost effective manner. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



CAROLYN S. ANSAY, ESQ.
CA/vm

Enclosures

EXHIBIT A

Brian Shutt

Brian Shutt was admitted to the Florida Bar in 1994 and has been a Florida Bar Board Certified City, County Local Government attorney since 2009. Mr. Shutt joined the firm after serving in the City of Delray Beach's City Attorney's Office for 19½ years, the first 15 years as an Assistant City Attorney and the last 4½ years as the City Attorney. Mr. Shutt has extensive experience in planning and zoning matters, contractual matters, purchasing matters, land use issues, drafting of ordinances and resolutions, public records and sunshine law matters, code of ethics issues, code enforcement matters and all facets of local government law.

During Mr. Shutt's career with the City of Delray Beach, he successfully defended the City in various cases related to civil rights, trip and fall, auto accident, employment discrimination, unlawful use of force by police officers and claims against the City regarding the enforcement of its ordinances. He has also represented the City in labor arbitrations and served as counsel to the City's Site Plan Review and Appearance Board, Board of Adjustment, Historic Preservation Board, Planning and Zoning Board and Code Enforcement Board.

Mr. Shutt, while at the City of Delray Beach, was responsible for reviewing all agenda items for legal sufficiency as well as acting as board counsel for the City Commission and attending all Commission meetings. He is very familiar with issues confronting cities in the area of sober homes.

Mr. Shutt is very knowledgeable of and has responded to numerous questions and inquiries regarding Florida's Code of Ethics (Chapter 112, Florida Statutes); public records law and the Sunshine Law. Mr. Shutt was also involved in addressing issues that arose under the County-wide code of ethics and with the Inspector General. He has provided advice to elected officials and board members on ethics, public records and the Sunshine Law. His experience in these areas assists him in his ability to advise local governments on their internal policies and procedures.

Mr. Shutt, while the City Attorney for Delray Beach, was instrumental in crafting the City's noise ordinance as well as developer's agreements regarding major projects in the City. He met with city staff on a daily basis and assisted department directors with numerous legal issues. Mr. Shutt has drafted a variety of legal instruments, including contracts for construction, purchases and professional services; bills of sale; easements; dedication agreements; unity of title; access agreements, and developer's agreements.

Mr. Shutt has drafted various ordinances, resolutions, license/use agreements, and procurement documents. He has drafted ordinances on topics related to signs, pain management clinics, handbills,

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rental properties, procurement procedures, sexual predator/offender residency restrictions, and landlords. He has drafted a procurement policy for the City of Delray Beach as well as numerous bid, request for proposal and request for qualification documents. Mr. Shutt has reviewed, revised and drafted contracts related to construction, professional services, professional consulting, independent contractors, facilities management companies, and sponsorships. Mr. Shutt was also responsible for the oversight of the City's outside counsel, which dealt with matters related to pensions, labor relations, lobbying, bonding and real estate.

Since February 1, 2016, Mr. Shutt, along with Mr. Torcivia, has served as Town Attorney for the Town of Ocean Ridge. He attends all meetings of the Town Commission, the Planning Board and other advisory boards. Mr. Shutt has drafted a wide array of new ordinances for the Town dealing with purchasing, land use, board duties and responsibilities, and charter revisions. He meets with Town staff and Town Commissioners on a regular basis. He also drafts various legal instruments for the Town including contracts, bid documents, request for proposals and easements. He is currently working with the Town's charter review committee to update the Town's charter.

Mr. Shutt also assists the City of Lake Worth and the Village of Palm Springs in day-to-day legal issues. For the Village of Palm Springs, Mr. Shutt has been instrumental in several new land use ordinances dealing with nightclubs, signage, right of way use and abandonment procedures. He meets with Village staff weekly at Village Hall and assists department directors with a wide range of legal issues. Mr. Shutt drafts a variety of legal instruments for the Village including contracts for construction, purchases and professional services; easements and developer's agreements. He occasionally attends Village Council meetings. He recently completed drafting revisions to the Village's charter.

For the City of Lake Worth, Mr. Shutt is available to the Commissioners and City staff to discuss and provide advice on a variety of City issues. He works closely with City staff to prepare contracts, draft ordinances and resolutions, and provide advice on a variety of municipal law issues. Mr. Shutt has also drafted ordinances related to right of way use, panhandling and utilities for the City. He is currently representing the City in all legal issues regarding the City's development of a Park of Commerce.

Mr. Shutt also assists the Town of Highland Beach in everyday legal issues, such as, sunshine law, public records law, ethics, purchasing and the drafting of contracts and ordinances. He works closely with the police department as well as with public works and utilities. Some recent ordinances that Mr. Shutt has prepared for the Town involve signage, purchasing, sexual predators and maintenance of the right of way.

Carolyn Ansay

Carolyn Ansay was admitted to the Florida Bar in 1997 and is a Florida Bar Board Certified City, County Local Government attorney. Ms. Ansay has nearly two decades of experience representing private individuals and governmental entities in environmental and water law, governmental law, land use, and civil litigation. Ms. Ansay joined the firm in 2014 after serving as General Counsel to

the South Florida Water Management District.

Ms. Ansay previously served as City Attorney for the City of Edgewater and Interim City Attorney for the City of New Smyrna Beach. Additionally she has served as counsel to several municipal planning and advisory boards and as a special magistrate for city and county governments. As former General Counsel to the South Florida Water Management District, Ms. Ansay also provides clients with strategic advice and counsel on governmental and land use, legislative and environmental issues across the State of Florida.

Over the course of her career, Ms. Ansay has also represented regional water suppliers, counties, school districts, special districts, and state agencies. She also served as a Special Magistrate in several jurisdictions where she presided over quasi-judicial proceedings on matters ranging from land use to local code enforcement. She has also served as an adjunct professor and frequent lecturer on environmental law topics.

Ms. Ansay currently represents the Firm's municipal clients including the City of Lake Worth, Town of South Palm Beach and the Town of Sewall's Point on water utility issues, land use and FEMA issues. Her past experience with state and federal agencies assists our clients in successfully navigating issues with such agencies. She also represents Protecting Hobe Sound in its efforts to incorporate.

Glen J. Torcivia

Glen J. Torcivia was admitted to The Florida Bar in 1982 and engaged in private practice in West Palm Beach until 1984. From 1984 through 1989, Mr. Torcivia was an Assistant County Attorney for Palm Beach County. Mr. Torcivia represented the County in a wide range of areas, from A (airports) to Z (zoning) including drafting the Palm Beach County Health Care Act and the Children's Services Council Act of Florida. He successfully represented the County in many federal and state court actions at both the trial court and appellate levels. *See, e.g., McGregor v. Board of Commissioners of Palm Beach County*, 674 F. Supp. 858 (S.D. Fla. 1987) (a whistleblower action filed by the County's former internal auditor); *Ackinclose v. Palm Beach County*, 845 F.2d 931 (11th Cir. 1988). (A fair labor standard act lawsuit filed on behalf of 33 employees of the utilities department.) He won every case that went to trial, and none were settled for more than a nuisance value. He negotiated several collective bargaining agreements for the County, including the first agreement for the County's newly consolidated Fire Rescue Department. He also negotiated collective bargaining agreements with the County's general employee union. He successfully represented the County in several grievance, arbitration and impasse hearings pursuant to these agreements.

After establishing the Firm, Mr. Torcivia continued to represent local governments in a wide variety of matters. His representation includes a number of municipalities, counties, school districts, special districts and constitutional officers. Mr. Torcivia is very familiar with the Sunshine Law, the Code of Ethics, the ad valorem (TRIM) process, labor and employment law, code enforcement matters, contracts, land use and zoning, utilities, finance, infrastructure,

litigation, ordinances and all facets of local government law. He has served as Special Magistrate/Hearing Officer for several municipalities for code enforcement matters.

For the past six years, Glen J. Torcivia and the firm have served as the City Attorney for the City of Lake Worth providing legal advice in the areas of administration, labor & employment law, public works, water utilities, electric utilities, solid waste, land use, planning & zoning, historic preservation, real estate, finance, infrastructure, litigation, building, code enforcement, public records, ethics, Sunshine Law, library and recreational services. Mr. Torcivia or Christy Goddeau attend City Commission meetings for the City of Lake Worth and work closely with outside counsel to oversee and resolve pending litigation. Over the past five years, Mr. Torcivia has been instrumental in favorably resolving costly litigation against the City and limiting the City's continued exposure to liability and attorneys' fees. The firm reduced Lake Worth's legal budget by approximately 20% during our first three years as City Attorney, while enhancing the level of legal services provided to Lake Worth.

Mr. Torcivia and the firm have served as the Village Attorney for the Village of Palm Springs for the past ten (10) years providing legal advice in the areas of administration, police, public works, water utilities, land use, annexations, public records law, Sunshine Law, employment law, planning & zoning, building, code enforcement, finance, infrastructure, litigation, library and recreational services. Mr. Torcivia attends most Village Council meetings with Brian Shutt attending at times. Mr. Torcivia, along with Ms. Donlon, negotiates collective bargaining agreements with the Village's police union (previously having negotiated with the union representing both police and fire rescue) and with the Service Employee International Union (SEIU).

Since January 2012, Mr. Torcivia, along with Leonard Rubin, Esq., has served as Town Attorney for the Town of Highland Beach. As the Town Attorney, Mr. Torcivia is responsible for all legal matters affecting the Town. He or Ms. Ryan attend all Town Commission meetings, as well as meetings of various advisory boards of the Town. Mr. Torcivia and Ms. Ryan work closely with the Town Manager and Town staff, including the Finance Director and Police Chief. During the first three years as Town Attorney the firm reduced the Town's legal budget by approximately 50% while providing outstanding legal services to Highland Beach. Mr. Torcivia worked with the Charter Review Committee in reviewing and revising the Town Charter.

Mr. Torcivia has been the Town Attorney for the Town of Sewall's Point since 2007. Sewall's Point is a residential full service community with administrative, police, public works, land use, and building/code, provided in house, with fire rescue, water, waste water treatment and sanitation provided via outside contracts. As Town attorney, Mr. Torcivia and the firm are responsible for all legal matters for the Town. Mr. Torcivia attends most Town Commission meetings. Ms. Ansay occasionally attends Town Commission meetings. He has provided an overview of relevant laws such as the Sunshine Law, Public Records Law, and Code of Ethics to the Town Commission and to Town Advisory Boards. Ms. Donlon provides all employment law services for the Town.

Serving as the City Attorney for the City of Belle Glade since 2003, Mr. Torcivia oversees all legal issues pertaining to the City and attends City Commission meetings, workshops, and meetings of

different boards of the City. He advises the City Manager and City staff on a host of issues confronting the City. He previously worked with the City's Chiefs of Police and Fire Rescue in matters pertaining to public safety. The City of Belle Glade has contracted, since 2008, with the Palm Beach County Sheriff's Office. He negotiated the initial contract and was successful in renegotiating said contract to achieve an approximately \$1 Million reduction in cost to the City with no decrease in the level of service provided by the Sheriff's Office. In 2009, the City transferred its fire rescue service to Palm Beach County Fire Rescue. He also represents the Planning and Building department and is involved in legal issues involving developing the City's business park and annexation and other real estate matters.

Mr. Torcivia, along with Ms. Goddeau, were actively involved in negotiations with Palm Beach County, and the cities of Pahokee and South Bay, to form the Glades Utility Authority, a regional water utility system provider. The GUA consolidated services and begun making significant improvements to the aging infrastructure of the Glades water utility systems. He provides advice on the Sunshine Law, Public Records Law, the TRIM process, Ethics and Litigation. The City has received approximately 4 million dollars in State funds for road construction over the past few years. Mr. Torcivia and Jennifer Hunecke, draft RFP's and contracts for these (and other) infrastructure improvements.

Mr. Torcivia has, as special counsel, represented the City of Riviera Beach since 1989 in a diverse variety of matters, including defending claims of employment discrimination, defending police officers in unlawful use of force cases, representing the City in the enforcement of their ordinances (e.g., adult entertainment ordinances, fireworks ordinances, zoning ordinances, etc.), tort litigation, including slip and fall, assault and battery, traffic accidents, due process claims, Sunshine Law and public records lawsuits. Along with Mr. Ransdell, he provides legal advice and services to the police department on a variety of matters. He has also represented the City in labor arbitrations and served as counsel to the City's Planning and Zoning Board. He, along with Ms. Goddeau, have served as interim City Attorney as needed.

Together with Leonard Rubin, Esq., Mr. Torcivia and the firm have represented the Village of North Palm Beach as the Village Attorney since 2006. The firms jointly provide all legal service to the Village, including Planning & Zoning, Ethics, contracts, procurement, code enforcement and litigation. Ms. Donlon provides all employment law service for the Village.

As the initial general counsel of the Health Care District of Palm Beach County (1989-1997), Mr. Torcivia was responsible for all legal matters pertaining to starting an independent special taxing district. He helped establish the trauma system, including negotiating the purchase of the Trauma Hawk Air Ambulance, and negotiating the contracts with the trauma centers and with the trauma physicians. Mr. Torcivia provides a wide range of legal services to Lakeside Hospital, including the negotiating and drafting of numerous contracts. He continues to represent the District on a number of matters, including the acquisition of state land for a new hospital and the negotiations of numerous contracts. Mr. Torcivia, along with Ms. Goddeau, have occasionally served as interim general counsel.

Mr. Torcivia, along with Ms. Donlon, represent the School Board of St. Lucie County in employment law matters. Mr. Torcivia recently prevailed after a DOAH hearing in representing the District in an employment termination matter.

Mr. Torcivia represents the Early Learning Coalition of St. Lucie County as general counsel. As such, he reviews and drafts contracts, RFP's and other documents. He recently prevailed in an administrative hearing for the Coalition.

Mr. Torcivia has, for over twenty-seven (27) years, represented the Children Service Council of St. Lucie County. The Council is comprised of ten (10) individuals, five (5) of whom are appointed by the Governor and five (5) of whom serve by designation (i.e. a County Commissioner, School Board member, the School Board superintendent, a representative of the Department of Children and Families and a local Juvenile Judge). The Council has provided millions of dollars in funding to programs to improve the quality of life for all children in St. Lucie County. Mr. Torcivia drafts and reviews all contracts entered into by the Council and, along with Ms. Donlon, provides advice on employment law matters. Mr. Torcivia and the firm have served as Town Attorney of South Palm Beach since 2017. As Town Attorney, he provides all necessary legal services to this coastal community. This includes representing the Town Council, Town Manager and Police Department. The firm is currently assisting in drafting an RFQ for wastewater and sewer engineering services.

Lara Donlon

Lara Donlon was admitted to The Florida Bar in 1996. After clerking at the Fourth District Court of Appeals, she practiced in the area of tort litigation, including litigation regarding wrongful death, automobile accidents, premises liability and insurance coverage cases, commercial litigation, and employment law matters. She also practiced before the appellate courts and prepared a number of appellate briefs resulting in favorable outcomes.

Since joining the firm in 2001, Ms. Donlon has been involved in all aspects of the firm's practice and has provided services to a majority of the firm's governmental, as well as, corporate clients. She leads the firm's employment law practice. Ms. Donlon provides employment law advice and representation for the firm's municipal and special district clients, including the Village of Palm Springs, the Village of Wellington, the City of Lake Worth, the City of Riviera Beach, the Village of North Palm Beach, the City of Belle Glade, the Town of Highland Beach, the Town of Sewall's Point, the Port of Palm Beach and the Property Appraiser of Palm Beach County. Ms. Donlon also volunteers her time for the Human Resource Association of Palm Beach County, most recently serving as President in 2009 and 2010, and Immediate Past President in 2011.

When current or former employees file grievances, arbitrations, administrative complaints, or lawsuits in State or Federal Court, Ms. Donlon provides a zealous defense, while ensuring the client also explores the possibility of early resolution. Ms. Donlon has defended and resolved numerous cases brought under multiple employment law theories. Additionally, she assists clients in vigorously defending charges filed with the Equal Employment Opportunity Commission to avoid

future litigation. Should any litigation matter proceed to the appellate level, Ms. Donlon is well-versed in appellate matters and is able to continue the defense without any disruption. Ms. Donlon's experience as a law clerk to the Honorable John W. Dell of the Fourth District Court of Appeals has provided her the experience to prepare a number of appellate briefs resulting in favorable outcomes. See e.g. *McCollem v. Chidnese*, 832 So.2d 194 (Fla. 4th DCA 2002); *Brown v. Brown*, 800 So.2d 359 (Fla. 4th DCA 2001); *Hadden v. School District of Palm Beach County*, 845 So.2d 208 (Fla. 4th DCA 2003)(affirmed PCA).

Ms. Donlon regularly represents governmental and private-sector clients in labor and employment-related disputes at the administrative, trial and appellate levels. Balancing proactive practices with appropriate reactive measures, Ms. Donlon assists clients in minimizing legal risks and expenses related to employment including, but not limited to, claims of harassment, hostile work environment, discrimination, wage payments and overtime, retaliation, public sector whistle-blower, Family Medical Leave Act, and evaluating reasonable accommodations for religious purposes or for the disabled. Ms. Donlon also represents our clients in contested unemployment hearings, as needed.

Ms. Donlon has drafted, amended and updated multiple personnel policies for governmental organizations, ensuring compliance with federal, state and local laws. Ms. Donlon was also instrumental in assisting a municipality in modifying its personnel policies to comply with new civil service rules that were passed by referendum. Ms. Donlon has represented Civil Service Boards and has prosecuted cases for municipalities before the Civil Service Board. Ms. Donlon has also represented governmental employers in the negotiation and interpretation of collective bargaining agreements, and represented employers during the grievance process.

Ms. Donlon provides training to elected officials, senior managers and general employees as needed to prevent harassment and discrimination in the workplace, to provide education regarding changes to personnel policies, and to provide education regarding various labor and employment laws and their application to the workplace.

Ms. Donlon has been successful in representing the City of Riviera Beach, the School Board of Palm Beach County, the Village of North Palm Beach, the Health Care District of Palm Beach County and other governmental and corporate clients in administrative proceedings, litigation and appellate matters. Ms. Donlon has routinely provided exceptional responses on behalf of our clients to administrative charges alleging claims of discrimination and/or harassment, thereby avoiding further litigation.

Ms. Donlon has also conducted investigations resulting from internal complaints from current employees. Ms. Donlon provides findings and recommendations, as dictated by each situation.

Ms. Donlon also drafts employment and independent contractor agreements for multiple organizations including municipalities, private-sector companies and schools. She has prevailed at trial on a breach of contract case brought by a former teacher against a private school. Ms. Donlon was also successful at the Fourth District Court of Appeal after prevailing against an independent contractor, which dismissed a breach of contract lawsuit against the School Board of Palm Beach

County.

Ms. Donlon represents the City of Riviera Beach in collective bargaining with their Fire Rescue union (IAFF). Ms. Donlon regularly consults with the City on varied employment law matters and recently concluded labor negotiations on behalf of the City with the International Association of Fire Fighters (IAFF) and with the Professional Managers and Supervisor Association (PMSA).

Ms. Donlon negotiates all collective bargaining agreements for the City of Lake Worth with the Public Employees Union and Professional Managers and Supervisor Association (PMSA). Ms. Donlon possesses excellent research and writing skills and has presented a number of seminars to both our government and corporate clients on a variety of labor and employment law issues.

Ms. Donlon has represented the City of Port Saint Lucie in collective bargaining and employment law matters. She also represents the St. Lucie County School Board in employment law matters.

Christy Goddeau

Christy Goddeau is a Florida Bar Board Certified City, County, & Local Government attorney. She has over twenty years of experience representing governmental agencies and has been with the firm since 2004. After being admitted to The Florida Bar in 1996, Ms. Goddeau entered active duty as an Assistant Staff Judge Advocate (JAG) in the United States Air Force. She was on active duty for over four years and then became a contracts attorney for the Department of the Air Force. Prior to joining the firm, Ms. Goddeau was general counsel to a local constitutional office.

Ms. Goddeau's accomplishments have included successful court-martial prosecutions; resolution of tort claims for and against the federal government; award of a multi-billion dollar satellite communication network contract (without protest); creating a standard legal review for all Freedom of Information Act requests; and, providing legal assistance to active duty and reserve military members facing deployment.

Since joining the firm in 2004, Ms. Goddeau has represented local governments in various litigation and advised local governments on a variety of topics including public records law, Sunshine Law, procurement law and elections law. Ms. Goddeau leads the firm's local government law practice.

Ms. Goddeau is well versed in the areas of public records, ethics, procurement and Sunshine Law compliance. She has provided advice and training to a variety of elected officials and personnel and has rendered numerous legal opinions for local governments with respect to these areas. Ms. Goddeau has litigated a number of public records and Sunshine Law cases for municipal clients. She is also involved in addressing issues that arise under the County-wide code of ethics and issues with the Palm Beach County Inspector General. Ms. Goddeau takes a proactive approach with Sunshine Law and public records issues and assists our clients with avoiding unnecessary litigation and

attorneys' fees. Her experience in these areas assists in her ability to advise local governments on their internal policies and procedures.

Ms. Goddeau has represented our clients in connection with negotiating and drafting complex contracts, including various Interlocal agreements, leases, corporate documents and construction, utilities, software and communications contracts. She has worked with local municipalities and Palm Beach County on utility transfer agreements and Inter-Service Boundary Agreements. Ms. Goddeau has extensive experience drafting resolutions and ordinances; assisting with grant applications and compliance; and, has assisted at least three (3) municipalities in significant revisions to their procurement codes and internal purchasing policies.

Ms. Goddeau has had great success in representing local governments in defense of federal and state litigation. Ms. Goddeau's representation has resulted in the dismissal of cases filed against the City of Riviera Beach (two federal cases; a public records case and a Sunshine Law case); the City of Belle Glade (municipal election lawsuit); and, the Village of Palm Springs (a circuit court appeal of a code enforcement order and a public records case). She was also instrumental in the resolution of an appeal to the Fourth District Court of Appeals based on a bid protest against the St. Lucie West Services District. Ms. Goddeau's success in these matters is due in part to her thorough researching skills and ability to draft clear, well-supported pleadings.

Ms. Goddeau has assisted the City of Lake Worth, the Village of Palm Springs and the City of Riviera Beach in day-to-day legal issues. For the Village of Palm Springs, Ms. Goddeau has been instrumental in several new land use ordinances (dealing with nightclubs and alcohol sales) and a temporary lobbyist registration policy. She has assisted department directors with a variety of legal issues including assisting with annexation, land use and planning issues. Ms. Goddeau has drafted a wide range of legal instruments for the Village including contracts for construction, purchases and professional services; bills of sale; easements; dedication agreements; unity of title; letter agreements; and lien settlement agreements.

For the City of Lake Worth, Ms. Goddeau has dedicated office hours at City Hall and is available to the Commissioners and City staff to discuss and provide advice on a variety of City issues. Ms. Goddeau works closely with the City Manager to address emerging issues and resolve matters in a proactive manner. Ms. Goddeau reviews all agenda items prior to submission to the City Commission. She works closely with City staff to prepare contracts, draft ordinances and resolutions, and provide advice on variety of municipal law issues. Ms. Goddeau has successfully represented the City in defending two Bert J. Harris (private property rights) lawsuits and a charter referendum lawsuit.

Ms. Goddeau also represents the City of Riviera Beach Police Department in prosecuting its code enforcement hearings and in advising the Department in a variety of legal matters including public records law, contracts, and updating various Standard Operating Procedures. Ms. Goddeau also represents the City of Riviera Beach in breach of contract and public records cases. Ms. Goddeau has successfully represented the City of Riviera Beach in foreclosing code enforcement liens; an inverse condemnation claim; a writ of mandamus claim (dealing with code enforcement); a circuit court

appeal of a code enforcement order; and, two Fourth District Court of Appeal cases (Sunshine Law case and elections law case). Ms. Goddeau has conducted extensive research on municipal liens including special assessment, utility and code enforcement liens and recovery of surplus funds after a foreclosure or tax deed sale.

For the City of Belle Glade, Ms. Goddeau's assistance has included drafting various ordinances and resolutions, reviewing and preparing contracts and advising City departments on the City's procurement process. She has drafted ordinances and resolutions on topics ranging from a special event ordinance to an ordinance governing all City citizen participation committees. Ms. Goddeau has conducted extensive research for the City in the areas of dual-office holding, the Florida Code of Ethics and the Consultants' Competitive Negotiations Act.

Ms. Goddeau has also represented the Town of Juno Beach in a foreclosure of a code enforcement lien and is a code enforcement special magistrate for Palm Beach County and was a hearing officer for Palm Beach County's Red-light Enforcement Program (until the Program was dis-continued).

Jennifer Hunecke

Ms. Hunecke was admitted to the Florida Bar in 1997. After clerking for the Fifteenth Judicial Circuit in Palm Beach County, Ms. Hunecke has been exclusively representing municipalities for the past sixteen years.

Immediately prior to joining the firm, Ms. Hunecke was an Assistant City Attorney at the City of West Palm Beach for almost five years. During her tenure at West Palm Beach, she managed the City's involvement in approximately 100 foreclosure actions as both the Plaintiff and Defendant. She drafted contracts related to construction, design/build projects, professional services along with work authorizations, amendments and change orders. Ms. Hunecke advised and represented the City's building official regarding the enforcement of the Florida Building Code and the Unsafe Building Code; handled the City's prosecution of its code enforcement violations and any related appeals; and enforced the collection of liens citywide.

After joining the firm in 2006, her caseload has included representing local municipalities in various administrative matters and advising local governments on a variety of municipal matters related to procurement, contracts, constitutional issues, elections, business tax receipts, lien enforcement, code enforcement and police forfeitures.

Ms. Hunecke has over 13 years' experience prosecuting code enforcement cases and advising code inspectors. For the first six (6) years at the firm, she was the attorney charged with code enforcement responsibilities for the City of Belle Glade, the Village of Palm Springs, City of Lake Worth and the Town of Sewall's Point. Ms. Hunecke was called on weekly to address issues, negotiate stipulations, interpret each municipality's code of ordinances and advise clients regarding the legal requirements, limitations and procedures found in Chapter 162, Florida Statutes. She has experience prosecuting code enforcement violations before both code enforcement boards and special magistrates. Ms.

Hunecke was also responsible for the prosecution of municipal ordinance violations in county court for the Village of Palm Springs, City of Belle Glade and the City of Pahokee, and has successfully defended the Village of Palm Springs Sexual Predator Ordinance in both the Fifteenth Judicial Circuit Court (appeals) and the United States District Court for the Southern District of Florida (on a motion to dismiss).

For the Town of Sewall's Point and the City of Belle Glade, Ms. Hunecke's assistance includes researching and drafting various ordinances, resolutions, easements, contracts, license/use agreements, and procurement documents. She has drafted ordinances on topics such as signs, unsafe building abatement, pain management clinics, handbills, rental properties, procurement procedures, sexual predator/offender residency restrictions, and amendments to the setbacks for waterfront property and docks. She recently rewrote and reorganized the Town's code enforcement procedures for compliance with Florida Statutes. She has drafted contracts for the Town related to its securing of over one million dollars in FEMA Flood Mitigation and Repetitive Flood Loss Programs; various professional services contracts; construction contracts; and, utility and landscape maintenance easements.

For the City of Lake Worth, Ms. Hunecke assisted the City with a complete overhaul of its code compliance/enforcement, nuisance abatement and chronic nuisance services ordinances. She works with the City's building official on unsafe building abatements and has also worked with City staff to review and revise the City's invitation to bid for construction documents.

For the Village of Wellington, Ms. Hunecke reviewed and revised the standard contracts related to construction, professional services, professional consulting, independent contractors, sports officials, performance artists, and sponsorships. She drafted new contracts, such as the Amphitheatre License Agreement, Broadcasting License Agreement, and the Radio System Maintenance-Facility Usage Trade Agreement, and she reviewed and revised the Village's standard Invitation to Bid for construction to ensure compliance with current Florida laws and construction standards.

Pamala H. Ryan

Pamala Ryan was admitted to the Florida Bar in 1994 and has been a Florida Bar Board Certified City, County Local Government attorney since 2013. Ms. Ryan joined the firm in 2016 after 20 years of service with the City of Riviera Beach, Florida. In Riviera Beach, Ms. Ryan served in the capacity as City Attorney for sixteen years, and prior to that she served as the Assistant City Attorney for three years and in the administrative capacity of Deputy City Manager for one year. Ms. Ryan has extensive experience in all aspects of the governmental arena, including drafting ordinances and complex contracts and agreements, handling land use matters including rezones and comprehensive plan changes, handling a variety of marina and admiralty issues, procurement, public records and sunshine law matters, ethics issues, labor and employment matters, employee training, budgetary issues, risk management, and all aspects of local government law.

During her career with Riviera Beach, as the chief legal officer, Ms. Ryan was responsible for

overseeing the City's entire litigation program, which included anywhere from 25-40 cases at any given time. The cases included land use and marina issues, election matters, contractual claims, civil rights violations, trip and fall, auto accidents, employment discrimination, and public record and sunshine violations. Ms. Ryan strategized on all cases, serving as co-counsel in several instances, especially on land use cases, 1st Amendment defense cases, and public records lawsuits.

Further, as City Attorney, Ms. Ryan reported directly to a five person city council and mayor, attending all City Council meetings and public hearings. Ms. Ryan also served as the District Attorney for the Riviera Beach Utility Special District, responsible for water issues before the District Board and administrative agencies. During her tenure with Riviera Beach, Ms. Ryan also represented the Planning and Zoning Board and the Zoning Board of Adjustment. As the attorney for these various boards, Ms. Ryan was responsible for drafting documents to be reviewed and voted on by the boards, as well as reviewing all agenda items for legal sufficiency.

As City Attorney, Ms. Ryan also had the responsibility of working very closely with thirteen different departments in Riviera Beach, meeting with staff daily, assisting with numerous legal issues and drafting legal instruments for a variety of situations including contracts and agreements for professional services, purchase agreements, bid documents, contracts for construction, real estate instruments including bills of sale; deeds, easements; dedication agreements, resolutions and ordinances. Using her skills developed administratively, Ms. Ryan assisted executive staff with budgeting strategies during lean years, including advising on bonding opportunities, restructuring the City's pension plans, and developing strategies to restructure the employee complement at the City.

Ms. Ryan is very knowledgeable of and has responded to numerous questions and inquiries regarding Florida's Code of Ethics Statutes, the Palm Beach County Code of Ethics, Florida's Public Records Law and the Sunshine Law. Ms. Ryan has spoken on these topics for numerous internal boards and outside organizations, and will be serving as the Co-Chairperson of the Florida Bar's Board Certification Committee for City, County and Local Government Law, where she leads the committee in drafting test questions and reviewing applications for those seeking to become Florida Bar board certified.

Ms. Ryan has extensive knowledge drafting disposition and development agreements on behalf of local governments who are partnering with private developers. In her tenure with Riviera Beach, she worked on disposition and development agreements for the city's municipal beach, the city's marina, and for projects located within the Riviera Beach Community Redevelopment Area. Ms. Ryan has also negotiated and drafted interlocal agreements with other governmental entities in Palm Beach County (including the Palm Beach County School District, Palm Beach County and other cities).

Ms. Ryan currently assists the firm's municipal clients including the City of Lake Worth, the Town of Highland Beach and the City of Belle Glade. In Lake Worth, Ms. Ryan provides legal advice and provides advice for many of its day to day legal issues. Ms. Ryan most recently assisted in revising its risk program, updating the City's historic preservation ordinance, and revising several of the City's code enforcement ordinances. Ms. Ryan also serves as board attorney for Lake Worth's Planning and Zoning Board and its Historical Preservation Board. She assists staff with drafting land

development regulations and is currently working on vacant property ordinances and medical marijuana regulations with City staff.

Ms. Ryan, along with Mr. Torcivia, has served as Town Attorney for Highland Beach since last year. Ms. Ryan attends Town Commission meetings and workshops, and drafts resolutions and ordinances as requested by the Commission. In that capacity, Ms. Ryan also works closely with the Town Manager and Town staff, including the City Clerk, Finance Director and Police Chief on many issues that have legal ramifications.

In Belle Glade, Ms. Ryan (along with Mr. Torcivia) represents the City Commission at its Commission meetings and workshops. She also handles all airport regulations for the City, prosecutes code enforcement matters, and drafts land use ordinances, resolutions and other documents as requested by the City.

Matthew L. Ransdell

Matthew Ransdell was admitted to The Florida Bar in 2009. He joined the firm after working for seven years for large international law firms in the Tampa and West Palm Beach areas, where he was a senior associate in their labor and employment practice groups.

Mr. Ransdell is involved in all aspects of the firm's employment law practice and has provided services to a majority of the firm's governmental, as well as, corporate clients. He regularly provides legal advice with respect to day-to-day personnel issues, including disciplinary, performance, and termination decisions; wage and hour compliance; and Family and Medical Leave Act compliance. He also regularly assists the firm's clients in developing policies, procedures, and personnel handbooks and trains employees on compliance with state and federal laws in the workplace.

Mr. Ransdell provides employment law advice and representation for the firm's municipal and special district clients, including the Village of Palm Springs, the Village of Wellington, the City of Lake Worth, the City of Riviera Beach, the Village of North Palm Beach, the City of Belle Glade, the Town of Highland Beach, the Town of South Palm Beach, the Town of Sewall's Point, the St. Lucie County School Board, and the Property Appraiser of Palm Beach County. Mr. Ransdell also has experience providing advice and counsel to Police and Fire Departments regarding personnel and disciplinary issues. He also has experience regarding collective bargaining agreements, labor grievances, and other union related issues.

In addition to his counseling experience, Mr. Ransdell has represented management in employment litigation, including Title VII, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Florida Civil Rights Act, as well as whistleblower and retaliation claims. When current or former employees file grievances, arbitrations, administrative complaints, or lawsuits in State or Federal Court, Mr. Ransdell provides a zealous defense, while ensuring the client also explores the possibility of early resolution. Mr. Ransdell has defended and resolved numerous cases brought under multiple

employment law theories. He has been involved in defending employers in over 100 arbitrations, has prevailed in federal court jury trials, and has represented clients through the appeals process in both court and administrative settings.

Mr. Ransdell has also conducted investigations resulting from internal complaints from current employees. He has been involved in international investigations centered on Department of Justice corruption allegations for a Fortune 50 company. Mr. Ransdell provides findings and recommendations, as dictated by each situation.

Mr. Ransdell possesses excellent research and writing skills and has either authored articles or given presentations regarding various labor and employment issues impacting private and public sector clients. Recent examples of which are:

- “Will the NLRB’s Protection of Unacceptable Conduct Last?” – March 13, 2017
- “Employer Exposure Increase: Emotional Distress Damages in FLSA Cases” – January 18, 2017
- “Gig and Technology Sectors Targeted in EEOC Enforcement Plan” – November 3, 2016
- Presenter of “Employment Law Issues Facing Small Business” seminar for the Small Business Resource Network – April 1, 2015
- “Federal Appeals Court Says Dodd-Frank Does Not Protect Overseas Whistleblowers” – August 28, 2014
- Co-Author of “Managing Employees After Complaints: Retaliation Post-*Nassar* and *Thompson*” – March 2014
- Special guest lecturer at Stetson University College of Law regarding the Foreign Corrupt Practice Act – March 2013

Mr. Ransdell has earned recognition from his peers as a top rated labor and employment lawyer in the Super Lawyers publication. He was recognized as a Rising Star by Super Lawyers in 2015, 2016, and 2017. Mr. Ransdell is also a member of the National Order of Barristers.

Melissa P. Anderson

Melissa Anderson is a Florida Bar Board Certified City, County, & Local Government attorney. She has over twenty five years of experience representing governmental agencies and private parties, and is former corporate counsel for two publicly traded telecommunications companies.

A Florida native, Ms. Anderson began her legal career as an Assistant Broward County Attorney in Fort Lauderdale, Florida, representing the county in land use and environmental matters. Eventually, she became one of two attorneys representing the Broward County Port Everglades Department in all matters affecting the Port, including complex real estate and construction matters. She assisted the Port in implementing more stringent security restrictions in coordination with state and federal authorities after September 11, 2001.

After leaving Broward County in 2006, Ms. Anderson continued to represent government entities, including the cities of Lake Worth, Hallandale Beach, and Indian River County. Ms. Anderson has extensive experience in representing government entities in real estate, procurement matters, contracting, public records, ethics and government in the sunshine law. She has represented government clients in complex land use and environmental matters. As outside counsel for the Village of Royal Palm Beach, Ms. Anderson assisted a coalition of cities, including West Palm Beach and Palm Beach Gardens, successfully challenge developer proposed changes to the Palm Beach County comprehensive plan.

In 2012, she became the Southeastern Regional Government Relations Counsel for Crown Castle, Inc., a Fortune 1000 telecommunications corporation. In her role as Government Relations Counsel, Ms. Anderson represented the company in telecommunications matters before 28 cities and 3 counties in the state of Florida as well as most major cities in the SE United States, including Atlanta, GA, Nashville, TN, Charlotte, NC and Charleston, SC. Prior to joining the Firm in 2018, Ms. Anderson had her own practice representing several government entities, including Broward County and the cities of West Palm Beach and Lake Worth, as well as private entities including Airbnb.

EXHIBIT B

| Agency | Contact Person | Contact information |
|--------------------------|---------------------------------|---|
| City of Lake Worth | Michael Bornstein, City Manager | 7 North Dixie Highway Lake Worth, FL 33460 561-586-1630 mbornstein@lakeworth.org |
| Village of Palm Springs | Richard Reade, Village Manager | 226 Cypress Lane, Palm Springs, FL 33461 561-965-4011 rreade@vpsfl.org |
| City of Belle Glade | Lomax Harrelle, City Manager | 110 Dr. MLK Jr. Blvd. W Belle Glade, FL 33430 561-992-1602 lhharrelle@belleglade-fl.com |
| Town of South Palm Beach | Mo Thornton, Town Manager | 3577 South Ocean Blvd. South Palm Beach, Florida 33480 561-588-8889 MThornton@southpalmbeach.com |

RESUMES

**TORCIVIA, DONLON,
GODDEAU & ANSAY, P.A.**

701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407-1950
561-686-8700 Telephone / 561-686-8764 Facsimile
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Lara Donlon
Christy L. Goddeau*
Carolyn S. Ansay*

Jennifer H.R. Hunecke
R. Brian Shutt*
Pamala H. Ryan*
Matthew L. Ransdell
Melissa P. Anderson*

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

CAROLYN ANSAY

Experience

Shareholder, Torcivia, Donlon, Goddeau & Ansay, P.A.

September 2014 – present

- Represents governmental entities and private organizations in environmental and land use matters, contracting, procurement and governmental relations
- Advises municipalities and special districts on issues related to utilities, FEMA disaster assistance, interlocal agreements, procurement, public records and Florida's Sunshine Law

General Counsel, South Florida Water Management District

2011 – August 2014

- Provided legal advice and counsel to the District's Governing Board, executive management, and staff on a wide-range of water resources issues
- Regularly interacted with state and federal leaders in both Tallahassee and Washington D.C.
- Managed the District's 30+ attorneys and professional legal staff as they handled some of the most complicated and significant water issues in the State of Florida
- Worked on large permitting issues involving contracts for water supply and large

public-private partnerships involving water resource and water supply development projects

Partner, Doran, Sims

2000 – July 2011 (11 years) West Palm Beach/Daytona Beach

- Served as a City Attorney for the City of Edgewater and as Interim City Attorney for the City of New Smyrna Beach
- Negotiated and prepared interlocal agreements with multiple local governments related to utilities
- Formed and represented a countywide water authority consisting of 17 local governments
- Served as lead counsel in recovery of approximately \$40 million on behalf of the State of Florida, Department of Financial Services
- Served as Special Magistrate to several jurisdictions on land use and code enforcement matters

Education

- University of Florida, Juris Doctor, 1996
- University of Miami, B.S., Economics, 1993

Bar Admissions and Certification

- State of Florida, 1997
- United States District Court for the Southern District of Florida
- United States Court of Appeals, Eleventh Circuit
- Board certified by the Florida Bar in the area of City, County, & Local Government Law

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Melissa P. Anderson*

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

R. BRIAN SHUTT

Experience

Senior Associate, Torcivia, Donlon, Goddeau & Ansay, P.A.
September 2014 – present

Senior Associate, The Law Office of Glen J. Torcivia and Associates, P.A.
West Palm Beach, FL
January 2014 – present

- Assist municipalities with drafting of ordinances and codes
- Provide Board Counsel to various municipalities Planning and Zoning and Historic Preservation Review Boards
- Draft construction agreements for municipalities
- Draft and revise ordinances regarding utilities for municipalities

City Attorney, City of Delray Beach
Delray Beach, FL
June 2009 – January 2014

- Managed an office of 3 assistant City Attorney's and 4 support staff
- Acted as the Board Attorney for the City Commission and various other boards
- Drafted various contracts, easements, developers agreements, deeds, ordinances and procurement codes
- Handled issues related to employment matters, transient housing, land use, construction and contract disputes
- Defended the City in cases involving excessive force, slip and fall, auto accidents and employment issues

Assistant City Attorney, City of Delray Beach

Delray Beach, FL
October 1994- June 2009

- Drafted various contracts, easements, developers agreements, deeds and ordinances
- Handled issues related to employment matters, land use, construction and contract disputes
- Defended the City in cases involving excessive force, slip and fall, auto accidents and employment issues

Track Supervisor, Norfolk Southern Corporation

September 1989 –August 1991

Assistant Track Supervisor

July 1989 – September 1989

Management Trainee

July 1988 – July 1989

Field Maintenance Supervisor, Texco Refining and Marketing, Inc.

November 1987 – July 1988

Education

Nova Southeastern University

Fort Lauderdale, FL

Juris Doctor May 1994

Virginia Polytechnic Institute & State University

Blacksburg, VA

B.S. Civil Engineering May 1987

Bar Admissions

Board Certified in City, County and Local Government Law, 2009

Florida Bar 1994

U.S. Southern District 1995

U.S. Supreme Court 2007

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Melissa P. Anderson*

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

PAMALA H. RYAN

Experience

Senior Associate, Torcivia, Donlon, Goddeau & Ansay, P.A.
September 2016 - present

- Acts as counsel to city commissions, planning and zoning boards and historic preservation boards for municipal clients.
- Serves as code enforcement counsel for municipal clients.
- Drafts a myriad of contracts and agreements for municipal clients and their departments.
- Drafts ordinances, bid and RFP documents, resolutions, development orders, etc. for municipal clients and their departments.
- Manages litigation in conjunction with risk management for a municipal client.

City Attorney, City of Riviera Beach
Riviera Beach, FL
May 2000-July 2016

- Chief Legal Advisor and Counsel to the Mayor, a five person City Council, City Manager, and Department Directors.
- Represented the City Council in all City, Utility District, and nuisance abatement meetings.
- Handled land use matters and working closely with the Community Redevelopment Agency on revitalization issues within the CRA boundaries.
- Negotiated and drafted contracts on a wide array of issues including telecommunications matters, construction contracts, service agreements, leases, and leases.
- Drafted ordinances, resolutions, deeds, bids and other legal documents
- Managed all litigation in the City.

- Defended the City in employment arbitration cases, labor and other personnel matters.
- Rendered a legal opinions on a wide range of matters relating to municipal government.
- Prepared the City Attorney departmental budget.

Deputy City Manager, City of Riviera Beach

Riviera Beach, FL

June 1999 – May 2000

- Responsible for direct administrative oversight of eight City departments including the monitoring of all departmental activities and projects.
- Assisted in the development of the City's 1999-2000 FY budget and organizational restructuring.
- Worked closely with the city manager on major land development, environmental and capital improvement projects.
- Instituted review of interdepartmental policies and task analyses for the purpose of improving employee and departmental efficiency.

Assistant City Attorney, City of Riviera Beach

Riviera Beach, FL

June 1996-June 1999

- Litigated cases on behalf of the City up to and including trial.
- Represented the City in employee disciplinary hearings and arbitrations.
- Acted as chief negotiator in contract negotiations with citywide employee unions.
- Provided legal representation to the City in E.E.O.C. complaints.
- Served as advising counsel for the City on several municipal boards including Planning & Zoning and Zoning Board of Adjustment.
- Prepared legal memoranda for the City Attorney and rendered formal legal opinions to the City Council, all department heads, and administrative personnel of the City.
- Drafted and reviewed contracts and other legal documents on behalf of the City.

Staff Attorney for the Honorable W. Matthew Stevenson, Fourth District Court of Appeal

West Palm Beach, FL

April 1994-June 1996

- Researched case law and wrote formal bench memoranda on final civil and criminal appeals emanating from six counties for consideration by Judge Stevenson and other judges on the appellate panel.
- Analyzed writs and motions filed in the appellate court.
- Assisted judges in drafting published opinions.

Assistant Public Defender, 15th Judicial Circuit Public Defender's Office

West Palm Beach, FL

October 1993-April 1994

- *Appellate Division*: Wrote felony criminal appeals for indigent clients convicted in trial court. Reviewed transcripts, determined viable issues, researched and briefed arguments to be heard at the appellate level.
- *Trial Division*: Assigned a misdemeanor case load. Created and argued pre-trial motions, conducted discovery, negotiated plea bargains, litigated jury and non-jury trials.

Education

University of Florida College of Law
Gainesville, Florida
Juris Doctor, May 1993

Purdue University
West Lafayette, Indiana
Bachelor of Science in Economics May 1990

Bar Admissions

- Member of the Florida Bar
(admitted 1994)
- United States Southern District of Florida
(admitted 1999)
- Supreme Court of the United States
(admitted 2012)

Civic and Professional Organizations

- Co-Chairperson of the Florida Bar's Board Certification Committee for City, County and Local Government Law
- Florida Bar, member of City, County and Local Government Section
- Palm Beach County Bar Association
- Palm Beach Gardens Elementary School Advisory Council

Certifications

- Florida Bar City, County and Local Government certification

PROFESSIONAL LIABILITY INSURANCE COVERAGE PAGE



Lawyers Professional Liability Declarations

Markel Insurance Company
"A Stock Company"

Ten Parkway North
Deerfield, IL 60015

This is a claims made and reported policy
Please read this policy and all endorsements and attachments carefully

Claims Made and Reported Coverage: The coverage afforded by this policy is limited to liability for only those Claims which are first made against the Insured during the Policy Period or any applicable Extended Reporting Period, and which are reported to the Company in accordance with SECTION V - When to Report a Claim.

Notice: This policy may contain provisions that reduce the Limits of Liability stated in the policy by the costs of legal defense, unless the Named Insured has selected to purchase separate Limits of Liability for Claims Expenses as noted in Item 4. of the Declarations. This policy may contain provisions that permit legal defense costs to be applied against the deductible, unless the Named Insured has selected to purchase the deductible applicable to Damages only as noted in the Item 5. of the Declarations. Please read the policy carefully.

Policy Number: LA306377

Renewal of Policy: LA305213

1. NAMED INSURED: Torcivia, Donlon, Goddeau & Ansay, P.A.

ADDRESS: 701 Northpoint Parkway
Suite 209
West Palm Beach FL 33407

2. POLICY PERIOD: From 04/24/2018 to 04/24/2019
at 12:01 A.M. Standard Time at the Named Insured's address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,
THE COMPANY AGREES WITH THE INSURED TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

3. LIMITS OF LIABILITY: Each Claim: \$1,000,000
Aggregate: \$1,000,000

4. CLAIMS EXPENSES: Option Purchased
A. Included within the Limits of Liability []
B. Have separate Limits of Liability [X]

5. DEDUCTIBLE: Each Claim and Aggregate: \$5,000
A. Deductible applies to Damages only [X]
B. Deductible applies to Damages and Claims Expenses []

6. ANNUAL PREMIUM: \$ 16,306.00

Total Premium \$ 16,306.00

7. RETROACTIVE DATE: April 24, 1989

8. Forms and endorsements applying to this Coverage part and made part of this policy at the time of issue:

| | |
|-------------------|--------------------------------|
| MLP 1400-FL 07 13 | FL AMENDATORY ENDT |
| MLP 1218 02 17 | BREACH MITIGATION EXPENSE COVG |
| MLP 1219 02 17 | ENHANCEMENT ENDT |
| MPIL 1007 03 14 | PRIVACY NOTICE |
| MPIL 1083 04 15 | OFAC ADVISORY NOTICE |
| MLP 0001 07 13 | MARKEL INS LAWYERS PROF POLICY |

To Report a Loss

- Dial toll-free #1 (844)777-8323 or visit our
- Website: <https://my.rpsins.com/claimsfnol>
- Contact Insurer directly (see policy section)

9. Report Claims by fax, registered mail or email to:

Claims Service Center: Markel Service Incorporated; Ten Parkway North, Deerfield, Illinois 60015
Fax (847) 572-6338 E-mail: newclaims@markelcorp.com

These Declarations, together with the Common Policy Conditions and Coverage Form(s) and any Endorsement(s), complete the above numbered policy.

RPSBRD/SC/2018.04.23

Authorized Representative

Producer Name: RPS Plus Companies, 1150 U.S. Highway 22, Suite 120 Bridgewater, NJ 08807

Markel Producer # 36993

MDLP 1000 02 17

Issue Date: 04/23/2018

WRITING SAMPLES

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO.: 4D16-3084
L.T. NO.: 502016CA001119

LYNDA MAHONEY and ROSANNE
MALAKATES
Appellant/Petitioner(s)

v.

CITY OF LAKE WORTH and GULFSTREAM
HOTEL, LLC
Appellee/Respondent(s)

**CITY OF LAKE WORTH'S RESPONSE
TO PETITION FOR WRIT OF CERTIORARI**

TORCIVIA, DONLON, GODDEAU
& ANSAY, P.A.
Glen Torcivia, Esquire
Florida Bar No. 43374
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ABBREVIATIONS AND REFERENCES TO THE RECORD

The City of Lake Worth will be referred to as “City” or “Respondent.” The Petitioners in this appeal, Lynda Mahoney and Roseanne Malakates, will be referred to collectively as “Petitioners.” The Petition for Writ of Certiorari filed by Petitioners in this appeal will be referred to as “Petition.”

Citations to the Appendix filed by Petitioners will be referred to as “App. Vol. ____ Ex. ____” when referring to documents contained in the first three volumes of the Appendix. Citations to the Corrected Supplemental Appendix will be referred to as “Supp. App. Ex. ____.”

STANDARD OF REVIEW

Petitioners are seeking review of the circuit court’s per curiam affirmance of the City’s quasi-judicial decision to rezone property. App. Vol. 1 Ex. 1. The decision of a circuit court sitting in its appellate capacity is generally conclusive because second-tier review is extraordinarily limited and should not be used as a way to obtain a second appeal. *City of Deerfield Beach v. Valliant*, 419 So.2d 624, 626 (Fla.1982). “As a case travels up the judicial ladder, review should consistently become narrower, not broader.” *Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995).

The limited standard of review applicable to a district court in reviewing a circuit court appellate decision is whether the circuit court 1) afforded procedural due process of law and 2) applied the correct law. *Id.* at 530. Failure to apply the correct law is synonymous with a departure from the essential requirements of law. *Id.* at 528. In other words, this court cannot be concerned with mere legal error but must look for an act that results in a gross miscarriage of justice. *Id.* (citing *Combs v. State*, 436 So.2d 93, 95-96 (Fla.1983)).

Here, the circuit court entered the order affirming the City's decision without an opinion. App. Vol. 1 Ex. 1. In the usual case, district courts "do not reach behind a circuit court appellate division per curiam affirmance to grant relief" unless the reason for the per curiam affirmance is clear. *Granada Insurance Company v. Mark A. Cereceda, D.C., P.A.*, 997 So.2d 1243 (Fla. 3d DCA 2008). Further, without any controlling precedent, the district court cannot conclude that the circuit court violated a clearly established principle of law and at most must find that the circuit court misapplied the correct law. *Stilson v. Allstate Ins. Co.*, 692 So.2d 979, 982 (Fla. 1997). Misapplying the correct law is not enough to create a miscarriage of justice warranting reversal by a district court when reviewing a circuit court's appellate decision. *Id.*

INTRODUCTION

Petitioners filed a Petition for Writ of Certiorari with this court to challenge the circuit court's affirmance of the City's quasi-judicial decision to rezone property owned by HH GULFSTREAM LAND HOLDINGS, LLC ("Gulfstream"). App. Vol. 1 Ex. 1. Petitioners claim that the circuit court's affirmance of the City's approval of Ordinance Number 2016-04 and HRPB 15-01300001 (collectively, the "Ordinance") violated the essential requirements of law. Petition at 1.

At the outset, the Petition for Writ of Certiorari before this court fails to meet the very strict standard of review. The circuit court's affirmance of the City's decision was entered without opinion. App. Vol. 1 Ex. 1. There is nothing in the record to support the notion that the circuit court failed to afford procedural due process of law or failed to apply the correct law. Petitioners merely seek a second appeal and, therefore, the case is not properly before this court and the Petition should be denied.

Even if Petitioners claims were properly before this court for determination, the lower court did not err in the first appeal when it affirmed the City's decision. The Ordinance Petitioner challenged involves the rezoning of real property owned by Gulfstream from Medium Density Multi-Family Residential (MF-30) to Downtown (DT). App. Vol. 1 Ex. C. The Downtown zoning designation is consistent with the City's Comprehensive Plan land use designation of Downtown

Mixed Use (DMU) which provides for maximum heights of 65 feet. App. Vol. 1 Ex. C; App. Vol. III Ex. G. Petitioners claim that the Ordinance rezoning Gulfstream's property is invalid because of a purported amendment to the City Charter that passed by referendum in 2013 and attempted to reduce building heights in the Downtown zoning district to "not to exceed 45 feet" ("Charter Amendment"). Petition at 2.

However, the referendum seeking passage of the Charter Amendment was proposed just as the City amended its Comprehensive Plan to permit building height up to 65 feet in the Downtown zoning district. App. Vol. III Ex. H; Supp. App. Ex. 5. The Charter Amendment, therefore, was invalid, void and was never included in the City's Charter because it violated section 163.3167, Florida Statutes. Specifically, since the Charter Amendment was in regard to the City's Comprehensive Plan, it cannot be implemented by referendum. Because the purported Charter Amendment is ineffective, the City followed the essential requirements of the law in approving the Ordinance and the circuit court properly affirmed the decision without opinion. Accordingly, the Petition here must be denied.

ARGUMENT

I. The Petition Should be Dismissed As an Improper Second Appeal

The Petition before this court seeks an improper second appeal of the circuit court's first appeal affirmance of the City's rezoning decision. The decision of a circuit court sitting in its appellate capacity is generally conclusive because second-tier review is extraordinarily limited and should not be used as a way to obtain a second appeal. *City of Deerfield Beach v. Valliant*, 419 So.2d 624, 626 (Fla.1982). "As a case travels up the judicial ladder, review should consistently become narrower, not broader." *Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995). Without a violation of a clearly established principle of law resulting in a miscarriage of justice, the district courts are without jurisdiction to hear second-tier certiorari cases of circuit court appellate decisions. *Futch v. Florida Department of Highway Safety and Motor Vehicles*, 189 So.3d 131, 132 (Fla. 2016) (finding that the Fifth District inappropriately exercised its certiorari jurisdiction to review a circuit court order because there was no miscarriage of justice).

Here, the circuit court's affirmance of the City's decision in the first appeal was entered without a written opinion. App. Vol. 1 Ex. 1. This court, in reviewing the decision in the first appeal below, must consider whether the *circuit court* 1) afforded procedural due process of law and 2) applied the correct law. *Haines City*

Cnty. Dev. v. Heggs, 658 So.2d 523, 530 (Fla. 1995)(emphasis added). The court cannot be concerned with mere legal error but must look for an act that results in a gross miscarriage of justice. *Id.* (citing *Combs v. State*, 436 So.2d 93, 95-96 (Fla.1983)). Since there was no written opinion in the first appeal, district courts typically “do not reach behind a circuit court appellate division per curiam affirmance to grant relief” unless the reason for the per curiam affirmance is clear. *Granada Insurance Company v. Mark A. Cereceda, D.C., P.A.*, 997 So.2d 1243 (Fla. 3d DCA 2008). Here, Petitioners have made no argument as to how this restrictive standard is met and merely seek a second appeal by submitting nearly the same arguments as presented in the first appeal below. Petition at 3, 5-19.

Additionally, there is no case law directly in conflict with the per curiam affirmance in the first appeal. Thus, without a written opinion or controlling precedent, the district court cannot conclude that the circuit court violated a clearly established principle of law and, at most, could only find that the circuit court misapplied the correct law. *Stilson v. Allstate Ins. Co.*, 692 So.2d 979, 982 (Fla. 1997). Even if it could be found that the circuit court misconstrued the law in the first appeal when it affirmed the City’s decision, which the City vigorously disputes, misapplication of the correct law is not enough to create a miscarriage of justice warranting reversal. *Id.* Since the Petition merely attempts to obtain a second appeal of a per curiam affirmance below, it must be denied.

II. The Circuit Court Properly Affirmed the Rezoning Because the City Charter Does not Limit Building Height to 45 Feet

If this court were to consider the merits of the Petition, Petitioners' entire argument both in the first appeal and before this court is based upon language which does not actually exist in the City's Charter. Supp. App. Ex. 5 at Ex. C. While there indeed was a referendum in the City to limit building height to 45 feet in 2012, as more fully discussed below, the referendum language was never incorporated into the City Charter because it is prohibited by section 163.3167(8), Florida Statutes.¹ Supp. App. Ex. 5 at Ex. C. Indeed, as indicated in an Editor's note in the City Charter itself, the referendum was nullified and the Charter Amendment was voided. Supp. App. Ex. 5 at Ex. C.

In fact, counsel for the Petitioners filed a mandamus action against the City in 2013 seeking an order compelling the City to transmit the Charter Amendment to the Department of State thereby legally incorporating the language into the City's Charter. *See* 02013CA012420XXXXMBAJ (Fla. 15th Cir. Ct. 2013).² However, the case was voluntarily dismissed after the City argued the Charter Amendment was null and void based upon section 163.3167, Florida Statutes, essentially the same

¹ Section 163.3167(8), Florida Statutes is part of Florida's Community Planning Act as more fully set forth below.

² The relevant pleadings of this case were judicially noticed by the court below in the first appeal.

position the City took in the first appeal below. Supp. App. Ex. 5. Again, the City Charter on its face notes that the referendum was nullified and the amendment was voided as a result of section 163.3167, Florida Statutes. Supp. App. Ex. 5 at Ex. C. As a result, Petitioners here base their entire argument on a purported charter amendment which simply does not exist. As a result, the circuit court properly upheld the City's actions in passing the Ordinance and it cannot be said here that the circuit court failed to apply the correct law.

A. State Law Provides Strict Mandates for the Adoption of Comprehensive Plan Amendments

Even if the language of the referendum was incorporated into the City Charter, it would be null and void pursuant to Florida law. Chapter 163, Part II, of the Florida Statutes, known as the Community Planning Act, specifically governs the establishment and implementation of comprehensive planning programs of local governments. *See* Fla. Stat. § 163.3161. Once a local government adopts a comprehensive plan, all land development regulations adopted and all approved development within that locality must be in conformance with the adopted comprehensive plan. *See* Fla. Stat. § 163.3194.

The Community Planning Act outlines detailed procedures for adopting comprehensive plan amendments which involve review by multiple City boards. Moreover, property owners and the public generally are afforded an opportunity to participate at the City's public hearings and before review boards and comment on

the proposed amendments. Amendments to a local government's comprehensive plan are legislative decisions because the amendments are evaluated on several levels of government to ensure consistency with the Community Planning Act and to provide ordered development. *See Martin County v. Yuseum*, 690 So. 2d 1288 (Fla. 1997).

Section 163.3167(8) of the Community Planning Act provides:

(a) An initiative or referendum process in regard to any development order is prohibited.

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.

(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (b). Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.

(emphasis added). The language of section 163.3167(8), Florida Statutes, clearly expresses the legislative intent that the scope of permissible challenges in regard to comprehensive plans by referenda be limited and narrow. *See Fla. Stat. § 163.3167(8)(b),(c).*

Consistent with this narrow scope, section 163.3167(8) bars a referendum in regard to any comprehensive plan amendment unless exempted by specific charter authorization that existed before June 1, 2011. *See Archstone Palmetto Park, LLC v. Kennedy*, 132 So. 3d 347 (Fla. 4th DCA 2014) (addressing the legislative intent of section 163.3167(8)). If not specifically authorized by charter, a referendum process in regard to a comprehensive plan amendment is deemed “null and void” and of “no legal force and effect.” Fla. Stat. § 163.3167(8)(c). Section 163.3167(8)(c) reiterates the narrow application of the exception to the general rule that a referendum is prohibited in regard to any comprehensive plan amendment: “[i]t is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (b).” Fla. Stat. § 163.3167(8)(c) (emphasis added).

Petitioners did not allege, nor does there exist, a City Charter provision specifically authorizing a referendum in regard to a comprehensive plan amendment. Supp. App. Ex. 3 and 7. This means that the general and broad rule applies that a referendum is prohibited “in regard to” any comprehensive plan amendment. Thus, the circuit court properly affirmed the City’s decision to grant the rezoning in the first appeal.

B. The Language of Section 163.3167(8), Florida Statutes is Clear

The proper interpretation of a statutory provision begins with examining the language of the express provision. *Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004). “Although legislative intent is the ‘polestar’ of statutory interpretation, such intent is derived primarily from the language of the statute.” *Cason v. Fl. Dept. of Mgmt. Servs.*, 944 So. 3d 306, 312 (Fla. 2006). Black’s Law Dictionary defines “in regard to” as “concerning; relating to; in respect of; with respect to; about.” *Black’s Law Dictionary* (Centennial Ed./6th Ed. 1990).

By drafting section 163.3167(8) so that it prohibits any and all referenda “in regard to” (i.e., “concerning” or “relating to” or “about”) any amendment to a comprehensive plan, the Legislature chose language that drew the scope of this prohibition in the broadest possible terms. Here, when the City modified its Comprehensive Plan to allow building height up to 65 feet, and as a direct reaction thereto, a citizen’s initiative was formed and a Charter Amendment was passed to reduce the maximum building height to 45 feet. Supp. App. Ex. 5. The Charter Amendment here directly “relates to” or “concerns” or is “about” a comprehensive plan amendment and falls squarely within what section 163.3167(8) expressly prohibits.

C. Timing Establishes the Referendum's Intent to Amend the City's Comprehensive Plan.

The timing of the referendum and the Charter Amendment leaves no doubt that the language was "in regard" to an amendment to the Comprehensive Plan, in direct violation of section 163.3167(8). The amendment to the City's Comprehensive Plan establishing the sixty five foot building height limit for the district in which Gulfstream's property is located considered by the City as follows:

| | |
|-----------------|---|
| May 2, 2012: | Planning and Zoning Board Workshop Discussion and Community Input |
| May 9, 2012: | Historic Resources Preservation Board Workshop Discussion and Community Input |
| May 22, 2012: | City Commission Workshop Discussion |
| June 6, 2012: | Planning and Zoning Board Action to Recommend Approval to the City Commission |
| June 13, 2012: | Historic Resources Preservation Board Action to Recommend Approval to the City Commission |
| June 19, 2012: | City Commission Approved on First Reading |
| August 7, 2012: | City Commission Approved on Final Reading Ordinance 2012-25 |

Supp. App. Ex. 5 at Ex. D.³

The citizens seeking to challenge this amendment by referendum (1) initiated their efforts and met with representatives of the City no later than June 21, 2012; and

³ The circuit court took judicial notice of Ordinance 2012-25 in the first appeal.

(2) filed the Statement of Organization of Political Committee of Respectful Planning Lake Worth (their committee sponsoring the petition seeking the referendum) four days later on June 25, 2012. App. Vol. 1 Ex. 2. This was also just 6 days after the City Commission's first vote to approve the ordinance amending the City's Comprehensive Plan and immediately after months of intense discussion about the amendments to the Comprehensive Plan to which the referendum was directed. Supp. App. Ex. 5 at Ex. D.

Placement of the referendum on the ballot was approved by the City Commission with first reading on July 28, 2012. App. Vol. 1 Ex. 2. It is difficult to conceive of a more direct link between a comprehensive plan amendment which was in the process of adoption and a referendum attempting to invalidate it. It is clear based upon the record that the referendum and Charter Amendment were "in regard to" the Comprehensive Plan provision allowing for sixty five foot building heights. The referendum directly violated section 163.3167(8), Fla. Stat., was null and void and was never incorporated into the City's Charter. As a result, the City approved the rezoning and the circuit court affirmed the decision, without opinion, in the first appeal.

D. Similar Cases Support the Position That Referenda Cannot Amend City's Comprehensive Plan

The referendum at issue here sought to usurp the statutory comprehensive plan amendment process set forth in the Community Planning Act and the City's

legislative process in order to create contrary charter provisions via referendum. Two similar Florida cases are instructive here. In *Town of Ponce Inlet v. Pacetta, LLC*, 63 So. 3d 840 (Fla. 5th DCA 2011), a citizens' initiative petition placed a referendum on the ballot to amend the Town's charter to restrict certain construction and uses on Pacetta's property. *Id.* at 840. The referendum passed and had the effect of placing immutable charter restrictions on the property. *Id.* Pacetta filed suit to invalidate the referendum under section 163.3167(12), Florida Statutes. At the time, section 163.3167(12) prohibited referendum in regard to development orders or comprehensive plan amendments affecting five or fewer parcels.⁴ *Id.* at 841. Upon determining that the property at issue was five or fewer parcels, the trial court ruled that section 163.3167(12) invalidated the charter amendment. *Id.* at 840. The Town appealed and the Fifth District affirmed the trial court's ruling. *Id.*

Pacetta made it abundantly clear that use of the referendum process to amend a city charter is invalid if it has the effect of amending a local comprehensive plan. The referendum in *Pacetta* tried to do precisely that and failed. As here, in *Pacetta*

⁴ Section 163.3167(12) was the precursor provision to section 163.3167(8). Section 163.3167(12) was enacted in 1995 and placed limitations upon the initiative or referendum process in regard to any local comprehensive plan amendment that affects five or fewer parcels. Section 163.3167(12) was amended in 2011 and renumbered to section 163.3167(8). Section 163.3167(8) is essentially the same provision although the referendum process is now prohibited for all local comprehensive plan amendments, not just those affecting five or fewer parcels. See *Archstone Palmetto Park, LLC*, 132 So. 3d at 351.

the process by which the proponents sought to make a change to the comprehensive plan was by referendum amending the town's charter, not the town's comprehensive plan itself. The charter amendment in *Pacetta* was invalidated because it violated section 163.3167(12). In this case, the Charter Amendment is similarly invalid because it was passed by referendum and has the effect of changing the maximum building height permitted by the City's Comprehensive Plan. This use of the referendum process to circumvent the comprehensive plan process is expressly barred.

Similarly, in *Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So. 3d 1176, 1178 (Fla. 4th DCA 2010), a political action committee sought to have the Town's charter amended by referendum to prevent the demolition of a local theater. The theater at issue was the subject of a 1979 development order issued by the Town. *Id.* The Town challenged the referendum under section 163.3167(12), Florida Statutes, as the charter amendment would make the 1979 development order immutable except by referendum. *Id.* Importantly, the process used to effect this change to the development order was a referendum to amend not the order itself, but the Town's charter. The trial court agreed with the Town and ruled the proposed referendum invalidated by section 163.3167, Florida Statutes. The political action committee appealed and the Fourth District affirmed. *Id.* In other words, the referendum was invalid even though it sought to amend the charter,

because by changing the charter it would have effectively amended a development order, in violation of section 163.3167, as is the attempted circumvention of the City's comprehensive plan here.

In both *Pacetta* and *Preserve Palm Beach*, the referenda at issue were invalidated under section 163.3167, Florida Statutes, as they involved use of the referendum process in regard to amendments to a comprehensive plan or a development order, respectively. The courts in each case upheld the towns' right to render comprehensive plan amendments and development orders without interference by the referendum process. While these cases dealt with earlier language to section 163.3167, the central holding in both cases (the unavailability of referenda process to effect changes to a comprehensive plan or development order by amending the charter) is directly applicable to the present case. In the present case, the referendum process cannot supersede, circumvent and amend the City's Comprehensive Plan. Section 163.3167 prohibits such action and renders the referendum null and void.

Accordingly, Petitioners have not established that the circuit court failed to follow the essential requirements of the law in the first appeal because the referendum is null and void and of no legal force and effect by virtue of section 163.3167(8), Florida Statutes. Approval of the Ordinance and the rezoning of Gulfstream's property was properly affirmed by the circuit court in the first appeal.

E. The Referendum Was Not Merely a Charter Amendment

Petitioners' claim that a referendum to vote on a Charter Amendment is not expressly preempted by State law is unavailing, and their citation to *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010) is misplaced. Petition at 5. *Sarasota Alliance* confirmed the Florida Legislature's power to expressly preempt particular subject areas, thereby barring local government enactment, "by clear language expressing that intent." *Sarasota Alliance*, at 886. (See also, *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006) ("An 'express' reference is one which is distinctly stated and not left to inference. However, "[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.")).

Florida's Community Planning Act contains precisely such an expression of intent. Specifically, section 163.3161 provides as follows:

Subsection 7: "It is the intent of this act that the activities of units of local government in the preparation and adoption of comprehensive plans, or elements or portions therefor, shall be conducted in conformity with this act."

Subsection (8): "The provisions of this act in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state."

(emphasis added). These statements clearly express the Legislature's intent that

local amendment of comprehensive plans be carried out only in compliance with the express limitations contained within the Community Planning Act, such as section 163.3167(8)'s prohibition against local referenda "in regard to any comprehensive plan amendment," thereby barring precisely the type of local enactment utilized with regard to the purported Charter Amendment.

As discussed more fully herein, which is incorporated by reference, section 163.3167(8) broadly applies to prohibit a referendum "in regard to" an amendment to a comprehensive plan. This includes when an amendment to a Charter is sought by referendum and attempts to unwind an amendment to a comprehensive plan.

The Petition accurately cites *Sarasota Alliance* for the proposition that "conflict exists when two legislative enactments cannot co-exist." (Petition, at p. 5) This is precisely the situation between the Charter Amendment and section 163.3167(8). There is no rational way to conclude that the Charter Amendment is not "in regard to" the amendment to the Comprehensive Plan that increased the maximum building height to sixty five feet. As such, there is no rational way to reconcile the Charter Amendment and section 163.3167(8)'s prohibition against such referenda.

Pacetta confirms this. Issued one year after *Sarasota Alliance*, the *Pacetta* opinion does not even mention *Sarasota Alliance*, yet it still invalidated a referendum that had amended a municipal charter in a manner that was "in regard to" the local comprehensive plan. *Sarasota Alliance* did not prohibit this result – it

compelled it. Similarly, in this case, the attempt to amend the City's Comprehensive Plan via referendum was prohibited and the circuit court properly affirmed the City's decision.

CONCLUSION

The Petition for Writ of Certiorari filed with this court is merely an attempt to obtain a second appeal of the lower court's per curiam affirmance of the City's quasi-judicial decision. Even if the case were properly before this court, Petitioners have failed to establish that the circuit court sitting in its appellate capacity did not follow the essential requirements of the law in affirming the City's decision to rezone property. For the foregoing reasons, the City respectfully requests that the Court deny the Petition for Writ of Certiorari.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7, 2017, a true and correct copy of the foregoing was filed electronically with the court and served via e-service to Ralf@RalfBrookesAttorney.com; RalfBrookes@gmail.com, Ralf Brookes, Esq., Ralf Brookes, 1217 E. Cape Coral Parkway # 107, Florida 33904.

/s/Glen Torcivia

Glen Torcivia

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Response to Petition for Writ of Certiorari complies with the font requirements of Florida Rules of Appellate Procedure 9.100(1).

/s/Glen Torcivia

Glen Torcivia

Florida Bar No.: 43374

ORDINANCE NO. 618

AN ORDINANCE OF THE TOWN OF OCEAN RIDGE, FLORIDA, AMENDING ITS CODE OF ORDINANCES BY AMENDING CHAPTER 2 "ADMINISTRATION", ARTICLE VI "FINANCE", BY DELETING DIVISION 1 "GENERALLY" AND BY CREATING A NEW DIVISION 1 "PURCHASING CODE" TO PROVIDE FOR REGULATIONS GOVERNING THE PURCHASING OF GOODS AND SERVICES; PROVIDING FOR CODIFICATION, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Ocean Ridge, Florida (the "Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission wishes to establish certain requirements and regulations as it relates to the purchasing of goods and services; and

WHEREAS, the Town Commission wishes to enhance and strengthen the current purchasing policy; and

WHEREAS, the Town Commission has determined that the enactment of this ordinance is for a proper municipal purpose and in the best interests of the residents of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF OCEAN RIDGE, FLORIDA, AS FOLLOWS:

Section 1. The foregoing Whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. The Town Commission hereby amends Chapter 2 "Administration", Article VI "Finance", Division 1 "Generally", of the Town Code of Ordinances to read as follows (additional language underlined and deleted language ~~stricken through~~):

DIVISION 1. – GENERALLY PURCHASING CODE

~~Sec. 2-216. – Purchasing and bidding threshold.~~

~~(a) The town manager may approve all contracts for the purchase of commodities and/or contractual services for amounts up to and including \$10,000.00 for unencumbered budgeted funds.~~

~~(b) Except as provided by subsections (c) and (d) of this section, the town manager shall receive sealed bids for purchases of commodities and/or contractual services in excess of \$10,000.00 and then shall present the bids with a recommendation to the town commission for its approval.~~

~~(c) — The town commission may waive the competitive seal bid of commodities and/or contractual services, or purchase requirements, in the event of one or more of the following:~~

~~(1) An emergency has been declared by the town commission.~~

~~(2) Emergency purchases or contracts, the delay of which would delay the delivery of town services, stop work, or threaten life or property. The town manager shall notify the town commission of such purchases or contracts at its next meeting.~~

~~(3) A bid or proposal has been awarded by another governmental agency pursuant to a competitive sealed bid from which the town can purchase at the same price.~~

~~(4) Sole source or limited source provider.~~

~~(d) — This section shall not apply to the purchase or selection of professional services or other commodities and/or contractual services where the purchase or selection of which is governed by F.S. ch. 287, or other law or regulation of other governmental authority.~~

Sec. 2-217. — Commitment of certain expenditures.

~~Whenever the town commission seeks to commit or approve expenditures from the general fund, other than duly appropriated items, or from the nonappropriated fund balance, it shall do so at a regular town commission meeting. This provision shall not apply to expenditures from funds other than the general fund and the nonappropriated fund balance, and shall not apply to expenditures from any source, made by the town manager or town commission for bona fide emergencies to protect the health, safety and welfare of the public.~~

Sec. 2-216. — Applicability.

This division applies to the acquisitions of property, goods and services by the town after _____, 2016 as provided for in this division. Any action taken or contracts entered into contrary to the provisions of this division may, in the town's sole discretion, be declared null and void. The town has also adopted a purchasing policy whose regulations shall govern where not in conflict with this division.

Sec. 2-217. — Competitive selection.

(a) *Sealed competitive method.* Acquisitions of or contract for non-real property, goods or services where the expenditure by the town (including expenditures during renewal periods, but no expenditures relating to change orders) is estimated to be twenty-five thousand dollars (\$25,000.00) or greater shall be subject to a sealed competitive method, unless the town utilizes one of the methods that is exempt from the sealed competitive method or from obtaining quotes, as provided in this division or the purchasing policy.

(1) *Competitive bids.* Sealed competitive bids are utilized where price, responsiveness, and responsibility are the sole determining factors.

(2) *Requests for proposals, requests for qualifications, requests for letters of interest.* Requests for proposals, requests for qualifications, and requests for letters of interest are utilized where price, responsiveness, and responsibility are not the sole determining factors. The town

manager may appoint a selection committee to review the submissions received by the town in response to requests for proposals, requests for qualifications, and requests for letters of interest and make a recommendation to the town commission. The selection committee shall terminate upon the award of the contract, or such other time as determined by the town commission.

(3) Submissions. It shall be the sole responsibility of the bidder, proposer or responder to have the bid, proposal or response delivered to the town clerk's office before the specified closing date and time. Bids, proposals or responses received after the closing date and time shall not be considered and shall be returned unopened. The clock in the town clerk's office shall govern. All bids, proposals and responses submitted pursuant to a sealed competitive method shall remain sealed until they are opened publicly on the date and time and location stated in the notice to bidders, proposers or responders, or as may be amended by addendum. All bids, proposals or responses must be sealed. No faxed or emailed bids, proposals or responses shall be accepted.

(4) Town's reservation of rights. The town may utilize a sealed competitive method for any acquisition that the town deems appropriate regardless of the estimated cost of the acquisition.

In all competitive selection purchases, the town reserves the following rights:

(i) Rejection of bids, proposals or other responses. If the town manager determines that it is in the best interests of the town to do so, the town manager may reject any or all bids, proposals or other responses requested in whole or in part. Bids, proposals or other responses requested that are submitted after the due date and time will be disqualified from further consideration.

(ii) Waiver of irregularities. The town manager shall have the authority to waive all nonmaterial irregularities on any and all bids, proposals or other responses requested. Nonmaterial irregularities are those irregularities which do not substantially affect price and/or competition.

(iii) A request for bid, RFP, ITN or other competitive selection procedure utilized by the town may be canceled, in whole or in part, by the town manager when it is in the best interests of the town.

(iv) All costs and fees incurred by any party in preparing and responding to a request for bid, RFP, ITN or other competitive selection procedure used by the town are the sole responsibility of the responding party including all costs and fees related to a protest.

(b) Exemptions from purchasing by the sealed competitive method or by obtaining a written quote.

(1) Professional services. Except as otherwise provided for in Florida law, contracts for professional services (which include but is not limited to services provided by architects, engineers, surveyors, attorneys, accountants, actuaries, lobbyists and financial advisors) may be made or entered into by the town manager without utilizing a sealed competitive method or obtaining written quotes. Acquisitions of professional services where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ten thousand dollars (\$10,000.00) or greater shall be subject to approval by the town commission.

(2) *Specialty goods and services.* Acquisitions of or contracts for specialty goods and services (including but not limited to performing artists, artwork, special events, entertainment, and food and beverage) may be made or entered into by the town manager without utilizing a sealed competitive method or obtaining written quotes. Acquisitions of specialty goods and services, where the expenditure by the town is estimated to be ten thousand dollars (\$10,000) or greater, shall be subject to approval by the town commission.

(3) *Emergency acquisitions.* The town manager may acquire or contract for non-real property, goods, or services required in contemplation of, preparation for, or during an emergency without utilizing a sealed competitive method or obtaining written quotes regardless of the amount. Emergency acquisitions of non-real property, goods or services where the expenditure by the town is estimated to be ten thousand dollars (\$10,000.00) or greater shall be subject to ratification by the town commission as soon as practicable.

(4) *Sole source and town standard.*

a. *Sole source.* The town may acquire or contract for non-real property, goods or services that are available to the town from only one source without utilizing the sealed competitive method or obtaining written quotes. Sole source acquisitions where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ten thousand dollars (\$10,000.00) or greater shall be subject to approval by the town commission.

b. *Town standard.* Where the town has determined that a particular style, brand, make, or model is the only type that meets the town's requirements for performance, consistency, compatibility or other salient characteristics, and such determination has resulted in there being only one source available to the town, the town may acquire or contract for such goods without utilizing a sealed competitive method or obtaining written quotes. Town standard acquisitions where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ten thousand dollars (\$10,000.00) or greater shall be subject to approval by the town commission.

(5) *Utilization of other governmental entities' contracts.*

a. The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes where the desired goods or services are the subject of a contract with the state, its political subdivisions or other local governmental entities in the state, with associations in Florida affiliated with state and/or local governmental entities or departments (such as the Florida Sheriffs' Association and the Florida Fire Chiefs' Association) or with the United States government or national cooperatives, provided that the contract is based strictly on competitive bidding and not on any preference, and provided that the form of the contract is acceptable to the town attorney. Acquisitions utilizing other governmental entities' contracts where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ten thousand dollars (\$10,000.00) or greater shall be subject to approval by the town commission.

b. Utilization of other government entities' contracts shall only be permitted during the term of the other governmental entity's contract or for one year from the date the other governmental entity awards the bid, whichever is longer.

c. If the town desires to utilize another governmental entity's contract, the town shall require the vendor to certify that the price or rate represents the lowest price or rate for the non-real property, goods or services of any contract between the vendor and any other governmental entity within the state.

(6) Cooperative acquisitions. The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes where the town participates in joint procurement of non-real property, goods or services with other public entities within the state, including, but not limited to acquisitions made pursuant to interlocal agreements entered into with other governmental entities in accordance with F.S. Ch. 163. Cooperative acquisitions where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ten thousand dollars (\$10,000.00) or greater shall be subject to approval by the town commission.

(7) Utilities. Water, sewer, gas, electrical, and other utility services may be acquired without utilizing a sealed competitive method or obtaining written quotes and without town commission approval.

(8) Resale. Food, beverages and merchandise purchased for resale, may be acquired without utilizing a sealed competitive method or obtaining written quotes and without town commission approval.

(9) Employee benefits and health services. Employee benefits, including payroll processing services, and health related services may be procured/renewed directly through a negotiating process conducted by town staff and/or an expert in the field, or to maintain continuity of employee-health records, and is not subject to competitive procurement methods.

(10) Property, casualty, workers compensation, liability, automobile insurance. Insurances may be procured/renewed directly through a negotiating process conducted by town staff and/or an expert in the field, or to maintain continuity of insurance records, and is not subject to competitive procurement methods.

(11) The following goods and/or services are approved as exempt purchases when they are included in the adopted annual budget. Exempt purchases are exempt from the competitive selection and written quotation purchase requirements set forth in this purchasing code.

(1) Utilities—water, sewer, electrical, telephone, solid waste disposal fees and any other utility service where competition is not available.

(2) Postage and postage meter permits.

(3) Recording fees.

(4) Pension benefit payments.

(5) Debt service payments.

(6) Unemployment compensation.

(7) Tax withholding payments (FICA, Medicare, Federal Tax Withholding).

(8) Payroll deduction liability payments-including but not limited to-voluntary insurance policies, credit union deductions, Section 457 (deferred compensation) contributions, Roth IRA contributions, union dues, flex medical and flex dependent contributions, and garnishments (IRS, child support, court orders).

(9) Pension plan contributions.

(10) Memberships, dues, subscriptions, publications.

- (11) Advertisements for legal, promotional or informative matters.
- (12) Abstracts of titles or appraisals for real property.
- (13) Court reporting services.
- (14) Expert witnesses.
- (15) Bank analysis fees.
- (16) Merchant fees (credit card processing charges).
- (17) Job related seminars, training and related travel and per diem expenses.
- (18) Tuition reimbursements in accordance with town employment regulations.
- (19) Vehicle tag, title and registration fees.
- (21) Licensed computer software and services where competition is not reasonably available.
- (22) Licensed computer software maintenance renewals.
- (23) Authorized payment of donations or scholarships.
- (24) Payments to service providers needed to maintain village operations such as plumbers, electricians, temporary employment services, computer consultants or air conditioning repair services (this does not include the replacement of capital equipment).
- (27) Goods and/or services provided by governmental agencies.
- (28) Services required by proprietary ownership such as FPL and original equipment manufacturers (OEMs).

(12) *Best interest acquisitions.* The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes, as set forth in this code or the town's purchasing policy, where the town commission declares by at least a four-fifths (4/5) affirmative vote that the sealed competitive method or obtaining written quotes is not in the best interest of the town. The town commission shall make specific factual findings that support its determination, and such contracts shall be placed on the regular town commission agenda. This provision may not be used when the purchasing or procurement method is prescribed by state law, such as F.S. § 287.055 or 255.20, as amended.

Sec. 2-218. – Direct acquisitions.

(a) The town manager may approve all contracts for the acquisition of goods and services in an amount up to and including \$10,000.00 provided the funds are included in an adopted budget.

(b) *Acquisitions greater than ten thousand dollars (\$10,000.00).* Acquisitions of or contracts for non-real property, goods or services where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be greater than ten thousand dollars (\$10,000.00) shall be subject to prior approval by the town commission except for emergency acquisitions, which are subject to subsequent ratification by the town commission pursuant to subsection 2-217(b)(3).

(c) *Multiple acquisitions from a vendor exceeding ten thousand dollars (\$10,000.00) in any fiscal year.* Acquisitions of or contracts for non-real property, goods or services from the same vendor exceeding the aggregate sum of ten thousand dollars (\$10,000.00), per project, shall not

be permitted from the same vendor during the course of any fiscal year, unless the acquisition is first approved by the town commission.

Sec. 2-219. - Cone of silence.

Any person participating in a competitive solicitation issued by the town shall comply with section 2-355 of the Palm Beach County Code of Ordinances, as amended.

Section 3 – Codification: The ordinance shall be codified in the Code of Ordinances of the Town of Ocean Ridge, Florida.

Section 4 - Repeal of Conflicting Ordinances: All Ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 5 - Severability: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

Section 6 - Effective Date: This Ordinance shall become effective immediately upon adoption.

FIRST READING this 6th day of February, 2017.

SECOND AND FINAL READING this 6th day of March, 2017.

Commissioner Bonfiglio offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Commissioner Coz and upon being put to a vote, the vote was as follows:

GEOFFREY A. PUGH, Mayor

Aye

JAMES BONFIGLIO, Vice-Mayor

Aye

GAIL ADAMS AASKOV, Commissioner

Aye

STEVE COZ, Commissioner

Aye

The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission of the Town of Ocean Ridge, Florida, on second reading, this 6th day of March, 2017.

TOWN OF OCEAN RIDGE, FLORIDA

BY: 

Geoffrey A. Pugh, Mayor

ATTEST: 

Tracey L. Stevens, Town Clerk

ORDINANCE NO. 621

AN ORDINANCE OF THE TOWN OF OCEAN RIDGE, FLORIDA, AMENDING ITS CODE OF ORDINANCES BY AMENDING CHAPTER 64 "ZONING", ARTICLE III "SUPPLEMENTAL REGULATIONS", SECTION 64-49 "TEMPORARY STRUCTURES", TO CLARIFY THE REGULATIONS REGARDING TEMPORARY STRUCTURES; CHAPTER 67 "BUILDINGS AND BUILDING REGULATIONS", ARTICLE I "IN GENERAL", TO PROVIDE FOR AND CLARIFY EXISTING REGULATIONS GOVERNING CONSTRUCTION SITES; PROVIDING FOR CODIFICATION, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Ocean Ridge, Florida (the "Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission wishes to clarify and establish certain requirements and regulations as it relates to construction sites; and

WHEREAS, the Town Commission has determined that the enactment of this ordinance is for a proper municipal purpose and in the best interests of the residents of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF OCEAN RIDGE, FLORIDA, AS FOLLOWS:

Section 1. The foregoing Whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. The Town Commission hereby amends Chapter 64 "Zoning", Article III "Supplemental Regulations", Section 64-49 "Temporary structures" of the Town Code of Ordinances to read as follows (additional language underlined and deleted language ~~stricken through~~):

Sec. 64-49. - Temporary structures.

Temporary structures in connection with building construction or land development projects within the town may be erected for occupancy by personnel involved in the construction or land development project, in accordance with Section 67-9 of this Code. ~~No such structure may be approved prior to the issuance of a building permit. Such temporary structures shall not be used as a dwelling or lodging unit and shall require a minor development permit from the administrative official. The permit shall specify the location, the type of construction, the maintenance requirements, and the time period for which the structure may be erected. No temporary structure permit shall be issued for a period greater than six months, but permits may be renewed by the~~

~~administrative official. Failure to obtain a temporary structure permit or violation of any conditions or requirements connected with the issuance of such permit, or failure to remove such structure at the expiration of the permit period, shall be deemed a violation of this section. The administrative official may require a removal bond to guarantee removal of the temporary structure upon the expiration of the time limit provided for in the temporary structure permit. No temporary structure, other than as permitted herein in connection with building construction or land development projects, may be constructed, placed or maintained on any lot without a temporary structure permit issued by the administrative officer for a period not to exceed two weeks.~~

Section 3. The Town Commission hereby amends Chapter 67 "Buildings and Building Regulations", Article I "In General", of the Town Code of Ordinances to read as follows (additional language underlined and deleted language ~~stricken through~~):

Sec. 67-1. - Removal of debris from construction sites; storage of equipment and materials.

(a) All building and construction sites within the town shall at all times be kept free of loose debris, paper, construction material waste, scrap construction material and other trash produced from the site. All materials and equipment used, placed or stored upon any building or construction site shall be maintained within the perimeter of the building site.

(b) All building and construction sites within the town shall provide suitable on-site commercial container(s), as determined and designated by the town, for the collection of loose debris, paper, construction material waste, scrap construction material and other trash produced from the site. The construction container(s) shall be provided with a cover or covering that will prevent spilling or blowing of material from the container(s). The size and number of containers shall be adequate, as determined by the town, for the amount of material generated on the building or construction site. All said materials shall be containerized by the end of each day.

(c) Nothing in this section shall be deemed to permit the owner, general contractor or any of their employees, agents, or representatives to remove or dispose of debris, paper, construction material waste, scrap construction material and other trash produced from or on the site by onsite burning, or by piling or storage of said materials or equipment in the public streets or on property adjacent to the construction site.

(d) During construction, off-street parking for all personal vehicles and construction equipment shall be provided and shall be utilized to prevent on-street parking by construction personnel and equipment. The parking of any vehicle or equipment associated with the construction activities or construction personnel on the public right-of-way is prohibited, unless approval is obtained from the town building official. The building official may only allow use of the public right-of-way if he/she determines, based on the information provided by the developer/owner, that the site space is not adequate to accommodate all of the parking needs on site. If the building official allows parking in the public right of way, it must be pursuant to the developer/owner purchasing right of way parking permits and in no event shall any construction development be issued more than two right of way parking permits. The cost of each permit shall be set by resolution of the town commission.

(e) Where concrete or any other substance permanently affixes itself to any road surface, public or private, causing the surface to be uneven or defaced, it shall be immediately removed by the person or persons responsible. Where mud or excessive dirt or soil from a construction site is tracked or deposited, by vehicle or otherwise, onto any road surface, public or private, it

shall be immediately removed by the person or persons responsible. The person or persons responsible as identified in this section, shall mean the driver of the vehicle which deposited the substance onto the road surface, his employer, the owner of the real property containing the construction or demolition site and/or the general contractor in charge of a site from where the substance originated.

(f) If at any time the town notifies the owner or general contractor, personally or through their agent(s) or representative(s), in writing that construction activities are being conducted, or the construction site or any part thereof is being maintained, in violation of the provisions of this section, said violations shall be corrected within 24 hours of the notice. If the owner or general contractor does not satisfactorily correct the situation within 24 hours of said notification, in addition to any other enforcement actions available to the town pursuant to this Code or otherwise provided by law, upon written notice from the town given to the owner of the property, or to the general contractor, or to their agent(s), representative(s), or the person doing the work, work on the site shall immediately cease. Such written notice shall also state the conditions under which work may be resumed. Upon being notified of the elimination of the violation of the provisions of this section, the town shall inspect the site for compliance and allow resumption of the work.

(g) It shall be unlawful to unload and/or store any material used or required on any construction site without a permit having been issued for construction and/or demolition at that specific site.

(h) It shall be unlawful to store any material in an unsecured area which is deemed unsafe or a danger to those accessing the site. It shall be unlawful to store any construction materials in any manner whereby the material or a portion of the materials is stored outside the legal boundaries of the site. Reasonable exceptions to this subsection, for a reasonable period of time, may be considered on a case-by-case basis by the town manager.

(i) All areas surrounding construction sites which are affected by dust, dirt and debris from the construction site shall be swept clean of such dust, dirt and debris a minimum of two times per day; at least one of which must be at the conclusion of work for that day.

(j) Any pool under construction shall be kept clean of any debris until such time as the pool is properly filtered and must be properly fenced. All sitting water in pools under construction must be properly treated to eliminate algae, insects, etc.

(k) The contractor shall be responsible for placement and emptying of adequate disposal containers for food, wrappers and other nonconstruction related garbage.

(gl) The owner of the property and the general contractor shall be jointly and severally responsible for compliance with the provisions of this section.

(hm) The owner, or general contractor, personally or through their agent(s) or representative(s), shall have the right to appeal from the decision of the town ordering the cessation of all work and to appear before the code enforcement special master at a specified time and place to show cause why they should not comply with said notice.

(in) The enforcement procedures contained in this section are in addition to, and not in lieu of, any other enforcement procedures or remedies available to the town for the enforcement of its Code of Ordinances.

....

Sec. 67-4. - Temporary construction fences.

A temporary construction fence is required on all construction sites undergoing land disturbing construction or land development activities. All construction/demolition activities as well as all dumpsters, portable toilets, storage facilities, materials and any other item related to the construction must be located inside the temporary construction fence area. Before the temporary construction fence may be erected, a site plan depicting the materials, location and access gates must be approved as part of the fence permit issuance. At a minimum, the construction site must be completely enclosed, on all sides, by temporary construction fencing to prevent public access. However, a fence shall not be required, unless specifically requested by the building official in order to preserve the public health, safety and welfare, on the side where the property abuts the Atlantic Ocean or intracoastal waterway or where there is a sufficient barrier, such as a fence, wall or landscaping material, where the property abuts an adjacent property, not public right of way.

(a) Temporary construction fences shall be six (6) feet in height and shall be constructed of chain link with screening material (scrim).

(b) Temporary construction fences shall not be erected until the town has issued a demolition permit or building permit for the land disturbing construction or land development activities. In no event may a temporary fence be erected more than ten (10) days prior to the commencement of land disturbing construction or land development activities.

(c) In the event that the demolition permit or building permit expires, all temporary construction fences shall be removed within ten (10) days of the permit expiration date. Within fifteen (15) days of removal of the fences, the site shall be brought to grade, tilled and planted with ground cover to include sodding or seeding which shall have irrigation and shall be maintained in accordance with this Code, regarding landscaping requirements. Alternate forms of ground cover may be approved by the building official.

(d) Temporary construction fences shall comply with the following requirements:

(1) Temporary construction fences shall be installed in accordance with all Florida Building Code and Occupational Safety and Health Administration (OSHA) standards. Temporary construction fences installed pursuant to this section shall be subject to any visibility at intersections requirements of this Code.

(2) All temporary construction fencing shall be maintained in a satisfactory manner by the permittee or landowner during the entire period of the land disturbing construction and land development activities to ensure adequate performance, to prevent nuisance conditions and to maintain the public health, safety and welfare.

(3) Gates shall be secured and locked with a lock substantial enough to ensure closure and security when workers are not on the job site.

(4) No temporary construction fence may encroach beyond the subject property line. No fence may encroach upon the public right-of-way without obtaining the appropriate permit(s).

(5) Screening details shall be submitted with the temporary construction fence permit application. Wind Screening material shall be substantial enough to avoid rips or tears

due to wind or sun and shall be maintained in good condition at all times. Screening material shall be of one color, either green or black, with the entire fence consisting of the same shade of green or black and approved by the building official with no signage, artwork or pictures of any kind as part of the screening material or affixed to the fence.

(6) All wind screening materials shall be removed upon the issuance of a hurricane warning for an area including the town. Screening materials shall be reinstalled not more than ten (10) days after the hurricane threat has ended.

(7) The building official may grant the use of a temporary movable construction fence as part of a phased construction or phased demolition permit. Within ten (10) days of the completion of the phase of construction or demolition, the temporary movable fence shall be removed, and may be replaced by another temporary construction fence meeting the provisions of this section.

(8) "No Trespassing" signage shall be placed on the construction site under the direction of the building official and in accordance with F.S. § 810.09, as amended.

(e) The building official may grant, in writing, a restriction or extension to the time frames for the erection or removal of temporary construction fences when necessary to maintain the public health, safety and welfare.

Sec. 67-5. - Construction site noise.

See Section 34-83 of this Code.

Sec. 67-6. - Ingress and egress.

(a) All vehicles delivering materials to or picking up materials from any construction site within the town limits shall follow the legal rules of the road.

(b) Any vehicle which will be obstructing the normal flow of traffic for a period greater than three (3) minutes shall have a flag person present to assist in the safe passage of other motor vehicles. Such flag person shall wear a reflective vest.

(c) Any case where traffic is known to be disrupted for a period in excess of five minutes must be approved, in advance, by the Ocean Ridge Police Department and a flag person must be present to assist in the safe passage of other motor vehicles.

Sec. 67-7. - National Pollutant Discharge Elimination System (NPDES).

All applicable sections of the National Pollutant Discharge Elimination System (NPDES) requirements applicable to the town are incorporated as requirements hereto.

Sec. 67-8. - Tree protection during land clearing and construction.

All requirements related to tree protection during land clearing and construction listed in section 66-151 of this Code are incorporated into this code section by reference

Sec. 67-9. - Construction/storage trailers.

(a) Construction/storage trailers may be erected in connection with land development or construction projects. Construction/storage trailers shall not be used as dwelling or lodging units.

(b) A construction trailer shall not be installed without site plan review and approval and the issuance of a building permit for the construction trailer. The building official shall have final authority to approve a site plan for a construction trailer and for all temporary trailers or storage containers to be located on construction sites. Approval for a construction/storage trailer shall be subject to the standards listed below.

(1) The approved site plan and building permit for the construction trailer shall specify the location, type of construction, maintenance requirements, and the period for which the construction trailer shall be required.

(2) Any building permit issued for a construction trailer shall expire after a period of six (6) months, unless renewed by the building official for one or more additional periods of six (6) months.

(3) A construction trailer shall not be allowed for more than two (2) years, including any renewal periods, unless approved by the town commission.

(4) Approval from the building official shall be obtained before the trailer is occupied.

(5) Land development or construction activities on the site must commence within one year after the building permit for the construction trailer is issued. If land development or construction activities do not commence within the required time period the trailer must be removed. Code enforcement proceedings and/or any other lawful action to require removal of the construction trailer from the site may be initiated.

(6) Construction trailers shall also be subject to all regulations listed in the Construction Site Management Handbook.

Sec. 67-10. - Construction site management handbook.

(a) The town manager shall establish and maintain a manual pertaining to construction standards and town policy concerning construction activities on properties located within the town. This manual shall be titled "Construction Site Management Handbook" and shall be binding upon contractors, owners, residents and others with respect to construction and maintenance activities on private properties within the town. This construction site management handbook shall be adopted and amended as necessary by resolution of the town commission.

(b) Permits for construction identified in the construction site management handbook shall be subject to and conditioned upon the contractor and the property owner complying with the terms and conditions of the construction site management

Sec. 67-11. - Issuance of permits and establishment of fees.

(a) The town shall charge a fee to cover the costs associated with reviewing for compliance with zoning, design manual and other town ordinances. Such fee shall be established in a fee schedule adopted by a resolution of the town commission or by town code.

(b) If there is a change in the initial plans as approved, the contractor shall be required to file such plan change with the town. The fee payable to the town for review of such change in plans shall be as indicated in the town fee schedule.

(c) If the contractor wishes to either demolish or move a building or structure located within the town, a permit must be obtained from the town and a fee established by the town's fee schedule shall be paid to the town for receipt of such permit.

Sec. 67-12. - Construction abandonment.

All authorized construction shall be completed prior to the expiration of the building permit. The expiration of a building permit shall be prima facie evidence that the building project has not commenced or has been abandoned.

Failure of the permit holder or the property owner to complete construction once it has been initiated within the timeframe of the building permit is a violation that will be referred to the special magistrate pursuant to Chapter 16, Article I, of this Code. Failure to restore the site to its preconstruction conditions, including removal of all structural improvements and placement of sod on all disrupted portions of the site, may result in a fine not to exceed \$250.00 per day after the permit expires.

Sec. 67.13. – Enforcement.

Failure to comply with the provisions of this article, or with the approved plans, may result in fines assessed against the property, the issuance of a stop work order, or revocation of any or all building permits. Uncorrected violations shall be considered separate violations for each day they remain uncorrected beyond any correction period given by the building official, town police officer or town manager. Enforcement of this article may be performed by the building official, town police officer or town manager.

Section 4 – Codification: The ordinance shall be codified in the Code of Ordinances of the Town of Ocean Ridge, Florida.

Section 5 - Repeal of Conflicting Ordinances: All Ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 6 - Severability: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

Section 7 - Effective Date: This Ordinance shall become effective immediately upon adoption.

FIRST READING this 3rd day of April, 2017.

SECOND AND FINAL READING this 1st day of May, 2017.

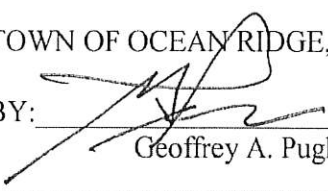
Vice Mayor Bonfiglio offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Commissioner Coz and upon being put to a vote, the vote was as follows:

| | |
|---------------------------------|--------|
| GEOFFREY A. PUGH, Mayor | Yea |
| JAMES BONFIGLIO, Vice Mayor | Yea |
| GAIL ADAMS AASKOV, Commissioner | Absent |
| STEVE COZ, Commissioner | Yea |
| DON MAGRUDER, Commissioner | Yea |

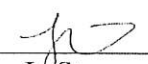
The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission of the Town of Ocean Ridge, Florida, on second reading, this 1st day of May, 2017.

TOWN OF OCEAN RIDGE, FLORIDA

BY: _____

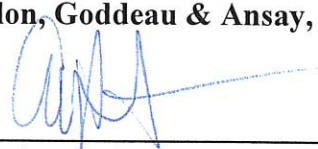

Geoffrey A. Pugh, Mayor

ATTEST: _____


Tracey L. Stevens, Town Clerk

SIGNED STATEMENT

No discipline has been sustained or Court sanctions (including contempt) have been levied against any attorney practicing in the firm of Torcivia, Donlon, Goddeau & Ansay, P.A.



Carolyn S. Ansay

BRANDENBURG & ASSOCIATES, P.A.

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www.BrandenburgPA.com

Gary M. Brandenburg

Gary@BrandenburgPA.com

ATTORNEY AT LAW

July 12, 2018

Hon. Susan Gibbs Thomas
and Members of the Village Council
Village of Indiantown
16550 SW Warfield Blvd.
Indiantown, FL 34956

Re: Village Attorney Position

Dear Mayor Thomas and Members of the Village Council:

Please accept this letter as my application for the position of Village Attorney.

I have had the opportunity to serve as County Attorney for two South Florida counties, Palm Beach County and Indian River County. I have also provided legal advice to several municipalities as Special Counsel, Arbitrator, Special Magistrate and City Attorney. In the private sector, I have represented clients before most municipalities in both Palm Beach and Martin counties.

I believe I have the experience to know what a Village Council expects of a Village Attorney, as well as what the residents and local businesses expect. I am prepared to meet those expectations in the Village of Indiantown.

I am available to immediately provide the 50 hours of service per month, as estimated, or more if needed. I do not have any time conflicts with attendance at the Village Council meetings.

My office is in North Palm Beach, however, I live in Palm City, Martin County, which is a short drive to the Village.

I am willing to negotiate an hourly rate which will meet the Village's budgetary constraints, and am willing to consider a flat rate per month for all services, excluding litigation, for better budget control. With the exception of hourly billing, there will be no other administrative charges other than direct expenses incurred on behalf of the Village, which are approved by you in advance (i.e., case filing fees).

I believe I am well-suited for this position as a result of my extensive experience in representing local governments and also representing private individuals in their relationship with government. I have insight from both perspectives.



Hon. Susan Gibbs Thomas
and Members of the Village Council
of the Village of Indiantown
July 12, 2018
Page 2

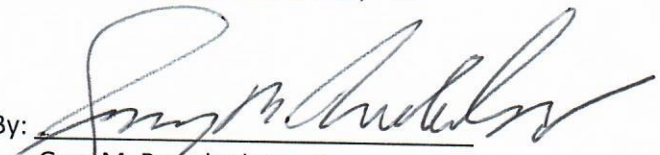
I do not represent any parties that have dealings with the Village of Indiantown and will not consider any such private representation while serving as Village Attorney.

Thank you for this opportunity to be considered for this position.

Respectfully submitted,

BRANDENBURG & ASSOCIATES, P.A.

By:


Gary M. Brandenburg, Esq.

GMB/slm

Enclosures:

Resume

Professional Liability Insurance Coverage Page

Writing Sample

Statement Confirming No Bar Discipline and/or Court Sanctions

RESUME

Gary M. Brandenburg, Esq.
Gary@BrandenburgPA.com

Brandenburg & Associates, P.A.
11891 U.S. Highway One
Suite 101
North Palm Beach, FL 33408
(561) 799-1414

Home Address:
5437 Honeysuckle Court
Palm City, FL 34990

Qualifications/Experience

- President, Brandenburg & Associates, P.A., concentrating on all aspects of municipal and County governmental law, contract procurement, zoning, permitting, land use, code enforcement (2003 to Present)
- Shareholder, Carlton Fields, P.A., specializing in Governmental, Environmental, Land Use and Administrative Law, Managing Partner of West Palm Beach office (10 years), member of Board of Directors, Compensation Committee and Executive Committee, Chairman of the Land Use, Environmental and Government Practice Group (1991 to 2003)
- General Counsel, Tri-County Commuter Rail Authority (Tri-Rail), responsible for all legal representation for commuter rail system including Federal Funding, acquisition of property for Railroad Stations, contracts with all vendors, personnel matters and general governmental law (1994 – 2002)
- Associate, Gunster, Yoakley & Stewart, P.A., in the Environmental, Land Use and Administrative Law Department, specializing in governmental law, administrative law, land development law and water and sewer utility acquisitions and public finance, representation of Private Interests and Government Agencies, including Palm Beach County for the formation of Seacoast Utilities and Acquisition of Water and Sewer Utilities (1988 to 1991)

- Palm Beach County Attorney, managing an in-house legal staff of nineteen attorneys and forty employees. Responsible for all legal representation of the Board of County Commissioners of Palm Beach County (1985 to 1988)
- Indian River County Attorney, responsible for the operation and management of the Indian River County Attorney's Office, which provides total legal representation for the Board of County Commissioners and selected constitutional officers, established first in-house County Attorney's Department for the County (1981 to 1985)
- Special Magistrate for the City of West Palm Beach Code Enforcement
- Special Magistrate for Palm Beach County Code Enforcement
- Special Master for the City of Pahokee Code Enforcement and Traffic Violations
- Special Magistrate for the Town of Lake Park
- Special Master for the City of Boca Raton
- Prosecutor for Code Enforcement Case for Town of Jupiter Island
- Special Magistrate for the Town of Gulf Stream
- Special Magistrate for the City of Port St. Lucie
- City Attorney for City of Pahokee
- City Attorney for City of Clewiston
- AV Rating with Martindale Hubbell

EDUCATION

- Admitted to practice law in the State of Florida
- Admitted to practice law in the U.S. District Court, Southern District of Florida
- University of Detroit School of Law – Juris Doctor Degree
- Michigan State University - Bachelor of Science Degree

**LAWYERS PROFESSIONAL LIABILITY INSURANCE
POLICY DECLARATIONS****Policy Number**
17MCFL000629**Issuing Company**
Medmarc Casualty Insurance Company
14280 Park Meadow Drive, Suite 300
Chantilly, VA 20151-2219
(A Stock Company)**1 Named Insured and Address**Brandenburg & Associates, P.A.
11891 US Highway One, Suite 100
North Palm Beach, FL 33408**2 Policy Period**Effective Date: 8/26/2017
Expiration Date: 8/26/201812:01 A.M. Standard Time at the address
of the Named Insured as stated herein.**3 Retroactive Date**

8/26/2010

Unless indicated otherwise in an
Endorsement attached to this **policy****4 Limit of Liability**\$1,000,000.00 Each Claim
\$1,000,000.00 Aggregate**5 Deductible**\$2,500.00 Each Claim
\$2,500.00 Aggregate**6 Premium**

\$3,695.00

7 Fees (if applicable)

\$0.00

Issue Date: 08/21/2017

ORDER

**TOWN OF GULF STREAM
100 Sea Rd.
Gulf Stream, FL 33483-7427**

SPECIAL MAGISTRATE ORDER

CASE NO. 15-1

**PROPERTY OWNER: CHRISTOPHER F. O'HARE
2520 AVENUE AU SOLEIL
GULF STREAM, FL
PCN: 20-43-46-04-22-000-0360**

THIS MATTER came before the Special Magistrate for a hearing held at Town Hall on March 7, 2016, pursuant to a Notice of Violation issued by the Town of Gulf Stream ("Town") to Christopher F. O'Hare ("Respondent") on August 14, 2015. The Notice of Violation (NOV) alleged the following violations:

SEC. 42-29 CONSTRUCTION ABANDONMENT
SEC. 70-238 ROOFS
SEC. 70-99 ROOF DESIGN, SLOPE & MATERIALS

The Town set the matter for hearing, which was convened on Friday, December 4, 2015, at 10:00 a.m. The Respondent and his attorney, Mr. Roeder, were present. Mr. Randolph, the Town Attorney, and Mr. Thatcher, the Town Manager, were also present.

The Respondent requested a postponement because he was not afforded pre-hearing discovery which typically occurs in Circuit Court trials. The postponement was denied. There is no process allowing pre-hearing discovery, other than the issuance of subpoenas by the Special Magistrate, and Public Records Requests, both processes which the Respondent was aware of and utilized.

On December 4, the hearing began at 10:00 a.m. and the proceeding adjourned at 4:15 p.m.

Several attempts were made to re-convene the hearing, to no avail. Respondent terminated his attorney shortly before a scheduled hearing and was not able to find suitable counsel. On another occasion the proceedings began and were shortly thereafter adjourned due to medical issues that required the Respondent to be transported to a hospital. Respondent's doctors requested that the hearing not occur for a period of time.

On Monday, March 7, 2016, the hearing was continued. The Town appeared with the same representation. The Respondent appeared *pro se*, with two assistants, both attorneys, one of which was his attorney on the first day of the hearing. He was now offered as a witness. The hearing re-convened at 10:00 a.m. and concluded with closing arguments completed at approximately 6:00 p.m.

During the two days of hearing, the Town presented 24 exhibits, some composite with several pages, marked T-1 through T-24. The Respondent proposed 41 exhibits, some composite with several pages, all of which were admitted with the exception of R-32 (composite), R-35, and R-31. The parties agreed the Special Magistrate could take time to review the evidence and submit a written order, waiving the requirement that the decision be announced at the conclusion of the hearing, and that a written order would follow in ten (10) days. It was agreed the decision would be mailed to the parties. Both parties were given the opportunity to submit proposed Findings of Fact, and did.

BURDEN OF PROOF

The Town carries the burden of showing the violation occurred by producing evidence that must be competent and substantial.

SUMMARY OF CASE

Section 42-29 Construction Abandonment

The Respondent applied for and received a re-roofing permit on August 30, 2011. Permit No. 11-135146 was issued to Rooftec Corporation, the Respondent's contractor.

As of the date this hearing concluded, Respondent's previous roof had been removed, and new underlayment and waterproofing had been added. The roof remains unfinished with no tile or finishing roofing material in place.

The Town contends the permit is inactive under Florida Building Code Section 105.4.1.3, which requires an approved inspection every 180 days. The Town, therefore, reasons that the Respondent has not completed construction of the re-roofing project within the timeframe of the Building Permit and is in violation of Section 42-29.

The Respondent asserts several defenses to the Town's argument.

The Town of Gulf Stream has an Interlocal Agreement dated 30 September, 2009, with the City of Delray Beach ("Delray") that provides for Delray to act as the Town's Building Department (T-5). Prior to November 15, 2009, the County served as the Town's Building Department. Pursuant to a Memorandum of Understanding between the Town Manager, Building Official for Delray Beach, and County Building officials, the arrangement with the County was terminated and Delray undertook the responsibility on November 15, 2009. There was a provision to allow County officials to act on permits after November 15, 2009, in certain circumstances (paragraph 2.b., T-15)

The Respondent points out that the Interlocal Agreement between the Town and Delray was not recorded in the Public Records, as required by Florida Statute § 163.01(11) until February 11, 2013, (ORB 25785, Page 0534) and, therefore, was not effective on August 30, 2011, when the Building Permit was issued and that secondly, Section 42-29 of the Codified Codes and Ordinances of the Town still refers to "a Building Permit issued by the County". Since the permit was not issued by the County, it does not fall within the abandonment language of § 42-29.

Both of these arguments are rejected.

Section 42-26 of the Town Code, enacted on November 13, 2009, corresponding approximately to the date of the Interlocal Agreement, was an Ordinance providing that Delray's Building Codes would apply. Section 42-27 also provided that Delray would issue all permits and conduct inspections. All parties understood and followed the procedure of applying to Delray for the re-roofing permit. The Delray Beach Building Official testified that the previous Building Official had determined the permit was inactive, and he had no reason or information to contradict his decision. The Town and Delray relied on the Florida Building Code to determine when a permit becomes inactive. The first paragraph of § 42-29 refers to the time period when the County issued the permits, and active County-issued permits after Delray took over as the Town's Building Department, and is merely a relic of the past. Respondent was cited with paragraph 2, which deals with keeping a building permit active whether issued by Delray or, as was previously the case, the County.

It should be noted that if Respondent's first argument regarding the Interlocal Agreement was correct, and Delray did not have the authority to act as the Town's Building Department, Respondent would never have had a valid permit to begin the re-roofing project. Respondent never applied for permits from the County, as that process had been replaced. The parties' actions confirm, and a long history shows, all involved knew and processed the permits through Delray.

Next, Respondent argues that the inspection to keep the re-roofing permit active did not have to be by a Delray Beach Inspector. Testimony offered by Respondent showed that under certain conditions such as "threshold buildings" and other complicated structures, Building Departments will allow and accept other qualified professionals to conduct inspections on behalf of the Department. There was no testimony or evidence to suggest that the Town or the City of Delray Beach Building Department authorized anyone other than Delray inspectors to conduct roofing inspections on Respondent's house. There is no need to comment on Respondent's evidence regarding delivery of inspections by unauthorized persons to Delray. The last inspection by a Delray employee was April 26, 2012. The permit became inactive under the Florida Building Code on November 26, 2012. The most the Respondent was able to show were several letters from T.E. Lunn, PE, LLC, addressed to Respondent, indicating additional hot-mopping of material to offset deterioration of the underlayment due to excessive exposure for long periods, to prevent water intrusion. There is no evidence that Delray accepted these as valid inspections. There was no evidence of the project progressing towards completion.

Next, Respondent argues that he did not receive notice that the Building Permit was inactive. At the very least, Respondent was put on Notice of the inactive permit when he received the Notice of Violation on August 5, 2015, four months prior to the commencement of this hearing. In addition, the Delray Beach Building Department testified that Notices of Inactive Permits were typically given when an owner called for an inspection or other activity on the permit. Since there were no inspections requested from Delray after April 26, 2012, there was no notification.

Next Respondent argues that the expiration of the permit was tolled by virtue of legal proceedings. Attorney Roeder testified that there was active legal activity on Respondent's roof since 2012. Florida Building Code § 105.4.1 provides the 180 day period "shall not be applicable in case(s) . . . when the building work is halted due directly to judicial injunction, order or similar process." Respondent failed to show any order from any of the litigation that required the work on the roof to be halted. The only testimony with respect to this issue was that Respondent was not happy with the type of roofing the Town would allow and voluntarily waited to finish the work in the hope of a Court order which would allow his preferred choice.

Section 70-238 Roofs

Respondent wanted a metal roof. This request was denied by the Town Manager. Respondent appealed to the Board of Adjustment, resulting in the denial of his request. Respondent filed a Petition for a Writ of Certiorari with the Circuit Court for the 15th Judicial Circuit (T-8), which was denied *Per Curiam* (T-9). That decision was appealed to the Fourth District Court of Appeals, and the Court denied the petition on its merits (T-10).

Respondent then applied for a revised Building Permit to install a "solar sandwich" roof, which was denied. Respondent appealed to the Board of Adjustment and the Board denied his appeal. Respondent filed a petition for Writ of Certiorari with the 15th Judicial Circuit, appealing the denial. The denial by the Board of Adjustment was affirmed *Per Curiam* (T-11).

During the litigation, the style of house and roof covering allowed by Town Code was litigated extensively and is not a subject to be revisited in this Code Enforcement hearing.

The evidence is clear that there is no tile or any other protective material over the underlayment which is in place on Respondent's roof. Although it has been thoroughly argued and decided in previous litigation what type of tile must be used on Respondent's house; it is clear that some type of finished roof material must be installed, and there is none.

Section 70-99 Roof Design, Slope & Materials

Section 70-99 prohibits inconsistent roofing materials visible from the exterior of the property. The preamble of § 70-99 reads:

"Roofs are a major visual element and should be carefully considered as to the proportion, texture, color and compatibility with both the house style and neighboring buildings. Similarities in roof types create a visual continuity in the streetscape and neighborhood. Broad low roof lines with overhanging eaves provide a reassuring sense of shelter and create shade for underlying windows."

The testimony presented established that Respondent's roof, consisting of hot-mopped underlayment, was visible from the exterior and inconsistent with Town Code, which requires a finished layer of approved tile or other approved material. It is also inconsistent with the roofs on homes in Respondent's neighborhood. Roofing consisting of underlayment only is not permitted and is not consistent with the Town Code.

FINDINGS OF FACT

1. Christopher O'Hare is the owner (Respondent) at 2520 Avenue Au Soleil, Gulf Stream, FL 33483.
2. The Notice of Violation dated August 4, 2015, was properly served by Hand Delivery on August 5, 2015.

3. The Notice of Hearing was properly served and Respondent was present with counsel on December 4, 2015, and again *pro se* on March 7, 2016, with two Attorney advisors.
4. The summary of the case is incorporated in these Findings of Fact.
5. The Town has shown, by substantial competent evidence, violations of Section 42-29, Section 70-238, and Section 70-99.

COMPLIANCE

The Respondent is hereby ordered to bring his property into compliance by:

- A. Installing a flat, white thru and thru, smooth uncoated tile; or
- B. Installing similar tile to what was removed. (The Building Permit expired, requiring the Respondent to restore the roof with the previous covering.) This was an S-shaped terra cotta tile, identified at the hearing as Exhibit T-20 (Barcelona 900), or other similar tile approved by the Town; or
- C. Apply a roofing material that is otherwise approved by the Town. I will note that continuous applications, demands, and appeals will not suffice as a reason to delay compliance.

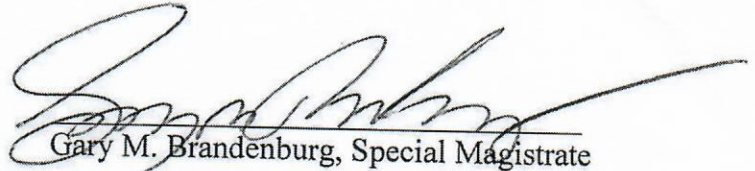
CONCLUSIONS OF LAW

The above Findings of Fact constitute a violation of the Sections of the Codes and Laws of the Town of Gulf Stream set forth above.

It is the Order of this Special Magistrate that Respondent shall comply, as set forth above, by June 1, 2016, with this Order. Failure to comply may subject the Respondent to fines and liens upon the property that is the subject of this hearing, and all other property owned by Respondent in Palm Beach County. Administrative costs of \$150.00 are awarded to the Town, which Respondent will pay within 10 days.

The Town is ordered to inspect the property on June 1, 2016, and, if it is not found to be in compliance, to convene a hearing to determine compliance with this Order and such other matters that are deemed appropriate.

DONE AND ORDERED this 22nd day of March, 2016

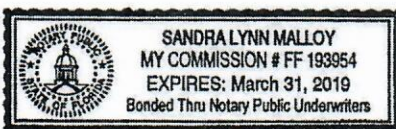

Gary M. Brandenburg, Special Magistrate

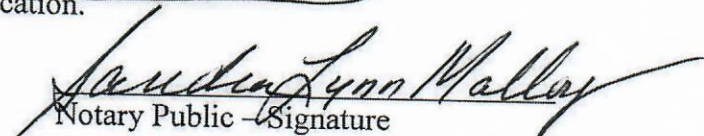
STATE OF FLORIDA

COUNTY OF Palm Beach

The foregoing was sworn to, subscribed and acknowledged before me on this the 22nd day of MARCH, 2016, by Gary M. Brandenburg, as Special Magistrate for the Town of Gulf Stream, Florida. He is personally known to me or has produced _____ as identification.

(SEAL)




Notary Public - Signature

Sandra Lynn Malloy
Notary Public - Print Name
Commissioner No.: FF 193954
My Commissioner Expires: 3/31/19

BRANDENBURG & ASSOCIATES, P.A.

11891 U.S. Highway One, Suite 101
North Palm Beach, Florida 33408
(561) 799-1414
www.BrandenburgPA.com

Gary M. Brandenburg

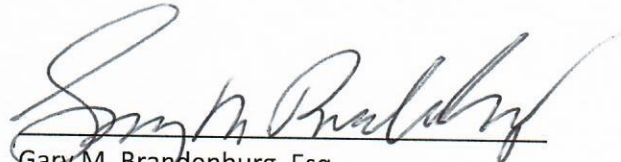
Gary@BrandenburgPA.com

ATTORNEY AT LAW

AFFIDAVIT OF GARY M. BRANDENBURG, ESQ.

COMES NOW, Gary M. Brandenburg, Esq., having been placed under oath and subject to the punishment for perjury, and states:

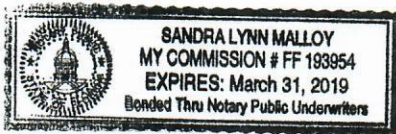
1. I have never been subject to Florida Bar Association discipline;
2. I have never been sanctioned or held in contempt by any Court;
3. No member of my law firm has ever been subject to Florida Bar discipline or sanction by any Court.


Gary M. Brandenburg, Esq.


STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing was sworn to, subscribed and acknowledged before me on this the 12th day of July, 2018, by Gary M. Brandenburg, Esq. He is ☒ personally known to me; or ☐ has produced _____ as identification.

(SEAL)




Notary Public - Signature


Notary Public - Print Name
Commissioner No.: FF 193954
My Commissioner Expires: 3/31/2019



John J. Anastasio
Counselor-At-Law

3601 South East Ocean Boulevard, Suite 203
Stuart, Florida 34996
(772) 286-3336
Fax: (772) 286-1036
E-mail: Contact.Office@psllaw.net

*If we could read the secret history of our
enemies, we should find in each man's
life sorrow and suffering enough to
disarm all hostility.*

- Longfellow

11 July 2018

Mayor Susan Gibbs-Thomas
Vice-Mayor Guyton Aboston Stone
Councilwoman Jacqueline L. Clarke
Councilwoman Janet Hernandez
Councilman Anthony Darell Dowling

Re: Village Attorney RFP

Ladies and gentlemen:

Previously I had an opportunity to discuss the Village of Indiantown with four out of five of you. You were provided with my resume and a copy of the *A Blueprint for the Village of Indiantown Village Attorney's Office*. Attached are copies of each again. Also attached is an appeal writing sample for Mayor Faiella, and statement.

I have continued to watch the Village since your inaugural meeting. I cataloged your agenda in the *Blueprint*. Aside from the press of required and routine legal business, I would like to move forward with assisting each of you in accomplishing the platform you ran on.

While I have recently been an interviewed finalist for the Cities of Hollywood and Tallahassee, I would be most comfortable remaining local, and representing a small town such as the Village of Indiantown.

My hourly rate to the Village would be between \$200 to \$275 an hour, depending on the type of services rendered.

I look forward to an interview again with each of you.

Cordially,



John J. Anastasio

JOHN J. ANASTASIO

Law Offices of John J. Anastasio
3601 South East Ocean Boulevard, Suite 203
Stuart, Florida 34996
john@psllaw.net (772) 286-3336

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PROFILE SUMMARY

A self-motivated, self-sufficient, attorney and polymath¹. Offering more than 20 years of broad experience in municipal law and civil law, involving the representation of: citizens, corporations, and government entities, officials, and employees.

Relevant experience includes:

| | |
|---|--|
| Commercial and construction litigation | Real estate acquisitions and foreclosures |
| Public employee discipline under chapter 112 | Employee grievances and hearings |
| Fair Labor Standards Act (FLSA) | Family Medical Leave Act (FMLA) |
| Drug Free Workplace and testing | Americans With Disabilities Act (ADA) |
| Occupational Health and Safety Act (OSHA) | Public records law and Sunshine Law |
| Health Insurance...Act (HIPAA) | Chapter 120 Administrative Procedures Act |
| Local government Section 1983 liability | LDR and comprehensive planning |
| Federal and Florida Tort Claims Act | Injury, med-mal, and workers compensation |
| Bankruptcy (financial and management aspects) | Computer source code litigation |
| Commercial, contracts and construction litigation | Florida and federal jury trials, non-jury trials |
| Appeals | Mediation and arbitration |
| Public policy analysis and rule drafting | Contract and pension plan analysis |
| Root cause and methodology analysis | Investment and financial statement analysis |
| Equal Opportunity Employment Comm. (EEOC) | Bankruptcy chapters 7, 11 and 13 |

¹ Polymath: A person whose interests span a significant number of different subject areas; used to draw on multiple complex bodies of knowledge to solve specific problems. Commonly known as a "Renaissance man". It is aspiring to seek knowledge and wisdom in all fields that impact our lives. Leonardo da Vinci is the applicant's personal model

SKILLSETS

IT SKILLS

Microsoft Word 2016
Microsoft Access 2016 (Database)
Microsoft Outlook
Microsoft Visio 2016 (Visual presentations)
Adobe Acrobat DC (Create and edit PDF)
Case Map 5.0 Suite (Litigation software)
ACD5 AIA Contract Documents (2007-2017)
PolicyMaker 4.0 (Political Feasibility Analysis)

Microsoft Excel 2016
Microsoft PowerPoint 2016
Microsoft Project 2016
Electronic document analysis (eDiscovery)
HotDocs 5.0 (Document assembly)
Dragon 15 Legal (Voice recognition)
Google Earth Pro (Mapping graphics)
Information Governance/Policy Compliance

RESEARCH AND METHODOLOGY SKILLS

Legal Research:
Social Science Research:
Physical Science Research:
Advanced Legal Writing and drafting
Root cause analysis, and cause mapping

Lexis-Nexis, Lexis Advanced, Westlaw
Study review, surveys, focus groups
Study design and methodology review
Sigma Six (Quality Control)
Metrology (Science of measurement)

PUBLIC POLICY ANALYSIS SKILLS

Cost-Benefit Analysis
Multicriteria Decision Analysis
Systems Analysis
Risk Analysis
PERT
SWOT
CARVER plus Shock Matrix²

Scenario Planning
Forecasting and Horizon Scanning
Game Theory
Literature Reviews
Critical path Method (CPM)
Brainstorming/Brainstorming
Modeling and Simulation

NEGOTIATION SKILLS

Litigation negotiation
Mediation

Contract negotiation
Arbitration

PRESENTATION SKILLS

Lectures, speeches, trial and appellate presentations. Use of Beyond Bullet Points method.

LITIGATION SKILLS

Federal and State nonjury trials, jury trial, administrative hearings, grievance hearings, appeals. Including, Florida state trial level and appeals courts. And, the Middle, Northern, and Southern United States District Courts of Florida, and the Eleventh Circuit Court of Appeals.

² Criticality, Accessibility, Recuperability, Vulnerability, Effect ,and Recognizably

LOCAL GOVERNMENT LAW EXPERIENCE

Law Offices of John J. Anastasio

Broad experience in Florida state, local government and administrative law. 1989 - 2017

Counsel to the Honorable Joann Faiella

Mayor, City of Port Saint Lucie (2010-2014)

Engaged in rendering daily advice to former Mayor on all aspects of local government law.

See profile summary for a partial list of issues.

Broad experience in New Jersey State, local government and administrative law 1981-1989.

Young, Dorsey and Fisher (Involved in the representation of 5 municipalities)

Town of Dover Housing Authority Attorney

Borough of Mount Arlington Special Counsel and Special Prosecutor

SELECTED ACCOMPLISHMENTS

Recent litigation accomplishment concerning administrative and public records law, in an administrative rule challenge before the Division of Administrative Hearings, in which the State of Florida was forced to concede, that the records retention system the State of Florida had operated under for decades was invalid; resulting in the Department of State having to adopt a valid system for public records retention.

Numerous successful career service hearings under Chapter 112, including the only successful Career Service Board hearing in the Saint Lucie County Sheriff's Office, along with a number of successful appeals. Numerous other successful local government administrative hearings.

Authored the *A Blueprint for the City of Delray Beach City Attorney's Office*, 2016.

This mapped out most aspects of a City Attorney's Office. It laid out the applicant's governmental, organizational, managerial, and leadership philosophies.

EXPERT AND OUTSIDE COUNSEL COST CONTAINMENT REVIEW

Extensive experience in analyzing consultant and expert methods. Analysis to assure delivery of contracted for services and maximum value to clients.

Extensive attorney fee and billing litigation experience. Review of outside counsel billing. In one case assigned as guardian ad litem by the court, independently reviewed of attorney billing, resulting in a \$250,000.00 reduction in attorney fees sought to be approved by the court.

36 YEARS PRIVATE PRACTICE EXPERIENCE

Broad practice experience covering **all fields of law**, except anti-trust law and international law, at the federal and state levels. Experience both for legal guidance, settlement, and in litigation.

Appeals before the Fourth District Court of Appeals: 70. Plus numerous appeals in other courts.

Proudly represented of approximately 200 Saint Lucie and Martin County Homeowners in foreclosure actions, foreclosure trials, and on appeal, during the foreclosure crisis.

Contract drafting, negotiation and litigation.

SELECTED FIELDS OF FORENSIC OR TECHNICAL STUDY FROM LITIGATION

| | | |
|-----------------------|---------------------------|---------------------|
| Florida Building Code | Florida Fire Code | DNA Testing |
| Drug Testing | Human Factors Engineering | Epidemiology |
| Computer Forensics | Accident Reconstruction | Human Biomechanics |
| Toxicology | Metrology | Root Cause Analysis |
| Psychological Testing | Asset Valuation | Literature Review |

FORMAL EDUCATION AND SEMINARS

| | | |
|------------------|--|-------------------------------------|
| Bachelor of Arts | Major: Government Minor Labor Relations | Seton Hall University |
| Juris Doctor | | Seton Hall University School of Law |

SELECTED SEMINARS (From Dozens):

| | |
|---|--------------------------------------|
| City, County & Local Gov't Law Certification Review | Sunshine Law and Records & Ethics |
| Public Employment Labor Relations Forum | Civil Trial Certification Review |
| Criminal Trial Certification Review | Appellate Law Certification Review |
| Advanced Legal Writing and Drafting | Circuit Court Mediator Certification |
| Real Estate Law Certification Review | |

PROFESSIONAL ACTIVITIES

| | |
|--|---|
| U.S. Court Southern District of Florida | Member of Arbitrator Panel |
| Florida Bar Traffic Rules Committee (40-member legislative committee) | Member 1992-1996, 2010-2014 Chairperson 2012 |
| Rules of Judicial Administration E-service subcommittee | Member 2010-2011 |
| Florida Bar City, County & Local Government Law Section | |
| Pro Bono Awards: Numerous awards from Florida Rural Legal Services. | |

PERSONAL INFORMATION

Interests: Strategy, Decision Making Theory, Military and Diplomatic History, Operational and Strategic Level Conflict Simulations, Constitutional Law, philosophy, cooking, jazz, writing.

Copyright Notice

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All rights reserved, except to the extent necessary, for the Village of Indiantown to comply with Chapter 119 Florida Statutes.

DISCLAIMER

This document expresses the personal and professional views of the author.

It is not to be interpreted as a definitive policy or polices, of a potential future Village Attorney.

A Blueprint for the Village of Indiantown Village Attorney's Office

By: John J. Anastasio, Esq.

**Law Offices of John J. Anastasio
Suite 203
3601 South East Ocean Boulevard
Stuart, Florida 34996
(772) 286-3336
Contact.office@psllaw.net**

“The Village Attorney should be like the frame of a house. Ever present, supportive, and seldom seen, except for construction and renovation.”

---- John J. Anastasio

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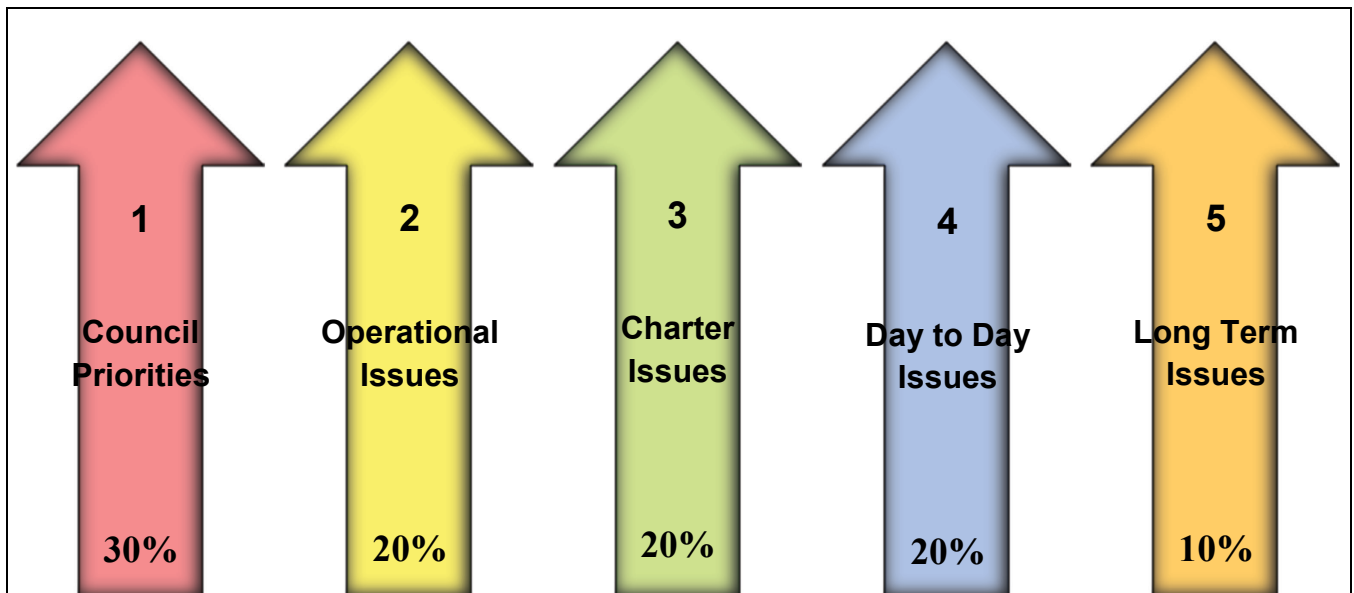
I. THE VILLAGE ATTORNEY'S PRIORITIES

As a new municipality, there are numerous tasks to be completed to get the Village operational, comply with the law, and advance each Councilmember's agenda. This workflow design is necessary both for the Village Council and Village Attorney, for planning, strategy, and execution purposes.

A scalable version of City Attorney Prioritized Leadership Focal Points (LFP) that I designed for the City of Tallahassee, has been modified for the Village of Indiantown and appears below as Figure 1.

An explanation of each point of the LFPs follows

Village Attorney Prioritized Leadership Focal Points (LFP)



Note: Percentages are budgeted time allocations by the Village Attorney.

Figure 1

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1. VILLAGE COUNCIL PRIORITIES

“As the first Village Council, Indiantown is a canvas waiting for you to paint on.”

---- **John J. Anastasio**

A. THE VILLAGE ATTORNEY AND COUNCIL PRIORITIES

The Village Attorney has as his first and highest obligation, to carry out the policies of the Village Council. This is not simply an obligation imposed in the Village Charter. It is because the Village Council is the direct representative of the people of the Village of Indiantown,

The Village Attorney best serves the Village Council, by reaching out to assist each Village council member, to achieve the agenda on which they ran.

Village Council priorities arise in part, from issues and topics raised, and promises made, by the candidates at candidate forums, transition team meetings, candidate literature, and in press and social media statements.

From these sources and over 40 pages of notes from candidate forums, the following are reoccurring candidate issues that would seem to be legislative priorities (in no particular order) for the Village Council from political, practical, and legal points of view. It is to this first set of priorities, that the Village Attorney must first direct his energies.

A checklist of Village Council priorities from these sources is attached for the Council’s consideration.

Any omission of an item or issue is purely unintentional.

B. VILLAGE COUNCIL PRIORITIES

1) Sense of community and small-town feel

Keeping the “small-town” feel.
The “look” of Indiantown.
The image/branding of Indiantown.
Allocating/prioritizing resources among the different neighborhoods.
Community aesthetics/signage.
Spirit of the volunteer community.
Neighborhood revitalization.
Encouraging diversity.
Better service levels.

2) Infrastructure

Water
Sewer
Drainage
Lighting
Sidewalks
Prioritizing road upgrades
Infrastructure survey

3) Economic Development

Attracting permanent well-paying jobs for residents
Jobs training/education for residents.
Public private partnerships. (P3)
Business development
Small business support
Welcoming new businesses that contribute to the community.

4) Affordable Housing

(a) Purpose

Senior
Less advantaged

Workforce

(b) Type

Public Housing
Housing assistance/grants
Developer-Village Partnerships

(c) Form

High-density homes
Low-density smaller footprint (Tiny Homes)
Multiple dwellings. (Apartments)

5) Community Outreach

(a) Youth Programs

Sports
Non-sports
Character building and leadership.

(b) Community Programs

Community events.
Volunteer programs.
4th of July celebration.
Partnering with the Chamber of Commerce and other groups.

(c) Funding

Continuous Village funding.
Grants from the Village.
Seed money grants from the Village pending outside grants.
Outside grants for Village programs.

6) Village economics

Budgeting that addresses citizen concerns.
Tax rates

Special assessments.

Village Reserve Fund size. Investment now or investment later?

7) Code Enforcement issues

(a) Philosophy

Code enforcement - Strict enforcement.

Code compliance - Cooperative enforcement, working with residents.

(b) Types

Code Enforcement Board.

Paid Special Magistrate.

8) Government structure

Government lite – 2-3 full time employees, plus contractors?

Village Manager

Director of Building

Director of Leisure and Youth Programs?

Contractor operations.

Contracting with, and delegation to, the County and other entities.

Emergency planning.

Public accessibility to Village government.

Getting the structure and infrastructure right the first time.

9) Land Development Regulations: Is the County way the only way?

(a) Speed of transition from County to Village Plans and regulations

Fast adoption of Village

Slow adoption by Village

(b) Documents

Comprehensive Plan
Land Development Regulations
Land use and future land use maps.

(c) Sources

County Documents
Modified County Documents
From Scratch

(d) Types of Design Philosophy

Streamlined plans.
Detailed plans.
Traditional (Euclidian) Code like the County.
Forms Based Code that focuses on the community feel.
Aesthetics design.

10) Community Growth.

Annexation
Water and Sewer utility acquisition/workout.
Balancing industrial/commercial/residential development.

Local trade school/educational opportunities
Partnership with School Board
Promotion of more medical/shopping/entertainment options.

Signage as a first step to community redevelopment.

Extend the concept of the image and branding of Indiantown to its neighborhoods, which are the building blocks of the Village.



2. VILLAGE OPERATIONAL ISSUES.

Operational issues include those mission critical issues, required to make the Village function at first.

A. Council Rules of Procedure

Immediate development and writing of an ordinance concerning Village Council procedures, including provision for Sunshine Law compliance, and public records compliance.

B. Purchasing Ordinance

The feasibility study for the Village was based on the concept of a “government lite” or “government by contract” municipality. Immediate development and writing of a purchasing ordinance, purchasing procedures, and purchasing manual are essential, if the Village Council desires the Village government to operate along this concept.

C. Organizational and compliance issues

Immediate development and writing of an ordinance creating an organizational plan for departments, staff, and appointment of independent boards. This includes whether code enforcement is done by an independent board or contracted out to an attorney serving as a code enforcement magistrate.

Drafting of Interlocal Services Boundary Agreements between the Village and Martin County are authorized under Chapter 177 Florida Statutes.

These include the following Municipal Service Taxing Units (MSTU):

Fire and Rescue
Parks and Recreation
Stormwater
Roads

These necessary interlocal serving agreements to be drafted also include:

Agreements for law enforcement services with the Sheriff’s Office.
Community Redevelopment Agency funding and tax issues.

The Village Attorney is responsible for compliance with the proper legal proceeds for valid interlocal service agreements under Chapter 177 Florida statutes.

D. Village Values, Vision and Mission Statements

Because this is a startup municipality, values, vision and mission statements are both immediate and long term in their impact.

An organizational values statement describes who we are.

A vision statement says where we want to go.

A mission statement gives day to day guidance as to how to get there.

Together, these form the basis for a strategic plan for the Village over the next 1, 3, 10 and 20-year periods.

The writing of a legally supportable values, vision and mission statement for daily strategic guidance is an operation necessity for the Village. If you don't know where why and where you are going, you are unlikely to get there.

There are two approaches to this. First, the Village Council can take it upon themselves

E. Comprehensive Plan and Land Development Regulations

By Village Charter, the Village currently operates under the Martin County Comprehensive Plan and Land Development Regulations (LDRs).

Whether to continue using these or revise these are issue that will have to be resolved in the short term, due to time limitations placed upon the Village by Statute.

As a startup municipality, a range of policy options should be considered, including whether to stick with the tradition or Euclidian zoning code, or consider Forms Based code, that emphasizes the feel rather than technical requirements such as property setbacks.

3. VILLAGE CHARTER ISSUES.

First, the defective Village boundary issue must be promptly addressed. This is addressed either by the legislature, or by a court action to declare what the boundaries really are for the Village.

Second, there will have to be the writing of ordinances to comply with requirements imposed by the Village Charter. These ordinances include:

Holding meetings in accordance with a duly adopted ordinance or resolution.

Setting standards for council members and procedures for removal.

Setting procedures for public input.

A personnel ordinance.

Code of Ethics

Assigning planning functions.

Setting procedures for the appointment of a Village Auditor.

Establishing a Village Canvassing Board. (This will be necessary before the next regular election cycle for purposes of annexation, special elections, recall, initiative or referendum)

Adoption of a comprehensive plan.

Adoption of Land Development Regulations.

All other ordinances necessary to affect the transition from unincorporated area to a municipality.

Land Development Regulations.

4. VILLAGE DAY-TO-DAY ISSUES

These are just routine challenges that occur on a day to day basis with any municipality.

5. VILLAGE LONG-TERM ISSUES.

Long-term Village issues include:

1) Annexation

A policy and guidelines need to be developed, as to if, what and when to add land to the Village. This can be done either by a consent process, or by a vote. How annexation occurs is governed by Chapter 171 of Florida Statutes.

2) Infrastructure

a) Utilities

The Village will ultimately have to take charge of its own water and sewer systems. The acquisition of private utilities such as the Indiantown Company. This can be done either by negotiation, or by a public taking. This process is controlled by Chapter 180 of Florida Statutes

b) Roads

The Village roads that have been neglected by Martin County were a top priority of the candidates for Village Council. This transportation component will first have to be addressed by making the non-voting member of the Martin County Metropolitan Transportation organization a voting member.

All sources of transportation funding will have to be examined. A critical part of roads is drainage provided by swales.

c) Digital

In the long term the Village will have to consider its digital infrastructure in light of technological and regulatory changes.

Some of these issues include:

- Creating a City Ransomware policy. Once you need the policy, it's too late.
- Building a fully compliant Public Records/litigation hold system.
- Addressing the legal and physical infrastructure to deal with autonomous vehicles, without which the City may find itself physically bypassed in a digital transportation environment.
- Dealing with regulatory, franchise, FCC preemption, zoning, and revenue issues like pole attachment fees within the new G5 spectrum. (Your old G4 cell phone may not cut it anymore.)
- Regulatory and other issues pertaining to taking advantage of FirstNet ((First Responder Network Authority) excess bandwidth capabilities.

4) Housing

Along with funding by grants, the Village will have to determine if the creation of a Village Housing Authority is another avenue to be explored in addressing Village housing issues.

5) Strategic Planning

The Village like any organization, needs long term planning , in the form of a strategic plan, that answers how we are going to accomplish the values, vision and mission statements..

4) Emergency Planning

Much of the emergency planning for the Village will be provided by the Martin County Comprehensive Emergency Management Plan (CEMP). Continuous impute is necessary to address emergency operations needs the Village Council feels is necessary.

III. Role of the Village Attorney

Introduction

The Village Attorney must be sensitive to the political realities each Village Commission member faces. The Village Attorney must be ever ready, to rapidly investigate factually, and legally any Councilmember's constituent's concerns. By assisting in this way, the Village Attorney lessens the burdens on the Councilmembers.

A Village Attorney should be political, without being partisan.

A. Empowering the Village Commission.

The top priority of the Village Attorney should be, to pursue aggressively, the legislative agendas, and concerns, of each and every member of the Village Commission.

It is understood that the Village Commission may be divided on a number of issues. This is where the Village Attorney can be of the most assistance.

The Village Attorney should fully, and vigorously, embrace the role, as the chief legislative drafter. Providing the tools of legal and public policy analysis, the Village Attorney can assist the Village Commission in making their concerns and goals concrete through legislation.

To this end, and with this yardstick, the Village Attorney should meet separately with each member of the Village Commission within a week of assuming office, and each week after, to go over their legislative agenda. Gathering their thoughts, reflections, and their experiences so far. Determining what policies, and why, each Village Councilmember wishes to bring forth.

With this data, the Village Attorney can factually and legally research, and then craft the best arguments, and legislative proposals, for each member of the Village Commission, on all sides of an issue.

If a thorough job is done by the Village Attorney, as their "debate coach" preparing and maximizing each Village Councilmember's position, then each Councilmember can put forth their position in the strongest way possible.

If the Village Attorney empowers each Councilmember with these tools, it largely eliminates the need for the Commission to lean on the Village Attorney for a recommendation. Policy recommendations to the Village Commission should fall more closely under the Village Manager's Office. However, the Village Attorney should always stand ready with a recommendation, if asked.

If the Village Attorney helps design and supports each Councilmember's position, then this Village's legislature, its Village Commission, can better debate and decide the ultimate public policy involved. This minimizes the need for impute from unelected officials, such as the Village Attorney. In this way the Village Attorney gives life to representative democracy, in the Village by the Sea.

Another facet of empowering the Village Commission, is a rapid response to Village Commission inquiries and directives.

Service to the Village Commission should be the Village Attorney's first priority. All else flows from this.

B. Values that shape the Village Attorney's Office mission.

The Village Council needs to develop values, vision and mission statements. Likewise, the Village Attorney's Office needs a values, vision and mission statement, even though it is an office of one at this time.

The second is that it does not express the core values and vision of the Village Attorney's Office, if any exist. Without the expression of core values, a mission is meaningless.

What the Office of the Village Attorney needs is a "functional mission statement". One that is used for understanding, developing, and communicating fundamental objectives. It must reflect the true passions and values, in a goal that is an action.

First one must have a values statement. From this a mission statement can be developed. Correctly structured values should exist, to guide the decision making and behaviors of the Village Attorney's Office on a day-by-day basis.

**Village of Indiantown
Office of the Village Attorney**

Draft Mission Statement

The ultimate mission of the Office of the Village Attorney is to assist, guide, and advise, the Village Council, the Village Manager, Village employees and contractors, in the Village's legal affairs. To insure fair process for all. And maximize the opportunity for the pursuit happiness, for the people of the Village of Indiantown.

C. Trust Building

It is important to consider the issue of trust in any Blueprint for the Village Attorney's Office.

Trust is not a vague term. It is an applied field of study. It has clearly defined components that can be taught, learned, and applied. Trust must be an explicit objective of the Office of the Village Attorney.

The 4 core components of trust the Village Attorney's Office must implement are:

1. Credibility of competence.
2. Benevolence of motives.
3. Integrity with the sense of fairness and honesty.
4. Predictability of behavior.

The Village Attorney's Office should have a Policy and Procedure Manual. How things are done in the Village Attorney's Office should be in writing and followed. It will promote confidence, trust, and efficiency. It will provide for a smooth transition when there is a change of Village Attorney. It is a critical part of succession planning.

To avoid the problems of consistency and institutional memory, all requests for legal advice from the Village Council, Village Manager, employees and contractors should be reduced to formal opinions, indexed by year, sequentially numbered, and indexed, in the same way as Florida Attorney General Formal Opinions. Then this knowledge bases and intuitional memory can be easily referenced by Village Officials, employees and citizens alike, now and in the future.

4. Active discovery, and acknowledgement of mistakes internally before the public becomes aware of the problem. And, the design of any proactive and visible steps to correct.
5. Displaying candor by publicly, and immediately, acknowledging, and

providing a plan to correct mistakes. And, correcting the misapprehension, that such mistakes are policy. Silence is never an option.

Finally, the Village Attorney at all times must have the courage to ask **“But, is it right?”** (The Village Attorney doesn’t need a name plate with his name on it. He needs a nameplate on his desk with that question on it.) And, to do what is right, even in the face of the threat of losing one’s position, by promptly and respectfully, speaking truth to power.

D. Training Village employees to avoid litigation and controversy.

A program of constant scheduled training in legal affairs for each Councilmember, employee and contractor must become the norm.

A culture of consulting the Village Attorney’s Office before, or as problem begins, must be created. This can only be done by the continuous direct action of the Village Attorney, in reaching out to Councilmembers, employees and contractors. If the Village Attorney asks “How can I help?” now; it will reduce asking, “What’s the problem?” later. The Village can ill afford a Village Attorney that only reacts to issues, problems and crisis.

Rather than tell a Councilmember, employee and contractor why they cannot do something, the Village Attorney’s Office should be ready with creative “can do” solutions.

E. Systems Analysis.

“I have not failed 10,000 times. I have not failed once. I have succeeded in proving that those 10,000 ways will not work. When I have eliminated the ways that will not work, I will find the way that will work.”

--- Thomas Edison

One of the other critical roles to be played by the Village Attorney is that of system analyst, by the constant application of root cause analysis, to the Village’s legal problems.

It is easy to blame people. But, the root cause often lies not with people,

but with the failure of the system. We fail to look for system failures. You can replace a thousand people, but if the system or process is flawed, you will get the same result.

It is not the mistakes we make, but what we learn from them that count. As one modern philosopher once said, “The four most important words in the English language are, ‘But, I can learn.’”

We need not to fear mistakes, if we build in safeguards to prevent catastrophic failure, by managing risk. The Village Attorney’s office must have a culture, from one of fear of mistakes, to welcoming them. The size of a potential mistake should be planned and managed. When we learn from mistakes, that are not repetitive, that is not failure. It is the essence of human progress.

To this end, the Office of the Village Attorney should take on the role of a “Center for Lessons Learned.” Every contract we enter, every ordinance we pass, every significant public policy action taken, every incident, and emerging situation we go through, should be reviewed and analyzed by the Village Attorney, asking:

What did we learn from that experience?

Where did the system or policy fail?

(This is answered by applying a Root Cause Analysis. See Sober Homes section for an example.)

What public policy and legal lessons did we learn?

What action can be taken to avoid the same mistake, **OR** duplicate the success?

Institutional memory should not rely upon people, but upon a bank of well indexed, written root cause analyses, with lessons learned.

F. Assuring No Due Process in the Village

Above all, this Office must take on the role of being the good guys and gals.

Just because the Village can legally do something or not do something,

does not mean we should do it or not do it. Just because a court defines what due process is, does not mean we are bound by it. For due process stripped to its essentials are only notice and the opportunity to be heard. It is only the floor of rights, beneath which we may not go.

The Village Attorney should not be concerned about due process. It is not the true responsibility of the Office of the Village Attorney to guaranty due process. Its responsibility is to design and present you with intelligent legal systems in the form of ordinances, regulations, and policies, which guaranty the higher standard of “fair process.”

In government, public policy analysis, and in politics, perception is reality. Fair process is a perception. That perception most often is reality.

The Village Attorney must design for the Village and the Village Council, a system of laws, regulations, and policies, that to the maximum extent possible, make each stakeholder feel they are being treated fairly in the process. Every citizen, and every Village employee, from the Village Manager, to volunteers, to applicants, must feel they are being treated fairly. That is “fair process”, as opposed to “due process.”

If this is the culture in the Village Attorney’s Office, then the number of potential lawsuit and complaint will remain low. The Village Manager’s job, each department head’s job, and the job of the Village Council, each employee, and contractor will be made easier, the public treasury further protected, and the pursuit of happiness of its residents enhanced.

G. Handling of Litigation

On the subject of lawsuits. The Village Attorney should take a default position, that a lawsuit against Village, is a direct failure by the Village Attorney. It is the job of the Village Attorney to anticipate, correct, or mitigate the circumstances, that can lead to litigation.

This is particularly true in the areas of Public Records Law and the Sunshine Law, which recent decisions have placed an almost strict liability standard on the Village, exposing the public treasure to unnecessary attorney fees.

When the Village is faced with a lawsuit, if the Village is truly right, then

it should be competently, aggressively, and expeditiously litigated. If the Village is wrong in whole or in part, then the Village Attorney must have the courage to say so. Not tomorrow, but, today. And, to recommend a remedy, or payment of full and fair compensation to those who have been wronged. Not a penny more or a penny less.

H. Reaching out: The best things in life are free, or almost.

The use of law school students as interns can provide quality work, at little or no cost. So can academia. Law school and professors in other fields must “publish or perish.” Interesting these professors in research that will benefit the Village and provide them with a research topic in a living laboratory to work with is a win-win situation.

With numerous graduate schools in Florida, when the Village Attorney needs research outside its fields of expertise, master’s student working on a thesis, or doctoral students working on their dissertation, can provide such research on a live problem.

The Village Attorney can have confidence in such research. The work is shepherded by a faculty advisor along the way. The final product is approved by a faculty committee. With minimal support and cost, the Village can support higher education, and higher education can support the Village.

IV. Village Attorney philosophy of government

“Democracy is worth dying for, because it's the most deeply honorable form of government ever devised by man.”

— Ronald Reagan

First, the Village Attorney must have a philosophy of government at the local level. The Village government is the government closest to the people.

What is the object of government?” That answer is found in our Declaration of Independence. On July 4, 1776, the geniuses who were our founding fathers proclaimed to the world, pledging their lives, their fortunes, and sacred honor that:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the ***pursuit of Happiness***. --That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

While life and liberty may generally be the province of federal and state governments, the government closest to the people, should be concerned with their happiness.

Second, from that philosophy of local government, the Village Attorney creates their mission. The ultimate mission of the Office of the Village Attorney should be to assist and guide the Village Commission, the Village Manager, and Village employees, in legal affairs. And, to insure fair process for, and maximize the opportunity, for, the pursuit happiness of the people by the Village of Indiantown. This should be the Village Attorney’s overarching goal.

It is that yardstick, “does this maximize the pursuit of happiness of the people?” that should guide local government. If we do so together, then we will be implementing the wisdom, and the hopes, of our founding fathers, to protect a system of ordered liberty.

V SELECTED ISSUES

A. Defective Village Boundaries

Due to an error in legislative drafting, certain “X” values rather than actual numbers were inserted in the Laws of Florida 2017-195, which created the Village.

These will have to be promptly addressed. This can either be addressed by way of the legislative process in Tallahassee, or locally by a court action, which could resolve the issue in a matter of weeks.

B. Grants

There are many grants and assistance available to the Village from the federal and state governments. They all have deadlines. If those deadlines, along with other extensive requirements to be met, if the Village of Indiantown is to have a chance to fund community improvements without having to resort 100% to using taxing revenues.

Examples include:

1) Florida Community Development Block Grant Program.

Florida Administrative Code 73C-23.0041(1) provides for the Florida Department of Economic Opportunity annually to receive applications for the Florida Small Cities Community Development Block Grant (CDBG) assistance.

The Block grant funding opportunities are in the following program areas:

1. Economic Development.
2. Neighborhood Revitalization.
3. Commercial Revitalization.
4. Housing Rehabilitation.

In addition to the Application for Funding deadlines, there are citizen participation requirements imposed by Florida Administrative Code 73C-23.0041(5) under federal regulations 24 C.F.R. § 570.486. This includes a noticed public meeting held by the Village Council within 12 months prior to the start of the Community Block Grant application period.

After an Application for Funding has been drafted, a second public meeting regarding the proposed application must be held by the Village Council.

These are competitive grants, based upon a point system. The Village can appoint a Citizens Advisory Task Force (CATF) to make recommendations on community needs prior to drafting an Application for Funding and to provide input. If the Village does so, it can claim up to 10 points on its Application for Funding.

In looking at the Florida Department of Economic Opportunity's latest published Small Cities CDBG Final Scores and Funding attached, one can see that claiming 10 points can make all the difference between getting a Block Grant and not getting a Block Grant.

The legal aspects of such grants require the Village Attorney to work aggressively with the Council, and Village Manager, or Grants Manager to produce results for the Village. And, achieve the agenda Councilmembers ran on.

2) State Housing Initiatives Partnership (SHIP) Program

The State Housing Initiatives Partnership Program (SHIP) annually has funds allocated for low and moderate-income housing.

A look at the appropriated and projected funds show an increase. Indiantown should get into that process, to avoid having Martin County control those funds.

Attached is a draft of a resolution concerning SHIP funds a a rough draft of a SHIP Program Plan to be submitted to the Florida Department of Economic Opportunity.

AFTERWORD

The birth of the Village of Indiantown means five new councilmembers, each with an agenda they campaigned on. And, that they wish to carry out for their supporters, and the people of the Village of Indiantown...

The Village Attorney must provide and defend, a level playing field for each councilmember, and each citizen, each local business, and each potential business or developer.

This does not mean there will not be debate. There will be differences. Sometimes strong differences. This is all expected, along with, and perhaps an occasional firestorm, both within, and outside Village government. It is the way a representative democracy is supposed to operate.

And, it should not concern us, if we always remember that our common interests, are greater than those that divide us. To paraphrase President Kennedy, from his address at American University, Washington, D.C., June 10, 1963:

So, let us not be blind to our differences. But let us also direct attention to our common interests and to the means by which those differences can be resolved. And if we cannot end now our differences, at least we can help make the Village safe for diversity. For in the final analysis, our most basic common link, is that we all inhabit this small Village. We all breathe the same air. We all cherish our children's futures. And we are all mortal.

It is in this spirit, that the Village Attorney should guide and protect the Village Council and the people of the Village.

**IN THE NINETEEN JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA
APPELLATE DIVISION**

STATE OF FLORIDA,

Appellant/plaintiff,

APPEAL NO.

56-2014-AP-12

L.T. NO.

56-2013-IN-383

v.

GIOVANNA MARIE FAIELLA,

Appellee/defendant.

_____ /

APPELLEE'S ANSWER BRIEF

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Florida Bar #0722367

Appellee/defendant Mayor Joann Faiella

***“So by picking these rules up,
it appears that you would then
pick them up, all or none.”***

---- Honorable Kathleen Roberts, County Court Judge

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| POINT I | 20 |
| The appellant's appeal is barred by the doctrine of invited error, because over the Appellee's objection, it requested the Rules of Criminal Procedure apply, accepted the ruling, and only objected after it failed to comply with the very rules it insisted applied. | |
| POINT II | 23 |
| Any confusion by the second trial judge was the result of appellant's fraud upon the court, by failing to inform the second trial judge at the ex-parte hearing, that the first trial Judge has ruled the Rules of Criminal Procedure applied. The appellant failed to move for rehearing at any time and the argument concerning the applicability of any Rule of Criminal procedure has been waived. | |
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| | <p>“Noncriminal violations” are governed Florida Statutes concerning crimes, and by the Florida Rules of Criminal Procedure, because they are a “criminal proceeding”, conducted by a court with criminal jurisdiction. This is made plain by the 1968 Committee Note that, “These rules are...intended to apply to all state courts where "crimes" are charged.”</p> | |
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| Fourteenth Amendments of the Constitution of the United States | 24 |
| Article I, §9 of the Florida Constitution | 24 |

Court Rules:

| | |
|------------------------------|----------|
| Fla. R. Jud. Admin. 2.330(h) | 25 |
| Fla. R. Crim. P. 3.010 | 16,26,29 |
| Fla. R. Crim. P. 3.020 | 26,29 |
| Fla. R. Traff. Ct. 6.325 | 26 |
| R. Reg. Fla. B. 4.3.3 | 11,23,24 |

PRELIMINARY STATEMENT

The Plaintiff State of Florida is referred to as the appellant. The Defendant Port Saint Lucie Mayor Joann Faiella is referred to as the appellee.

References to the record shall be to Volume, Page, and line if a transcript.
(V15, P7, L11-12 = Appendix Volume 15, Page 7, Lines 11 to 12.)

STATEMENT OF THE CASE AND THE FACTS

A. Pre-final hearing occurrences

On **December 3, 2013** the appellee was charged by summons (V1, Progress docket last page) with a violation of Section 119.021 Florida Statutes for a violation of the public records retention rules, because it was claimed she deleted text messages off her phone (V1, P2), which still existed in hardcopy. (V1, P32)

The case was placed in the Saint Lucie County Court Criminal Division, and assigned to County Court Judge Kathryn Nelson. (V1, Progress docket last page)

On **December 4, 2013**, an arraignment before Judge Nelson was reset for December 18, 2013. (V1, Progress docket last page).

On **December 10, 2013** the appellee under the Rules of Civil Procedure, filed an appearance, (V1, P5) a motion for an extension of time to answer or otherwise defend (V1, 27), and a request for production, (V1, Progress docket last page)

On **December 17, 2013**, appellee filed a motion to strike the clerk's notice of arraignment for December 18, 2014. (V1, P7)

On December 18, 2013, the next court date was set for January 21, 2014, (V1, Progress docket second to last page), which was continued.

On **December 18, 2013**, the appellee served a first set of interrogatories (V1, Progress docket last page), and filed Motion to Consolidate (V1, P23), a Motion

for a Case Management Conference, (V1, P10) and a Motion for a Pretrial Conference. (V1, P20)

On **January 15, 2014**, the appellee filed a motion to take judicial notice of the Administrative Code, the Retention Schedules, and relevant City of Port Saint Lucie records. (V1, P1)

On **January 17, 2014**, the appellee filed a motion for a hearing in limine to exclude expert testimony concerning cellular phone data extraction under *Daubert*. (V3, P320)

On **January 21, 2014**, the appellee filed a motion to compel answers to interrogatories and to compel production. V3, P329)

On **January 24, 2014**, Judge Nelson heard the appellee's pending motions. (V1, Clerk's Progress Docket second to last page) All those motions were based upon the Florida Rules of Civil Procedure.

At the January 24, 2014 motion hearing, the State raised without filing any motion, or notice to the appellee, the issue of which rules of procedure applied. (V13, P6, L18-21)

The appellant argued the Florida rules of Criminal Procedure applied. (V13, P6, L18-21) The appellee argued that the Florida Rules of Civil procedure applied. (V13, P10, L6-19) Over the appellee's argument, Judge Nelson ruled in the appellant's favor. (V13, P20, L5-8): "So, again, I do understand there are not

specific rules that have been promulgated, but there have to be some rules that apply. So the Rules of Criminal Procedure will be the rules that will govern.”

This rendered a number of the defendant’s motions moot.

The Court also entered an order continuing the appellee’s *Daubert* Motion, (V4, P570) and motion to dismiss, (V3, P365) an order taking judicial notice, (V4, P560) an order granting a statement of particulars. (V4, P564)

On **January 24, 2014**, at the motion hearings, the court set the next court date for **February 24, 2014**, and reserved all afternoon for those motions. (V13, P33, L4-5)

On **January 31, 2014**, the appellant filed an Information, pursuant to the Florida Rules of Criminal Procedure. (V1, P1)

On **January 31, 2014**, the appellant filed a Statement of Particulars, pursuant to the Florida Rules of Criminal Procedure. (V3, P367)

On **February 4, 2014**, the appellee filed a motion to dismiss for violation of the statute of limitations. (V3, P371)

On February 19, 2014, the appellee noticed pending motions for the next set hearing previously set by the court on January 24, 2014, with the date of February 21, 2014. (V1, Clerk’s Progress Docket third to last page)

On February 20, 2014, the appellant moved to continue the court date set for February 21, 2014, which had been set back on January 21, 2014 for a half a day,

claiming it did not know there was to be a hearing on that date and was not ready.
(V5, P609)

On **February 21, 2014** at the motion hearings, Judge Nelson recused herself, and continued the hearings. (V5, P626) Appellant did not order the transcript of the February 21, 2014 proceedings.

On **February 21, 2014** the appellee filed a notice of intent to rely upon hardcopies of the texted messages at issue, which at all times existed, at all times were in the possession of the appellant, and which had now been hardcopy filed in the City of Port Saint Lucie's official records. (V5, P614)

On **February 24, 2014**, the appellant filed a motion for a protective order, based upon a public records request directed toward the appellant. (V5, P616) This motion was based upon claimed protection under the Florida Rules of Criminal Procedure.

On **February 26, 2014**, the appellant filed a motion to compel reciprocal discovery. (V5, P623) This motion was based upon the Florida Rules of Criminal Procedure.

On **March 4, 2014**, based upon the ruling of Judge Nelson, at the behest of the appellant, that the Florida Rules of Criminal Procedure applied, the appellee filed a Notice of Expiration of Speedy Trial. (V5, P621)

On **March 10, 2014**, an order of reassignment from Saint Lucie County

Judge Kathryn Nelson to Saint Lucie County Judge Phillip Yacucci was entered. (V5, P627)

On **March 10, 2014**, six (6) days after the filing of the notice of expiration, Judge Yacucci, **without notice to the appellee**, and in violation of the appellee's fundamental due process rights, held a conference on the notice of speedy trial expiration. The record is devoid of any notice to the appellee. *Ex-parte*, Judge Yacucci struck the notice of expiration. (V14, P2, L11-12))

Judge Yacucci was unfamiliar with the file. (V14 P2, L2-5): Alright, *I believe* I inherited this, there was a recusal, uh, the prior judge, *I'm not sure*, I think it was Judge Nelson. *I just got the reassignment last week, I believe*, on May 5 the fifth." [Emphasis added.]

No inquiry was made of the Clerk as to notice of the hearing. This court knows the drill. If a party is not before them, the first question is to the clerk, "Has the defendant received notice?" That inquiry did not occur here.

No notice appears anywhere in the record, because no notice was sent. (V15, P6, L11-17) The hearing was an *ex-parte* hearing with the appellant.

Judge Yacucci stuck the notice because, (V15, P2, L9-10) "I don't believe that speedy trial does even apply in this case."

The appellant was present. The record reflects the appellant perpetrated a fraud upon the court, in violation of R. Reg. Fla. B. 4.3.3, and **stood silent, and**

willfully failed to advise Judge Yacucci, that:

1) The appellant had requested the Florida Rules of Criminal Procedure apply.

2) Judge Nelson had granted that request over the appellee's arguments.

3) The appellant had filed a criminal information, pursuant to the Rules of Criminal Procedure.

4) The appellant filed an ordered statement of particulars to the criminal information, as ordered by the Court, pursuant to the Rules of Criminal Procedure.

(A)

5) The appellant had filed a motion for a protective order based on the Rules of Criminal Procedure.

6) At no time had the appellant moved to strike the Notice of Expiration.

The appellant never moved for reconsideration of Judge Nelson's decision on the application of the Rules of Criminal Procedure, after she was recused, within the 20 day time period after disqualification, under Fla. R. Jud. P. 2.330(h). In fact, the appellant never moved for reconsideration at any time, including the final hearing on May 9, 2014.

On **March 10, 2014**, upon discovering what had occurred at the *ex-parte* motion, appellee refiled the notice of expiration. ((V15, P6, L11-17, V5, P629)

On **March 11, 2014**, the appellee filed a notice of hearing for March 17,

2014. (V1, Clerk's Progress Docket fourth page from the back.)

On **March 17, 2014**, Judge Yacucci recused himself in open court, (V1, Clerk's Progress Docket fourth page from the back) and entered a written order dated March 17, 2014, which was not filed until March 20, 2014. (V6, 796)

On **March 17, 2014**, appellant filed an amended criminal information, pursuant to the Rules of Criminal. (V1, P2)

On **March 27, 2014**, an order of reassignment from Saint Lucie County Judge Yacucci to Martin County Judge Kathleen Roberts was entered. (V6, P797)

On **April 24, 2014**, the appellee noticed all pending motions for the earliest date available before Judge Roberts of May 9, 2014. (V1, Clerk's Progress Docket fourth page from the back.)

On **April 25, 2014**, the appellee filed hearing transcripts (V7, P801) a jury demand, (V7, P899) a motion to take judicial notice of territorial laws as a basis for the demand for a jury trial, (V7, P901) a motion for discharge for expiration of speedy trial and recapture periods. (V7, P841) a motion to declare the retention schedules the appellee was charged with, as unconstitutional as an invalid exercise of delegated legislative authority, (V7, P917) and a motion to suppress admissions unlawfully obtained. (V12, P1638)

On **May 8, 2014**, the appellant finally filed a discovery answer and demand for reciprocal discovery, pursuant to the Florida Rules of Criminal Procedure.

(V12, P1740)

B. Final Hearing

On **May 9, 2014**, Martin County Judge Roberts heard pretrial motions. The motion for discharge was heard first, and was granted, ((V12, P1740, V15, P23, L1-2) rendering all the other pending motions moot.

At the hearing, the appellant told Judge Roberts (V15,P.7, L24-25), “Well, *the State certainly agrees that the Rules of Criminal Procedure apply*”[.] and concluded (V15 P.8, L.4-5):, *so the rules apply, but not necessarily, uh, in this case.*” [Emphasis added.]

The appellant conceded that at the March 10, 2014 *ex-parte* hearing that, (A p. 9, L12-17):, *I didn't even necessarily argue before the Court that, uh, this is an infraction and not entitled to a, a speedy trial.* [.] [Emphasis added.]

The court inquired (V15, P.10, L6-14): “if both parties have elected to invoke the Rules of Criminal Procedure..,If they were invoked and accepted, then both sides would be bound, would they not?” “To the criminal rules—“ “Uh-huh.” *--as they apply*, yes, ma'am.”

The Judge Roberts then inquired into the appellant’s rationale in using the criminal rules. The appellant responded, (V15, P11, L6-9) “it was defined by the Rules of, of 775, by, by crimes and punishment, is that exact statute, we felt that that's, that's where it fit. And, uh, there, the former judge, I believe, was Judge

Nelson, agreed with that .”

The Judge Roberts next inquired, when the Rules of Criminal procedure have been invoked, what un-invokes them? (V15, P11, L10-14) The appellant responded, (V15, P11, L 15) “I don't see anything that, that un-invokes it...”

Judge Robert’s then expressed her concern that the appellant did not advise Judge Yacucci, that Judge Nelson, at the appellant’s request, had previously ruled the criminal rules applied. (V15, P12, L6-8): “But Judge Yacucci doesn't even, doesn't even address the fact that the Rules of Criminal Procedure had been invoked. He doesn't address that.”

Appellant suggested that Judge Yacucci would know the criminal rules applied because (V15, P12, L6-8): “I suppose he already, you know, because we, we had already, uh, decided the criminal rules, uh, I'm going to say approximately forty-five days before that.”

Judge Robert’s then restated her concern that, “I can see that from the, from the, uh, court dockets. [That the Criminal rules were invoked.] But it doesn't appear from the hearing that, that the fact that the parties had invoked the Rules of Criminal Procedure was even addressed by Judge Yacucci.”

The appellant conceded that (V15, P14, L9-11) appellee argued the Rule of civil procedure applied, and the appellant argued that the “Rules of Criminal procedure should apply for non-criminal infractions to the *extent that, that the*

rules are applicable.” [Emphasis added.] However, a review of the January 24, 2014 transcript shows it contains **no argument** by the appellant, that argues the criminal rules are in anyway limited. (V13)

The court inquired of the appellee, if there was anywhere else the court might look for guidance in this case.

The appellee pointed out that even traffic infractions have a speedy trial rule, (V15, P15, L21), and that a review of the scope rule, [Fla. R. Crim. P. 3.010] might be of assistance. (V15, P16, L21-25).

Judge Roberts in looking at that rule, (V15, P17, L13-17) observed that the committee note from 1968 indicated that, “These rules are not intended to apply to municipal courts, but are intended to apply to all state courts where ‘crimes’ are charged.”

C. Court’s Ruling

Based on this reference to courts where crimes are charged, such as a County Court, Judge Roberts concluded that, (V15, P17, L8-9) “So by picking these rules up, it appears that you would then pick them up, all or none.”

The Court asked the appellant, if the 90-day period applied, there no argument the time frame elapsed. The appellant conceded that was correct. (V15, P.20, L3-7)

Judge Roberts after argument concluded that (V15, P21 L17 to L23):

The judge then allows the Rules of Criminal Procedure to be invoked, and now the parties are bound by the Rules of Criminal Procedure, with no other guiding documents. I understand what the State is saying about, uh, felonies and misdemeanors, but these rules that were invoked on this infraction were invoked in the face of what they were intended to be. So now it's all or none....

We are in county court, bound by county rules. One, two, we need to look at the rule of lenity, and the rule of lenity says that when constructing, or construing the definitions as well as the language of a statute, it shall go for the defendant.

The court again expressed the concern that (V15 P.22, L11 to L22):

So then we turn to the hearing on March tenth, after the Notice of Expiration, when the defendant is not there, or the defense attorney. It's not addressed. The only thing that the judge says is, "I don't believe that speedy trial does even apply in this case". ***I listened and I was listening specifically to the transcript to hear if there was any point where the State was asserting anything***, and I understand how those things go, and ***at no point is there a realization by the judge that Judge Nelson had already invoked these rules***, just that speedy trial doesn't apply. But there is ***no indication that the rules had been invoked. It's not addressed.*** Which means the recapture period has also expired. [Emphasis added.]

The court concluded that (V15, P22, L23 to P23, L2):

Under the procedural history of this case, in reading 24 3.191 in conjunction with the committee note, under the scope of the rule, as well as looking at 775.08 in the definitions, the Court has no choice, but to discharge the case for expiration of speedy trial. We are in recess.

On **May 15, 2014** appellant filed a notice of appeal. (V12, P1738)

On **May 22, 2014**, the order on appeal, the order discharging the defendant for expiration of speedy trail and recapture periods was filed. (V12, P1740)

SUMMARY OF ARGUMENT

This appeal is barred under the doctrine of invited error. The appellant invited error, by insisting upon the use of the Florida Rules of Criminal Procedure. Then appellant failed to comply with the rules, and claimed the speedy trial ruled did not apply, but all the other criminal rules did apply.

The invited error rule is further compounded by the appellant failing to tell a successor judge, it requested Rules of Criminal Procedure apply, and that the prior judge ordered those rules to be used in this case.

Through all the pleadings and motions in this case, the appellant for all purposes proceed under the Rules of Criminal procedure.

As a matter of law, this court may not consider the argument because it is deemed waived.

STANDARD OF REVIEW

“In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error.” *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979)

“Even when based on erroneous reasoning, a conclusion or decision of a trial court will generally be affirmed if the evidence or an alternative theory supports it.” *Id.*

LEGAL ARGUMENT

POINT I

The appellant's appeal is barred by the doctrine of invited error, because over the Appellee's objection, it requested the Rules of Criminal Procedure apply, accepted the ruling, and only objected after it failed to comply with the very rules it insisted applied.

It is a bedrock rule of appellate law, that a party requesting certain action in the trial court below, waives the right to challenge the correctness of the action on appeal.

This rule is referred to as "invited error."

The invited error rule operates to **preclude review** in this case. This case is an obvious application of the rule. Here the appellant argued, accepted, and used to its benefit, the ruling that the Florida Rules of Criminal Procedure apply.

As a matter of law, the appellant cannot then argue on appeal that the trial court erred in granting the very relief it argued, accepted, and used to its benefit.

A party, who induces an argument, and accepts a favorable ruling, waives the right to argue on appeal that the argument was improper or prejudicial.

In *Goodwin v. State*, 751 So. 2d 537, 544 (Fla. 1999) the Florida Supreme Court held that invited error **cannot** be a basis for reversal. "If the error is invited,' the appellate court **will not** consider the error a basis for reversal. [Emphasis added.]

A party, who accepts a favorable ruling, waives the right to argue on appeal

that the argument was improper or prejudicial. In this case the appellant not only accepted the ruling the Florida rules of Criminal Procedure applied, but was the one who requested it, and used it to its benefit, to deny the appellee the right to civil discovery.

In *Gonzalez v. State*, 136 So. 3d 1125, 1147 (Fla. 2014) the Supreme Court held that, "Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal. *Terry v. State*, 668 So. 2d 954, 962 (Fla. 1996)."

This past week Judge Connor wrote for the Fourth District in *Laws v. State*, 2014 Fla. App. LEXIS 14002(Fla. 4th DCA, Sept. 10, 2014) that:

By asking the trial court to strike that language from the substantive instructions and failing to ask for a limiting instruction, Laws ***invited the error he complains about on appeal. Procedurally, Laws cannot seek a reversal.*** See *Czubak v. State*, 570 So. 2d 925, 928 (Fla. 1990) "Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal." [Emphasis added.]

Several months prior to the decision in *Laws*, Judge Klingensmith wrote for the Fourth District in *Hernandez v. Gonzalez*, 124 So. 3d 988, 993 (Fla. 4th DCA 2013) that:

By seeking to have the jury decide the issue of appellees' liability for all damages rather than moving for directed verdict on any or all of those damages, ***appellants cannot now successfully claim error*** simply because the jury returned a zero verdict. See *Gupton*, 656 So. 2d at 478; see also *Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 202 (Fla. 2001) (quoting *Goodwin v. State*, 751 So. 2d 537, 544 n.8 (Fla.

1999)) (Under the rule of invited error, "a party may not make or invite error at trial and then take advantage of the error on appeal.")). [Emphasis added.]

Here, the appellant requested Florida Rules of Criminal Procedure, (over the appellee's argument to the contrary,) received a favorable ruling, and accepted the ruling it requested, and applied that favorable ruling, to prevent the appellee from using civil discovery, to its advantage.

Under the doctrine of invited error, the appellant has waived an argument as to which rules apply. The appellant's sole issue of the use of the Rules of Criminal Procedure, is not cognizable under Florida Supreme Court and Fourth District precedent. Under the invited error rule and *Applegate, Id.*, Judge Robert's ruling is as a matter of law, required to be affirmed.

The Florida Rules of Criminal Procedure apply for the reasons set down by Judge Roberts: The Criminal Rules were invoked as a whole, without exception. Appellant is bound by what it requested.

The case citations by appellant in its initial brief concern the application of the speedy trial rule to incarcerated out of state prisoners. Counsel can absolutely represent to this Court, that the Mayor of the City of Port Saint Lucie has never been an incarcerated out of state prisoner. Appellant's suggestions about the applicability of the cited case are meritless.

POINT II

Any confusion by the second trial judge was the result of appellant's fraud upon the court, by failing to inform the second trial judge at the *ex-parte* hearing, that the first trial Judge has ruled the Rules of Criminal Procedure applied. The appellant failed to move for rehearing at any time and the argument concerning the applicability of any Rule of Criminal procedure has been waived.

A. Lack of Candor to Tribunal

The appellant simply stood silent before Judge Yacucci, at the hearing on March 10, 2014. Appellant failed to advise Judge Yacucci, that the appellant moved to have the Rules of Criminal Procedure apply, and that the prior Judge, Judge Nelson had ordered they be applied.

Fla. Bar Reg. R. 4-3.3 provides:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

* * * *

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel[.]

By the foregoing clear violation of Bar Rules, the appellant enters this court with unclean hands, and has waived any argument, about the application of the very rules they insisted on applying.

B. Ex-parte communication

The appellant proceeded with a hearing when there was no notice in the record to the appellee. This violated the appellee's fundamental right to notice, under the due process clause, of the Fifth and Fourteenth Amendments of the Constitution of the United States, and Article I, §9 of the Florida Constitution. The *ex-parte* hearing argued by the appellant, is a nullity.

Further, the appellant simply stood silent before Judge Yacucci at the hearing on March 10, 2014. It failed to advise him that the appellant moved to have the Rules of Criminal Procedure apply, and that the prior Judge, Judge Nelson had ordered they be applied. It failed to advise Judge Yacucci, that the appellant filed all its pleadings and motions in the case under the Rules of Criminal Procedure.

Fla. Bar Reg. R. 4-3.3 provides:

(c) Ex Parte Proceedings. --In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Appellant failed to disclose the foregoing facts, and now on appeal seeks to profit from this misconduct.

The foregoing concern was mentioned several times by Judge Roberts, before she granted the motion discharging the appellee.

C. Waiver by No Objection to Ruling

If the appellant did not want the Florida Rules of Criminal Procedure to

apply, it could have moved before Judge Yacucci for reconsideration. However, it had to do so with 20 days of February 21, 2013, the date Judge Nelson recused herself. The appellant **never** moved for reconsideration of Judge Nelson's ruling.

Fla. R. Jud. Admin. 2.330(h) provides:

Prior Rulings. --Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge ***based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification***, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.

By failing at any time to move for reconsideration, the appellant bound itself the Rules of Criminal procedure, which it insisted on in this case.

Further, the appellant, even at the final May 9, 2014 hearing, never moved to strike any of the appellee's notices of expiration, at any time.

Because of both misconduct and waiver, the appellant is barred from raising the applicability of the Criminal Rules of Procedure on appeal as a matter of law.

Appellant's suggestions in its initial brief that anyone was bound by an *ex-parte* decision of Judge Yacucci, in violation of due process, procured by the appellant's fundamental ethical obligations, and fraud upon the court is meritless.

POINT III

“Noncriminal violations” are governed Florida Statutes concerning crimes, and by the Florida Rules of Criminal Procedure, because they are a “criminal proceeding”, conducted by a court with criminal jurisdiction. This is made plain by the 1968 Committee Note that, “These rules are...intended to apply to all state courts where "crimes" are charged.”

A. Criminal proceedings

Fla. R. Crim. P. 3.010 states, “These rules shall govern the procedure in all criminal *proceedings* in state courts...” [Emphasis added.] It does not say the Rules of Criminal Procedure govern the prosecution of crimes, but “criminal *proceedings*.” The 1968 Committee Note states, “These rules are...intended to *apply to all state courts* where "crimes" are charged.” It is clear the applicability of the Florida Criminal Rules of Procedure, is “court dependent” not “offense dependent.”

This is amplified under Fla. R. Crim. P. 3.020, which states, “These rules are intended to provide for the just determination of *every criminal proceeding*. They shall be construed to secure simplicity in procedure and fairness in administration.”

“Noncriminal violations” are governed by the Florida Rules of Criminal Procedure, because they are a “criminal proceeding”, conducted by a court with criminal jurisdiction.

Even noncriminal traffic infractions have a speedy trial rule. Fla. R. Traff. Ct. 6.325.

B. Quasi-criminal proceeding

A “noncriminal violation” may best be classified in Florida as a “quasi-criminal” proceeding.

An action is considered a “quasi-criminal” proceeding in nature, because they are *heard and disposed of by* courts with criminal jurisdiction," *Tedder v. State*, 12 So. 3d 265, 265 (Fla. 5th DCA 2009)., citing *State Ex Rel Butterworth v. Kenny*, 714 So. 2d 404, 410 (Fla. 1998). [Emphasis added.]

Thus, the Rules of Criminal Procedure apply to criminal “**proceedings.**”

C. Legislature has placed noncriminal violations with crimes

A review of the criminal legislative scheme in Florida is instructive on the issue of “criminal proceedings.”

Title XLVI Florida Statutes is entitled “Crimes.”

Contained within that Title is Chapter 775 Florida Statutes is entitled, “Definitions; General Penalties; Registration of Criminals.”

Within Chapter 775 Florida Statutes is contained Section 775.08 Florida Statutes, entitled, “Classes and definitions of offenses.”

Within Section 775.08 Florida Statutes, are defined together, the terms “felon”, misdemeanor” and “noncriminal violation.” The definition of “noncriminal violation” is in a Chapter involving crimes four levels down, (Title, Chapter, Section, subsection) under sub-section 775.08(3) Florida Statutes.

“Noncriminal violations” are governed by the Florida Rules of Criminal Procedure, because they are a “criminal proceeding”, under: 1) Florida’s criminal statutes and, 2) are the conducted by a court with criminal jurisdiction.

This is further supported by Section 775.15 Florida Statutes, concerning limitations of prosecutions. Section 775.15(2)(d) Florida Statutes states that:

Except as otherwise provided in this section, *prosecutions for other offenses* are subject to the following periods of limitation...: (d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed. [Emphasis added.]

A noncriminal violation is treated the same as a misdemeanor, for purposes of the statute of limitations on prosecutions. Again, lumping together of noncriminal violations under the Chapters concerning crimes is instructive on the legislature’s intent ,to provide protection as to the length of time in either event a person may be prosecuted.

The requested that the Rules of Criminal Procedure apply because, “it was defined by the Rules of, of 775, by, by crimes and punishment, is that exact statute, we felt that that's, that's where it fit.” (A P11, L 6-8). By providing this explanation to the court, the appellant has validated the foregoing arguments.

D. Rule of Lenity

Further, Section 775.021 Florida Statutes, known as the “Rule of Lenity” provides:

(1) The *provisions of this code and offenses defined by other statutes shall be strictly construed*; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides.

The application of the Rule of Lenity to the issue before Judge Roberts was appropriate.

Further, the application of the Rule of Lenity further demonstrates how intertwine all criminal proceeding are under Chapter 775 Florida Statutes.

However, if the Court accepts the prior analysis concerning the Rules of Criminal Procedure governing “criminal proceedings” then there is no need to resort to the Rule of Lenity.

If this court determines that “criminal proceedings” under Fla. R. Crim. P. 3.010 and 3.020 is somehow ambiguous, because the, “language is susceptible of differing constructions”, then the Rule of Lenity requires this Court, as did Judge Roberts, construe Fla. R. Crim. P. 3.010 and 3.020, “most favorably to the accused” and find that all the Rules of Criminal Procedure apply in this case.

CONCLUSION

Judge Robert’s order should be **affirmed** under *Applegate*, for the reasons stated by Judge Roberts, and argument raised in this brief.



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Florida Bar #0722367

Appellee/defendant Mayor Joann Faiella

CERTIFICATE OF COMPLIANCE

I certify that is brief complies with the font requirements of Fla. R. App. P.
9.210(a)(2).

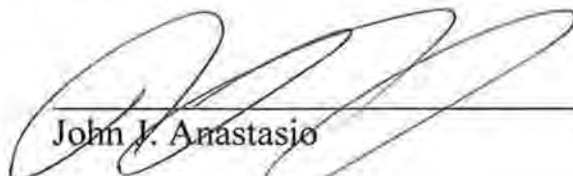


John J. Anastasio

CERTIFICATE OF SERVICE

I certify the above has been served on the following, this 15th day of
September 2014 **email** through the **ePortal** on the following:

Ryan Butler, Assistant State Attorney
Office of the State Attorney
411 South Second Street
Fort Pierce, Florida 34950-1594
EMAIL: SA19eService@sao19.org



John J. Anastasio

Statement As To Prior Bar Discipline

Florida Bar case numbers 95-31,511(19B), 95-32,009(19B) from 1994, (advertising violations) when distracted from practice while running for Congress reprimand ,and 2001-30,771(19B), 2001-31,113(19B), disciplined as a result of self-reported records keeping violation occurring in 1998 during my divorce 10 day suspension.

A handwritten signature in blue ink, appearing to read 'John J. Anastasio', with a long horizontal flourish extending to the right.

John J. Anastasio

William T. Toohey, Esq.
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July 3, 2018

The Honorable Mayor Thomas
Members of the Village Council
Village of Indiantown
P.O. Box 398
16550 SW Warfield Blvd.
Indiantown, FL 34956-0398

Re: Village Attorney Position

Dear Mayor Thomas and Members of the Village Council:

I am writing to apply for the position of Village Attorney for the Village of Indiantown. I believe that my broad range of legal and municipal experience make me an excellent candidate for this position.

I am a member of both the Florida and New York Bars, with eighteen years of experience in the practice of law, including civil law, real property law, family law, criminal law and the administration of decedent's estates. I currently hold the position of Special Counsel to the Code Enforcement Division of the Martin County Building Department. Prior to entering the practice of law I spent twenty years with the New York City Police Department, retiring with the rank of Lieutenant in 2004. I attended law school while employed by the police department, graduating Magna Cum Laude in 2000, having served as a Law Review editor and a clerk for a New York County Supreme Court Justice during the course of my studies. For eleven years after leaving the Police Department I practiced as a solo practitioner, concentrating in the areas of transactional real estate, criminal law, family law and surrogate's court practice. Upon becoming a full time Florida resident in 2015 I assumed a semi-retired status by no longer accepting new private clients, with the result that now my only client is Martin County. I am experienced in taking family, civil and criminal cases from inception to disposition. I have experience in investigating criminal and civil matters, interviewing and preparing witnesses and conducting and defending depositions. I am skilled in researching legal issues and writing motions and legal memoranda. In the police department I held a supervisory rank in the Special Operations Division for fifteen years, where I was involved in the planning of major capital improvements, including the construction of facilities and the municipal purchase of major equipment. In addition, I regularly acted as liaison with governmental and private entities in regard to event planning and emergency management procedures throughout the City of New York. These duties and experiences have provided me with deep insight into the workings of municipal organizations.

My experience as a municipal attorney has been as Special Counsel to the Martin County Building Department. In this position I review documents for legal sufficiency, draft and review proposed County ordinances, draft and review settlement stipulations, and review orders prior to them being presented for the Magistrate's signature. I also review the code investigator's violation cases and

prepare witnesses and evidence prior to code enforcement hearings, and attend the Magistrate's hearings as the Code Enforcement Division representative. I have also represented the Martin County Fire Marshal in an appellate proceeding, and on occasion have represented the Martin County Attorney's Office at licensing board meetings. I hold no Florida Bar Board Certifications.

My availability to serve in the position of Village Attorney is, I believe, one of my strongest qualifications for the position. I am semi-retired, with no intention of seeking any new private legal clients. My schedule is extremely flexible, so I am available whenever the Village might require me. Although this is a part-time position, my lack of interest in pursuing other legal work means the Village will receive my full attention all the time.

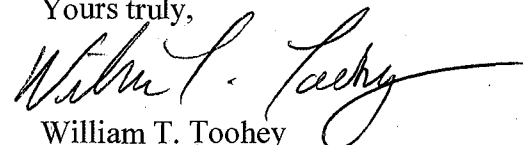
I know of no conflicts of interest, actual or potential, that might arise from this position.

Although I have on occasion worked with, or been Of Counsel to other attorneys, I have always practiced as a solo practitioner, and I would fulfill this position in the same manner. My semi-retired status affords me minimal overhead expenses, so I propose an hourly rate of compensation of \$165.00 per hour. I charge no administrative fees, and bill for expenses, such as filing or service fees, as they occur. I do not bill for travel time unless the distance involved is greater than thirty miles from my office.

In summation let me reiterate the reasons why the Village would be well served in choosing me for this position: I am experienced in a variety of legal disciplines, including those which touch upon real estate and land use, contract formation and negotiation, litigation and code enforcement. I am a well-trained and skilled legal writer. In addition my civil service background provides me with extensive strategic planning, management and leadership experience. I excel at planning and organizational tasks by evaluating needs and requirements and then formulating new policies, rules, and procedures to successfully meet them in the most efficient way possible. These are exactly the skills a brand-new municipal organization needs to be successful; and, because I have no competing interests I can provide them to you in an expedited manner and at an economical rate.

Thank you for your attention to this submission. Included with this letter of interest is my resume, a copy of my professional liability insurance coverage, a memorandum of law submitted as a writing sample, and a signed statement regarding Bar discipline and Court sanctions. If you think I might be of service to you please contact me at the above number. I look forward to speaking with you.

Yours truly,

A handwritten signature in black ink, appearing to read "William T. Toohey", written in a cursive style.

William T. Toohey

William T. Toohey, Esq.
2180 SW Oakwater Pointe
Palm City, FL 34990
516-509-1372
TooheyLaw@aol.com

EDUCATION: New York Law School

Juris Doctor, **Magna Cum Laude**, June 2000

GPA: 3.60

Class Rank: 14 out of 340

Honors: Notes and Comments Editor, *New York Law School Law Review*, 1998-99
Member, *New York Law School Law Review*, 1997-98
Recipient of the Harry A. Gottimer III Admiralty Award for Outstanding Work in the Field of Admiralty Law

Publication: "The New York Court of Appeals 1997-1998 Case Compilation", co-author, *New York Law School Law Review*, June 1999

Adelphi University

Bachelor of Arts, American Studies, January 1994 **GPA: 3.81**

Nassau Community College

Associate in Science, Criminal Justice, **Summa Cum Laude**, June 1992 **GPA: 4.0**

BAR

ADMISSIONS: Florida and New York

LEGAL EXPERIENCE:

Special Counsel, Martin County Code Enforcement Division, July 2016-Present.

Review documents for legal sufficiency; draft and/or review proposed County ordinances; draft and/or review settlement stipulations; draft and/or review orders for Magistrate's signature; conduct case review and prepare witnesses prior to code enforcement hearings; attend Magistrate's hearings as Code Enforcement Division representative.

Solo Practitioner, March 2001-July 2015.

Practice concentrated in the areas of real estate, criminal law, family law and the administration of decedent's estates. Experienced in all areas of transactional real estate from contract to closing. Experienced in preparing cases and witnesses for trial. Experienced in researching, writing and arguing motions. Experienced in conducting and defending depositions. Experienced in supervising paralegals and office staff. Experienced in conducting and supervising criminal and civil investigations. Experienced in carrying cases from inception to disposition in Criminal, Surrogate's and Family court in New York, and Circuit Court in Florida. Proficient in the use of Word, WordPerfect and electronic research databases.

Of Counsel, June 2006-December 2012.

To Stephen Bilkis and Associates, 805 Smith Street, Baldwin, New York, concentrating in the areas of decedent's estates, criminal and family law, including motion practice and conducting trials and hearings.

Judicial Internship, Supreme Court, New York County, Spring 2000.

Intern law clerk position with Justice Ira Gammerman, Civil Division. Conducted legal research, drafted legal memoranda, decisions and orders.

TEACHING EXPERIENCE:

Briarcliffe College, September 2014-May 2015.

Adjunct Instructor, Criminal Justice Department. Courses taught: Criminal Procedure, Contemporary Issues in Criminal Justice, Civil Litigation and The Administration of Criminal Justice.

CRIMINAL JUSTICE EXPERIENCE:

New York City Police Department, January 1984-February 2004.

Harbor Unit, Lieutenant Platoon Commander, October 1997-February 2004.

Assigned as Commanding Officer of Harbor Unit Base facility; performed duty as citywide supervisor responsible for all marine law enforcement and rescue activities occurring during assigned tour. Established policies and formulated procedures as necessary in order to ensure the orderly operation of the facility. Developed equipment and facility specifications and negotiated with vendors to fulfill contract specifications. Acted as liaison to private industry and governmental agencies in regard to law enforcement, emergency management and event planning in New York Harbor and adjacent waterways.

Harbor Unit, Sergeant Launch Supervisor, January 1992-October 1997.

Responsible for the performance and training of police officers and civilian employees in field and administrative assignments. Briefed members of the press and appeared at press conferences concerning noteworthy incidents. Conducted investigations of accidents, crimes and incidents occurring in assigned area.

Patrol Services, Sergeant, December 1988-January 1992.

Assigned to patrol precincts as field supervisor; responsibilities included deployment and supervision of police officers on patrol, assignment as precinct desk officer, conducting internal investigations and training of personnel in legal and operational matters.

Police Officer, January 1984-December 1988.

Performed patrol duties in both uniformed and plain-clothes assignments.

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DECLARATIONS**

THIS IS A CLAIMS MADE POLICY. IT APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD AND ANY APPLICABLE EXTENDED REPORTING PERIOD, AS THOSE TERMS ARE DESCRIBED IN THIS POLICY. PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.


EXCEPT AS OTHERWISE SET FORTH IN THIS POLICY, CLAIM EXPENSES REDUCE THIS POLICY'S LIMITS OF LIABILITY AND ARE SUBJECT TO THE POLICY'S DEDUCTIBLE.

MATURITY:

DURING THE FIRST SEVERAL YEARS OF THE CLAIMS MADE RELATIONSHIP, CLAIMS MADE RATES ARE COMPARATIVELY LOWER THAN OCCURRENCE RATES, AND INSURED CAN EXPECT SUBSTANTIAL ANNUAL PREMIUM INCREASES, INDEPENDENT OF OVERALL RATE LEVEL INCREASES, UNTIL THE CLAIMS MADE RELATIONSHIP REACHES MATURITY.

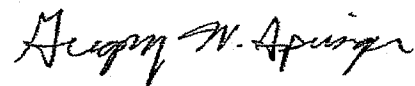
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|--|--|--|--|--|--|
| COMPANY: AXIS Insurance Company | | POLICY NUMBER: 011152-0118 | | | |
| Item 1. Named Insured: William T. Toohey, PLLC 2180 SW Oakwater Pointe Palm City, FL 34990-7721 | | Item 2. Policy Period: Inception Date: 3/21/2018 Expiration Date: 3/21/2019 <i>Both dates at 12:01 a.m. Standard Time at the address listed in Item 1.</i> | | | |
| Item 3. Limits of Liability: \$1,000,000 each Claim \$1,000,000 Aggregate | | Item 4. Deductible: \$5,000 each Claim | | | |
| Item 5. Retroactive Date: 6/12/2001 | | Item 6. Premium: \$1,785.00 Policy Fee: \$125.00 Agency Fee: \$100.00 | | | |
| Item 7. Notices to Company: <table border="0" style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><u>Notice of Claim To Be Sent To:</u> AXIS Professional Insurance 300 Connell Drive, Suite 8000 Berkeley Heights, NJ 07922-0357 Email: AttysAdvClaimNoticeBH@axiscapital.com</td><td style="width: 50%; vertical-align: top;"><u>All Other Notices To Be Sent To:</u> Aon Affinity Insurance Services, Inc. 1100 Virginia Drive, Suite 250 Fort Washington, PA 19034-3278 Fax: 312.381.0875 Email: AffinityLawyersAdmin@aon.com</td></tr></table> | | | | <u>Notice of Claim To Be Sent To:</u> AXIS Professional Insurance 300 Connell Drive, Suite 8000 Berkeley Heights, NJ 07922-0357 Email: AttysAdvClaimNoticeBH@axiscapital.com | <u>All Other Notices To Be Sent To:</u> Aon Affinity Insurance Services, Inc. 1100 Virginia Drive, Suite 250 Fort Washington, PA 19034-3278 Fax: 312.381.0875 Email: AffinityLawyersAdmin@aon.com |
| <u>Notice of Claim To Be Sent To:</u> AXIS Professional Insurance 300 Connell Drive, Suite 8000 Berkeley Heights, NJ 07922-0357 Email: AttysAdvClaimNoticeBH@axiscapital.com | <u>All Other Notices To Be Sent To:</u> Aon Affinity Insurance Services, Inc. 1100 Virginia Drive, Suite 250 Fort Washington, PA 19034-3278 Fax: 312.381.0875 Email: AffinityLawyersAdmin@aon.com | | | | |
| Item 8. Endorsements Effective at Inception: ALPL-101 (09-14) ALPL-323 (09-14) ALPL-324 (09-14) ALPL-400 FL (01-15) ALPL-401 FL (09-14) ALPL-509 (09-14) | | | | | |

The **Company** has caused this policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the **Company**.


Authorized Representative

February 27, 2018

Date


Gregory W. Springer, President


Andrew Weissert, Secretary

**IN THE BOARD OF APPEALS AND ADJUSTMENT TO THE FIRE CODE
MARTIN COUNTY, FLORIDA**

Ralph Caruso,

Appellant,

vs.

Appeal of Building Permit FSA 20170474

Douglas V. Killane III,
in his official capacity as
Martin County Fire Marshal,

Respondent.

MEMORANDUM OF LAW

This memorandum is submitted in support of the Respondent's motion to dismiss this appeal on the grounds the appellant lacks standing to appear before this Board. In the Appellant's Appeal Letter dated May 17, 2017 (attached hereto as Exhibit A) the appellant specifically requested to appear before this Board, and claimed to have standing to file this appeal based solely on the proximity of the appellant's properties to the property that is the subject of this permit. See page A7 of Exhibit A, paragraph "D". As is demonstrated herein there is no basis in law for this claim of standing, and therefore this appeal must be dismissed.

Argument

Point One

**A PARTY THAT DID NOT APPEAR BEFORE A LOWER TRIBUNAL HAS NO
STANDING TO APPEAR BEFORE ANY APPELLATE BODY.**

The establishment, scope and jurisdiction of this Board is provided for by Chapter 1 of the Florida Fire Prevention Code (hereinafter "FFPC") as adopted by Martin County by the Martin County Code (hereinafter "MCC") pursuant to Florida Statutes (hereinafter "FS") 633.202(2) and 633.208(1). Appellate procedure is addressed in Section 1.10.4 of the FFPC, and Section 1.10.4.1 of the FFPC states that "any person with standing" shall be permitted to bring an appeal before the Board of Appeals. (Section 1.10.4 is attached hereto as Exhibit B) Therefore, the first issue that must be determined is what is a "person with standing". In order to determine that it is necessary to examine the law of appellate jurisdiction.

It is a fundamental principle of appellate law that appellate jurisdiction is only available to parties. See Orange County v. Game & Fresh Water Fish Comm'n, 397 So.2d 411 (5th DCA 1981) at 412; see also Forcum v. Symmes, 101 Fla. 1266, 133 So. 88 (Fla 1931), Barnett v. Barnett, 705 So.2d 63 (4th DCA 1997), Nedeau v. Gallagher, 851 So.2d 214 (1st DCA 2003), Stas v. Posada, 760 So.2d 954 (3rd DCA 1999). Therefore it follows that in order to have standing to bring an appeal a

person must be a party in the proceeding that the appeal is being taken from. In Forcum v. Symmes, 101 Fla. 1266, 133 So. 88 (1931), the seminal case on appellate jurisdiction, the Florida Supreme Court held that “[T]he appeal must be taken by a party to the cause. There can be no appeal without an appellant, and the appellant must have been a party to the cause in the trial court.” See id. at 1269. As this Board is an appellate body it is governed by the Florida Rules of Appellate Procedure (hereinafter “Fla.R.App. P.”) {See MCC 79.188}, and these rules provide a definition of a “party” that is in accord with the holding in Forcum: Fla.R.App. P. 9.020(g) defines a party in any appellate proceeding as the appellant (“the party who seeks to invoke the appeal jurisdiction of a court”) See: Fla.R.App. P. 9.020(g)(1), and the appellee (“every party in the proceeding in the lower tribunal other than the appellant”) See: Fla.R.App. P. 9.020(g)(2). The law is clear: in order to have standing to appear in any appellate proceeding a person must have been a party in the lower tribunal. A person or entity that is not a party to the proceeding in the lower tribunal cannot be an appellant. See generally, Florida Jur.2d, Vol. 3, §83. A lower tribunal is defined by Fla.R.App. P. 9.020(e) as the agency, officer or body whose order is to be reviewed; therefore the Fire Marshal and the fire permit process are a lower tribunal, and only parties that appeared in the application for the permit to install the subject sprinkler system have standing to bring an appeal to this Board. The parties to that application are Sailfish Marina and Red Hawk Fire & Security, and as a matter of law they are the only persons or entities with standing permitted to bring an appeal before this Board.

(Note: In the instant matter the Fire Marshal is captioned as the Respondent, but for the purposes of this proceeding the terms appellee and respondent are interchangeable See: Fla.R.App. P. 9.020(g)(4).)

Point Two

GEOGRAPHIC LOCATION CANNOT CONFER STANDING IN AN APPELLATE PROCEEDING.

The appellant claims to have standing to appear before this Board because some of the petitioner’s properties are located in the vicinity of Sailfish Marina. This position is without any basis or support in the law, and seems to be based on a misapplication of the zoning variances and development procedures found in the Martin County Land Development Code (hereinafter “LDC”). The LDC provides for notice of a public hearing before the Board of Zoning Adjustment on a request for a zoning variance be mailed to properties within 300 feet of the subject property. See LDC 9.5.K. The right of the public to appear at that hearing is specifically created by that ordinance. See LDC 10.7(c). It is important to note that the right to appear created by this ordinance does not make the applicant’s neighbors parties to the matter; it merely affords them the opportunity to be heard.

Even in the context of zoning law mere geographic location does not confer standing to appeal a zoning board decision. The Florida Supreme Court has repeatedly held that citizens lack standing to challenge a governmental action unless they can demonstrate a special injury different from the injuries to other citizens and taxpayers. See Sch. Bd. Of Volusia Cty. v. Clayton, 691 So.2d 1066, 1068 (Fla 1997). To have standing in this context an individual must show a definite interest exceeding the general interest shared in common with all citizens. See Renard v. Dade County, 261 So.2d 832 (Fla 1972); see generally Florida Real Estate Transactions, Vol. 3, §38.12(1)(c)(2). So even if this zoning law standard could be applied to this case a claim of a general risk to a neighborhood would be insufficient to confer standing on the appellant.

In any event the LDC has no application to this appeal. Sailfish Marina did not submit an application to the Board of Zoning Adjustment for a change in zoning; it submitted an application for a permit to install a sprinkler system to the Fire Prevention Bureau. Additionally, unlike this Board, the Board of Zoning Adjustment is not an appellate panel; it is a tribunal of original jurisdiction which confers the right to be heard on persons other than the applicants by statute. See LDC 10.7.(c). That right does not apply to this appellate panel. Geographic location cannot confer appellate standing before the Board of Appeals and Adjustment to the Fire Code; only appearance as a party before a lower tribunal bestows standing to appeal.

Conclusion

Geographic proximity to a property that applies for a fire permit does not confer standing on any person or entity to appeal that permit. It is settled law that the only persons with standing to appear in any appellate proceeding are those who were parties to the matter in the lower tribunal. The appellate jurisdiction of this Board is limited to persons with standing. The appellant herein was not a party to the permit application that is the subject of this appeal. Therefore, the appellant herein has no standing to appear before this Board, and this appeal must be dismissed.

Respectfully submitted,

William T. Toohey
Attorney for Respondent

William T. Toohey, PLLC

Attorney at Law

Member of Florida and New York Bars

2180 SW Oakwater Pointe, Palm City, FL 34990

516-509-1372

TooheyLaw@aol.com

July 3, 2018

Village of Indiantown
P.O. Box 398
16550 SW Warfield Boulevard
Indiantown, FL 34956-0398

Re: Village Attorney Position

I, William T. Toohey, Esq., hereby affirm that I have never been the subject of any disciplinary proceedings by any Bar organization, nor have I ever been sanctioned by any Court.

Yours truly,



William T. Toohey
Fl. Bar No. 523224

**CALDWELL PACETTI
EDWARDS SCHOECH & VIATOR LLP**
ATTORNEYS AT LAW

MANLEY P. CALDWELL, JR.
KENNETH W. EDWARDS
CHARLES F. SCHOECH
MARY M. VIATOR
WILLIAM P. DONEY
FRANK S. PALEN
JOHN A. WEIG

OF COUNSEL
BETSY S. BURDEN
RUTH P. CLEMENTS

1555 PALM BEACH LAKES BLVD.
SUITE 1200
WEST PALM BEACH, FLORIDA 33401

PARALEGAL
EMILIE PEARSON, CP

www.caldwellpacetti.com

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TELECOPIER: (561) 655-3775

July 12, 2018

Mayor and Village Council
Village of Indiantown
16550 SW Warfield Blvd.
Indiantown, FL 34956-0398

Re: Village Attorney Request for Proposals – Letter of Interest

Dear Mayor and Village Council:

This is our Letter of Interest in response to the Village of Indiantown Attorney Request for Proposals. The Law firm of Caldwell Pacetti Edwards Schoech & Viator LLP was established in 1939. The firm practices primarily in the following areas of law: Municipal; Environmental, Land Use and Zoning; Real Estate; Special Districts; Water Management; Local Governmental; Administrative; Commercial; and Corporate Law. Our office is located at 1555 Palm Beach Lakes Blvd., Suite 1200, West Palm Beach, FL 33401. The firm has nine attorneys and six support staff.

Our firm is immediately available to provide legal services to the Village. Our firm should be chosen as Village Attorney for the Village of Indiantown because we have attorneys with extensive municipal law experience and employ a team approach which enables us to meet time and budget requirements. We will work together as professionals by sharing and supplementing each other's skills and interests to offer superior legal services to the Village.

The firm's objective is to represent the Village in all relevant legal matters to the best of its ability, using the most prudent, legally advisable, and cost-effective methods. Our scope is to protect the best interests of the Village to the extent legally and ethically possible. Our methodology is to utilize our vast knowledge and experience in the relevant areas of law, collectively as a firm, and apply same to ensure the Village has the best possible representation.

The firm is not aware of any potential or actual conflicts of interest in representing the Village of Indiantown, including its residents. If conflict should arise, we will resolve it by

appropriate compliance with applicable Florida Bar Rules of Conduct, which may include informed consent, consistent with ensuring the Village is adequately represented at all times.

Our firm is registered to do business in the State of Florida. All attorneys with the firm are members of the Florida Bar. The firm and all attorneys with the firm are holders of appropriate City and County business tax receipts.

LEGAL EXPERIENCE & ATTORNEY QUALIFICATIONS

As longtime municipal attorneys, William P. Doney and Charles F. Schoech have rendered numerous opinions regarding municipal and other governmental issues. These opinions have involved a broad variety of municipal issues such as planning and zoning matters, contracts, procurement, ordinances and resolutions, sunshine law, public records matters and reducing liability exposure to clients. Mr. Doney has been Town Attorney for the Town of Jupiter Inlet Colony and the Town of Cloud Lake more than 30 years. In addition, Mr. Schoech is currently Town Attorney for the Town of Lake Clarke Shores and has served as County Attorney for Palm Beach County. Frank S. Palen is a certified land use planner (AICP) with experience in land planning, zoning, urban design, historic preservation and related issues. He served as Zoning Director for Palm Beach County. Former municipal clients of the firm (as Town Attorney) include the City of Clewiston, City of Belle Glade and Village of Wellington. In addition, members of the firm have represented numerous municipalities and counties in litigation or other matters. Resumes of Mr. Doney, Mr. Schoech and Mr. Palen are attached.

FEES

The firm's proposed hourly rate is \$250.00/hour. Litigation matters will be billed at the rate of \$275.00/hour. Paralegal time will be billed at the rate of \$100.00/hour. The firm typically charges additional fees for the provision of extraordinary legal services such as bond validation and sale proceedings, legislative matters and other legal services not of a routine nature. The fee for extraordinary legal services will be as agreed to between the District and the firm. Except for employment or labor matters involving litigation, it is anticipated that the firm will not require the assistance of outside counsel for Village matters. The firm will bill for photocopies, postage, courier expenses and other out of pocket expenses such as court filing fees, title searches and the like. It is the firm's practice to charge for the actual time expended on a tenth of an hour basis.

The firm is amenable to a flat monthly retainer. However, without additional information on the number and length of meetings to be attended and other routine work to be covered, it is difficult to provide a flat retainer fee at this time.



William P. Doney, Esq.

Charles F. Schoech, Esq.

Frank S. Palen, Esq.

**CALDWELL PACETTI
EDWARDS SCHOECH & VIATOR LLP**

ATTORNEYS AT LAW

MANLEY P. CALDWELL, JR.
KENNETH W. EDWARDS
CHARLES F. SCHOECH
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WILLIAM P. DONEY
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PARALEGAL
EMILIE PEARSON, CP

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TELEPHONE: (561) 655-0620
TELECOPIER: (561) 655-3775

WILLIAM P. DONEY
doney@caldwellpacetti.com

RELEVANT EXPERIENCE AND ACCOMPLISHMENTS

- Town Attorney, Town of Jupiter Inlet Colony (1983 to present)
- Town Attorney, Town of Cloud Lake (1986 to present)
- Assistant City Attorney, City of West Palm Beach; Staff Attorney (1978-1983)
- Assistant City Attorney, City of Boynton Beach; Outside Counsel (1983-1986)
- Code Enforcement Special Magistrate, City of Lantana (2007-present)
- Code Enforcement Special Magistrate, Village of Wellington (2005-2015)
- Code Enforcement Special Magistrate, Town of Haverhill (2007-present)
- Code Enforcement Special Magistrate, Town of Loxahatchee Groves (2011-2015)
- Code Enforcement Special Magistrate, Town of Mangonia Park (2008- 2010)
- Hearing Officer, Broward County (2012-present)
- Attorney for property owners in code enforcement proceedings and related circuit court litigation
- Represented the following governmental entities in various types of litigation, appeals and administrative matters: City of Delray Beach, City of Lake Worth, City of West Palm Beach, City of Boynton Beach, City of Riviera Beach, City of Sebastian, Town of Glen Ridge, Palm Beach County, Palm Beach Community College, State of Florida Department of Professional Regulation, West Palm Beach Community Redevelopment Agency, Delray Beach Community Redevelopment Agency, Acme Improvement District, Florida Inland Navigation District, Village of Wellington, City of Stuart, City of Palm Beach Gardens, Coquina Water Control District, West Villages Improvement District, East County Water Control District and Indian Trail Water Control District
- Retained as outside counsel for the City of West Palm Beach, West Palm Beach CRA, City of Delray Beach, Delray Beach CRA, St. Lucie County, Florida Inland Navigation District, City of Stuart, Village of Wellington, Indian River County, Martin County and City of Palm Beach Gardens in eminent domain matters
- Represented property owners in eminent domain matters
- Represented governmental entities in quiet title and other land related disputes

EMPLOYMENT

Partner, Caldwell Pacetti Edwards Schoech & Viator LLP (2010-Present)

- Practice consists primarily of general municipal representation and litigation
- General real estate matters
- Representation of governmental entities and private individuals in eminent domain and other litigation matters
- Service as Special Magistrate for Code Enforcement Proceedings

Partner, Vance, Doney & MacGibbon, P.A. (1983-2010)

- Practice consists primarily of general municipal representation and litigation
- General real estate matters
- Representation of governmental entities and private individuals in eminent domain and other litigation matters
- Service as Special Magistrate for Code Enforcement Proceedings

Assistant City Attorney, City of West Palm Beach (1978-1983)

- General municipal practice and representation
- Board Advisor to Code Enforcement Board, Pension Board, Zoning Board of Adjustment and Appeals, Civil Service Board and Contractor's Industry Licensing Board
- Litigation including eminent domain, general municipal, zoning and planning disputes, contraband forfeiture, personnel matters, personal injury and workers' compensation defense

Associate, Scott, Burk, Royce & Harris (1977-1978)

- Zoning, planning and real estate matters

EDUCATION

- **JD**, University of Pittsburgh School of Law, 1977
- **BA Economics**, Bethany College, 1974

MEMBERSHIPS

- Florida Bar Member since November 1977
- Member of the Steering Committee of the Florida Bar CLE Eminent Domain Practice and Procedure Manual, 7th edition, and co-author of Chapter 4 "Necessity for the Taking"
- Palm Beach County Bar Association
- Certified Title Agent, Attorney's Title Insurance Fund

**CALDWELL PACETTI
EDWARDS SCHOECH & VIATOR LLP**

ATTORNEYS AT LAW

MANLEY P. CALDWELL, JR.
KENNETH W. EDWARDS
CHARLES F. SCHOECH
MARY M. VIATOR
WILLIAM P. DONEY
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PARALEGAL
EMILIE PEARSON, CP

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TELEPHONE: (561) 655-0620
TELECOPIER: (561) 655-3775

CHARLES F. SCHOECH
schoech@caldwellpacetti.com

RELEVANT EXPERIENCE AND ACCOMPLISHMENTS

- Town Attorney for the Town of Lake Clarke Shores
- General Counsel for the following independent special districts: Bolles Drainage District, Clewiston Drainage District, Disston Island Conservancy District, East Beach Water Control District, East Shore Water Control District, Everglades Agricultural Area Environmental Protection District, Gladeview Water Control District, Highland Glades Water Control District, Pahokee Water Control District, Pelican Lake Water Control District, Ridge Water Control District, Ritta Drainage District, Shawano Water Control District, South Florida Conservancy District, South Shore Drainage District and Troup-Indiantown Water Control District
- Former City Attorney, City of Clewiston
- Former City Attorney, City of Belle Glade
- Former Village Attorney, Village of Wellington
- Past President and Past Chairman, Board of Directors of the State Association of County Attorneys
- Past President, Local Government Section of the Florida Bar
- Past Member of the Editorial Advisory Committee of the Stetson Law Review Local Government Law Symposium
- Received the Paul S. Buchman Award from the Local Government Law Section of the Florida Bar in 1992 for his outstanding contributions in Legal Public Service

EMPLOYMENT

Partner, Caldwell Pacetti Edwards Schoech & Viator LLP (1989-Present)

I represent municipalities and special districts. My practice consists primarily of representing governmental agencies in all aspects of governmental law. I currently represent the Town of Lake Clarke Shores, the Everglades Agricultural Area Environmental Protection District, the Estero Fire Protection District, and several water control districts, drainage districts and improvement districts.

Partner, Mudge Rose Guthrie Alexander & Ferdon (1985-1988)

I opened and established the West Palm Beach office. My practice consisted primarily in representing governmental agencies in the areas of public finance and governmental law, including impact fees. I also represented clients in real estate matters.

County Attorney, Palm Beach County (1980-1985)

I supervised legal staff including 10 attorneys and 2 legal assistants. I was legal counsel for all county boards and agencies. I was General Counsel to the Board of County Commissioners, and was ultimately responsible for all legal matters relating to Palm Beach County. I was also the General Counsel to the Palm Beach County Legislative Delegation of the State Legislature representing them in all local meetings and drafting legislation that is requested and sponsored by the local legislative delegation.

Assistant County Attorney, Palm Beach County (1978-1980)

I was the Chief Assistant in charge of all matters relating to Planning, Zoning and Building, Subdivision and Land Development within Palm Beach County. I reviewed all condominium documents, property owner association documents, contracts for platting, and all zoning applications. I represented the Planning and Zoning Commissions, Zoning Board, Zoning Board of Adjustment, Code Enforcement Boards, Subdivision Review Boards, Site Plan Review Board, Construction Industry Licensing Board, Building Code Advisory Board, Building Board of Appeals and Land Use Advisory Board.

Assistant City Attorney, City of West Palm Beach (1974-1978)

I represented the City in legal matters pertaining to all City Departments including but not limited to: Planning Zoning & Building, Personnel, Utilities, Fire, Police, Finance, Public Works, Parks & Recreation and Administration.

EDUCATION

- JD, Valparaiso University (1974)
- BS, Florida State University (1971)

MEMBERSHIPS

- Admitted to Bar, Florida (1974); U.S. District Court, Southern District of Florida (1975); U.S. Court of Appeals, Fifth Circuit (1977), Eleventh Circuit (1981); U.S. Supreme Court (1981); New York (1985); District of Columbia (1986).
- Palm Beach County Bar Association
- Florida Bar City, County & Local Government Law Section; Executive Council, Member 1983-1989; Secretary/Treasurer, 1985-1986; Chairman Elect, 1986-1987; Chairman, 1987-1988; Administrative Law Section; Environmental Land Use Law Section; Real Property, Probate and Trust Law Section
- National Lawyers Association
- Florida Association of County Attorneys; Vice-President, 1983; President, 1984; Chairman, 1985
- Florida Municipal Attorneys Association
- Florida Association of Special Districts

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RELEVANT EXPERIENCE AND ACCOMPLISHMENTS

- Co-Counsel, Indian Trail Improvement District
- Counsel, Principal One Community Development District
- Counsel, Terracina Community Development District
- Counsel, Thousand Oaks Community Development District
- Counsel, Winston Trails East Community Development District
- Former Co-Counsel, Lehigh Acres Municipal Services Improvement District
- Intergovernmental Relations, Interlocal Agreements and Emergency Response Instructor, Florida Association of Special District, Certified District Official Program
- Handles residential real estate closings
- Adjunct Faculty, Florida Atlantic University, Department of Urban and Regional Planning (1999-2001)
- Member and Past Member of the following Boards: Palm Beach County Land Development Regulation Advisory Board (1998-Present); City of Lake Worth, Florida, Planning & Zoning Board, 2012-2012; City of Lake Worth, Florida, Planning & Zoning Board/Historic Resources Preservation Board, 1996-2002; Chair, 1998-2001; Palm Beach County Tiered Growth Management Policy Committee (1997-1998); South Florida Water Management District Technical Advisory Committee, SE PBC Integrated Water Resource Plan (1997-1998); Gold Coast Builders Association (1997-1999), Board of Directors (1998); Board of Directors, Greater Lake Worth Chamber of Commerce, 2006-2008
- Community Service Award, City of Lake Worth, Kiwanis, Lions International, Chamber of Commerce, Salvation Army, Rotary (1998)
- Award, Distinguished Contribution to Florida Chapter, American Planning Association, 2016
- Leadership Palm Beach County, Class of 2001

EMPLOYMENT

Partner, Caldwell Pacetti Edwards Schoech & Viator LLP (2004-Present)

- Provides a full range of transactional services and legal advice to local governments

regarding public real estate transactions, drafting of instruments of title and Interlocal and other agreements and contracts, both complex and simple, purchasing and procurement issues, environmental and other permitting, land use and zoning matters.

- Matters related to Florida Sunshine, Public Records and other laws applicable to the management of local governments.

Zoning Director, Palm Beach County (1986-1988)

In-House Counsel, Eccleston Organization and Corepoint Corporation (1989-2002)

Managed all state and local government regulatory and development permitting matters, including for developments of regional impact (DRIs) and large scale planned unit developments (PUDs), including Wellington PUD, PGA National and Ibis Golf and Country Club.

EDUCATION

- **JD**, Cum Laude, State University of New York at Buffalo (1974); Student Editor, Law & Society Review; Jaekle Fellow; Phi Kappa Phi.
- **BA**, Allegheny College (1969); Alden Scholar; Pi Gamma Mu;

MEMBERSHIPS

- Admitted to Bar, Florida (1989), Washington (1975), New York (1978)
- Certified Title Agent, Attorney's Title Insurance Fund
- American Planning Association
- American Institute of Certified Planners (AICP)

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Administration Office: 555 College Road East, Princeton, NJ 08543-5241

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(a stock insurance company)

Renewal of: New

Policy No.: 5LA2PL0001254-00

LAWYERS PROFESSIONAL LIABILITY INSURANCE

DECLARATIONS

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY THOSE CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD AND REPORTED IN WRITING TO THE COMPANY PURSUANT TO THE TERMS HEREIN. UNLESS OTHERWISE ENDORSED, THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ CAREFULLY.

Item 1. **Named Insured:** **Caldwell Pacetti Edwards Schoech & Viator LLP**
Caldwell Pacetti Edwards Schoech & Viator PA

Mailing Address:

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State and Zip Code: FL, 33401

Item 2. **Limits of Liability:** (A) \$ 2,000,000 each CLAIM, including CLAIMS EXPENSE

(B) \$ 2,000,000 Policy Aggregate, including CLAIMS EXPENSE

Item 3. **Deductible:**

\$10,000

Deductible per CLAIM

Deductible Aggregate

Item 4. **Policy Period:** **From: 4/1/2018 To: 4/1/2019**

at 12:01 A.M. Standard Time at the mailing address shown above.

Item 5. **Premium:** **\$19,688**

Item 6. **Retroactive Date:** See RETROACTIVE DATE ENDORSEMENT

Item 7. **Endorsements:** See SCHEDULE OF FORMS AND ENDORSEMENTS

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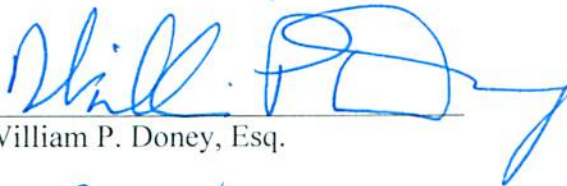
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STATEMENT REGARDING BAR DISCIPLINE AND/OR COURT SANCTIONS

The undersigned attorneys state that no Bar discipline has been sustained, nor Court sanctions levied against them or any members of the firm Caldwell Pacetti Edwards Schoech & Viator LLP.

Dated: July 12, 2018


William P. Doney, Esq.


Charles F. Schoech, Esq.


Frank S. Palen, Esq.

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

DAVID DIGIALLORENZO and
STEFANIA DIGIALLORENZO,

APPELLATE DIVISION

Petitioners,

CASE NO.

502017CA004782XXXXMB

v.

TOWN OF JUPITER INLET COLONY,
a political subdivision of the State of Florida,

Respondent.

ANSWER TO AMENDED PETITION FOR WRIT OF CERTIORARI

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 Petitioners had not submitted a full set of plans to the Town prior to its
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ANSWER TO PETITION FOR WRIT OF CERTIORARI

Respondent, the TOWN OF JUPITER INLET COLONY, (hereinafter referred to as the "Town") by and through its undersigned counsel, files this Answer to Petition for Writ of Certiorari pursuant to Rule 9.210, Florida Rules of Appellate Procedure.

INTRODUCTION/PRELIMINARY STATEMENT

References to Exhibits within the Appendix filed by Petitioners will be referred to as (A, Ex. ____); references to the Supplemental Appendix filed by Petitioners will be referred to as (SA, Ex. ____); references to pages of the Transcript of the March 27, 2017 Appeal Hearing will be referred to as (T, page ____); and references to Respondent's Appendix filed herewith will be referred to as (RA, Ex. ____). The Appendix, Supplemental Appendix, Transcript and Respondent's Appendix shall be collectively referred to as the record. References to Petitioners' Amended Petition for Writ of Certiorari will be referenced as (Pet. Am. Pet., page ____).

SUMMARY OF ARGUMENT

The Code of Ordinances of the Town of Jupiter Inlet Colony requires that at the time an application is made for a building permit, the applicant must submit a landscape plan, a grading plan and two (2) copies of a plot plan. Petitioners failed to comply with these Code requirements. Therefore, Petitioners failed to submit a

“full set of plans” as required by Town Ordinance No. 07-2016 so as to be permitted to proceed with construction under the Town’s Zoning Code as in existence prior to the adoption of this ordinance.

The doctrine of equitable estoppel is inapplicable in this cause. No Town representatives or officials made any representation(s) to Petitioners upon which Petitioners relied to their detriment. Applicants for a building permit with a governmental agency are on constructive notice of the Code and regulations that govern the issuance of such a permit. Petitioners simply failed to comply with the express requirements of the Town Code and the requested building permit was lawfully denied.

ARGUMENT

The evidence supports the conclusion of the Town Commission that Petitioners had not submitted a full set of plans to the Town prior to its adoption of Ordinance No. 07-2016. The doctrine of equitable estoppel is inapplicable to the facts in this case. Accordingly, the Town has not failed to observe the essential requirements of law in refusing to issue the requested building permit.

On January 11, 2017, the Town of Jupiter Inlet Colony duly adopted Ordinance No. 07-2016. (A, Ex. 1). This Ordinance substantially amended the Town’s Zoning Code with the primary intention of limiting the size, mass and volume of new residences constructed in the Town. Section 23 of Ordinance No. 07-2016, Town of Jupiter Inlet Colony, provides as follows:

“Section 23. This Ordinance shall become effective immediately upon passage. Applications for building permits where a full set of plans have been submitted to the Building Official prior to the effective date of this Ordinance shall not be required to comply with the revised provisions set forth herein.” (A, Ex. 1)

On or about January 4, 2017, Petitioners submitted certain building plans to the Town. (A, Ex. 3) The plans submitted by Petitioners did not include a landscape plan or grading plan for the proposed construction. (T, page 19, 21) Only one (1) copy of a plot plan was submitted even though the Town Code requires that two (2) copies be submitted. (T, 19; RA, Ex. 1) The primary issue in this proceeding is whether the plans submitted by Petitioners constituted a “full set of plans” as required by Section 23 of Ordinance No. 07-2016. If it is determined that the plans submitted by Petitioners to the Town do not constitute a full set of plans, then a second issue arises as to whether, under the facts in this matter, the doctrine of equitable estoppel precludes the Town from denying Petitioners’ building permit application. As will be demonstrated below, Petitioners did not submit a full set of plans to the Town prior to the adoption of Ordinance No. 07-2016. Further, under the facts of this matter, the Town is not precluded by the doctrine of equitable estoppel from denying the building permit request.

THE PLAN SUBMITTAL

The Town's Zoning Code provides that the Building and Zoning Commissioner, as agent of and acting under the direction of the Town Commission, is charged with the administration and enforcement of the provisions of the Zoning Code. (RA, Ex. 3). In this capacity, the Building and Zoning Commissioner is required to review building plans to ensure compliance with the Town Zoning Code. (RA, Ex. 3) The Town's Zoning Code also establishes a Building and Zoning Committee that acts in an advisory capacity to the Building and Zoning Commissioner in his/her review of building plans. (RA, Ex. 3)

At all pertinent times to this litigation, Dr. Jerome A. Legerton has served as the Building and Zoning Commissioner for the Town. In this capacity, Commissioner Legerton was charged with the duty of making the determination as to whether the plans submitted by Petitioners comprised a "full set of plans" as contemplated by Ordinance No. 07-2016. If so, Petitioners would be able to proceed under the terms of the Zoning Code prior to its amendment. If not, Petitioners would be required to comply with the Zoning Code provisions as adopted by Ordinance No. 07-2016.

Commissioner Legerton concluded that Petitioners' plans, as submitted prior to the adoption of Ordinance No. 07-2016, did not constitute a "full set of plans" as required by Section 23 of the Ordinance. (T, page 19, 21) Commissioner Legerton

reached this conclusion based on specific provisions contained in the Town's Code of Ordinances that require the submittal of a landscape plan, grading plan and two (2) copies of a plot plan at the time application is made for a building permit. (T, 19, 21; RA, Ex. 1) Specifically, Section 4-2(d)(1), Code of Ordinances, Town of Jupiter Inlet Colony, provides, in part, as follows: "At the time that application is made for a building permit, there shall be submitted additionally two (2) copies of landscape plans for the premises." (RA, Ex. 1 and 2) Additionally, Section 4-2(e), Code of Ordinances, Town of Jupiter Inlet Colony, provides, in part, that: "At the time that application is made for a building permit, which includes the proposed construction of any new structure(s), including swimming pools, patios and spas, there shall be submitted two (2) copies of a grading plan." (RA, Ex. 1 and 2) Also, Section 4-2(f), Code of Ordinances, Town of Jupiter Inlet Colony, provides, in part, that: "At such time that application is made for a residential building permit, there shall be submitted two (2) copies of a plot plan depicting the location of all improvements on the site and clearly showing the dimensions of all required setbacks." (RA, Ex1 and 2)

The Town's Building and Zoning Committee, in its advisory capacity, agreed with the conclusion of Commissioner Legerton that Petitioner's submittal did not constitute a full set of plans as required by Ordinance No. 07-2016 and advised that a building permit should not be issued to Petitioners. (See minutes of

January 25, 2017 Building and Zoning Committee meeting) (A, Ex 8) Neither Petitioners, nor any agent or representative of Petitioners, attended this Building and Zoning Committee meeting. (T, page 16)

Pursuant to Section 3 of the Town's Zoning Code, (RA, Ex. 3), Petitioners appealed the decision of Commissioner Legerton to not grant the building permit to the full Town Commission. At its hearing on March 27, 2017, the Town Commission affirmed the decision of Commissioner Legerton to deny the requested building permit. (A, Ex. 15) Thus, it was the conclusion of the Town's Building and Zoning Commissioner, the Town's Building and Zoning Committee and the Town Commission that the Petitioners' failure to include a landscape plan, grading plan and two (2) copies of a plot plan in their plan submittal did not comply with the Town Code and did not constitute the submittal of a full set of plans for a building permit.

Generally, a reviewing Court should defer to the interpretation given a statute or ordinance by the agency responsible for its administration. *Palm Beach Polo, Inc. v. Village of Wellington*, 918 So. 2d. 988 (Fla. 4th DCA 2006). When an interpretation of a word or provision in a city code by the agency responsible for its administration is a reasonable interpretation, then there has been no departure from the essential requirements of law. *Las Olas Tower Co. v. City of Ft. Lauderdale*, 742 So. 2d 308 (Fla. 4th DCA 1999). Only when the agency's interpretation of a

statute or ordinance is unreasonable or clearly erroneous should a Court intervene. *Shamrock-Shamrock, Inc. v. City of Daytona Beach*, 169 So. 3d 1253 (Fla. 5th DCA 2015).

A ruling constitutes a departure from the essential requirements of the law only when it amounts to a violation of clearly established principal of law resulting in a miscarriage of justice. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195 (Fla. 2003) Based upon the undisputed testimony that Petitioners had not submitted a landscape plan, grading plan or two (2) copies of a plot plan with the Town prior to the effective date of Ordinance 07-2016, the decision by the Town Commission that Petitioners had not submitted a full set of plans prior to the adoption of Ordinance No. 07-2016 is a reasonable interpretation of the Town's Code of Ordinances and does not constitute a departure from the essential requirements of the law.

EQUITABLE ESTOPPEL

Petitioners contend that the Town should be barred by the doctrine of equitable estoppel from denying the issuance of their requested building permit. The doctrine of equitable estoppel has been held to preclude a municipality from exercising its zoning power where a property owner (1) in good faith (2) upon some act or omission of the government (3) has made a substantial change in position or has incurred extensive obligations and expenses that it would be highly

unequitable to destroy the right he acquired. *Hollywood Beach Hotel Company v. City of Hollywood*, 329 So. 2d 10 (Fla. 1976).

In their Amended Petition, Petitioners quote Mayor Daniel Comerford extensively apparently in support of the proposition that representations were made by the Town that were relied upon by Petitioners to their detriment. (Pet. Am Pet., pages 8 and 9, 16 and 17) However, when read in context and in their entirety, the comments by Mayor Comerford reflect nothing more than a recitation of the provisions set forth in Section 23 of Ordinance of 07-2016, i.e. that if Petitioners submitted a full set of plans prior to the adoption of the new Ordinance, the building plans would be reviewed under the Zoning Code provisions in existence prior to its amendment. (T, page 10) However, as set forth above, Petitioners simply did not submit a full set of plans with the Town prior to January 11, 2017.

The doctrine of equitable estoppel may be applied against a governmental entity only under exceptional circumstances. *Monroe County v. Carter*, 41 So. 3d 954 (Fla. 3d DCA 2010). As noted above, the Town's Code of Ordinances is clear that an application for a building permit must be accompanied by a landscape plan, a grading plan and two (2) copies of a plot plan. The record is undisputed that Petitioners submitted neither a landscape plan nor a grading plan with the Town. (T 19, 21) Only one (1) copy of a plot plan had been submitted. (T, 19, 21) Having failed to comply with the express provisions of the Town Code, Petitioners are in

no position to validly claim that the Town is estopped from enforcing its Code of Ordinances.

A governmental entity may not be estopped from enforcing its ordinances even in the event a permit is issued if the issuance of the permit is in violation of a town code provision. In such a case, even a permit issued in error is subject to revocation. As noted by the Court in *Dade County v. Gayer*, 388 So. 2d 1292 (Fla. 3d DCA 1980):

“While at first blush it seems that the application of the rule may be harsh, it would be inconceivable that public officials could issue a permit, either inadvertently, through error, or intentionally, by design, which would sanction a violation of an ordinance adopted by the legislative branch of the government. Only the duly constituted members of the Metropolitan Dade County Commission enjoy that prerogative and then only in accordance with established procedure.” *Gayer*, supra. at page 1294.

See *Corona Properties of Florida, Inc. v. Monroe County*, 485 So. 2d 1314 (Fla. 3d DCA 1986) where the Court held that the doctrine of equitable estoppel would not bar the revocation of a building permit issued in error even though the property owners had expended in excess of \$82,000.00 on the project. See also, *Town of Lauderdale-By-The-Sea v. Meretsky*, 773 So. 2d 1245 (Fla. 4th DCA 2000) wherein the Town issued a building permit and the property owner commenced construction on a wall. The Town revoked the permit on the basis that it lacked the legal authority to issue the permit in question. On appeal, the Court held that the Town was not estopped from revoking the permit and requiring removal of the

wall when there was no legal authority for the issuance of the building permit since the wall encroached into Town owned right-of-way.

In the subject case, Petitioners make no assertion or claim they were advised by anyone related to the Town that they were not required to submit a landscape plan or a building plan as required by the Town Code. Rather, Petitioners were simply advised by the Mayor that if a full set of plans was submitted prior to the adoption of the Code amendment, they would be able to proceed with construction under the pre-existing Code. (T, page 10) As indicated by the above-referenced cases, only the Town Commission would be authorized to waive the requirement that a landscape plan, grading plan and two (2) copies of a plot plan accompany a building permit application.

Furthermore, as applicants for a building permit, Petitioners were on constructive notice of the contents of the Town Code and are presumed to have constructive knowledge of the nature and extent of the authority of government agents who issue permits. See *Ammons v. Okeechobee County*, 710 So. 2d 641 (Fla. 4th DCA 1998) and *Town of Lauderdale-By-The-Sea*, supra at page 1249. Owners and purchasers of property are deemed to have constructive knowledge of all applicable land use regulations. See *Metropolitan Dade County v. Fontainebleau Gas & Wash, Inc.*, 570 So. 2d 1006 (Fla. 3d DCA 1990) where it was noted that the Dade County Code contained clear provisions of which all

property owners are on notice. Therefore, in *Metropolitan Dade County*, supra., the property owners were deemed to have constructive knowledge of the county code and were not able to claim detrimental reliance on a permit that was inadvertently issued by the County.

In this regard, Petitioners apparently claim that the Town had some sort of affirmative legal duty to advise them if their building plans were insufficient. (Pet. Am Pet, page 17) Petitioners cite no case in support of such a contention. As noted above, it is the duty of a landowner/building permit applicant to be knowledgeable of the Town's Code of Ordinances and to comply therewith. *Town of Lauderdale-By-The-Sea v. Meretsky*, 773 So. 2d 1245 (Fla. 4th DCA 2000) and *Dade County v. Gayer*, 388 So. 2d 1292 (Fla. 3d DCA 1980).

Therefore, the doctrine of equitable estoppel does not preclude the Town from denying the building permit application submitted by Petitioners. The issuance of the requested permit under the circumstances of this case would require the Town to violate its own Code of Ordinances since no landscape plan, grading plan or two (2) copies of a plot plan had been submitted by Petitioners.

CONCLUSION

The decision of the Town Commission that Petitioners had not submitted a full set of plans prior to the adoption of Ordinance No. 07-2016 is supported by the record. The Town has afforded Petitioners procedural due process and has not

departed from the essential requirements of law in denying the requested permit.

The Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

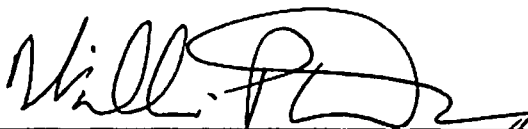
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A handwritten signature in black ink, appearing to read "William P. Doney", is written over a horizontal line.

WILLIAM P. DONEY, ESQ.
Florida Bar No. 237086

CERTIFICATE OF SERVICE

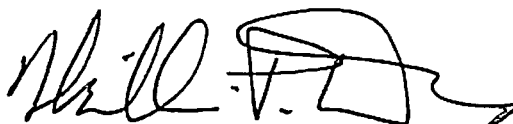
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served to Fred W. van Vonno, Esq., Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison, Van Vonno & McCluskey, LLP, 3473 SE Willoughby Blvd., Stuart, FL 34994, fvanvonno@foxwackeen.com , on this 4th day of August, 2017.



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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Answer has been prepared and printed in Times New Roman 14-point font, and therefore complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.



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July 13, 2018

Village of Indiantown
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Via e-mail to HR@indiantown.org

Re: Village of Indiantown Attorney Position

Dear Mayor Thomas and Honorable Council Members:

I am excited about submitting my letter of interest and resume for the position of Village of Indiantown Attorney. A native Floridian, I have lived in Martin County since 2002. My children attend school here and I am proud to call Martin County my home. I respectfully submit this letter of interest and appreciate your consideration.

As background of my professional career, Stephen Fry, former Martin County attorney, hired me in 2002 to work as an assistant county attorney for Martin County. While at the Martin County Attorney's Office I was fortunate to be able to work and obtain experience on a myriad of legal issues affecting Martin County and our community. I remained in this position until late 2004, leaving the Martin County Attorney's Office to begin my work in private practice. In private practice, my primary area of focus involved matters relating to land use and real estate work. I had the privilege of working at Oughterson, Sundheim and Woods, P.A., a small firm located in Stuart, and then with former Martin County attorney Noreen Dreyer at Ruden McClosky, P.A. Ruden McClosky was a statewide law firm having approximately 200 attorneys during my tenure there. In 2011, I left Ruden McClosky and accepted a general counsel position at Seven Kings Management, Inc., where I remained until the start of 2018. As general counsel, I handled and managed all of the legal work of the company, and its related entities, which work included matters relating to real estate, land use, contract negotiations, corporate, employment, litigation and other general issues the company faced.

At the start of this year, I joined the law firm of Fox McCluskey Bush Robison, PLLC (f/k/a Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison, van Vonno & McCluskey, LLP), in Stuart. My area of concentration with the firm is land use, real estate and governmental matters, though the firm is comprised of attorneys that handle all types of legal matters, including all types of litigation and employment issues. Those additional resources would be available to the Village of Indiantown. The firm currently represents the School Board of Martin County and the Town of Sewall's Point Board of Zoning Adjustments, and has represented many other local governments and boards in the past.

Though I have only worked directly as a local government attorney for a little less than three years, through my practice and have consistently been involved in working with local governments, and their counsel, and significantly involved in public sector matters. My legal practice over the past 16 years has afforded me the opportunity to work closely with staff of local governments and assist with the drafting of rules, regulations and ordinances. My area of concentration, and past experience, together with the resources my firm has available to it, would be a great asset to my ability to represent the Village of Indiantown and provide guidance on all types of matters the Village of Indiantown may encounter as it continues to grow.

I am a Florida Bar board certified attorney in Real Estate, a Martindale-Hubbell AV Rated attorney and an active member in our community. I had the honor of being appointed to the Martin County Impact Fee Review Committee, leaving that position in 2011, and since 2012 I have served on the Martin County Board of Zoning and Adjustment. Currently, I am the vice chairperson of the Board.

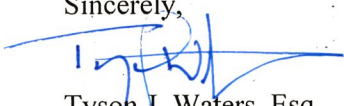
I have also served on multiple community boards over the years and I am currently a board member of the Education Foundation of Martin County, Inc., and have recently been appointed to the executive committee of that organization.

While I do not believe conflicts of interest exist that would affect my ability to serve as the Village of Indiantown attorney, as a land use attorney I am at times required by clients to attend local government hearings in the evening. Currently, the only board that I am involved in on a consistent basis that may conflict with the Village of Indiantown Commission meeting schedule would be the Martin County Board of Zoning Adjustments, which meets on the fourth Thursday of each month. If selected as the Village of Indiantown attorney, it would be my intent to resign from the Martin County Board of Zoning Adjustments to minimize the potential scheduling conflicts between the two boards.

My hourly rate for working as the Village of Indiantown attorney would be at a reduced rate of \$300.00 per hour. Enclosed with this letter of interest is a copy of my up-to-date resume, a copy of the firm's Professional Liability Insurance coverage page and a signed statement indicating that there has been no Bar, court or other tribunal disciplinary action sustained against me. As primarily a transactional attorney, I do not have writing samples from a trial court, appellate court or similar tribunal as requested in the position notice. Though as general counsel for my prior employer I was involved in litigation matters, it would normally include outside counsel so any motion or memorandum relating to such matters would have been prepared jointly with outside counsel. I would be happy to provide alternative types of writing samples, if desired by the Council.

My previous experience with the Martin County Attorney's office made a tremendous impact on me and I am excited about the possibility of representing and working with the Village of Indiantown as it grows. I appreciate and am grateful for any consideration that the Village will grant me in furtherance of my interest in the position of Village of Indiantown Attorney.

Sincerely,



Tyson J. Waters, Esq.

Enclosures

Cc: Teresa Lamar-Sarno, Interim City Manager (via e-mail)
Paul J. Nicoletti, Interim City Attorney (via e-mail)

FOX McCLUSKEY BUSH ROBISON, PLLC

EMPLOYMENT HISTORY

Of Counsel, Fox McCluskey Bush Robison, PLLC (January 2018 – Present)

Stuart, FL

- Legal practice focusing on Land Use & Zoning law and Commercial and Residential Real Estate transactions and related matters. Land use work included, but not limited to: site plan approvals and modifications, negotiations of planned unit development documents, due diligence review and variances. Real estate work included, but not limited to: preparation and negotiation of contracts, loan documents and leases, title and survey review, due diligence review and closings.

Corporate Counsel, Seven Kings Holdings, Inc. (March 2011 – December 2017)

Jupiter, FL

- General Counsel for real estate development company, responsible for handling various legal matters, including sale and purchase of real estate, leasing, financing, contracts, collections, regulatory compliance, land use and litigation.

Associate Attorney, Ruden McClosky, P.A. (September 2006 – February 2011)

Port St. Lucie, FL

- Legal practice focusing on Land Use & Zoning law and Commercial and Residential Real Estate transactions and related matters, together with litigation matters relating to value adjustment board petitions.

Associate Attorney, Oughterson, Sundheim & Woods, P.A. (October 2004 – September 2006)

Stuart, FL

- General transactional practice with an emphasis on Land Use & Zoning, City, County & Local Government, Commercial and Residential Real Estate matters.

Assistant County Attorney, Martin County Board of County Commissioners

(April 2002 – October 2004)

Stuart, FL

- Provided legal advice to County Commissioners and County Departments, reviewed and drafted contracts, researched policy issues, drafted ordinances and regulations, handled eminent domain matters, appeals and other litigation, advised and represented various local advisory boards, and reviewed development applications.

Attorney, Williams, Gautier, Gwynn & DeLoach, P.A. (March 2001-April 2002)

Tallahassee, FL

- Provided legal and compliance advice to financial institutions, reviewed and drafted contracts for financial institutions, attended depositions, hearings and pre-trial mediations, and performed various research and writing tasks.

EDUCATION

University of Florida Levin College of Law

Gainesville, FL

J.D. with honors, December 2000

University of Florida Levin College of Law Florida Bar Fellowship recipient

- High honors, Fall 1999; Honors, Spring 2000 and Fall 2000
- University of Florida Outstanding Students
- Published in The Florida Bar Public Interest Law Section Newsletter, Volume VIII, No. 1, August 1999, "ADA 1999 Update": pages 7-8.

Florida State University

Tallahassee, FL

B.S. in Sociology, December 1996

- Dean's List
- Florida Academic Scholar (4 years)

PROFESSIONAL AFFILIATIONS

- *Florida Bar Board Certified, Real Estate Law; AV Rated, Martindale Hubbell Peer Review*
- Martin County Board of Zoning Adjustments – Board Member (2012-Present), Vice Chairman (2016-Present)
- 19th Judicial Circuit Grievance Committee "A" (2017-Present)
- Martin County Impact Fee Review Committee (2008-2011), Chairman (2010-2011)
- Martin County Bar Association (2002-Present); In-house Counsel Committee Chair (2016-2017)
- Education Foundation of Martin County, Inc., Board of Directors (2017-Present)
- St. Lucie Chamber of Commerce Board of Directors (2008-2011); Vice President of Governmental Affairs, Chair of Governmental Affairs Committee (2009-2011)
- City, County, Local Government Law Section; Environmental and Land Use Law Section; Real Property, Probate and Trust Law Section Florida Bar, Member

REFERENCES AVAILABLE UPON REQUEST



Created by The Florida Bar for its members

Lawyers Professional Liability Policy
This is a Claims Made and Reported Policy. Please read it carefully.

MANUSCRIPT ENDORSEMENT

Named Insured: Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison, van Vonno & McCluskey LLP

Policy Number: 86637 ***Endorsement Number:*** 3 ***Effective Date:*** 07/05/2018

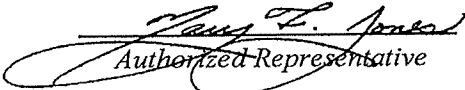
It is understood and agreed that the Named Insured as shown under Item 1 of the Declarations page is amended to read as follows:

Fox McCluskey Bush Robison, PLLC

All other terms and conditions of the **Policy** remain unchanged.

July 09, 2018
Date Issued

FLPL-107(R.08/01/2011)


Authorized Representative

Page 1 of 1



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541 E. Mitchell Hammock Road Oviedo, Florida 32765
Phone: 800-633-6458 Fax: 800-781-2010
www.flmic.com

Lawyers Professional Liability Policy
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Declarations

Policy Number: 86637

Item 1. Named Insured: Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison, van Vonno & McCluskey LLP

Mailing Address: P.O. Drawer 6
Stuart, FL 34995-0006

Item 2. Policy Period: From 05/01/2018 **to** 05/01/2019 **at 12:01 A.M.**

Standard Time at Your Address Shown Above

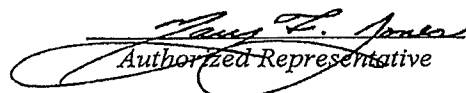
| | | |
|------------------------------------|-------------|-------------------------|
| Item 3. Limit of Liability: | \$4,000,000 | Per Claim |
| | \$4,000,000 | Total Limit |
| Item 4. Deductible: | \$15,000 | Annual Aggregate |
| Item 5. Policy Premium: | \$47,544.00 | Annual Premium |

Item 6. Forms and Endorsements Attached at Policy Issuance:

FLPL-101 (R.01/01/2016) FLPL-200R (R.01/01/2014) FLPL-103 (R.08/01/2011)
FLPL e-JD™ (R.01/01/2016)

The Policy is not valid until signed by Our authorized representative.

April 16, 2018
Date Issued


Authorized Representative

FLPL-100 (R.08/01/2011)

Page 1 of 1



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RETROACTIVE DATE SCHEDULE ENDORSEMENT

Named Insured: Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison, van Vonno & McCluskey LLP

Policy Number: 86637 ***Endorsement Number:*** 1 ***Effective Date:*** 05/01/2018

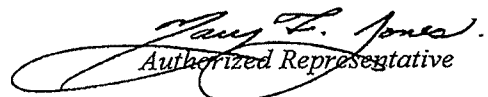
It is understood and agreed that the **Retroactive Date** of each lawyer is as shown below:

***** See attached Addendum Schedule *****

All other terms and conditions of the **Policy** remain unchanged.

April 16, 2018
Date Issued

FLPL-103(R.08/01/2011)


Authorized Representative

Page 1 of 2



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ADDENDUM SCHEDULE

Named Insured: Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison, van Vonno & McCluskey LLP

| <u>Name</u> | <u>Retroactive Date</u> |
|--------------------------|--------------------------------|
| George W. Bush, Jr. | Unlimited |
| J. Henry Cartwright | 02/05/2007 |
| M. Lanning Fox | Unlimited |
| Anthony Dale George, Jr. | 07/14/2014 |
| Robert A. Goldman | 04/03/2000 |
| Philip W. Grosdidier | 03/28/2016 |
| Michael J. McCluskey | 03/01/1999 |
| Raymond Geofran Robison | 10/31/2006 |
| Jennifer A. Waters | 07/01/2007 |
| Tyson J. Waters | 12/29/2017 |

April 16, 2018
Date Issued

FLPL-103(R.08/01/2011)


Authorized Representative



Created by The Florida Bar for its members.

***Lawyers Professional Liability Policy
This is a Claims Made and Reported Policy. Please read it carefully.***

EXTENDED CLAIMS REPORTING PERIOD ENDORSEMENT

Named Insured: Fox, Wackeen, Dungey, Beard, Bush, Goldman, Waters, Robison,
van Vonno & McCluskey LLP

Policy Number: 86637 ***Endorsement Number:*** 2 ***Effective Date:*** 07/03/2018

In consideration of an additional premium of \$0, it is understood and agreed that the **Policy** is amended to add the following **Extended Claims Reporting Period**:

from 07/03/2018 to 07/03/2022 at 12:01 A.M.

Standard time at the address shown in the Declarations or the last address reported to **Us** in writing.

This **Extended Claims Reporting Period** applies to covered **Claims** made against the following
Insureds: Jennifer A. Waters

The premium for this endorsement is fully earned on the first day of this **Extended Claims Reporting Period**.

All other terms and conditions of the **Policy** remain unchanged.

June 21, 2018
Date Issued


FLPL-102 (R.08/01/2011)


Authorized Representative

Page 1 of 1

STATEMENT OF NO DISCIPLINARY ACTION

Please find this as the undersigned's statement and confirmation that I have not had any disciplinary action filed or pursued against me by the Florida Bar, nor have I sustained any sanctions from, or by, the Florida Bar or any court or tribunal.



Tyson J. Waters, Esq.



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

BRETT J. SCHNEIDER
bschneider@wsh-law.com

July 13, 2018

VIA EMAIL (HR@Indiantown.org)

Village of Indiantown
Attn: Village Attorney Search
P.O. Box 398
16550 SW Warfield Boulevard
Indiantown, FL 34956-0398

Re: Letter of Interest – Village Attorney Services

Dear Mayor and Village Council:

On behalf of the law firms of Weiss Serota Helfman Cole & Bierman, P.L. (“Weiss Serota”) and Davis & Ashton, P.A. (“Davis & Ashton”), I am delighted to submit this joint proposal to serve as Village Attorney for the Village of Indiantown (the “Village”). As outlined below, Weiss Serota and Davis & Ashton will jointly provide the Village with the highest quality of municipal legal services available to the Village in a cost-effective manner.

I. The Value of Joint Representation by Two Preeminent Municipal Law Firms.

A. Weiss Serota: Full-Service South Florida Municipal Law Firm.

Weiss Serota is a full-service municipal law firm dedicated to serving municipalities seeking the services of a municipal attorney as well as providing specialized legal services in virtually every legal discipline that a municipality might need. Many of Weiss Serota’s attorneys are Board Certified by The Florida Bar in their respective areas of expertise. Weiss Serota’s lawyers are routinely recognized as being at the top of their respective fields within the state and many regularly lecture on their areas of expertise. Recently, Founding Partner Richard Jay Weiss received the prestigious Claude Pepper Outstanding Government Lawyer Award from The Florida Bar, which is given to an individual who has “exemplified the highest ideals of dedication, professionalism, and ethics in service to the public.”

Weiss Serota’s approximately 70 attorneys and their breadth of experience enable Weiss Serota to provide legal expertise to municipalities in virtually every area of need for local governments, including general municipal law, land use and zoning, building, permitting, code enforcement and lien law, procurement and contract law, parliamentary law and procedure,

constitutional and legislative issues, economic development and redevelopment issues, litigation and dispute resolution, annexations and boundary issues, labor and employment issues, eminent domain, appellate representation, utilities law, environmental and sustainability law, telecommunications, housing issues, municipal finance, real estate and construction law. Weiss Serota's model enables its municipal clients to minimize the need to hire outside counsel and to avoid the unnecessary expenditures of time, effort and resources, financial or otherwise, to compensate and educate new lawyers.

At present, the Firm serves as general counsel for over 20 municipalities across South Florida. Weiss Serota has also served as general counsel for several South Florida municipalities since incorporation, including Aventura, Cutler Bay, Doral and Key Biscayne. As such, the Firm has a great deal of experience addressing the legal issues that newly formed municipalities face. Weiss Serota also provides special counsel services to dozens of other municipalities and local government entities across the state, including but not limited to Port St. Lucie, Boca Raton, Delray Beach, Gulf Stream, Lantana, Manalapan, Palm Beach, and Royal Palm Beach.

Despite Weiss Serota's work for local governments across South Florida, we do not have any legal representations that conflict with the interests of the Village and do not represent any of the municipalities bordering the Village.

B. Davis & Ashton: Boutique Municipal Firm with Treasure Coast Experience.

Davis & Ashton is a boutique law firm of three attorneys that specializes in representing smaller municipalities, as well as other government entities, throughout northern Palm Beach and Martin Counties. Davis & Ashton is extremely experienced in advising municipalities that are similar in size to the Village of Indiantown and that therefore share certain features with the Village of Indiantown.

Though every municipality is distinct and unique, most of Davis & Ashton's current municipal clients share certain features with the Village of Indiantown. For example, Palm Beach Shores, Manalapan, Atlantis, Pahokee and Mangonia Park are all relatively small in size, and they all operate with limited staff. Royal Palm Beach and Mangonia Park both contract for law enforcement services. Atlantis, Mangonia Park and Palm Beach Shores all contract for fire and/or EMS services. Finally, Mangonia Park and Palm Beach Shores both contract for water and/or sewer services. Mr. Davis and Ms. Ashton have provided general counsel legal services to all these municipalities since 2002 and 2010, respectively. Their over 22 years of combined experience representing smaller-sized municipalities with similar features, budgets and issues as those of the Village will prove invaluable in this joint representation.

Notwithstanding Davis & Ashton's extensive municipal experience throughout the Treasure Coast, the firm does not have any legal conflicts with the interests of the Village and they do not represent any adjoining municipalities or any municipalities with competing interests on any issue.

II. The Village of Indiantown Team.

If this proposal is selected, the Village will have access to the extensive knowledge and expertise of every lawyer at both Weiss Serota and Davis & Ashton. This full-service approach will enable us to provide the Village with the depth of specialized municipal knowledge it deserves in an efficient and cost-effective manner. Of note, our Firms have unparalleled experience in the substantive areas referenced in the Village's Request for Proposals, including contract formation and negotiation, public liability, litigation, labor and human resources, land use, government finance, economic development and redevelopment, strategic planning and technology. Representative client lists for Weiss Serota and Davis & Ashton are enclosed herewith as Exhibit 1.

A. The Proposed Village Attorney and Team.

Matthew T. Ramenda from Weiss Serota will serve as your lead Village Attorney and is available to attend the Village Council meetings. Matt was admitted to the Florida Bar in 2004 and has dedicated the majority of his legal practice to representing municipalities. Matt resides in northern Palm Beach County and has provided legal services to several Martin County and Palm Beach County municipalities, including Jupiter Island, Boca Raton, Palm Beach, Gulf Stream, Jupiter, and Lake Park. Matt has extensive experience in municipal law and regularly handles legal issues involving litigation, code interpretation, government contracts, code enforcement, procurement, utilities, municipal finance, real estate, special assessments, and compliance with public records, sunshine and ethics laws.

Milton Collins, who is based in Weiss Serota's Boca Raton office, will serve as Deputy Village Attorney and would be available to assist on all Village matters. Milton specializes in labor and employment law, but also possesses a great deal of general municipal law experience from his 10 plus years serving as Deputy City Attorney for the City of Port St. Lucie.

Susan L. Trevarthen, who serves as the Chair of Weiss Serota's Public Land Use and Zoning Group and as general counsel for two small South Florida communities, will be available to assist the Village with any land use and zoning matters, along with the other members of her group, which handle land use matters for many municipalities. Susan is board certified in City, County and Local Government Law and is a Fellow of the American Institute of Certified Planners. Susan's practice includes extensive constitutional law in her field, including regulatory taking cases and land use and zoning decisions raising First Amendment issues, including sign codes, regulation of religious uses, Harris Act claims, comprehensive plan challenges and petitions for certiorari.

I, **Brett J. Schneider**, am the head of Weiss Serota's Labor and Employment practice group and the Managing Partner of the Firm's Boca Raton office. I am available to assist the Village with its labor and employment needs. I am Board Certified by The Florida Bar in Labor and Employment Law and currently provide labor and employment law services to over 40 local government entities throughout Florida.

Keith W. Davis of Davis & Ashton is Board Certified by The Florida Bar in City, County and Local Government Law, and he specializes in representing local governments that are similar in size to the Village. His clients include Manalapan, Briny Breezes, Palm Beach Shores, and the Treasure Coast Regional Planning Council. Keith understands the issues that smaller municipalities face, and he is able to bring that knowledge to benefit the Village. In addition, Keith serves as special magistrate for several municipalities on the Treasure Coast.

Jennifer Garner Ashton of Davis & Ashton is experienced as local government general counsel. She currently serves as General Counsel for the Village of Royal Palm Beach, the City of Atlantis, and she also represents the Palm Beach County League of Cities. Her additional experience as a Code Enforcement Special Magistrate for the City of West Palm Beach and her depth of municipal knowledge will be of great benefit to the Village.

Resumes for all of the attorneys referenced above are attached hereto as Exhibit 2.

B. References for Weiss Serota and Davis & Ashton.

The following four references are provided for Weiss Serota:

1. Joni Hamilton, Deputy City Attorney
City of Boca Raton
(561) 393-7716
jhamilton@ci.boca-raton.fl.us
2. Azlina Goldstein Siegel, Former City Attorney
City of Port St. Lucie (The Siegel Law Firm)
(954) 559-0465
asiegel@siegellawfirm.com
3. Burgess Hanson, City Manager
City of Deerfield Beach
(954) 480-4263
baahanson@deerfield-beach.com
4. John C. Gilbert, Village Manager
Village of Key Biscayne
(305) 365-5514
jgilbert@keybiscayne.fl.gov

The following four references are provided for Davis & Ashton:

1. Michael J. Busha, Executive Director
Treasure Coast Regional District Planning Council
(772) 221-4060
mbusha@tcrpc.org

2. Krista A. Storey, Senior Assistant County Attorney
Martin County
(772) 288-5400
kstorey@martin.fl.us
3. Ken Metcalf, Town Manager
Town of Mangonia Park
(561) 848-1235
kmetcalf@townofmangoniapark.com
4. Abigail Brennan, Mayor
Village of Tequesta
(561) 339-0740
abrennan@tequesta.org

C. Proposed Fee & Administrative Cost Structure.

We are very interested in serving as Village attorney and are willing to provide the Village with legal services on either an hourly rate or flat fee basis. If the Village prefers to be billed on an hourly basis, we propose a blended hourly rate of \$200.00 per hour for all attorney time. If the Village prefers to have a monthly retainer in place, we propose a monthly retainer of \$15,000.00 per month to cover all general municipal services (excluding litigation and labor and employment). In addition to our fees, we would bill the Village for our costs associated with representation of the Village, including but not limited to, photocopying charges, fax charges, postage, long distance telephone calls, computerized research charges, tolls, courier charges, express mail charges, filing fees, recording costs, court reporter costs (including the costs of transcripts and court reporter's fee for attendance), court costs (such as filing fees, service of process, subpoena costs, witness fees, etc.), mediator fees, accounting and appraisal fees, expert fees and expenses, trial/hearing exhibit costs and investigation costs. In any event, we are committed to providing the Village with the most cost effective legal services possible and are willing to further discuss our rate structure if necessary in order to provide legal services to the Village.

III. Professional Liability Insurance Coverage.

As requested, please find a copy of the Professional Liability Insurance cover pages for both Weiss Serota and Davis & Ashton enclosed herewith as Exhibit 3.

IV. Writing Sample.

As requested, enclosed please find a copy of a writing sample from the proposed Village Attorney, Matt Ramenda. The writing sample attached as Exhibit 4 is a Motion for Summary Judgment prepared by Matt on behalf of the City of Weston.

V. Bar Discipline Statement.

Both Weiss Serota and Davis & Ashton certify that no Bar discipline or Court sanctions have been sustained or levied against either Firm or its attorneys.

VI. Additional Information.

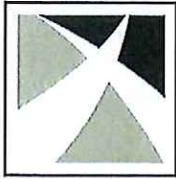
Additional information about Weiss Serota may be found at (www.wsh-law.com), and additional information about Davis & Ashton may be found at (www.davisashtonlaw.com). We would be honored to serve jointly as the Village Attorney. If you have any questions or concerns please do not hesitate to contact me via telephone at (561) 835-2111 or via email at bschneider@wsh-law.com.

Very truly yours,



Brett J. Schneider

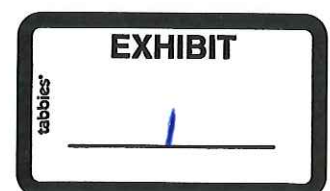
Enclosures

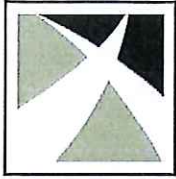


WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- City of North Miami
- City of Port St. Lucie
- City of Weston
- Delray Housing Authority
- Florida Department of Environmental Protection
- Florida Department of Financial Services
- Florida Department of Transportation
- Florida Housing Finance Corporation
- Florida Metropolitan Planning Organization Advisory Council
- Green Corridor Property Assessment Clean Energy (PACE) District
- Hialeah Housing Authority
- Hollywood CRA
- Homestead Housing Authority
- Homestead CRA
- Lake Worth Drainage District
- Miami Dade Expressway Authority (MDX)
- Miami-Dade County School Board
- North Collier Fire Control & Rescue District
- Space Coast Transportation Planning Organization
- The Collins Center for Public Policy, Inc.
- Town of Cutler Bay
- Town of Golden Beach
- Town of Gulfstream
- Town of Indialantic
- Town of Lantana
- Town of Lauderdale by the Sea





WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- Town of Manalapan
- Town of Medley
- Town of Miami Lakes
- Town of Palm Beach
- Town of Surfside
- Village of Indian Creek
- Village of Key Biscayne
- Village of Pinecrest
- Village of Royal Palm Beach
- Village of Virginia Gardens



Representative Clients

General Counsel-

- Village of Tequesta
- City of Atlantis
- Town of Manalapan
- Town of Mangonia Park
- Town of Palm Beach Shores
- Village of Royal Palm Beach
- Palm Beach County League of Cities
- Florida Green Finance Authority
- Treasure Coast Regional Planning Council
- Town of Briney Breezes

Special Counsel-

- City of Fort Lauderdale
- City of Homestead
- City of Miramar
- City of Riviera Beach

Special Magistrate-

- Town of Juno Beach
- City of West Palm Beach
- Martin County
- Town of Ocean Ridge
- City of Pahokee
- Town of Loxahatchee Groves
- City of Lake Worth
- City of Port St. Lucie



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



Of Counsel
mramenda@wsh-law.com

1200 N. Federal Highway
Suite 312
Boca Raton, FL 33432
P: 561-835-2111
F: 954-764-7770

Practice Areas

- Business Dispute Litigation
- Code Enforcement
- Employment Litigation and Arbitration
- Governmental Litigation
- Litigation
- Municipal Government Law

Education:

- Vanderbilt University Law School, Doctor of Jurisprudence, 2004
- Florida State University, B.S., Business Administration, cum laude, 2001

Admitted to Practice:

- Florida, 2004
- United States Supreme Court, 2015
- United States District Court for the Southern District of Florida, 2005

Matthew T. Ramenda

Matt is a seasoned civil litigator and municipal attorney with fifteen years of experience representing both private and municipal clients in state and federal courts.

With respect to private litigation clients, Matt has successfully represented his clients in the areas of complex commercial litigation, business law torts and premises liability defense. A sample of his successful representation of private clients includes: obtaining a \$7.75 million jury verdict in a five-week jury trial involving securities fraud pursuant to the Florida Securities & Investor Protection Act (SIPA) with team of two other lawyers; bringing and defending lawsuits based on the Federal and Florida Civil RICO Acts; defending age discrimination claims brought by former employees against employers pursuant to the Age Discrimination in Employment Act (ADEA); representing commercial landlords in numerous eviction proceedings; and successfully appealing the denial of trademark registrations to the USPTO Trademark Trial and Appeal Board.

With respect to municipal clients, Matt has defended numerous municipalities in litigation throughout South Florida in state and federal courts. He has successfully represented his municipal clients in cases involving claims for false arrest, constitutional challenges, public records request violations, premises liability, excessive force, and code enforcement lien foreclosure actions.

In addition to litigation, Matt has extensive experience providing general representation to multiple municipalities, including the Town of Palm Beach, the Town of Jupiter Island, the Town of Jupiter, and the Town of Lake Park. His experience includes representing municipalities at town council meetings, code enforcement board hearings, quasi-judicial proceedings, special magistrate hearings, appeals to the Circuit Court, and in drafting municipal ordinances and resolutions.

Matt was an elected member of The Florida Bar Board of Governors YLD for nine years, where he actively participated in numerous statewide committees and hosted multiple CLE courses.

Professional & Community Involvement:

- Governor, The Florida Bar Board of Governors YLD (2007-Present)
- Chairman, "Practicing with Professionalism" Florida Bar CLE (2008-2014)
- Co-Chair, Florida Bar "Access to Justice" Committee (2015)
- President, Vanderbilt University Alumni Association of Palm Beach and Broward Counties (2008-2012)

Presentations

- "ADA Compliance for Municipal Websites", *Palm Beach County Municipal Clerks Association*, 2/2018
- "Is Your Website ADA Compliant and What is the Law", *Palm Beach League of Cities*, 9-2017



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW



Of Counsel

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Practice Areas

- Labor and Employment Law
- Labor and Employment Law Group
- Local Government Division

Bar Admissions

- Florida, 2004
- U.S. District Court Southern District of Florida, 2006

Education

- Washington & Lee University School of Law
JD, 2004
- University at Buffalo BA, High Distinction,
1998

Milton R. Collins

Milton Collins is of counsel in the Palm Beach office of Weiss Serota Helfman Cole & Bierman, P.L. His primary areas of practice include: labor & employment, employee benefits, and local government law. In the labor and employment field, Mr. Collins has extensive experience handling grievance-arbitration matters involving contract interpretation and employee discipline. He has also served as the chief negotiator in the collective bargaining process, which has resulted in the successful negotiation of several union contracts. Mr. Collins has also handled discrimination charges and lawsuits filed pursuant to Title VII, the Florida Civil Rights Act, the Public Employees Relations Act, the ADEA, and the ADA. Mr. Collins provides labor and employee benefits advice on a variety of labor and employment topics including the FMLA, FLSA, PERA, HIPAA, state and federal discrimination laws, EEOC regulations, among others, and has drafted numerous policies related to the aforementioned. He has also provided counsel in the areas of Florida's public records act, local government Home Rule powers, and state construction contracting laws.

Mr. Collins graduated from Washington & Lee University School of Law in 2004. While in law school, he participated in several local and national competitions, which included earned selections to the American Bar Association's Regional mediation and negotiation competitions.



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Practice Areas

- Administrative and Regulatory Law
- Appellate Law
- Code Enforcement
- Municipal Government Law

Bar Admissions

- Florida, 1991
- U.S. District Court, Southern District of Florida, 1993
- U.S. Court of Appeals, 11th Circuit, 1997
- U.S. Court of Appeals, 9th Circuit, 2011
- U.S. Supreme Court, 2003

Education

- University of North Carolina School of Law JD, 1991
- University of North Carolina MRP, 1991
- Duke University
AB Public Policy Studies, *cum laude*, 1986

Susan L. Trevarthen, FAICP

Susan handles land use, planning and zoning matters for governments and is a municipal attorney. Her work includes negotiating development agreements and approvals, drafting municipal codes and plans, advising municipal staffs, managers and attorneys, defending challenges to municipal regulations and decisions, handling public hearings and counseling elected officials, as well as advocating for municipalities on legislative issues in her field. She serves as Town Attorney. She also serves as the Chair of our Public Land Use and Zoning Group, which handles all of the land use matters for the Cities of Cooper City, Weston, Miramar, Aventura, Medley, Doral, Marco Island, Indialantic and Homestead; the Towns of Cutler Bay and Lauderdale-By-The-Sea; and the Villages of Bal Harbour, Key Biscayne and Pinecrest. The Group also provides outside counsel services on planning, zoning and land use matters to additional South Florida cities on an as needed basis. In recent years, these cities have included Boca Raton, Delray Beach, Deerfield Beach, Wellington, Lauderhill, Juno Beach, Pompano Beach, Sunrise, Hallandale Beach, Parkland, Hollywood, Coconut Creek, Vero Beach, Plant City, Miami Beach, Dania Beach, Cape Coral, Coral Gables and Miami Springs.

Susan's practice includes extensive constitutional law in her field, including regulatory taking cases and land use and zoning decisions raising First Amendment issues, including sign codes, adult use regulations, and regulation of religious uses, Harris Act claims, comprehensive plan challenges and petitions for certiorari.

Susan also has extensive experience with school planning and facilities issues and mandatory school concurrency, and she has represented local governments and school boards across the state on these issues.

Susan has held leadership positions in The Florida Bar's Section for Environmental and Land Use Law and Section for City, County and Local Government Law. She is a member of the Board of Directors of 1000 Friends of Florida. She has been recognized as one of the top land use attorneys in the state in publications such as Florida Trend Magazine and SuperLawyers, and she has an AV rating (highest attainable) from Martindale Hubbell. A member of the College of Fellows of the American Institute of Certified Planners and Board Certified in City, County and Local Government Law by The Florida Bar, Susan speaks and publishes frequently on planning, zoning and land use issues. Susan grew up in Boca Raton, Florida.

Significant Matters

Regulation of First Amendment-protected land uses

Signs

- Representing the American Planning Association, co-author of the amicus brief addressing the interests of the American Planning Association, National League of Cities, International Municipal Lawyers Association, US Conference of Mayors, National Association of Counties, International City/County Management Association, and Scenic America, Inc., in the 2015 U.S. Supreme Court case of *Reed v. Town of Gilbert*.
- Updated and revised regulations of signs for City of Sunrise after it was challenged, and resulting regulations were upheld by the Eleventh Circuit. Advised the City on the implementation and interpretation of the sign code as it related to the Broward County Civic Arena and other developments.
- Updated and revised regulation of signs for City of Miramar and, working with the Litigation Group, successfully defended the sign regulations in the Southern District of Florida.
- Working with the Litigation Group, successfully defended the City of Boca Raton's sign regulations in the Southern District of Florida.
- Updated and revised regulations of signs for Cities of Weston, Coconut Creek and Dania Beach, Town of Lauderdale-By-The-Sea, and Pasco



County, without challenge.

- Updated regulations of signs following Reed for Parkland, Weston, Lauderdale-by-the-Sea, New Port Richey and Pinecrest.

Sexually Oriented Businesses

- Updated and revised regulations of sexually oriented businesses in City of Dania Beach, changed the zoning districts in which they are located, established an amortization requirement for nonconforming locations, and assisted the City and its insurer in successfully enforcing the amortization requirement against the three existing, nonconforming locations.
- Updated and revised regulations of sexually oriented businesses in the City of Hallandale Beach, and worked with Litigation Group to defend two challenges related to the prior regulations.
- Updated and revised regulations of sexually oriented businesses for Villages of Wellington and Islamorada, and the Cities of Miramar, Sunrise, and Boca Raton, without challenge.
- Revised regulations and advised on defense of challenge in Lauderhill.

Places of Worship

- Updated and revised regulations of places of public assembly, and working with the Litigation Group and the Town's insurer to defend Town of Surfside from challenge to the application of those regulations.
- Updated and revised regulations of places of public assembly in Cities of Cooper City, Sunrise, Miramar, Dania Beach, and Weston, without challenge. Advising the City of Lauderhill with code revisions in response to a Department of Justice investigation related to regulation of religious uses. Drafted procedures for reasonable accommodation and zoning relief for several municipalities.
- Drafted amicus brief for American Planning Association on Religious Freedom Restoration Act challenge in California.

Zoning Districts and Supplemental Regulations

- Drafted and advised on the implementation of targeted moratoria for various purposes in the Cities of Homestead, Hollywood and Hallandale Beach, without challenge.
- Drafted vacation rental regulations for several municipalities before preemption, and have defended challenges and advised several municipalities on the ability to amend grandfathered regulations or adopt new regulations compliant with state law.
- Drafted regulations of medical marijuana uses for several municipalities and was the appointee of the Florida Municipal Attorneys' Association to statewide working group of local government and public safety interests.
- Developed Planned Unit Development regulations for the Cities of Homestead and Sunrise, and created a form-based overlay with Dover Kohl & Partners for the Planned Area Development District in City of Coral Gables.
- Developed commercial design guidelines and special zoning districts for neighborhood plans in the City of Homestead.
- Developed specialty business zoning districts and regulations for hotels in the Cities of Dania Beach, Sunrise and Miramar.
- Advised on Joint Land Use Study, developed updated aircraft compatibility regulations and developed vested rights process for City of Homestead in relation to Air Reserve Base.
- Advised on changes to and implementation of regulations of agricultural uses in the City of Parkland, represented the City staff in related code enforcement matters, and worked with City's insurer to defend a challenge to the application of its regulations to an agricultural use.
- Developed quasi-judicial hearing procedures for our municipalities, and routinely administer, interpret and advise on quasi-judicial hearing procedure.
- Represented municipal staff or governing bodies in numerous contested quasi-judicial hearings in cities including Parkland, Weston, Hallandale Beach, Miramar, Deerfield Beach, Sunrise and North Bay Village.
- Advised our municipalities and defended challenges to quasi-judicial



decisions including projects such as the proposed SuperTarget and WalMart stores in the City of Miramar, the redevelopment of the Sonesta Beach Resort in the Village of Key Biscayne, the redevelopment of the Boca Beach Club at the Boca Raton Resort and Club, and various development decisions for the Village of Islamorada.

- Drafted noise regulations for City of Sunrise and Town of Lauderdale-By-The-Sea.
- Revised, implemented and represented staff at hearings on telecommunications facilities.
- Reviewed and advised on the implementation and updating of impact fee ordinances for municipal clients, including an affordable housing linkage fee in the City of Coconut Creek and Village of Islamorada, a transit impact fee for the City of Aventura, and police, public works and parks fees for the City of Homestead.
- Part of consulting team that completely rewrote the City of Dania Beach Land Development Code.

Comprehensive Plans

- Advised the City of Coral Gables on comprehensive plan amendment to enable form-based regulation in the Planned Area Development District.
- Advised the City of Sunrise, and participate in the comprehensive plan amendment process for Tao residential high-rise development, Metropica Transit-Oriented Development, and Westerra Local Activity Center.
- Advised the City of Coconut Creek on the Regional Activity Center for the MainStreet development.
- Advised municipal clients on applicants' plan amendments, and related rezonings.
- Advised municipal clients on Evaluation and Appraisal Reports and related plan amendments, and other plan amendments necessary to implement State statutes.
- Advised the City of Sunrise in the development and implementation of the Western Sunrise Area plan and land development regulations from 1995 to present.
- Advised the City of Homestead on the adoption of neighborhood plans for redeveloping areas of the City.
- Represented a coalition of Broward County municipalities and the Broward League of Cities in advocating for changes to the 2004 Broward County Evaluation and Appraisal process and potential changes to charter authority over land use.

Public School Facilities

- Advised the Department of Community Affairs as part of the consulting team preparing technical assistance documents for the implementation of school concurrency, including a model concurrency management system and model proportionate share mitigation agreement for school facilities.
- Advised the pilot communities in Sarasota County and Walton County on the implementation of school concurrency, including drafting and review of all pilot deliverables, including the public school facilities element and the school interlocal agreement.
- Advised Sarasota County School Board 10 years later on updates to their system.
- Drafted school interlocal agreements, reviewed public school facilities elements, and advised on the implementation of school concurrency for Cities of Sunrise, Miramar, Weston, Dania Beach and Hallandale Beach and the Collier County School Board.
- Represented the Miami-Dade School Concurrency Task Force in its development of a recommended approach to school concurrency, and represented the Miami-Dade County School Board in its negotiations with Miami-Dade County over the school interlocal agreement, and related to implementation of school concurrency.
- Advised City of Cooper City on issues with proposed public school boundary



changes and assisted in developing alternatives.

- Advised Town of Miami Lakes and the Cities of Homestead and Sunrise on issues with review and approval of charter school facilities.

Developments of Regional Impact

- Advised the City and participated in the DRI review process for the creation or amendment of DRIs for Sawgrass Mills, the Broward County Civic Arena (the BankAtlantic Center), Amerifirst/Metropica/Tao, Sawgrass International Corporate Park, and Harrison Park/Westerra in the City of Sunrise.
- Advised the City and participated in DRI review process for implementation and amendment of the Villages of Homestead in the City of Homestead. Also developed new zoning districts, comprehensive plan amendments, development agreements and other associated approvals for these projects.

Development Agreements

- Represented the City of Hallandale Beach in the Development Agreement and project approvals for BeachWalk condo hotel and related public-private partnership for development of Hyde Park Kitchen, a public restaurant and recreational facilities on the city's beach.
- Represented the City of Coral Gables in the Development Agreement and project approvals for Mediterranean Village, a 7-acre mixed use infill development designed with form-based regulations.
- Represented the City of Sunrise in the land use aspects and related approvals for Development Agreements for several major projects including Metropica and Westerra.
- Represented Village of Bal Harbour on a Development Agreement with the Bal Harbour shops.

Certifications and Specialties

- The Florida Bar Board Certified, City, County and Local Government Law
- College of Fellows of American Institute of Certified Planner (FAICP)
- American Institute of Certified Planners (AICP)

Memberships

- American Planning Association
- Citizens for a Scenic Florida, Board of Directors Vice President
- Florida Bar Section of Environmental and Land Use Law, Former Executive Council Member
- Florida Bar Section of City, County and Local Government Law, Former Executive Council Member
- 1000 Friends of Florida, Member of Board of Directors

Publications

- "Best Practices in First Amendment Land Use Regulations," *Planning and Environmental Law*, Volume 51, 2009
- "Perspectives on the 2009 Growth Management Legislation" and "Municipal Perspectives on Senate Bill 360, Version 2.0," *The Florida Bar Journal*, Volume 83, No. 9, October 2009 "Senate Bill 360 Refined: The Impact of the 2007 Legislative Session on Local Government Growth Management, Part I," *The Florida Bar Journal*, Co-Author with Michelle Vos and Chad Friedman, Volume 81, Number 10, 2007
- "Senate Bill 360 Refined: The Impact of the 2007 Legislative Session on Local Government Growth Management, Part II," *The Florida Bar Journal*, Co-Author with Michelle Vos and Chad Friedman, Volume 81, Number 11, 2007.
- "Senate Bill 360: Growth Management Reform Arrives and It Is All About Infrastructure," (Co-Author), *The Florida Bar Journal*, Volume 79, No. 9, October 2005
- "Advising the Client Regarding Protection of Property Rights: Harris Act and Inverse Condemnation Claims," *The Florida Bar Journal*, Volume LXXXVIII,



- No. 7, July/August 2004 "Alternatives to Takings: Procedural Due Process, Equal Protection and State Law Doctrine in Taking Sides on Takings Issues: The Public and Private Perspectives," ABA, Roberts, Thomas Ed., 2001
- *Special Editor*, "Inverse Condemnation and Impact Fees Chapters," Florida Environmental and Land Use Law, February 2001
 - "Florida Supreme Court Decides That Comprehensive Plan Amendments are Legislative," *Florida Planning*, May/June, 1997
 - "Defensible Exactions After *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*" (Co-Author), XXV *Stetson Law Review*

Presentations

- "Medical Marijuana And Its Impact On Our Communities", *Florida City and County Management Association*, June 2018
- "Building an Ethical Organizational Culture", [APA Florida](#) Eleventh Annual Ethics Seminar: THE ETHICAL ORGANIZATIONAL CULTURE, November 2017
- Legislative Panel Luncheon for the Broward Section of the *Florida Chapter of the American Planning Association*
- "Land Use-Murr v. Wisconsin Part II", International Municipal Lawyers Association (IMLA), July 27, 2017
- "Medical Marijuana Issues Affecting Local Government Including Land Use And Labor Issues", *Florida City and County Management Association*, 2017
- "Effects of Marijuana on Cities", *Broward County Bar Association's Medical Marijuana Legalization Summit 2017*
- "Signs in the aftermath of *Reed v. Town of Gilbert*," *International Municipal Lawyers Association*, October 2015 and April 2016
- "Law Planning and Plain English" and "Managing Protective Planning Commission and Zoning Board Meetings," *APA National Conference*, 2016
- "Planning 101," 2-Part webinar for the *Florida City and County Managers Association and Florida Institute of Government*, April and May 2016
- "Planning Official Training," *APA Florida Conference*, annually
- "*Reed v. Town of Gilbert* and sign codes," *American Bar Association, American Planning Association, Lorman Educational Services, Strafford, and 1000 Friends of Florida* webinars, 2015
- "Planning and the Courts," *APA Florida Conference*, September 2015
- "Quasi-Judicial Hearings" and "Municipal Land Use: Hot Topics," *CLE International Land Use Law Conference*, August 2015
- "Medical Marijuana" and "Signs," *Florida Municipal Attorneys Association Annual Meeting*, July 2015
- "Changes to Growth Management Laws Affecting School Facilities," *Florida Educational Facilities Planners Association*, July 2015
- "Ethics Laws Affecting Florida Local Government Elected Officials," *Good Government Initiative*, August 2014 and 2015
- State-mandated ethics training for elected officials, *Space Coast League of Cities and Palm Beach County League of Cities*, 2015
- "Planning and the Courts," *APA Florida Public Policy Workshop*, February 2013-2015
- "What Are Cities Doing To Deal With Problematic Vacation-Rentals?" *Florida League of Cities Webinar*, December 2014
- "The Sharing Economy," *Florida League of Cities Legislative Conference*, November 2014
- "Counsel as Ethical Counselor," *8th Annual Ethics Seminar of Palm Beach Planning Congress*, November 2014
- "Medical Marijuana," *Broward League of Cities*, October 2014
- "Marijuana: What Does it Mean for Your City?" *Palm Beach League of Cities*, October 2014
- "Land Use Regulations of Marijuana Related Uses," *Miami-Dade County Bar Local Government Section Seminar*, September 2014
- "Quasi-Judicial Hearings" and "RLUIPA," *CLE International Land Use Law Conference*, August 2014
- "Planning Ethics," *1000 Friends of Florida Webinar*, June 2014
- "School Facilities," *APA National Planning Conference*, April 2014
- Rewrote the course materials and taught land use course for Florida league



- of cities Advanced Institute for Elected Municipal Officials, November 2013
- "[School Concurrency Unplugged](#)," *APA Florida Conference*, September 2013
- "The Politics of Sustainability," Sustainable Zoning and Development Controls, *Planners Training Service, American Planning Association*, 2011
- "Planning in the Courts, Senate Bill 360 Challenge," *9th Annual APA Florida Public Policy Workshop*, 2011
- "Regulating Political Signs and Speech - Strategies for Local Governments Responding to First Amendment and Land Use Challenges," *Stratford Webinar with Interactive Q&A*, 2010 "Regulating First Amendment Land Uses," *National Conference of the American Planning Association*, New Orleans 2010 and Boston 2011
- "Unfunded Mandates and the Constitutional Challenge to Senate Bill 360," *Florida On-Line Academy on Planning & Growth Topics*, 2009
- "The Local Government Attorney's Guide to Successful Regulation of First Amendment Land Uses," *Florida Municipal Attorneys' Association*, 2009 and City, County and Local Government Law Section of the Florida Bar, 2009
- "School Concurrency," *25th Annual Growth Management, Energy, Climate Change, and the Environment Short Course*, Florida Chamber of Commerce, 2009
- "Issues in Implementing the Harris Act," *Eminent Domain Committee*, The Florida Bar, 2005
- "What Local Governments Can Do About School Overcrowding," *City, County and Local Government Law Section of The Florida Bar*, Orlando 2004

Classes Taught

- Adjunct Professor, Environmental and Growth Management Law, Florida Atlantic University, Department of Public Administration, 1992 - 1993
- Frequent guest lecturer at University of Miami School of Law, St. Thomas University School of Law, Florida Atlantic University School of Urban Planning on land use, zoning and planning matters

Professional Associations

- The Florida Bar, City, County and Local Government Section Executive Council
- The Florida Bar, Environmental and Land Use Law Section Executive Council
- American Institute of Certified Planners (AICP)
- City of Boca Raton Environmental Advisory Board, 1994-2000
- Vice President and Board of Directors, Citizens for a Scenic Florida
- Mezzo-Soprano, Master Chorale of South Florida/Florida Philharmonic Orchestra
- The City of Boca Raton Environmental Advisory Board, 1994 - 2000

Reported Cases

- *Restigouche v. Town of Jupiter*, 845 F. Supp. 1540 (S.D. Fla. 1993)
- *Schumacher v. Town of Jupiter*, 643 So. 2d 8 (Fla. 4th DCA 1994)
- *Section 28 Partnership, Ltd. v. Martin County*, 676 So. 2d 532 (Fla. 4th DCA 1996)
- *Woodrow Kantner, Trustee, Carolyn Weaver & YMCA v. Martin County*, 929 F. Supp. 1482 (S.D. Fla. 1993)
- *Town of Jupiter v. Michele Alexander*, 747 So. 2d 395 (Fla. 4th DCA 1998)
- *MediaNet of South Florida, Inc. v. City of Miramar*, Case No. 03cv61689 (S.D. Fla. 2002)
- *Florida Outdoor Advertising, LLC v. City of Boca Raton*, 266 F. Supp. 2d 1376 (S.D. Fla. 2003)
- *Renaissance Charter School, Inc. v. Department of Community Affairs and School Board of Miami-Dade County*, Case No. 1D09-2065 (Fla. 1st DCA 2010)
- *Seay Outdoor Advertising, Inc. v. City of Mary Esther, Florida*, 397 F.3d 943 (11th Cir. 2005) (amicus brief for Citizens for a Scenic Florida)
- *City Of Weston, Florida; Village Of Key Biscayne, Florida; Town Of Cutler Bay, Florida; Lee County, Florida; City Of Deerfield Beach, Florida; City Of*



Miami Gardens, Florida; City Of Fruitland Park, Florida, City Of Parkland, Florida, City Of Homestead, Florida; Cooper City, Florida; City Of Pompano Beach, Florida; City Of North Miami, Florida; Village Of Palmetto Bay, Florida; City Of Coral Gables, Florida; City Of Pembroke Pines, Florida; Broward County, Florida; Levy County, Florida; St. Lucie County, Florida; Islamorada, Village Of Islands, Florida; And Town Of Lauderdale-By-The-Sea, Florida, v. The Honorable Charlie Crist, Governor Of The State Of Florida; The Honorable Kurt S. Browning, Secretary Of State, State Of Florida; The Honorable Jeff Atwater, President Of The Senate, State Of Florida; The Honorable Larry Cretul, Speaker Of The House, State Of Florida, Case No. 2009 CA 2639 (2nd Judicial Circuit, Fla. 2010)

- *Outdoor Media Group, Inc., and Chance Outdoor, LLC, v. City Of Beaumont, California*, Case No. No. 10-56081 (9th Cir. 2011) (amicus brief for Citizens for a Scenic Florida)
- *Atwater v. City of Weston*, 64 So. 3d 701 (Fla. 1st DCA 2011)
- *Reed v. Town of Gilbert*, 135 S.Ct. 884, 190 L.Ed.2d 701, 83 USLW 3365, 2015 WL 2473374 (June 18, 2015) (co-authored amicus brief for American Planning Association)

Awards and Recognitions

- "MDCLC President's Municipal Service Award", MDCLC, 4/13/2017
- "Super Lawyers", *Super Lawyers* 2015 - present
- AV Rated
- Avvo Rating "10.0"
- "Florida SuperLawyer," *Florida SuperLawyers*, 2010-present
- Legal Elite
- Burns Fellowship in Development Planning
- Cited with favor by Florida's First District Court of Appeals in *M&H Profit, Inc. v. City of Panama City*, 28 So.3d 71 (Fla. 1st DCA 2009) for article on Harris Act:
<https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/29DBBCF7355AEB1F85256.EC20049ADD1>.

Press Mentions

- "[Local regulations mixed bag for pot dispensaries](#)," *News Service of Florida* 8/2/2016
- "[The Fallout from the Supreme Court's Sign Ordinance Ruling](#)," *The National Law Journal* 8/14/15
- "With Ruling, It's Time to Revisit Municipal Sign Ordinances," *Daily Business Review*, 7/2/15
- Old Liens May Still Haunt In Zombie Foreclosures," *Daily Business Review*, 11/4/14
- "Municipalities Have Much to Address with Digital Billboards," *Daily Business Review*, 1/3/13
- "House Passes Growth-Management SB360 Do-Over Bills," *Florida Tribune*, 3/16/11
- "The Next Generation of Florida's Growth Management," *The Miami Herald*, 7/25/11
- "Growth Law Challenge Leads to Recommendation to Clarify 'Unfunded Mandates'," *The Current*, 9/16/11
- "Signs of the Times: New Frontier," *Florida Trend*, December 2011



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Practice Areas

- Labor and Employment Law
- Labor and Employment Law Group
- Police Legal Advisement

Bar Admissions

- Florida, 2005
- New York, 1999
- District of Columbia, 2000
- U.S. District Court, Southern District of Florida, 2005
- U.S. District Court, Middle District of Florida, 2006
- U.S. District Court, Southern District of New York, 2001
- U.S. District Court, Eastern District of New York, 2002
- U.S. District Court, Western District of New York, 2003
- U.S. Court of Appeals, 11th Circuit, 2005

Education

- George Washington University Law School
JD, *cum laude*, 1999
Journal of International Law & Economics
- University of Maryland,
BA, Government and Politics, *with honors*,
1996
Honors: Golden Key National Honor Society

Brett J. Schneider

Brett is the Managing Director of the Firm's Palm Beach Office and chairs the Firm's [Labor and Employment Practice Group](#). Brett is Board Certified by The Florida Bar in Labor and Employment Law and he represents public and private sector employers in a wide array of labor and employment law matters.

For his public sector clients, Brett represents employers in collective bargaining negotiations, labor impasse hearings, unfair labor practice proceedings and labor arbitrations. In the last several years, he has successfully negotiated collective bargaining agreements on behalf of the Cities of Aventura, Bal Harbour, Deerfield Beach, Hallandale Beach, Homestead, Juno Beach, Key Biscayne, Lauderhill and North Miami. Brett recently has handled labor impasse proceedings for the Cities of Deerfield Beach, Hallandale Beach and Surfside. He also has achieved significant labor arbitration victories for the Cities of Bay Harbor Islands, Boca Raton, Coconut Creek, Deerfield Beach, Golden Beach, Hallandale Beach, Homestead, Key Biscayne, Lauderhill and Miramar.

Brett has successfully represented public and private sector employers in all phases of employment litigation, up to and including trial, on matters arising under Federal, State and local employment laws such as Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Fair Labor Standards Act, the Family and Medical Leave Act (FMLA) and the Florida Civil Rights Act (FCRA). Brett regularly defends employers in wage and hour suits brought under the Fair Labor Standards Act (FLSA) and has successfully navigated a number of employers through Department of Labor Wage & Hour Audits.

Brett represents public and private sector employers before Federal, State and local administrative agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB) and the Florida Public Employee's Relations Commission (PERC). In addition, Brett regularly consults with and advises employers on a wide array of human resources issues, including personnel policies and procedures, discipline and discharge matters, drug and alcohol testing, employee privacy rights and educational and training programs for managers and supervisors, and he has worked closely with employers to ensure that their practices do not run afoul of Federal, state or local law.

Brett is certified as a Senior Professional in Human Resources (SPHR) by the HR Certification Institute and as a Senior Certified Professional by the Society for Human Resource Management. Brett regularly lectures throughout Florida on various labor and employment law and human resources matters and has been on the cutting edge with regard to the impact of the legalization of medical marijuana on Florida employers.

Prior to joining the Firm, Brett practiced labor and employment law at large national law firms in Washington DC, New York and South Florida.

Published Works

- "Bills Would Reform Government Pension Plan," *South Florida Daily Business Review*, March 29, 2011
- "How Employers Can Keep Themselves From Being You-Tubed," *Workforce Management*, May 11, 2009
- "Acting Affirmative Against Harassment," *New York Law Journal Corporate Counsel*, February 4, 2002
- "Employee Privacy 2001 A Review for Employers," *Lawyer Pilot's Bar Association Journal*, Fall, 2001

Professional Associations

- Human Resource Association of Broward County, 2008 - present



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

- Past-President, 2015
- President, 2014
- President-Elect, 2013
- Legislative Affairs Director, 2011-2012
- The Cooperative Feeding Program, Board-member, 2010 – 2014
- Jewish Federation of South Palm Beach County, Young Adult Division, Board-member, 2012 - 2014
- University of Maryland South Florida Alumni Association, 2010 – Present
- Anti-Defamation League, Glass Leadership Institute, 2008
- Leadership Broward Foundation, Class XXIV, 2005-2006
- South Florida Touchdown Club Foundation, 2005-2006
Board Secretary

Reported Cases

- *Aristyld v. City of Lauderdale*, Case No. 13-12235 (11th Cir. Oct. 23, 2013)
- *Amunraptah v. City of Deerfield Beach*, 93 So. 3d 1040 (Fla. 4th DCA 2012)
- *East Coast Karate Studios, Inc. v. LifeStyle Martial Arts, LLC*, 65 So. 3d 1127 (Fla. 4th DCA 2011)
- *World Rentals and Sales, LLC v. Volvo Construction Equipment Rentals, Inc.*, 517 F.3d 1240 (11th Cir. 2008)
- *Goldberg v. Chong*, 2007 WL 2028792 (S.D. Fla. Jul. 11, 2007)
- *Kaptan v. Danchig*, 796 N.Y.S.2d 706 (N.Y. 2nd Dept., 2005)

Awards and Recognitions

- "Legal Elite", Florida Trend, 2018
- "Super Lawyers," 2018
- "AV Preeminent Rating," *Martindale-Hubbell*, 2017
- "Power Leaders in Law & Accounting," South Florida Business Journal 2017
- "SHRM Senior Certified Professional (SHRM-SCP)," *Society for Human Resources Management*, 2015
- Florida Bar Board Certified in Labor and Employment Law, 2013
- "Senior Professional in Human Resources (SPHR)," *Human Resources Certification Institute*, 2012
- "Florida Rising Star," *Florida SuperLawyers*, 2011-2013
- "Top Up and Comer," *South Florida Legal Guide*, 2009

Presentations

- "Medical Marijuana and Sexual Harassment in the Workplace", Hospitality Financial and Technology Professionals Gold Coast Educational Breakfast, April 2018
- "2018 HR Insights 2018: HR in a [#Metoo](#) World", GMCC, April 2018
- "Employer Drug Testing in the Era of Legal Medical Marijuana", 2018 Connect Business & Leadership Conference
- "Minimizing Employer Liability for Sexual Harassment Claims & Employer Drug Testing in the era of Medical Marijuana", [HFTP Gold Coast Chapter](#) Educational Breakfast
- "Medical Marijuana from the Employer's Prospective", Palm Beach County League of Cities General Membership Meeting
- "Medical Marijuana from the Municipal Employer's Perspective", 36th Annual Florida Municipal Attorneys Association Seminar
- "Medical Marijuana and Your City: Facts, Fiction and Moving Forward", Florida League of Cities' Center for Municipal Research & Innovation (CMRI) Summer Research Symposium
- "Drug Alert - Medical Marijuana in the Work Place", 7th Annual TSG Labor & Employment Law Conference
- "Medical Marijuana and Your City: Facts, Fiction and Moving Forward", FLC Medical Marijuana Symposium
- "Medical Marijuana from the Municipal Employer's Perspective", Florida Municipal Attorneys Association, July 27, 2017
- "Overcoming the Haze of Medical Marijuana in Florida", *Human Resource*



- Association of Broward County's Legal Seminar, May 11, 2017*
- "New Medical Marijuana Law", *Democratic Professionals Network*
 - "Legislative Changes – Medical Marijuana," *International Public Management Association for Human Resources (South Florida Chapter)*, December 1, 2016
 - "Overtime Payment Rules & ADA Accommodations," *International Public Management Association for Human Resources (South Florida Chapter)*, September 13, 2016
 - "New Overtime Rules Mean HR Professionals Will Be Working Overtime!!!", *Human Resource Association of Broward County*, May 6, 2016
 - "What Should You Do If Something Pops Up In A Background Check That Makes You Reconsider Hiring Them," *Florida Public Human Resources Association*, May 4, 2016
 - "What You Should Know About Collective Bargaining Before You Get There," *Palm Beach Counties League of Cities Newly Elected Officials Workshop*, April 27, 2016
 - "Legal Considerations in Performance Management," *International Public Management Association for Human Resources (South Florida Chapter)*, April 5, 2016
 - "Conducting Harassment Investigations," *Florida Public Employer Labor Relations Association*, February 23, 2016
 - "Issues & Pitfalls Associated with Negotiating & Drafting Employment Contracts for Municipal Officials, what Every City Attorney Needs to Know," *Miami-Dade Commission on Ethics & Public Trust Lunch Seminar*, February 18, 2016
 - "Planning for Employees Social Gatherings," *International Public Management Association for Human Resources (South Florida Chapter)*, September 9, 2015
 - "Solving the ADA/FMLA Compliance Mystery," *Florida Public Human Resources Association*, August 4, 2015
 - "EEOC & FLSA Overview," *Florida Public Human Resources Association*, August 1, 2015
 - "What Non-Union Employers Need to Know About the NLRA," *Human Resource Association of Broward County*, May 1, 2015
 - "Medical Marijuana – Workplace Impact," *International Public Management Association for Human Resources (South Florida Chapter)*, April 7, 2015
 - "Got Wellness? Labor Relations Trouble & Legal Pitfalls," *Florida Public Employer Labor Relations Association*, February 9, 2015
 - "Newsworthy HR Caselaw," *International Public Management Association for Human Resources (South Florida Chapter)*, December 9, 2014
 - "Labor Rights and How They Impact Your Crew," *Florida Public Employer Labor Relations Association 39th Annual Training Conference*, January 29, 2013
 - "Hiring and Terminating Employees in the Current Economy," *Fundamentals of Employment Law (Sterling Education Seminar)*, November 13, 2012
 - "FLSA/Wage and Hour Critical Issues," *Fundamentals of Employment Law (Sterling Education Seminar)*, November 13, 2012
 - "FLSA 101," *Florida Public Personnel Association Annual Conference*, July 29, 2012
 - "Legal Updates," *Florida Public Personnel Association Annual Conference*, July 29, 2012
 - "HR Case Update," *International Public Management Association for Human Resources (South Florida Chapter)*, June 28, 2012
 - "Avoiding Liability for overtime under the FLSA," *Certipay HR Seminar*, May 15, 2012
 - "HR Update," *International Public Management Association for Human Resources (South Florida Chapter)*, March 15, 2012
 - "EEOC Investigations," *Florida Public Employer Labor Relations Association 38th Annual Training Conference*, February 6, 2012
 - "What's Up with the Supremes and other Must-Know Legal Developments for HR Professionals," *Human Resource Association of Broward County*, October 14, 2011
 - "Conducting Investigations from A to Z," *Florida Public Personnel*



- Association Annual Conference, July 25, 2011
- "How to Effectively Redesign Benefit Plans," *Florida Government Finance Officers' Association*, June 27, 2011
- "What Constitutes an Enforceable Past Practice," *International Public Management Association for Human Resources (South Florida Chapter)*, May 12, 2011
- "Mandatory vs. Permissive Subjects of Collective Bargaining Negotiations," *Florida Public Employer Labor Relations Association 36th Annual Training Conference*, February 9, 2010
- "Labor Relations Update," *Miami-Dade County City Manager's Association Luncheon*, November 20, 2009
- "The Specifics of Ricci v. DiStefano," *International Public Management Association for Human Resources, South Florida Regional Meeting*, August 25, 2009
- "Recent Legal Developments Affecting Florida Public Employers," *International Public Management Association for Human Resources (South Florida Chapter)*, April 28, 2009
- "What is New with Labor Law," *Miramar / Pembroke Pines HR Consortium*, April 16, 2009
- "Conducting Investigations from A to Z," *Florida Public Employer Labor Relations Association 35th Annual Training Conference*, February 3, 2009
- "Bargaining in Times of Fiscal Crisis – How to Pull a Rabbit out of an Empty Hat," *Florida Public Employer Labor Relations Association 34th Annual Training Conference*, February 5, 2008

Press Mentions

- ["Midsize and Small Law Firms Skip the Lockstep Pay Dance"](#), *Daily Business Review*, 6/20/2018
- ["Avoiding an Ageism Suit"](#), *Human Resource Executive*, April 17, 2018
- ["Zero Tolerance: Be Proactive About Sexual Harassment Policies"](#), *Construction Today*, 2/2018
- ["Employers Reinforce Anti-Harassment Policies"](#), *Sun Sentinel*, 12/10/2017
- ["Attorney Brett Schneider Presents at Three Conferences"](#) - (1) 36th Annual Florida Municipal Attorneys Association Seminar - "Medical Marijuana from the Municipal Employer's Perspective", (2) Florida League of Cities' Center for Municipal Research & Innovation (CMRI) Summer Research Symposium - "Medical Marijuana and Your City: Facts, Fiction and Moving Forward", (3) 7th Annual TSG Labor & Employment Law Conference - "Drug Alert - Medical Marijuana in the Work Place", *Attorney At Law Magazine*, 9/1/2017
- ["Delivery Dudes expands despite growing pains"](#), *Sun Sentinel* 8/1/16
- ["New OT rules to hit Retail Hospitality Cos. hardest"](#), *Law 360* 5/19/16
- ["Will Gay Weddings Lead to Fewer Domestic Partnership Benefits?."](#), *Sun-Sentinel*, 1/22/15
- ["Medical Marijuana Could Cost Employees Their Jobs."](#), *Sun-Sentinel*, 10/30/14
- ["News and Notes"](#), *The Florida Bar News*, 2/1/14
- ["Legal People"](#), *Daily Business Review*, 1/16/14
- ["Weiss Serota Helfman Attorney Brett Schneider Becomes Board Certified in Labor & Employment Law"](#), *CityBizList*, 6/19/13
- ["People on the Move"](#), *South Florida Business Journal*, 6/19/13
- ["People"](#), *Daily Business Review*, 1/3/13
- ["Business Monday: Movers"](#), *Miami Herald*, 12/31/13
- ["People on the Move"](#), *South Florida Business Journal*, 12/26/12
- ["News & Notes"](#), *The Florida Bar News*, 10/1/11
- ["Bills Would Reform Government Pension Plans"](#), *Daily Business Review*, 3/29/11
- ["People on the Move"](#), *Sun-Sentinel*, 8/13/07

Keith W. Davis, Esq.

Board Certified Specialist in City, County and Local Government Law

President and Managing Shareholder - Davis & Ashton, P.A.



Keith W. Davis, Esq., is the President and Managing Shareholder of Davis & Ashton, P.A. Mr. Davis is Board certified by the Florida Bar in the area of City, County, & Local Government Law, and is rated "AV Preeminent" by both his attorney and judicial peers. He obtained his law degree from the College of William and Mary in Virginia in 1992 and was admitted to the Florida Bar that same year. Prior to joining the Firm in

2002, Mr. Davis served as an Assistant Public Defender for the 19th Judicial Circuit of Florida, and later as an Assistant State Attorney for the 15th Judicial Circuit of Florida.

Current Local Government Representation:

- Town of Briny Breezes – General Counsel
- Town of Manalapan – General Counsel
- Town of Mangonia Park – General Counsel
- Town of Palm Beach Shores – General Counsel
- Village of Tequesta – General Counsel
- City of Fort Lauderdale – Special Counsel
- City of Homestead – Special Counsel
- City of Miramar – Special Counsel
- City of Riviera Beach – Special Counsel

Current Special District Representation:

- Florida Green Finance Authority – General Counsel
- Treasure Coast Regional Planning Council – General Counsel

Current Special Magistrate Representation:

- Martin County
- City of Port St. Lucie
- City of Pahokee
- Town of Loxahatchee Groves
- City of Lake Worth
- City of West Palm Beach

Representative Successful Litigation Matters:

- *Federico v. Town of Manalapan*, 502016CA009393 & 009397
- *Navellier v. Town of Manalapan*, U.S. SC 14-1678
- *Byrd Family Trust v. Town of Jupiter*, 4DCA 13-2570
- *City of Lake Worth v. Save Neighborhood*, 4DCA 07-5027
- *City of Delray Beach v. St. Juste*, 4DCA 07-2985
- *City of Atlantis v. FRIMA Group, Inc.*, 502007CA000022
- *Town of Lantana v. Bre Sky Bo Holdings*, 502004CA002312

Length of Practice/Employment:

26-year member in good standing with the Florida Bar

16 years practicing with Davis & Ashton, P.A.

16 years practicing in municipal law.

References:



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Village of Tequesta
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Treasure Coast Regional Planning Council

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mbusha@tcrpc.org



Ken Metcalf, Town Manager
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(561) 848-1235

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Attorney Experience – Keith W. Davis

Mr. Davis is a Florida Bar Board Certified Specialist in City, County and Local Government Law. He is a member of the City, County and Local Government Section of the Florida Bar and serves on the Executive Committee of the Florida Municipal Attorneys Association. He is admitted to practice in all Florida courts as well as the Federal Southern and Northern Districts of Florida. He has had no disciplinary action ever imposed upon him by any Bar including the Florida Bar and the Federal Bar. Mr. Davis has never been sued for malpractice and has never been involved in any manner with a malpractice proceeding. The same can be said for all members of his Firm. For the past 16 years, Mr. Davis has successfully focused his practice on representing local government entities including municipalities and special districts, and has developed a reputation as an exceedingly professional and talented attorney. He is rated "AV Preeminent" by his attorney



and judicial peers through Martindale-Hubbell. Mr. Davis is a regular speaker at local and statewide seminars on a variety of topics involving local government.

In the area of land use, Mr. Davis is extremely experienced with comprehensive plan requirements and zoning codes. He has prepared both Evaluation and Appraisal Reports and plan amendments based thereon for several of his clients. Additionally, he regularly works with local government staff in the upkeep and revision of all aspects of his clients' comprehensive plans, from future land use elements to capital improvement updates and everything in between, constantly keeping up with the changes in law to Chapter 163, *Florida Statutes*. He has overseen and directed numerous re-zonings, subdivisions and plat approvals, and is currently working on such projects in both the Village of Tequesta and the City of Atlantis. Mr. Davis has completely re-written zoning codes for the Towns of Manalapan and Palm Beach Shores, and has seen to the legal sufficiency of countless plan and code amendments over the years. He has prepared floodplain management codes for all of his clients. Mr. Davis has also successfully defended the Town of Mangonia Park against environmental hazard violations alleged by the Environmental Protection Agency, resulting in the ultimate dismissal of all charges. Mr. Davis has assisted his clients with TCRPC projects and most recently has been involved with the Village of Tequesta's U.S. 1 project. In the past Mr. Davis assisted the Town of Mangonia Park in working with TCRPC to present a conceptual "Transit Oriented Development" concept for the former jai alai site.

In the area of contracts, Mr. Davis has negotiated and prepared many contracts with both private entities and with other governments on behalf of his clients. Notably, Mr. Davis has negotiated and written complex contracts for cellular tower siting between the Village of Tequesta and several telecommunications providers, as well as complex contracts for the erection and use of billboard signs in the Town of Mangonia Park. Mr. Davis has also negotiated and written employment contracts for police and fire chiefs in several of the towns he represents, and has negotiated and written town manager contracts. Mr. Davis has also negotiated, written and revised countless interlocal agreements between various governmental entities. Mr. Davis also assisted in the drafting of the interlocal agreement that created the Florida Green Finance Authority, a special district that facilitates PACE financing in municipalities and counties throughout the state. Mr. Davis has also revised or prepared interlocal agreements for the provision of fire rescue service, law enforcement service and utility service.

In the area of intergovernmental conflicts and relations, Mr. Davis has closed interlocal agreements between the Village of Tequesta and the Town of Jupiter Inlet Colony for both fire rescue service and utility service. Mr. Davis recently assisted the Village of Tequesta with an extremely complex tri-party agreement with the Town of Jupiter Inlet Colony and the Loxahatchee River Environmental Control District for the provision and rehabilitation of utility infrastructure in the Inlet Colony. He also recently worked to close the restatement and renewal of an interlocal agreement between the Town of Manalapan and the Town of South Palm Beach for wastewater service. Mr. Davis has worked on many successful annexations on behalf of his clients; both voluntary and via interlocal agreement with Palm Beach County. Finally, Mr. Davis works with the Town of Mangonia Park to foster intergovernmental relations with both the City of Riviera Beach and the City of West Palm Beach regarding the Town's water service interconnect arrangements.

Mr. Davis has written and reviewed hundreds of ordinances and resolutions for his clients. Recently and notably, working with the Palm Beach County League of Cities, Inc. and municipal leaders throughout the county, Mr. Davis in association with Jennifer Ashton, wrote and revised resolutions advocating that Palm Beach County remain as a member of TCRPC and not move its membership to the South Florida Regional Planning Council. Beyond this, in 2014 Mr. Davis concluded a two-year project for the Village of Tequesta virtually re-writing and updating the Village's entire code of ordinances. This project required the drafting and

adopting of dozens of ordinances. Mr. Davis has also prepared a number of resolutions regarding the "All Aboard Florida" project. There are many other examples, from ordinances that create code amendments, to Charter amendments, to resolutions making political assertions.

Mr. Davis is well versed on topics of sunshine law, public records, procurement, ethics and meeting procedure, and 501(c)(3) operations. He regularly advises the governing bodies that he represents on many of these topics, and has been a speaker both locally and for the Florida League of Cities on these topics as well. Between 2003 and 2007, Mr. Davis helped create, and served on the Board of Directors, of two 501(c)(3) charter school non-profit corporations and is familiar with these types of organizations.

As general counsel for his various clients, in addition to the experience described above, Mr. Davis is also well versed in matters of constitutional law (speech and religious issues), civil rights (fair housing and ADA discrimination issues), personnel issues (especially the relationships between elected officials and municipal staff that arise in the council-manager form of municipal government), and public finance (taxation and borrowing).

Jennifer G. Ashton, Esq.
Shareholder - Davis & Ashton, P.A.



Jennifer G. Ashton, Esq., is a Shareholder of Davis & Ashton, P.A. Ms. Ashton obtained her law degree and graduated Magna Cum Laude from The Florida State University College of Law in 2005. She was admitted to the Florida Bar that same year. Ms. Ashton specializes in local government law, land use, civil litigation and appellate law.

Current Local Government Representation:

- Village of Royal Palm Beach – General Counsel
- City of Atlantis – General Counsel

Current Agency Representation

- Palm Beach County League of Cities, Inc. – General Counsel

Current Special Magistrate Representation:

- City of West Palm Beach
- Town of South Palm Beach – Assistant General Counsel

Representative Successful Litigation Matters:

- *West Construction, Inc. v. The Village of Royal Palm Beach, Florida*, Case No. 502013CA015011XXXXMB (Construction/Contract Litigation)
- *Cielo Madera Land Trust v. Town of Manalapan*, Case No. 502012CA013455XXXXMB (Building Permit Litigation)
- *Amicus Briefs filed by the Palm Beach County League of Cities, Inc. on behalf of North Palm Beach* (Case No. 4D10-4721 – Vested Rights After Annexation), and *Boca Raton* (Case No. 4D12-4554 – Referendum Process for Development Orders)
- *City of Lake Worth vs. City of Atlantis, Town of Manalapan, Town of Lantana, Town of Palm Beach, Village of Palm Springs, Town of South Palm Beach, and Palm Beach State College*, Case No. 502010CA020435XXXXMB (Utilities / Contract Litigation)
- *Mark Hewitt v. Town of South Palm Beach*, Case No. 502010AP900031AXXXMB (Cyclist Rights Appeal)

Length of Practice/Employment:

13-year member in good standing with the Florida Bar
8 years practicing with Davis & Ashton, P.A.
8 years practicing in municipal law

References:



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Brian Moree, City Manager
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Attorney Experience – Jennifer G. Ashton

Ms. Ashton is a member of the City, County and Local Government Section of the Florida Bar and the Florida Municipal Attorneys Association. She is admitted to practice in all Florida courts as well as the Federal Southern District of Florida. She has had no disciplinary action ever imposed upon her by any Bar including the Florida Bar and the Federal Bar. Ms. Ashton has never been sued for malpractice and has never been involved in any manner with a malpractice proceeding. In 2009, Ms. Ashton was named a "Rising Star" in Law and Politics by Florida Super Lawyers Magazine. In 2011, she received the Palm Beach County League of Cities "Home Rule Award" for her service on the Palm Beach County Inspector General and Ethics Commission Ordinance Drafting Committee. Since 2010, Ms. Ashton has successfully focused her practice on representing local government entities, as well as the Palm Beach County League of Cities, Inc., and has developed a reputation as an exceedingly professional and talented attorney among both clients and peers.

In the area of land use, Ms. Ashton has extensive experience in overseeing numerous future land use map amendments, re-zonings, plat approvals, and comprehensive plan and zoning code text amendments for the Village of Royal Palm Beach and the Town of Mangonia Park.

In the area of contracts, Ms. Ashton has negotiated and prepared numerous interlocal agreements, vendor contracts and settlement agreements on behalf of the Firm's municipal clients.

In the area of conflicts, Ms. Ashton has extensive experience in litigation and appellate matters. By way of example, Ms. Ashton successfully assisted in the representation of six local governments in litigation against the City of Lake Worth. This case involved a dispute regarding the City of Lake Worth's charges to its municipal partners for the Subregional Wastewater Transmission Facilities. During this litigation, Ms. Ashton helped coordinate the Chapter 164 conflict resolution proceedings for the governing bodies involved. Ms. Ashton also assisted in drafting the interlocal agreement/settlement agreement that resolved the case.

In the area of ordinance/resolution preparation, Ms. Ashton has drafted numerous ordinances and resolutions on behalf of the Firm's municipal clients and the Palm Beach County League of Cities, Inc. These ordinances and resolutions involve a wide range of topics

from general land use matters to seeking support from state agencies for certain development and road projects.

Ms. Ashton is well versed in the Public Records Act, the Sunshine Law, and the Florida Code of Ethics for Public Officers and Employees. Ms. Ashton regularly advises and trains municipal elected and appointed officials and employees on these topics. In 2011, Ms. Ashton further assisted in drafting the Palm Beach County Code of Ethics on behalf of the Palm Beach County League of Cities, Inc.

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 11/4/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | |
|--|---|
| PRODUCER RISK STRATEGIES COMPANY/PHS 228943 P: (866) 467-8730 F: (888) 443-6112 PO BOX 29611 CHARLOTTE NC 28229 | CONTACT NAME: PHONE (A/C, No, Ext): (866) 467-8730 FAX (A/C, No): (888) 443-6112 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE: NAIC# INSURER A: Sentinel Ins Co LTD INSURER B: Hartford Accident & Indemnity Co INSURER C: INSURER D: INSURER E: INSURER F: |
|--|---|

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR | TYPE OF INSURANCE | ADDD | SUBR | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|------|---|------|------|---------------|-------------------------|-------------------------|--|
| A | <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liab | | | 21 SBA BV7690 | 11/19/2017 | 11/19/2018 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/PROP AGG \$2,000,000 |
| | GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER: | | | | | | |
| | <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | 21 SBA BV7690 | 11/19/2017 | 11/19/2018 | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEF: <input checked="" type="checkbox"/> RETENTION \$10,000 | | | 21 SBA BV7690 | 11/19/2017 | 11/19/2018 | EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/IN OFFICER/MEMBER EXCLUDED? (Mandatory in NJ) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | 21 WEC AJ4308 | 11/19/2017 | 11/19/2018 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate holder is Listed as an additional insured per the Business Liability coverage form SS0008 attached to this policy. Notice of cancellation is provided by form SS1224. A blanket waiver of subrogation applies per form WC00031 and a notice of cancellation applies per form WC990615.

| | |
|---------------------------|---|
| CERTIFICATE HOLDER | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Susan L. Castaneda</i> |
|---------------------------|---|



WEISSER-01

MCLA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/11/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|--|--|--|--|
| PRODUCER Gemini Risk Partners, LLC 39572 Woodward Avenue Suite 201 Bloomfield Hills, MI 48304 | | CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS: | |
| INSURED Weiss Serota Helfman Cole & Bierman, P.L. 2525 Ponce de Leon Blvd Suite 700 Coral Gables, FL 33134- | | INSURER(S) AFFORDING COVERAGE INSURER A: Endurance American Specialty Ins Co NAIC # 41718 INSURER B: Old Republic Insurance Company 24147 INSURER C: INSURER D: INSURER E: INSURER F: | |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR (INSR WVD) | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | | |
|----------|--|----------------------|---------------|-------------------------|-------------------------|--|------------------------|-----------------------|
| | COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | | | | | EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$ | | |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ | | |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ | | |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NJ) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | | | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ | | |
| A | Lawyers/Professional Liability | N | N | LPL10003941605 | 4/24/2018 | 4/24/2019 | \$3,000,000 Each Claim | \$3,000,000 Aggregate |
| B | Excess Professional Liability | N | N | ORPRO40688 | 4/24/2018 | 4/24/2019 | \$1,000,000 Each Claim | \$1,000,000 Aggregate |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/21/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Northeast, Inc.
New York NY Office
199 Water Street
New York NY 10038-3551 USA

CONTACT
NAME:
PHONE
(A/C. No. Ext.): (866) 283-7122 FAX (A/C. No.): (800) 363-0105
E-MAIL
ADDRESS:

INSURED
MCImetro Access Transmission
Services Corp.
1095 Avenue of the Americas
New York NY 10036 USA

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|--------|
| INSURER A: National Union Fire Ins Co of Pittsburgh | 19445 |
| INSURER B: New Hampshire Insurance Company | 23841 |
| INSURER C: American Home Assurance Co. | 19380 |
| INSURER D: Illinois National Insurance Co | 23817 |
| INSURER E: | |
| INSURER F: | |

COVERAGES

CERTIFICATE NUMBER: 570071855122

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Coverage is Included GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | | | GL4611607 | 06/30/2018 | 06/30/2019 | EACH OCCURRENCE \$3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$3,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$3,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS - COMPROP AGG \$3,000,000 |
| A | AUTOMOBILE LIABILITY | | | CA 461-15-19 AOS CA 461-15-20 MA CA 461-15-21 VA See Next Page | 06/30/2018 | 06/30/2019 | COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) |
| | UMBRELLA LIAB EXCESS LIAB DED RETENTION | | | | | | EACH OCCURRENCE AGGREGATE |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N N | N/A | WC014590551 AOS WC014590550 CA | 06/30/2018 | 06/30/2019 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Named Insured includes: MCImetro Access Transmission Services Corp. dba Verizon Access Transmission Services. Davis & Ashton, P.A. is included as an Additional Insured with respect to the General Liability policy.

CERTIFICATE HOLDER

CANCELLATION

Davis & Ashton, P.A.
Attn: Keith W. Davis, Esq., Attorney
701 Northpoint Parkway, Suite 205
West Palm Beach FL 33407 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Northeast, Inc.

Holder Identifier:

Certificate No: 570071855122

Page 1 of 1

ADDITIONAL REMARKS

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|-------------------------------|--------|
| INSURER | |
| INSURER | |
| INSURER | |
| INSURER | |

| INSR ID# | TYPE OF INSURANCE | ADDL INSD | SUDX WYD | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS | |
|-------------|----------------------|--------------|-------------|---------------------------------------|---|--|--------|--|
| | AUTOMOBILE LIABILITY | | | | | | | |
| A | | | | CA 774-22-65 NH - Primary | 06/30/2018 | 06/30/2019 | | |
| A | | | | CA 774-22-66 NH - Excess | 06/30/2018 | 06/30/2019 | | |
| | WORKERS COMPENSATION | | | | | | | |
| D | | N/A | | WC014590552 FL | 06/30/2018 | 06/30/2019 | | |
| B | | N/A | | WC014590553 ME | 06/30/2018 | 06/30/2019 | | |
| B | | N/A | | WC014590549 NJ, NY, TX, VA | 06/30/2018 | 06/30/2019 | | |
| B | | N/A | | WC014590554 MA, ND, OH, WA, WI, WY | 06/30/2018 | 06/30/2019 | | |
| | | | | | | | | |
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| | RECEIVED | | | | | | | |
| | JUL 05 2018 | | | | | | | |

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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY,
FLORIDA

CASE NO. CACE 15-006120 (03)

MARIA HERNANDEZ and
ENRIQUE HERNANDEZ,

Plaintiffs,

v.

CITY OF WESTON,

Defendant.

CITY OF WESTON'S MOTION FOR SUMMARY JUDGMENT

Defendant, City of Weston, Florida (the "City"), by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.510(c), hereby submits its Motion for Summary Judgment and in support thereof provides as follows:

I. Introduction.

A. Relevant Factual & Procedural Background.

This civil action arises out of Plaintiffs Maria and Enrique Hernandez's negligence claim against the City based on their allegations that Maria Hernandez tripped and fell on the evening of March 27, 2014 while she was jogging in the dark at night on what they allege was a negligently maintained City sidewalk.

The City clearly had no actual or constructive knowledge of any alleged defect with the sidewalk in the area Plaintiffs claim Ms. Hernandez fell, as: (1) a City inspection three months prior to the incident found no defects on the sidewalk, (2) a City inspection less than one month after the incident also found no defects on the sidewalk, (3) no repairs were made to the sidewalk.

EXHIBIT

4

after the alleged incident because there was no defect or dangerous condition on the sidewalk to repair, and (4) not a single other trip and fall in the area where Plaintiffs allege the incident occurred has ever been reported to the City (either before or after Plaintiffs' alleged trip and fall).

In addition, prior to the alleged incident both Plaintiffs jogged along that same sidewalk four to five times per week for one year. Notwithstanding having jogged the same route along the same sidewalk over 200 times prior to the alleged incident, both Plaintiffs testified in their depositions that they never noticed any problem or defect with the sidewalk prior to the incident, and neither Plaintiff ever reported any problem or defect with the sidewalk to the City prior to the incident.

On April 5, 2015, Plaintiffs filed a Complaint against the City. After the City's Motion to Dismiss was granted, Plaintiffs filed an Amended Complaint with the following causes of action: Count I (Negligence); and Count II (Loss of Consortium).

B. Summary of Argument.

Summary judgment should be entered in favor of the City with respect to all counts brought by Plaintiffs in the Amended Complaint.

First, summary judgment should be entered in favor of the City because the evidence clearly and irrefutably shows that the City had no actual or constructive knowledge of an alleged defect in the sidewalk. Moreover, the evidence demonstrates that there was no defect with the sidewalk, and, further, Plaintiffs' deposition testimony establishes that they jogged along the sidewalk over 200 times prior to the incident without noticing (and not reporting) any defect with the sidewalk.

Second, summary judgment should be entered in favor of the City because the mere happening of an accident or incident does not give rise to an inference of negligence. Neither Plaintiff could identify precisely where the incident occurred, Mr. Hernandez admits he did not witness his wife fall, and Mrs. Hernandez testified that "I was looking straight ahead" and "I just know I fell." Plaintiffs' case is based merely on the alleged occurrence of a fall, which, by law, does not constitute negligence, and, accordingly, this Court should grant summary judgment in the City's favor.

II. Legal Argument.

A. Applicable Standard for Summary Judgment.

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law." *See Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); *see also Castellano v. Raynor*, 725 So. 2d 1197, 1199 (Fla. 2d DCA 1999) (explaining "where the material facts are not in dispute and the moving party is entitled to judgment as a matter of law, it is the court's duty to enter summary judgment."); *Delgado v. Laundromax, Inc.*, 65 So. 3d 1087, 1088 (Fla. 3d DCA 2011) (affirming the granting of summary judgment in favor of property owner in a slip-and-fall case).

B. This Court Should Grant Summary Judgment in Favor of the City Because The City Had No Actual or Constructive Knowledge of the Alleged Defect in the Sidewalk.

1. Summary Judgment Should Be Granted When There Is No Actual Or Constructive Knowledge of an Alleged Defect.

"In order to establish a prima facie claim for negligence, a plaintiff must show that defendant had either actual or constructive notice of the alleged negligent condition." *See*

Hernandez v. City of Weston
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Miami-Dade County v. Herndon, 776 So. 2d 360, 360 (Fla. 3d DCA 2001); *see also Grier v. Metro. Dade County*, 660 So. 2d 273, 275 (Fla. 3d DCA 1995) (explaining in a trip-and-fall case "the County is entitled to summary judgment where it has no actual or constructive notice of the defect.").

In *San Miguel v. City of Miami*, 760 So. 2d 979 (Fla. 3d DCA 2000), the plaintiff filed a negligence action against the City based on a trip-and-fall allegedly caused by a defective condition on a City sidewalk. *See id.* at 980. In response to the plaintiff's claim that she tripped-and-fell due to a defective condition on the sidewalk:

The City filed a motion for final summary judgment on the grounds, among other things, that the record was devoid of any evidence of its actual or constructive knowledge of the dangerous condition. The trial court granted the motion and this appeal followed.

The record before us is totally devoid of any evidence that the City had actual or constructive notice of this alleged dangerous condition. For that reason, we affirm the summary judgment.

See id. at 980; *see also Herndon*, 776 So. 2d at 360 (explaining that judgment should have been entered in favor of the County because the plaintiff failed to "prove actual or constructive knowledge on the part of the County for the trip and fall."); *Grier*, 660 So. 2d at 275 (explaining the public policy that cities cannot be held liable for a defective condition on a sidewalk when there has been no actual or constructive knowledge of the alleged defect because "cities are not insurers of those who use the streets.").

2. The City Had No Actual or Constructive Knowledge of an Alleged Defect with the Sidewalk.

The evidence in the record clearly shows that the City (and Plaintiffs for that matter) had no actual or constructive knowledge of any alleged defect in the sidewalk anywhere in the area where Plaintiffs claim the incident occurred. More specifically, the following clearly supports the City's position that it did not have actual or constructive knowledge of any alleged defect in the sidewalk:

1. **City's Inspection Prior to Incident Found No Defects:** The City conducted an inspection of the sidewalk along South Post Road three months prior to the incident and found no defects of any kind in the general area where the incident allegedly occurred. *See* City's Responses to Interrogatory No. 9 (attached as Exhibit 1); *see also* Affidavit of Darrel L. Thomas, ¶ 4 (attached as Exhibit 2).
2. **City's Inspection Subsequent to the Incident Found No Defects:** The City conducted an inspection of the sidewalk along South Post Road less than one month after the incident and found no defects. *See* City's Response to Interrogatory No. 10; *see also* Affidavit of Mr. Thomas, ¶ 5; Deposition of Darrel L. Thomas ("Depo. of Mr. Thomas," attached as Exhibit 3), p. 20, ll. 3-25.
3. **No Repairs Made to the Sidewalk Because There Were No Defects:** From one year prior to the alleged incident to the present day, the City has made no repairs to the sidewalk in the general area where Plaintiffs claim the incident occurred because there was no defect or misleveling to repair. *See* City's Response to Interrogatory No. 11; *see also* Affidavit of Mr. Thomas, ¶ 6; Depo. of Mr. Thomas, p. 15, ll. 19-21.
4. **No Trip-and-Fall Incidents Prior to this Incident:** Prior to the incident that is the subject of this lawsuit, the City is not aware of any other trip-and-fall incidents in that area of the sidewalk along South Post Road. *See* City's Response to Interrogatory No. 14; *see also* Depo. of Mr. Thomas, p. 15, l. 22 – p. 16, l. 4.
5. **No Trip-and-Fall Incidents Subsequent to this Incident:** Subsequent to the incident that is the subject of this lawsuit, the City is not aware of any other trip-and-fall incidents in that area of the sidewalk along South Post Road. *See* City's Response to Interrogatory No. 14; *see also* Depo. of Mr. Thomas, p. 15, l. 22 – p. 16, l. 4.

In summary: (1) the City had no actual or constructive knowledge of any defect with the sidewalk either prior to or subsequent to the incident; (2) no other trip-and-falls have been reported in this area either before or after the incident that is the subject of this lawsuit; (3) no repairs were made because there was nothing to repair; and (4) City inspections both before and after the incident found no defects with the sidewalk in the general area at issue in this lawsuit.

3. Plaintiffs Admitted to Jogging Along the Sidewalk Over 200 Times Prior to the Incident and Never Noticing Any Defects with the Sidewalk.

Plaintiffs' deposition testimony revealed they lived one-quarter of a mile from where the incident allegedly occurred. *See* Deposition of Maria Hernandez ("Depo. of M. Hernandez," attached hereto as Exhibit 4), p. 9, ll. 7-9. In addition, Plaintiffs testified that prior to the incident they routinely jogged four to five times per week for a year and always took the same jogging route along the same area of the sidewalk where the incident occurred. *See* Depo. of M. Hernandez, p. 33, ll. 9-23; *see also* Depo. of Enrique Hernandez ("Depo. of E. Hernandez," attached as Exhibit 5), p. 10, ll. 4-12.

Notwithstanding the fact that Plaintiffs both jogged along the area where the incident allegedly occurred over 200 times prior to the incident, neither of the Plaintiffs noticed anything wrong with the sidewalk and neither Plaintiff ever reported any issue with the sidewalk to the City prior to the incident. More specifically, Plaintiff Enrique Hernandez testified as follows:

- Q. Prior to the incident on March 27th of 2014, how many times per week would you and your wife jog together on South Post Road?
- A. Prior to the incident, about four or five times a week.

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City of Weston's Motion for Summary Judgment

Q. How long had you been jogging along the sidewalk on South Post Road with your wife four to five times per week prior to the incident?

A. For about a year.

Q. Did you always take the same route along the sidewalk on South Post Road?

A. Yes.

Q. Prior to the incident on March 27th, 2014, had you ever contacted the City of Weston to inform them that there was any issue you had with the sidewalk along South Post Road?

A. No, I didn't.

Q. Did you ever notice a problem with the sidewalk along South Post Road prior to the incident?

A. No, I didn't.

See Depo. of E. Hernandez, p. 10, ll. 4-14, 18-20; p. 14, ll. 12-20.

Plaintiff Maria Hernandez testified as follows:

Q. This was not the first time that you jogged along the sidewalk on South Post Road, correct?

A. Correct.

Q. Prior to the incident on March 27th of 2014, how many times had you jogged along the sidewalk on South Post Road?

A. Four or five times per week.

Q. I believe you testified that you had jogged along that sidewalk four to five times per week for approximately one year; is that correct?

A. About, like I said, like I said about a year.

Q. In jogging along the sidewalk on South Post Road four to five times per week prior to the incident, did you ever notice any problems with the sidewalk?

A. Have I noticed any problem with the sidewalk?

Q. Before the incident.

A. No.

Q. Did you ever contact the City of Weston prior to the incident to inform them of any problem you saw with the sidewalk?

A. No.

Q. Did you ever notice any misleveling between the flags of the sidewalk prior to the incident?

A. No.

See Depo. of M. Hernandez, p. 33, ll. 3-12, 18-23; p. 13, l. 22 – p. 14, ll. 10, 15-18.

Thus, in addition to the City having no actual or constructive knowledge of any alleged defect with the sidewalk, Plaintiffs both admit that they jogged along the sidewalk four to five times per week for a year prior to the incident and, in that time, neither of them noticed any problem with the sidewalk and, accordingly, Plaintiffs never reported any problems with the sidewalk to the City prior to the alleged incident.

C. This Court Should Grant Summary Judgment in Favor of the City Because Plaintiffs Cannot Specifically Identify Where the Incident Supposedly Occurred or What Caused It.

"The mere happening of an accident does not give rise to an inference of negligence." *See Vermeulen v. Worldwide Holiday, Inc.*, 922 So. 2d 271, 273 (Fla. 3d DCA 2006); *see also Delgado*, 65 So. 3d at 1088. Moreover, "mere speculation of an inference of negligence is insufficient to defeat summary judgment." *See Vermeulen*, 922 So. 2d at 63.

As explained above, all the evidence in this case clearly shows that the City had no actual or constructive knowledge of any alleged defect in the sidewalk prior to the incident (because a defect did not exist) and both Plaintiffs admit they never noticed and never reported any defect in the sidewalk in the more than 200 times they both jogged on the sidewalk prior to the incident.

In addition, neither of the Plaintiffs were able to show precisely where the incident allegedly occurred from any of the pictures produced in this case. Further, Plaintiffs were unable to identify when many of the pictures were taken, who took the pictures, and even what some of the pictures depicted. *See Depo. of E. Hernandez*, p. 39, l. 1 – p. 44, l. 6; *see also Depo. of M. Hernandez*, p. 43, l. 22 – p. 55, l. 24.

According to their deposition testimony, Plaintiffs were the only people present at the time of the alleged incident, and Mr. Hernandez admitted that he did not witness his wife actually trip and fall. Specifically, Mr. Hernandez testified as follows:

Q. Did you witness your wife's fall on March 27th, 2014?

A. No.

See Depo. of E. Hernandez, p. 16, ll. 9-11.

Mrs. Hernandez was unable to testify what exactly caused her to fall in the dark that evening:

Q. Do you know why you fell?

A. My shoes got stuck somewhere.

Q. Do you know where it was that your right shoe got stuck?

A. I was jogging on the pavement itself. I just know I fell.

Q. Do you recall what you were looking at at the time?

A. Looking? I'm not sure, just the — I was just looking straight ahead.

See Depo. of M. Hernandez, p. 20, l. 24-25; p. 21, ll. 8-11, 21-24.

Plaintiffs' failure to be able to identify precisely where on the sidewalk the incident allegedly occurred, how it occurred, and what allegedly caused it, prevents the City from fully investigating the allegations and further precludes the City from being able to fully defend against the claims brought by Plaintiffs in this lawsuit.

Plaintiffs' case is based merely on the alleged occurrence of a fall, which, by law, does not constitute negligence, and, accordingly, summary judgment should be entered in favor of the City.

III. Conclusion.

WHEREFORE, the City of Weston respectfully requests this Court enter an order:
(1) granting summary judgment in favor of the City of Weston and against Plaintiffs with respect

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City of Weston's Motion for Summary Judgment

to all claims brought by Plaintiffs in the Amended Complaint, and (2) granting such other and further relief in favor of the City of Weston as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via E-Mail on the 13th day of November, 2017 to: **Walter G. Campbell, Jr., Esq., and Brent M. Reitman, Esq.,** Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A., *Attorneys for Plaintiffs*, 12 S.E. 7 St., Suite 801, Fort Lauderdale, Florida 33301 (pleadings-WGC@krupnicklaw.com)

WEISS SEROTA HELFMAN COLE &
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Lewis Stroud & Deutsch, P.L.

Gary H. Oldehoff, Esq.

Direct Dial: 561 826 2803

July 19, 2018

Village of Indiantown
PO Box 398
16550 W Warfield Blvd
Indiantown, FL 34956-0398

ATTN: Village Attorney Search

Honorable Mayor and Council Members:

I would be pleased if the City Council would accept my application and proposal to serve as the Village Attorney, and would be honored to be selected to serve the Council in this position.

As a new municipality, you face significant challenges and I suggest you need special, highly qualified, highly experienced counsel at this time and for the foreseeable future. You need an attorney with a very wide knowledge and experience in all facets of Florida municipal law, including municipal finance and transactions, land use and zoning law, litigation, ordinance and code drafting, public procurement, government contracts, and public employment, eminent domain, the Government in the Sunshine Law, economic development and redevelopment, strategic planning, technology, and negotiations with developers and labor organizations. I have more than 30 years of proven experience in these areas of law. And as a resident of Stuart who has lived in this county since 1989, I am extremely familiar with Indiantown and its unique character and what makes Indiantown a very, very special place. My first visit to Big Mound Park was a week after I began working with the Martin County Attorney's Office in September 1989. I had the pleasure of talking to Bill Owens on his porch. I spent hours with Timer Powers. I talked to many residents in the community. And I've dined and stayed at the Seminole Inn.

A very large portion of my firm's work is serving local governments and constitutional officers. Nancy Stroud has been providing legal services to the new Village of Estero since its creation on December 31, 2014.

In your notice, you have stated that

The ideal Village Attorney candidate will have at least five years of legal experience as a city, county, or local government attorney, or assistant attorney, and significant work in the public sector, working knowledge and experience in contract formation and negotiation, public liability, litigation, labor and human

One Lincoln Place, 1900 Glades Road, Suite 251, Boca Raton, Florida 33431

Telephone — 561 826 2800 Facsimile — 561 826 2828

resources, land use, government finance, economic development and redevelopment, strategic planning, and technology are all desirable.

I have all the knowledge and experience you need. I am immediately available and I can accommodate any time commitment the Village will need.

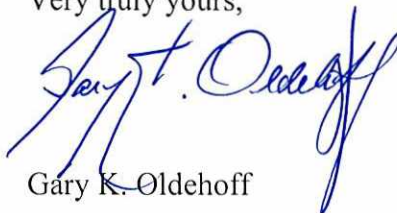
The hourly rate I propose is \$235.00 per hour. No other attorney will work on this matter without your prior consent. The paralegal hourly rate is \$85.00 hour. It is our practice to charge for actual time expended, in tenths of hours, but not less than 1/10 of an hour for each activity. I will also need to be reimbursed for any out-of-pocket expenses incurred in connection with the provision of legal services, including but not limited to long distance telephone charges, postage, outside printing, and photocopying. In-house photocopying will be billed at a rate of ten cents (.10) per page. Any travel, per diem, mileage, or meal expenses, which may be reimbursable, will be billed in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes. I will bill monthly on or about the first of the month.

Neither I nor my firm have any conflicts of interest that would affect or interfere with our ability to give the Village our very best counsel and services.

Neither I nor any other member of my firm has been disciplined by the Florida Bar, nor have we been found to have violated any Rule of the Bar. We have never been sanctioned or cited for contempt by a court.

Again, I appreciate the opportunity to be considered for the position of Village Attorney and would be honored to serve you. I will be happy to provide any additional references or information you may want.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Gary K. Oldehoff", with a stylized flourish at the end.

Gary K. Oldehoff

GKO/tfgw

Enclosures:

Attorney Bio
Florida Supreme Court Brief
US Supreme Court Brief

Lewis Stroud & Deutsch, P.L.

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Consent Agenda

AGENDA ITEM TITLE: Village Council Minutes of Budget Workshop and Regular Council Meeting of
July 12, 2018 for approval.

SUMMARY OF ITEM:

RECOMMENDATION: Approve Minutes

PREPARED BY: Cherie White

DATE: 7/20/2018

REVIEWED BY:

DATE:

APPROVED BY:

DATE:

ATTACHMENTS:

Description

07/12/2018 Budget Wrkshop

07/12/2018 Regular Meeting



**VILLAGE OF INDIANTOWN
AGENDA
SPECIAL VILLAGE COUNCIL MEETING
July 12, 2018, 6:00 PM**

ROLL CALL

Cherie White, Village Clerk

PRESENT

Council Member Clarke, Council Member Hernandez, Mayor Gibbs Thomas, Vice Mayor Stone, Village Manager Teresa Lamar-Sarno and Village Attorney Paul Nicoletti

ABSENT

Council Member Dowling

PLEDGE OF ALLEGIANCE Mayor Gibbs Thomas led the council in the pledge of allegiance.

Mayor Gibbs Thomas recognized the following dignitaries in the audience; Martin County Commissioner Harold Jenkins, County Administrator Taryn Kryzda, and Martin County School Board Member Michael DiTerlizzi.

PROCLAMATIONS, AWARDS AND SPECIAL PRESENTATIONS

1. VILLAGE OF INDIANTOWN DRAFT 2019 BUDGET

Village Manager Teresa Lamar-Sarno gave a visual presentation of the draft 2019 Village of Indiantown budget. She highlighted the proposed millage rate of 1.25, and a taxable value rate of 2.381 that has been reported back from the state. The MSTU is a new item for the village and is .3038. She explained some options for the village to consider in the future as the village continues to develop are the Fire Rescue and Parks. She gave a brief overview of the proposed revenue and expenditures for Fiscal Year 2018/2019, to include maintaining the Village stormwater system. She explained that she has hired Kimley Horn to evaluate the roadways and will present the conditions

to the council on July 26, 2018. She added that the Village will need to reimburse the County the \$50,000.00, as well as the line of credit. She recommended a third budget workshop to be held on July 26th, with the hopes that the local option gas tax numbers come in.

COMMENTS BY VILLAGE COUNCIL MEMBERS

Council Member Clarke and Council Member Hernandez agreed that the Village should maintain reserves in the event of an emergency.

COMMENTS BY VILLAGE MANAGER

APPROVAL OF AGENDA

PUBLIC COMMENT

Scott Watson came forward and asked what was the amount of the increased millage rate?

Teresa Lamar-Sarno explained .68.

Mr. Watson asked the Village Council to explain what the reserve is without the increase in .68 reserves. He expressed concern that the transition team promised that citizens of Indiantown that they would not raise taxes. He said he did not feel the need for such a large reserve.

**CONSENT AGENDA
REGULAR AGENDA
DISCUSSION ITEMS
COMMENTS FROM THE PUBLIC
ANNOUNCEMENTS
NEXT REGULAR MEETING**

ADJOURNMENT 6:25 P.M.

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE
VILLAGE CLERK

SUSAN GIBBS THOMAS
MAYOR

APPROVED ON: JULY 26, 2017



**VILLAGE OF INDIANTOWN
VILLAGE COUNCIL MEETING
JULY 12, 2018
MINUTES**

ROLL CALL

Cherie White, Village Clerk

PRESENT

Council Member Clarke, Council Member Hernandez, Mayor Gibbs Thomas, Vice Mayor Stone, Village Manager Teresa Lamar-Sarno and Village Attorney Paul Nicoletti

ABSENT

Council Member Dowling

INVOCATION Reverend Jimmy Gibbs delivered the invocation.

PLEDGE OF ALLEGIANCE Mayor Gibbs Thomas led the council in the pledge of allegiance.

Mayor Gibbs Thomas recognized the following dignitaries in the audience; Martin County Commissioner Harold Jenkins, County Administrator Taryn Kryzda, and Martin County School Board Member Michael DiTerlizzi.

PROCLAMATIONS, AWARDS AND SPECIAL PRESENTATIONS

1. SCHOOL BOARD PRESENTATION REGARDING THE PROPOSED SALES TAX INITIATIVE.

School Board Member Michael DiTerlizzi came forward and gave a brief overview of the proposed half mill increase. He explained that the State took money away from every school district in the state. He explained that was equal to \$90 million over the years. He presented the Council and public with a handout explaining the ballot question and the justification.

2. PRESENTATION BY DAN KLEMAN, SENIOR ADVISOR, WITH FLORIDA CITY/COUNTY MANAGEMENT ASSOCIATION REGARDING THE VILLAGE MANAGER SEARCH.

Dan Kleman, Senior Advisor with the City County Management Association introduced himself and explained his position, and what services the association provides to municipalities. The Association has agreed to provide volunteer services to the Village of Indiantown in their process of recruiting, interviewing, and selecting the next permanent Village Manager.

Motion: Accept the volunteer services of City County Management Association
Moved by Council Member Hernandez, seconded by Vice Mayor Stone.
Approved 4/0, Council Member Dowling absent

COMMENTS BY VILLAGE COUNCIL MEMBERS

Council Member Hernandez inquired about the Village Attorney position process.

Village Attorney Nicoletti explained that the process for Village Attorney has begun and that a committee of Martin County Commission Jenkins, Stuart City Attorney Michael Mortell, and himself would be reviewing the applicants and make recommendations to the council for candidate interviews.

Council Member Hernandez inquired about the Village Manager position timeline.

Village Attorney Nicoletti explained that the intent will be to put forth an agenda item to extend the Village Manager contract through the end of the calendar year. That will give Mr. Kleman time to get the process in order, and it is also not recommended to advertise both the Village Manager and Village Attorney at the same time, it's just too hard to do.

Vice Mayor Stone thanked the public for their continued support and for attending the public meetings.

Mayor Thomas echoed Vice Mayor Stones sentiments. She also announced that tomorrow July 13, 2018 at 6:30 p.m. the Indiantown Veterans Association will be holding their monthly potluck at the IVA at 16701 SW Morgan Street. She encouraged everyone to bring a dish. Mayor Thomas also said that she had several residents inquire about when Indiantown would begin to have Fireworks for the 4th of July, and encouraged anyone who is interested in forming a 4th of July committee to let her know. She said the Indiantown Jaycees used to host the fireworks many years ago.

COMMENTS BY VILLAGE MANAGER

Village Manager, Teresa Lama- Sarno explained that staff met with ITS fiber as it relates to public notices in the future since the concern over the past boil water notice that did not reach everyone in Indiantown. She encouraged everyone to join their email list, and make sure their email is up to date. ITS also assured the Village that they would include the Village in all public notices as it relates to emergency public notifications. She also announced that a third budget workshop will be held on July 26, 2018 at 6:00 p.m., and the Village will be setting the maximum millage at that time. She announced and introduced the new permanent Village Clerk, Cherie White. She asked that item 9 be heard before item 7.

APPROVAL OF AGENDA

Motion: Approve the Agenda as amended, including the scriveners error to the June 28, 2018 minutes.

Moved by Vice Mayor Stone, seconded by Council Member Clarke.

Approved 4/0, Council Member Dowling absent

PUBLIC COMMENT

Marjorie Beary commented that the public should be involved in the selection process of the Village Manager.

Mayor Thomas encouraged the public to contact the council with any comments or questions as it relates to the Village Manager selection.

Village Manager Lamar-Sarno also stated that the Council will hold the selection of the Village Manager at a Public meeting.

Renita Presler commented that one of the most important things to her in the selection of the Village Manager is responsiveness to the public.

Thelma Waters commented that she would like to have better response when she calls the Village Council or Village offices.

Vice Mayor Stone explained that the Village Council each have village phone numbers that they can be reached on.

Ron Carr, commented that on August 6, 2018 the largest golf outing will be held at the Indianwood Golf Course. He said the tournament is honoring the Fisher House. The Fisher House Foundation (FHF) is a non-profit which is best known for a network of comfort homes where military and veterans' families can stay at no cost while a loved one is receiving treatment.

This WLGO event is an 18 hole four person team scramble format. The registration fee includes a \$10 per player donation, golf, cart, lunch, range balls, drink ticket, and prizes.

EVENT INFORMATION

Monday, August 6

Registration Time: 8:00am

Start Time: 9:00am

Signups are online at: indianwoodgolfclub.com

EVENT PRICING

\$160 - Foursome

\$80 - Twosome

\$40 - Single

EVENT LOCATION

14007 SW Golf Club Dr,

Indiantown, FL 34956

(772) 597-3794

He also announced the upcoming events at the Indianwood Golf Club and invited everyone to come out.

CONSENT CALENDAR

3. VILLAGE COUNCIL MINUTES FOR JUNE 28, 2018

4. Minutes of Special Meeting Budget Workshop June 28, 2018

5. Resolution No. 028-2018 Adopting a Travel Policy for Official Village Travel.

6. Resolution No. 029-2018; Approving Professional Planning Services by
Bonnie C. Landry and Associates, P.A.

Motion: Approve the Consent Calendar

Moved by Vice Mayor Stone, seconded by Council Member Hernandez.

Approved 4/0, Council Member Dowling absent

REGULAR AGENDA

FIRST READING ORDINANCES

Item 9 was heard at this time

9. ORDINANCE NO. 002 (2018) AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF INDIANTOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

Motion: Approve Ordinance 002-2018 on First Reading

Moved by Council Member Clarke, seconded by Council Member Hernandez.

Marjorie Beary commented that solar power should bring the cost of electric down in the future, and that 6% may not be so nice 30 years from now.

Village Attorney Nicoletti explained that there is no way to tell what will happen in that time period but that each individual could generate their own power with solar.

Amy Brunjes, Florida Power & Light explained that the amount collected is based upon how much electricity you are using. She explained it is already being collected now but will now be going to the Village of Indiantown.

Approved 4/0, Council Member Dowling absent

7. Ordinance No. 004-2018; AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE TAXING UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE PARKS AND RECREATION SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion: Approve Ordinance 004-2018 on First Reading
Moved by Council Member Clarke, seconded by Vice Mayor Stone.
Approved 4/0, Council Member Dowling absent

8. ORDINANCE NO. 001-2018 AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE BENEFIT UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE FIRE RESCUE SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion: Approve Ordinance 001-2018 on First Reading
Moved by Vice Mayor Stone, seconded by Council Member Hernandez.
Approved 4/0, Council Member Dowling absent

Clerk Note: Item 9 was heard earlier

9. ORDINANCE NO. 0002 (2018) AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF INDIANTOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

SECOND READING ORDINANCES

10. EMERGENCY ORDINANCE NO. 0003 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE BENEFIT UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE SOLID WASTE COLLECTION AND DISPOSAL SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion: Approve Emergency Ordinance 003-2018 on Second Reading
Moved by Council Member Hernandez, seconded by Council Member Clarke.
Approved 4/0, Council Member Dowling absent

DISCUSSION ITEMS COMMENTS FROM THE PUBLIC

Scott Watson thanked School Board Member Michael DiTerlizzi and suggested the School Board start looking at constructing a high school.

ANNOUNCEMENTS

Mayor Thomas announced the upcoming Budget workshop on July 27, 2018 beginning at 6:00 p.m. followed by the regular meeting at 6:30 p.m.

NEXT REGULAR MEETING ADJOURNMENT

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE
DEPUTY VILLAGE CLERK

SUSAN GIBBS THOMAS
MAYOR

APPROVED ON : July 26, 2018

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Consent

AGENDA ITEM TITLE: RECEIVE AND FILE INDIANTOWN COMMUNITY DEVELOPMENT
DISTRICT FY 2019 BUDGET

SUMMARY OF ITEM: On May 16, 2018 the Village Manager was copied on an email from Taryn Kryzda, County Administrator, regarding the Indiantown Community Development District FY 2019 Budget Transmittal.
This appears to be in accordance to Florida Statutes and "for disclosure and informational purposes only."
Therefore, this is a noted item to be received and filed by the Village Council.

RECOMMENDATION: Motion to Receive and File the Indiantown Community Development District FY 2019 Budget.

PREPARED BY: Teresa Lamar-Sarno DATE: 7/19/2018

REVIEWED BY: P. Nicoletti DATE: 7/20/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 7/20/2018

ATTACHMENTS:

Description

Indiantown CDD FY 2019 Budget

**INDIANTOWN
COMMUNITY DEVELOPMENT DISTRICT
PROPOSED BUDGET
FISCAL YEAR 2019
PREPARED MARCH 29, 2018**

**INDIANTOWN
COMMUNITY DEVELOPMENT DISTRICT
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**INDIANTOWN
COMMUNITY DEVELOPMENT DISTRICT
GENERAL FUND BUDGET
FISCAL YEAR 2019**

| | Fiscal Year 2018 | | | | |
|---|------------------------------|------------------------------|-----------------------------------|----------------------------------|-------------------------------|
| | Adopted Budget FY 2018 | Actual through 2/28/18 | Projected through 9/30/2018 | Total Actual and Projected | Proposed Budget FY 2019 |
| REVENUES | | | | | |
| Developer contribution | \$ 14,490 | \$ 4,010 | \$ 10,475 | \$ 14,485 | \$ 14,893 |
| Total revenues | 14,490 | 4,010 | 10,475 | 14,485 | 14,893 |
| EXPENDITURES | | | | | |
| Management/accounting/recording | 2,500 | - | 2,500 | 2,500 | 2,500 |
| Supervisors | 2,000 | - | 2,000 | 2,000 | 2,000 |
| Legal | 1,500 | 212 | 1,288 | 1,500 | 1,500 |
| Audit | 3,000 | - | 3,000 | 3,000 | 3,100 |
| Postage | 150 | 13 | 137 | 150 | 150 |
| Printing & binding | 200 | - | 200 | 200 | 200 |
| Legal advertising | 1,000 | - | 1,000 | 1,000 | 1,000 |
| Annual district filing fee | 175 | 175 | - | 175 | 175 |
| Insurance | 3,000 | 2,994 | - | 2,994 | 3,293 |
| Contingencies | 250 | - | 250 | 250 | 250 |
| Office supplies | 100 | - | 100 | 100 | 100 |
| Website | 615 | 616 | - | 616 | 625 |
| Total expenditures | 14,490 | 4,010 | 10,475 | 14,485 | 14,893 |
| Net increase/(decrease) of fund balance | - | - | - | - | - |
| Fund balance - beginning (unaudited) | 2,350 | 518 | 518 | 518 | 518 |
| Fund balance - ending (projected) | \$ 2,350 | \$ 518 | \$ 518 | \$ 518 | \$ 518 |

**INDIANTOWN
COMMUNITY DEVELOPMENT DISTRICT
DEFINITIONS OF GENERAL FUND EXPENDITURES**

EXPENDITURES

Professional services

| | |
|---|-------------------------|
| Supervisors | \$ 2,000 |
| Statutorily set at \$200 for each meeting of the Board of Supervisors not to exceed \$4,800 for each fiscal year. The District anticipates two meetings during the upcoming fiscal year. | |
| Management/accounting/recording | 2,500 |
| Wrathell, Hunt and Associates, LLC , specializes in managing Community Development Districts in the State of Florida by combining the knowledge, skills and experience of a team of professionals to ensure compliance with all governmental requirements of the District, develop financing programs, administer the issuance of tax exempt bond financings, and operate and maintain the assets of the community. This fee is inclusive of district management and recording services; however, it has been reduced by approximately 80% for the current fiscal year due to the reduced level of activity that is anticipated. | |
| Legal | 1,500 |
| Hopping Green & Sams, P.A. provides on-going general counsel and legal representation. As such, he is confronted with issues relating to public finance, public bidding, rulemaking, open meetings, public records, real property dedications, conveyances and contracts. In this capacity, he provides service as a "local government lawyer," realizing that this type of local government is very limited in its scope – providing infrastructure and services to developments. | |
| Audit | 3,100 |
| If certain revenue or expenditure thresholds are exceeded then Florida Statutes, Chapter 218.39 requires the District to have an independent examination of its books, records and accounting procedures. | |
| Postage | 150 |
| Mailing of agenda packages, overnight deliveries, correspondence, etc. | |
| Printing & binding | 200 |
| Copies, agenda package items, etc. | |
| Legal advertising | 1,000 |
| The District advertises for monthly meetings, special meetings, public hearings, bidding, etc. | |
| Annual district filing fee | 175 |
| Annual fee paid to the Florida Department of Economic Opportunity. | |
| Insurance | 3,293 |
| The District carries public officials liability insurance. The limit of liability is set at \$1,000,000 for public officials liability. | |
| Contingencies | 250 |
| Bank charges and other miscellaneous expenses incurred during the year. | |
| Office supplies | 100 |
| Accounting and administrative supplies. | |
| Website | 625 |
| Total expenditures | <u><u>\$ 14,893</u></u> |

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Regular Agenda

AGENDA ITEM TITLE: (CONTINUE TO AUGUST 9, 2018) Ordinance No. 004-2018; AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE TAXING UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE PARKS AND RECREATION SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY OF ITEM: This ordinance includes the Village in the County's MSTU for Parks and Recreation for FY 2019. The projected millage has been given us by the County Administrator as 0.1615 mills. We do not currently believe the Village could accomplish the maintenance of these parks for the revenue this millage would generate. As a result, we will be exploring the contracts and other expenditures made by the County to come up with this millage levy.

RECOMMENDATION: Continue Ordinance No. 004-2018 to August 9, 2018 for Second Reading.

PREPARED BY: P. Nicoletti DATE: 7/6/2018

REVIEWED BY: P. Nicoletti DATE: 7/6/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 7/6/2018

ATTACHMENTS:

Description

Ord. 004-2018 Parks & Recreation MSTU Consent Ordinance



VILLAGE OF INDIANTOWN, FLORIDA

ORDINANCE NO. 0004 (2018)

AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE TAXING UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE PARKS AND RECREATION SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

*** * * * ***

BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined, and declared that:

(A) The Board of County Commissioners of Martin County, Florida (the "County"), has enacted an ordinance authorizing the County to create or identify a municipal service taxing unit or other specific geographic area within which the County

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 0004 (2018)
TO INCLUDE THE VILLAGE OF INDIANTOWN IN A MARTIN COUNTY MUNICIPAL SERVICE
TAXING UNIT (MSTU) FOR PARKS AND RECREATION SERVICES

imposes and collects ad valorem taxes for parks and recreation services, facilities, and programs within incorporated and unincorporated areas of the County.

(B) The Village Council of the Village of Indiantown has determined that the inclusion of the incorporated area of the Village of Indiantown, Florida within such municipal service taxing unit or specific geographic area by the County for the purpose of providing parks and recreation services is in the best interests of the owners of property within the corporate limits of the Village of Indiantown.

SECTION 2. REQUEST AND CONSENT OF INDIANTOWN. The Village Council of the Village of Indiantown hereby requests and consents to the inclusion of all of the incorporated area of the Village of Indiantown, Florida within an identified municipal service taxing unit or specific geographic area created or identified by the County to provide parks and recreation services, facilities, and programs and to the imposition of an ad valorem tax by the County to fund such services, facilities and programs. Such request and consent shall become effective upon adoption of this ordinance for the upcoming fiscal year. The Village Council finds that the provision of parks and recreation services has an essential municipal purpose.

SECTION 3. ANNUAL RENEWAL OF REQUEST AND CONSENT. Request and consent of the Village Council of the Village of Indiantown given to the County by

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 0004 (2018)
TO INCLUDE THE VILLAGE OF INDIANTOWN IN A MARTIN COUNTY MUNICIPAL SERVICE
TAXING UNIT (MSTU) FOR PARKS AND RECREATION SERVICES

this Ordinance shall be deemed given in advance for each fiscal year hereafter and shall be automatically renewed for each succeeding fiscal year unless such request and consent is subsequently withdrawn as provided herein. Request and consent shall be irrevocable for any fiscal year in which the subject parks and recreation services ad valorem tax is levied by the County within the incorporated area. The Village of Indiantown may only withdraw such consent for any subsequent fiscal year by adopting an ordinance which revokes its consent and providing a certified copy of such ordinance to the County Administrator prior to May 1st preceding the fiscal year for which consent is being withdrawn.

SECTION 4. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption.

PASSED on First Reading on the ____ day of _____, 2018.

Council Member _____ offered the foregoing ordinance on second reading, and moved its adoption. The motion was seconded by Council Member

VILLAGE OF INDIANTOWN, FLORIDA

ORDINANCE NO. 0004 (2018)

TO INCLUDE THE VILLAGE OF INDIANTOWN IN A MARTIN COUNTY MUNICIPAL SERVICE
TAXING UNIT (MSTU) FOR PARKS AND RECREATION SERVICES

_____, and upon being put to a vote, the vote was as follows:

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

PASSED AND ADOPTED on Second and Final Reading on the ____ day of
_____, 2018.

(SEAL)

VILLAGE OF INDIANTOWN, FLORIDA

Susan Gibbs Thomas, Mayor

ATTEST:

Cheryl White, Village Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Paul J. Nicoletti, Village Attorney

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Regular Village Council Meeting

AGENDA ITEM TITLE: RESOLUTION No. 030-2018A RESOLUTION OF THE VILLAGE COUNCIL OF THEVILLAGE OF INDIANTOWN, FLORIDA APPROVING ANEXTENSION OF CONTRACT WITH THE INTERIM VILLAGEMANAGER; PROVIDING FOR AN EFFECTIVE DATE; ANDFOR OTHER PURPOSES.

SUMMARY OF ITEM: As previously agreed by the Village Council, this item formalizes the extension of the Village Manager's Contact until December 31, 2018.

RECOMMENDATION: Adopt Resolution No. 030-2018 as submitted.

PREPARED BY: P. Nicoletti DATE: 7/19/2018

REVIEWED BY: P. Nicoletti DATE: 7/19/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 7/20/2018

ATTACHMENTS:

Description

Res. 030-2018 Village Manager Contract Extension

Contract Extension with Village Manager



RESOLUTION No. 030-2018

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA APPROVING AN EXTENSION OF CONTRACT WITH THE INTERIM VILLAGE MANAGER; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Section 5(1), Chapter 2017-195, Laws of Florida, which is the Charter of the Village of Indiantown, Florida, there shall be a city manager who shall be the chief administrative officer of the Village; and

WHEREAS, such village manager shall serve at the pleasure of the village council, and shall carry out the duties and responsibilities provided by law and by act of the village council.

NOW, THEREFORE BE IT RESOLVED, by the Village Council of the Village of Indiantown, Florida, as follows:

SECTION 1. INTERIM VILLAGE MANAGER; CONTRACT EXTENSION APPROVED. The Village Manager Contract Extension with Teresa Lamar-Sarno, attached hereto as Exhibit "A" is hereby approved, and as stated therein shall expire on its own terms on December 31, 2018, unless later extended or terminated.

SECTION 2. EFFECTIVE DATE. This resolution shall take effect immediately upon adoption.

- ALL SIGNATURES ON NEXT PAGE -

RES. 030-2018
VILLAGE MANAGER CONTRACT EXTENSION

Council Member _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

ADOPTED this 26th day of July, 2018.

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE
VILLAGE CLERK

SUSAN GIBBS THOMAS
MAYOR

REVIEWED FOR FORM AND
CORRECTNESS:

PAUL J. NICOLETTI
VILLAGE ATTORNEY

VILLAGE OF INDIANTOWN, FLORIDA

VILLAGE MANAGER CONTRACT EXTENSION

IN CONSIDERATION of the mutual agreements and promises herein, the **VILLAGE OF INDIANTOWN**, Florida, a municipal corporation ("Village"), contracts for management services with **TERESA LAMAR-SARNO CONSULTING, INC.**, a Florida corporation, 546 SE Southwood Trail, Stuart, FL 34997 ("Lamar-Sarno") as provided herein.

1. **CONTRACT EXTENSION.** That certain Contract between the parties beginning March 21, 2018 and adopted on April 11, 2018, is hereby amended as follows:

TERMINATION. The Village Council may terminate this Contract without cause at any time, upon 30 days notice. Lamar-Sarno may voluntarily terminate this contract upon at least 45 days written notice, and she shall be paid for all time served. **Without further action by either party, this Contract will expire on December 31, 2018.**

2. **MISCELLANEOUS.** All other provisions, terms and conditions contained in the original contract effective March 21, 2018, are hereby ratified, and shall continue in full effect, as if written herein.

IN WITNESS WHEREOF, the Village and Lamar-Sarno have executed this contract on the 26th day of July, 2018.

TERESA LAMAR-SARNO CONSULTING, INC., a
Florida corporation

TERESA C. LAMAR-SARNO, PRESIDENT

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE, VILLAGE CLERK

SUSAN G. THOMAS, MAYOR

APPROVED AS FORM AND CORRECTNESS:

PAUL J. NICOLETTI, VILLAGE ATTORNEY

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Regular Council Meeting

AGENDA ITEM TITLE: RESOLUTION No. 031-2018: A RESOLUTION OF THE VILLAGE OF INDIANTOWN HONORING FIFTY YEARS OF MUNICIPAL HOME RULE IN THE FLORIDA CONSTITUTION AND COMMITTING TO AN EDUCATIONAL INITIATIVE TO HELP FLORIDIANS UNDERSTAND THIS BENEFICIAL RIGHT; AND PROVIDING FOR AN EFFECTIVE DATE.

SUMMARY OF ITEM: A RESOLUTION OF THE VILLAGE OF INDIANTOWN HONORING FIFTY YEARS OF MUNICIPAL HOME RULE IN THE FLORIDA CONSTITUTION AND COMMITTING TO AN EDUCATIONAL INITIATIVE TO HELP FLORIDIANS UNDERSTAND THIS BENEFICIAL RIGHT

RECOMMENDATION: Adopt Resolution No. 031-2018.

PREPARED BY: Teresa Lamar-Sarno, Village Manager

DATE: 7/19/2018

REVIEWED BY:

DATE:

APPROVED BY:

DATE:

ATTACHMENTS:

Description

Res. No. 031-2018 Fifty Years of Home Rule



RESOLUTION No. 031-2018

A RESOLUTION OF THE VILLAGE OF INDIANTOWN HONORING FIFTY YEARS OF MUNICIPAL HOME RULE IN THE FLORIDA CONSTITUTION AND COMMITTING TO AN EDUCATIONAL INITIATIVE TO HELP FLORIDIANS UNDERSTAND THIS BENEFICIAL RIGHT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida's voters placed municipal Home Rule powers into the Florida Constitution on November 5, 1968, during the regular elections as an amendment to Article VIII; and

WHEREAS, this power has enabled each city, town and village across the Sunshine State to consider, adopt, revise or remove its own laws without the need to seek legislative permission from the state and has further served as the foundation upon which every municipality builds its governmental structure; and

WHEREAS, the political climate within the Florida Legislature has recently included many attacks on these powers; and

WHEREAS, grassroots measures calling such actions wrong and declaring that local decisions be made at the local level by local officials must continue so that all legislators clearly understand Florida's Home Rule as a constitutional power and one upheld in state statutes; and

WHEREAS, a 50th anniversary is a fitting time for all municipalities to engage their respective citizens to educate them about the Florida Constitution and local laws, so that all Floridians may continue to receive the many benefits of Home Rule.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF

THE VILLAGE OF INDIANTOWN, FLORIDA:

Section 1. That this anniversary presents a tremendous opportunity to educate all citizens about Florida's Constitution, municipal government and Home Rule authority, and that all necessary resources shall be provided for such public information.

Section 2. That the Village of Indiantown will actively challenge all efforts to reduce or erode this cherished right and further employ all efforts to ensure state and federal government partners understand that a one-size-fits-all approach to governance is not in the interests of Florida citizens.

Section 3. That the tradition of local decision-making in Florida is essential to protect, as it provides each municipality the ability to preserve and enhance the myriad characteristics that make each one uniquely special and that maintains its quality of life.

Section 4. That the Village of Indiantown will include this information on its website, as a regular agenda item for public discussion and within the Village of Indiantown services in as many outreach venues as possible.

Section 5. This Resolution shall take effect immediately upon adoption.

Council Member _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

– ALL SIGNATURES ON NEXT PAGE –

RESOLUTION No. 031-2018; FIFTY YEARS OF HOME RULE

ADOPTED this 26th day of July 2018.

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE
VILLAGE CLERK

SUSAN GIBBS THOMAS
MAYOR

REVIEWED FOR FORM
AND CORRECTNESS:

PAUL J. NICOLETTI
VILLAGE ATTORNEY

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Regular Village Council Agenda

AGENDA ITEM TITLE: ORDINANCE No. 005 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN,FLORIDA, ADOPTING A NEW LOCALCOMMUNICATION SERVICES TAX RATE; PROVIDINGFOR THE ADOPTION OF A NEW LOCALCOMMUNICATION SERVICES TAX RATE; PROVIDINGFOR ADJUSTMENT OF TAX RATE FOR PERMIT FEES;PROVIDING FOR NOTICE TO THE DEPARTMENT OFREVENUE; PROVIDING FOR SEVERABILITY;PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY OF ITEM: This ordinance adopts a 5.22% Communications Services Tax on phone service in the Village. While this type of telecommunication is dwindling, in favor of cellular and internet based systems, it nonetheless is a traditional source of revenue for municipalities. The Florida Department of Revenue indicates that this must be adopted, **and they must be notified**, no later that September 1, 2018, to be effective on January 1, 2019.

RECOMMENDATION: Adopt Ordinance No. 005 on First Reading.

PREPARED BY: P. Nicoletti DATE: 7/19/2018

REVIEWED BY: P. Nicoletti DATE: 7/19/2018

APPROVED BY: DATE:

ATTACHMENTS:

Description

Ord. 005-2018 Communications Services Tax



ORDINANCE No. 0005 (2018)

AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING A NEW LOCAL COMMUNICATION SERVICES TAX RATE; PROVIDING FOR THE ADOPTION OF A NEW LOCAL COMMUNICATION SERVICES TAX RATE; PROVIDING FOR ADJUSTMENT OF TAX RATE FOR PERMIT FEES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the 2000 Regular Session, the Florida Legislature passed the “Communication Services Tax Simplification Law”, creating Chapter 202, Florida Statutes; and

WHEREAS, Section 202.19, Florida Statutes, authorizes the Village of Indiantown to adopt a local communication services tax at a rate of up to 5.10%. This maximum rate does not include the add-on of up to .12% for municipalities which choose not to levy permit fees; and

WHEREAS, The Village of Indiantown is a newly incorporated municipality and has not adopted a conversion rate in accordance with 202.20(1)(b), Florida Statutes; and

WHEREAS, The Village of Indiantown desires to adopt a local communication services tax rate of 5.22% pursuant to Section 202.19, Florida Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA, that:

SECTION 1. ADOPTION OF LOCAL COMMUNICATIONS SERVICES TAX RATE.
There is no local communications services tax conversion rate established under Section

ORDINANCE No. 0005 (2018)
VILLAGE OF INDIANTOWN, FLORIDA
ADOPTING A NEW LOCAL COMMUNICATIONS SERVICES TAX RATE

202.20(1)(b), Florida Statutes for the Village of Indiantown. Therefore, the Village seeks to adopt the local communications services tax rate pursuant to Section 202.19(2)(a), Florida Statutes. The Village of Indiantown hereby adopts a local communications services tax rate of 5.10%. This rate is to be effective, January 1, 2019.

SECTION 2. ADJUSTMENT OF TAX RATE FOR PERMIT FEES. It is the intent of the Village of Indiantown to increase its local communications services tax rate as provided in Section 202.19, Florida Statutes, by an amount equal to .12% effective January 1, 2019 to replace revenue the Village of Indiantown would otherwise receive from permit fees as authorized by Section 337.401(3)(c) and (j), Florida Statutes. In the aggregate, the new combined Local Communication Services Tax Rate for the Village of Indiantown will be 5.22%, effective January 1, 2019.

SECTION 3. NOTICE TO THE FLORIDA DEPARTMENT OF REVENUE. The Village of Indiantown directs that notice of the new Local Communication Services Tax Rate be provided to the Florida Department of Revenue by September 1, 2018. Form DR-700021, and a copy of this ordinance must be submitted with the notification.

SECTION 4. SEVERABILITY. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. CODIFICATION. The provisions of Sections 1 and 2 of this ordinance shall be codified, at such time as the Village of Indiantown adopts a codification ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage by the Village Council. The imposition and collection of the new combined Local Communications Services Tax Rate shall commence effective January 1, 2019.

PASSED ON FIRST READING ON JULY 26, 2018.

Council Member _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

ORDINANCE No. 0005 (2018)
VILLAGE OF INDIANTOWN, FLORIDA
ADOPTING A NEW LOCAL COMMUNICATIONS SERVICES TAX RATE

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

ADOPTED this ____ day of _____, 2018.

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE
VILLAGE CLERK

SUSAN GIBBS THOMAS
MAYOR

REVIEWED FOR FORM
AND CORRECTNESS:

PAUL J. NICOLETTI
VILLAGE ATTORNEY

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Regular Village Council Meeting

AGENDA ITEM TITLE: ORDINANCE NO. 006 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING A “ZONING IN PROGRESS” PROCEDURE FOR THE VILLAGE OF INDIANTOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY OF ITEM: This ordinance is not contained in the Martin County Growth Management Code in a form that is similar. The County Commission has on occasion issued a zoning "moratorium." However, the procedure being recommended provides some certainty to the process, and allows both the development community and the Village an opportunity to know what limited development is being stopped, for how long, and why. All-in-all, it is a very useful ordinance and procedure.

RECOMMENDATION: Adopt Ordinance No. 006 (2018) on First Reading.

PREPARED BY: P. Nicoletti DATE: 7/19/2018

REVIEWED BY: P. Nicoletti DATE: 7/19/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 7/20/2018

ATTACHMENTS:

Description

Ord. 006-2018 Zoning in Progress



VILLAGE OF INDIANTOWN, FLORIDA

ORDINANCE NO. 006 (2018)

AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING A "ZONING IN PROGRESS" PROCEDURE FOR THE VILLAGE OF INDIANTOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

* * * * *

WHEREAS, the Village Council of the Village of Indiantown has determined that the it is prudent and appropriate to provide a procedure of limited and lawful development moratoria during the period that the Village is considering certain changes to its land use and zoning codes.

BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA:

SECTION 1. ZONING IN PROGRESS.

- (1) *Purpose.* The purpose of zoning in progress is to allow the village to make a text amendment or district map change to the Martin County growth management code, as it applies to the Village of Indiantown, and apply that change to development applications submitted following the declaration of zoning in progress. Additionally, zoning in progress allows a temporary hold on permits, licenses and other development orders already in progress, if there is a pending change in the growth management code that would affect the permit, license or other development order.
- (2) *No permits issued; and period of time.* During the period of time that the land planning agency or the village council is considering either a text amendment or a change of zoning district to the growth management code, no plans, permit(s), license(s), or other development order(s) of any kind shall be

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 006 (2018)
ZONING IN PROGRESS PROCEDURES

issued if issuance would result in the nonconforming or unlawful use of the subject property in the event that the text amendment or zoning district change be enacted by the village council (freeze period). The maximum freeze period allowed for zoning in progress shall be three months, except that the village council may extend the period for up to an additional three months for good cause, and upon making a finding that it is in the public interest to do so.

- (3) *Notice of declaration.* The declaration of zoning in progress, and the freeze period on development orders, permits and licenses shall begin on the earlier of:
 - (a) Publication of a notice of a public hearing before the village council to consider a resolution declaring zoning in progress; or
 - (b) Publication of a notice of a public hearing before the local planning agency on a text amendment or zoning district change, which notice also includes a notice of zoning in progress.
- (4) *Applicability.*
 - (a) Upon adoption of a text amendment or district map change, all pending applications, permits, licenses, and other development orders shall conform to the new provisions.
 - (b) Notwithstanding anything contained in this section to the contrary, no application for a text amendment to the growth management code, or map rezoning, plan approval, permit, or other development order shall be held up by this procedure for more than a total of six months, including all time periods described herein. Any such approval shall be deemed granted, if so affected, except as provided in subsection (c) below.
 - (c) Where an affected property owner requests a postponement, extension, or other delay of an application, such period of delay shall toll the running of the freeze period.
 - (d) If it is determined by the village manager that an application for a text amendment or map rezoning, plan, permit, license, or other development order would not violate the provisions of a pending zoning measure, such application, shall be exempt from this section.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 3. CONFLICTS. All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 006 (2018)
ZONING IN PROGRESS PROCEDURES

SECTION 4. CODIFICATION. The provisions of Section 1 of this ordinance shall be codified at such time as the village council adopts a village code.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption.

PASSED on First Reading on the ____ day of _____, 2018.

Council Member _____ offered the foregoing ordinance on second reading, and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

PASSED AND ADOPTED on Second and Final Reading on the ____ day of _____, 2018.

(SEAL)

VILLAGE OF INDIANTOWN, FLORIDA

Susan Gibbs Thomas, Mayor

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 006 (2018)
ZONING IN PROGRESS PROCEDURES

Cheryl White, Village Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Paul J. Nicoletti, Village Attorney

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Regular Village Council Meeting

AGENDA ITEM TITLE: ORDINANCE NO. 007 (2018) AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING AN ADMINISTRATIVE VARIANCE PROCEDURE FOR THE GROWTH MANAGEMENT CODE OF THE VILLAGE OF INDIANTOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY OF ITEM: The village has had inquiries regarding the need to make minor adjustments for developments within the village. Things like fence placement, fence height, location of gates, and siting of buildings on lots. There are many conditions which are minor in nature that should not require the time and expense of a Board of Adjustment or Village Council quasi-judicial hearing. This recommended process is to provide for an administrative variance for minor issues.

RECOMMENDATION: Adopt Ordinance No. 007 (2018) on First Reading.

PREPARED BY: P. Nicoletti DATE: 7/19/2018

REVIEWED BY: P. Nicoletti DATE: 7/19/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 7/20/2018

ATTACHMENTS:

Description

Ordinance No. 007 (2018) Administrative Variance Ordinance



VILLAGE OF INDIANTOWN, FLORIDA

ORDINANCE NO. 007 (2018)

AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, ADOPTING AN ADMINISTRATIVE VARIANCE PROCEDURE FOR THE GROWTH MANAGEMENT CODE OF THE VILLAGE OF INDIANTOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

* * * * *

WHEREAS, the Village Council of the Village of Indiantown has determined that the it is prudent and appropriate to provide an administrative procedure for varying the growth management code under certain circumstances.

BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA:

SECTION 1. ADMINISTRATIVE ZONING VARIANCE.

- A. *Authority conferred.* The village manager is hereby granted the power and authority to vary the village's growth management code, only as provided herein. Generally, this procedure is to provide for an efficient and effective review and approval process for certain minor aspects of development in the village. Pursuant to the following, the village manager may review and approve, approve with conditions, or deny any of the following:
1. *Yard setbacks.* Any yard setback variance request which does not exceed fifteen (15%) percent of the code requirement. (For example: where a side yard setback is 10 feet, and the variance request doesn't exceed 1.5 feet of relief, or conversely stated, a reduction to an 8.5-foot setback), and a variance request to position the principal building within a yard setback area to an extent

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 007 (2018)
ADMINISTRATIVE ZONING VARIANCES

no greater than ten (10%) percent of the square footage of the principal building footprint to a maximum of 500 square feet.

2. *Fences, walls and hedges.* Any variance request for a fence, wall, or hedge height or location, or other buffer screening matter.
 3. *Stormwater.* Subject to the design approval of the village consulting engineer, up to 100 percent of stormwater runoff may be stored in underground storage structures for irrigation, cooling, or other appropriate reuse.
 4. *Driveway width.* Subject to the design approval of the village fire inspector, the minimum width for a two-way residential driveway may be reduced to 18 feet provided any parking is restricted to one side of the driveway only.
 5. *Architectural design.* Subject to the design approval of the village consulting planner, a variance may be granted to depart from the strict architectural and building materials, design and location standards contained in the growth management code in order to utilize architectural and design features that are consistent with recognized green building principles.
 6. *Other minor growth management code variances.*
 - a. Any other minor growth management code variance which is minor in nature, affecting the type, location, size, or area, including, but not limited to, drainage structures, easements, slab or foundation footers, marine construction, flood elevation, curbing and curb-cuts, road medians, solid waste or recycle containers, principal or accessory structures or lots, signage, landscape, lighting, parking, driveways, or utilities.
 - b. A minor land development code variance is one in which the requested change:
 - (1) Does not increase or enlarge the density, or intensity of use; or
 - (2) Does not increase or enlarge the building footprint by more than five percent; or
 - (3) Does not violate the scope and intent of a previous approval for the property by the village council.
 7. *Time extensions.* A one-time extension of 180 days or less to an originally approved timetable of development may be granted upon good cause shown.
- B. *Further approval authority.* When authority to do so is conferred by the village council as a condition of zoning approval, plat approval, or development plan approval, the village manager may approve, approve with conditions or deny any plan document modification.
- C. *Village council intent.* By adopting this section, the village council intends that the village manager shall use the provisions of growth management code related to criteria for a zoning variance as a guide. Because the nature of the variances permitted herein is minor, strict adherence to the hardship requirements for a zoning variance shall not pertain, and the village manager shall be free to use reasonableness, as well as an awareness of community needs and aesthetics, in addition to the criteria expressed in the growth management code, as a basis for all decisions. Appropriate justifications for approving administrative variances and alternative plans include, but are not limited to:
1. Resolution of site constraints associated with incorporating new buildings and structures into existing development.
 2. Utilization of existing site characteristics, such as cultural, historical or archaeological features, topography, scenic views, or native vegetation.
 3. Improvement or integration of proposed development with surrounding off-site

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 007 (2018)
ADMINISTRATIVE ZONING VARIANCES

development.

4. Preservation of the cultural, historical, or archaeological features of the area.

- D. *Application; fee; and written order.* Any real property owner, or person in control of any real property with the written consent of the real property owner may apply for an administrative variance, on a form provided by the village manager. The village council shall provide for an administrative fee by resolution from time to time; however, the initial fee set for an administrative variance is \$100.00 per variance requested. Upon the filing of a complete administrative variance form, and payment of the proper fee, the village manager shall consider and decide the issue(s) presented and shall render a written order on the matter and shall approve, approve with conditions, or deny such request. A certified copy of the Order shall be recorded in the public records of Martin County, Florida upon the lapse of the appeal period, or if appealed, at the conclusion of the matter, if upheld.
- D. *Nonexclusivity.* It is intended that this section shall be non-exclusive in nature.
1. The village manager may defer any application for administrative variance which would otherwise qualify for consideration by the board of adjustment, or village council, as applicable, if such deferral is based upon a reasonable determination that the variance sought does not meet the criteria for an administrative variance. Any application so deferred shall be processed as a new zoning variance application, and shall meet all growth management code requirements for such application, including applicable fees, public notice, and all other submittal requirements.
- E. *Appeal of an administrative variance.* An applicant may appeal a denial of an administrative variance to the village council, by filing a written request with the village clerk, within thirty (30) days of the rendering of such denial, stating the legal or other basis for the appeal.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 3. CONFLICTS. All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

SECTION 4. CODIFICATION. The provisions of Section 1 of this ordinance shall be codified at such time as the village council adopts a village code.

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 007 (2018)
ADMINISTRATIVE ZONING VARIANCES

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption.

PASSED on First Reading on the ____ day of ____, 2018.

Council Member _____ offered the foregoing ordinance on second reading, and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

ADOPTED on Second Reading this ____ day of ____, 2018.

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

CHERIE WHITE
VILLAGE CLERK

SUSAN GIBBS THOMAS
MAYOR

REVIEWED FOR FORM
AND CORRECTNESS:

PAUL J. NICOLETTI
VILLAGE ATTORNEY

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETINGDATE: July 26, 2018

MEETING TYPE: Ordinance

AGENDA ITEM TITLE: ORDINANCE NO. 001-2018 AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE BENEFIT UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE FIRE RESCUE SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY OF ITEM: This ordinance, once adopted, gives the County assurance that the Village will participate in the County's Fire-Rescue system for at least next fiscal year.

As mentioned at the last meeting, adoption on First Reading is just procedural, at least for this particular ordinance. We are still anticipating receipt of statistical and financial information from County staff, prior to adoption of this ordinance on Second Reading.

RECOMMENDATION: Adopt Ordinance No. 001-2018 Municipal Consent on Second Reading.

PREPARED BY: Teresa Lamar-Sarno, Village Manager DATE: 6/21/2018

REVIEWED BY: P. Nicoletti DATE: 6/22/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 7/6/2018

ATTACHMENTS:

Description

Ordinance 001-2018



VILLAGE OF INDIANTOWN, FLORIDA

ORDINANCE NO. 0001 (2018)

AN ORDINANCE OF THE VILLAGE OF INDIANTOWN, FLORIDA, REQUESTING AND CONSENTING TO THE INCLUSION OF ALL OF THE VILLAGE OF INDIANTOWN WITHIN A MUNICIPAL SERVICE BENEFIT UNIT OR OTHER SPECIFIC GEOGRAPHIC AREA DESIGNATED BY MARTIN COUNTY TO PROVIDE FIRE RESCUE SERVICES; PROVIDING FOR ANNUAL RENEWAL OF SUCH REQUEST AND CONSENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

* * * * *

BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF INDIANTOWN, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined, and declared that:

(A) The Board of County Commissioners of Martin County, Florida (the "County"), has enacted an ordinance authorizing the County to create or identify a municipal service benefit unit or other specific geographic area within which the County imposes and collects assessments for fire rescue services within incorporated and unincorporated areas of the County.

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 0001 (2018)
TO INCLUDE THE VILLAGE OF INDIANTOWN IN A MARTIN COUNTY MUNICIPAL SERVICE
BENEFIT UNIT (MSBU) FOR FIRE RESCUE SERVICES

(B) The Village Council of the Village of Indiantown has determined that the inclusion of the incorporated area of the Village of Indiantown, Florida within such municipal service benefit unit or specific geographic area by the County for the purpose of providing fire rescue services is in the best interests of the owners of property within the corporate limits of the Village of Indiantown.

SECTION 2. REQUEST AND CONSENT OF INDIANTOWN. The Village Council of the Village of Indiantown hereby requests and consents to the inclusion of all of the incorporated area of the Village of Indiantown, Florida within an identified municipal service taxing or benefit unit or specific geographic area created or identified by the County to provide fire rescue services, facilities, and programs and to the imposition of a special assessment by the County to fund such fire rescue services, facilities and programs. Such request and consent shall become effective upon adoption of this ordinance for the upcoming fiscal year. The Village Council finds that the provision of fire rescue services has an essential municipal purpose.

SECTION 3. ANNUAL RENEWAL OF REQUEST AND CONSENT. Request and consent of the Village Council of the Village of Indiantown given to the County by this Ordinance shall be deemed given in advance for each fiscal year hereafter and shall be automatically renewed for each succeeding fiscal year unless such request and consent

VILLAGE OF INDIANTOWN, FLORIDA
ORDINANCE NO. 0001 (2018)
TO INCLUDE THE VILLAGE OF INDIANTOWN IN A MARTIN COUNTY MUNICIPAL SERVICE
BENEFIT UNIT (MSBU) FOR FIRE RESCUE SERVICES

is subsequently withdrawn as provided herein. Request and consent shall be irrevocable for any fiscal year in which the subject fire rescue service assessments are levied by the County within the incorporated area. The Village of Indiantown may only withdraw such consent for any subsequent fiscal year by adopting an ordinance which revokes its consent and providing a certified copy of such ordinance to the County Administrator prior to May 1 preceding the fiscal year for which consent is being withdrawn.

SECTION 4. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED on First Reading on the ____ day of _____, 2018.

Council Member _____ offered the foregoing ordinance on second reading, and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

ALL SIGNATURES ON THE NEXT PAGE –

VILLAGE OF INDIANTOWN, FLORIDA

ORDINANCE NO. 0001 (2018)

TO INCLUDE THE VILLAGE OF INDIANTOWN IN A MARTIN COUNTY MUNICIPAL SERVICE
BENEFIT UNIT (MSBU) FOR FIRE RESCUE SERVICES

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

PASSED AND ADOPTED on Second and Final Reading on the _____ day of
_____, 2018.

(SEAL)

VILLAGE OF INDIANTOWN, FLORIDA

By: _____
Susan Gibbs Thomas, Mayor

ATTEST:

Cheryl White, Village Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Paul J. Nicoletti, Village Attorney

**VILLAGE OF INDIANTOWN, FLORIDA
AGENDA MEMORANDUM**

MEETING DATE: July 26, 2018

MEETING TYPE:

AGENDA ITEM TITLE: ORDINANCE No. 0002 (2018) AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF INDIANTOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

SUMMARY OF ITEM: Ordinance No. 0002 (2018); An Ordinance of the Village of Indiantown Adopting a Year Franchise with Florida Power & Light Company; and levying a 6% Franchise Fee. This is the FPL Franchise that Amy Brunjes reviewed with you a few weeks ago. It will replace the Franchise Agreement that FPL already has in place with Martin County, as it relates to the Village. The Franchise levy is 6%, and instead of the funds going to the County, they will be a new revenue source for the Village.

There was a misunderstanding on the original First Reading regarding the timeframe. The 30 year Franchise is the one approved by FPL. This ordinance is coming back to First Reading because of that change.

RECOMMENDATION: Adopt Ordinance No. 0002 (2018) on Second Reading.

PREPARED BY: P. Nicoletti DATE: 6/22/2018

REVIEWED BY: P. Nicoletti DATE: 6/22/2018

APPROVED BY: Teresa Lamar-Sarno DATE: 6/22/2018

ATTACHMENTS:

Description

Ord 002-2018 Franchise

Original Redlined Draft Ordinance

Franchise Information from FPL



ORDINANCE No. 0002 (2018)

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF INDIANTOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Indiantown recognizes that the Village of Indiantown and its citizens need and desire the benefits of electric service; and

WHEREAS, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the Village does not desire to undertake to provide such services; and

WHEREAS, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, FPL and the Village desire to enter into a franchise agreement providing for the payment of fees to the Village in exchange for the nonexclusive right and privilege of supplying electricity and other services within the Village free of competition from the Village, pursuant to certain terms and conditions;
NOW, THEREFORE,

BE IT ORDAINED BY THE VILLAGE OF INDIANTOWN, FLORIDA:

Section 1. FRANCHISE GRANTED. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of THIRTY (30) years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places, but not including public parks, environmental preserves or wetlands, without a separate easement from the Grantor (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Village of Indiantown, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or

ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of supplying electricity and other electricity-related services incidental thereto (which other electricity related services are defined as FPL's facility to facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electric service, and which do not include any services that are sold to others) to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2(a). USE OF PUBLIC RIGHTS-OF-WAY. The facilities of Grantee shall be so located, relocated, installed, constructed and so erected as to not unreasonably interfere with the convenient, safe, continuous use of the maintenance, improvement, extension or expansion of any public "road" as defined under the Florida Transportation Code, nor unreasonably interfere with reasonable egress from and ingress to abutting property.

(b) To minimize such conflicts with the standards set forth in subsection (a) above, the location, relocation, installation, construction or erection of all facilities shall be made as representatives of the Grantor may prescribe in accordance with all applicable federal, state and local statutes, laws, ordinances, rules and regulations and pursuant to Grantor's valid rules and regulations with respect to utilities' use of public rights-of-way relative to the placing and

maintaining, in, under, upon, along, over and across said public rights-of-way, provided such rules and regulations shall be:

- (i) for a valid municipal purpose,
- (ii) shall not prohibit the exercise of Grantee's rights to use said public rights-of-way for reasons other than conflict with the standards set forth above,
- (iii) shall not unreasonable interfere with Grantee's ability to furnish reasonably sufficient, adequate and efficient electric services to all its customers while not conflicting with the standards set forth above, or
- (iv) shall not require relocation of any of the Grantee's facilities installed before or after the effective date hereof in any public right-of-way unless or until the facilities unreasonably interfere with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public "road".

(c) Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should, unless otherwise permitted, be installed near the outer boundaries of the public rights-of-way to the extent possible and such installation shall be consistent with the Florida

Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

(d) When any portion of a public right-of-way is excavated, damaged or impaired by Grantee or any of its agents, contractors or subcontractors because of the installation, inspection, or repair of any of its facilities, the portion so excavated, damaged or impaired shall, within a reasonable time and as early as practicable after such excavation, be restored to its original condition before such damage by the Grantee at its expense.

(e) The Grantor shall not be liable to the Grantee for any cost or expense incurred in connection with the relocation of any of the Grantee's facilities required under this Section, except, however, that Grantee may be entitled to reimbursement of its costs and expenses from others and as provided by law.

Section 3. LIABILITY AND INDEMNITY. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder. The Grantor does not waive or subrogate

its rights and privileges under Section 768.28, Florida Statutes, and claims the fullest protection afforded by such statutory provision and any other sovereign immunity laws.

Section 4. REGULATIONS SUBJECT TO LAW. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5. FRANCHISE FEE; SIX (6%) PERCENT LEVY. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal six percent (6%) of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and

privileges granted herein exceed six percent (6%) of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 6. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer"), or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric

energy from any third party(ies) to any other retail customer's facility(ies), provided that the Grantor shall not be considered a "third party" or an "other retail customer" for purposes of this Section 6. Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not

agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 7. TERMINATION FOR COMPETITION. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 90 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

Section 8. TERMINATION FOR COMPETITIVE DISADVANTAGE. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written

notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 9. DEFAULT BY GRANTEE. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have 180 days after such final determination to make good the default before a forfeiture shall result, with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 10. DEFAULT BY GRANTOR; CONDEMNATION BY GRANTEE. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including, but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than as set forth in Section 2; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; or (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute a breach of this franchise and entitle the Grantee to

withhold such portion of the payments provided for in Section 5 hereof as a court of competent jurisdiction has, upon action instituted by Grantee, determined to be equitable, just, and reasonable, considering the totality of the circumstances, until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination (after the expiration or exhaustion of all rights of appeal) in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right as provided by law. The Grantee recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantor's delegated sovereign right of condemnation and that the Grantor, in its sole discretion, may exercise such right as provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 6 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers.

Section 11. ANNUAL AUDIT. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records

are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Section 12. INTERDEPENDENCE OF PROVISIONS. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

Section 13. DEFINITIONS. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 14. CONFLICTING ORDINANCES. All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 15. CONDITION PRECEDENT. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this ____ day of _____, 2018.

Council Member _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

| VILLAGE COUNCIL | YES | NO | ABSENT | ABSTAIN |
|------------------------------------|-----|----|--------|---------|
| SUSAN GIBBS THOMAS, MAYOR | | | | |
| GUYTON STONE, VICE MAYOR | | | | |
| JACKIE GARY CLARKE, COUNCIL MEMBER | | | | |
| ANTHONY J. DOWLING, COUNCIL MEMBER | | | | |
| JANET HERNANDEZ, COUNCIL MEMBER | | | | |

ADOPTED on second reading this ____ day of _____, 2018.

VILLAGE OF INDIANTOWN, FLORIDA

SUSAN GIBBS THOMAS, Mayor

ATTEST:

By: _____
CHERYL WHITE, Village Clerk

(SEAL)

APPROVED AS TO FORM AND LEGALITY

PAUL J. NICOLETTI, Village Attorney

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF INDIANTOWN, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Indiantown recognizes that the Village of Indiantown and its citizens need and desire the benefits of electric service; and

WHEREAS, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the Village does not desire to undertake to provide such services; and

WHEREAS, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, FPL and the Village desire to enter into a franchise agreement providing for the payment of fees to the Village in exchange for the nonexclusive right and privilege of supplying electricity and other services within the Village free of competition from the Village, pursuant to certain terms and conditions; **NOW, THEREFORE**,

BE IT ORDAINED BY THE VILLAGE OF INDIANTOWN, FLORIDA:

Section 1. FRANCHISE GRANTED. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"),

for the period of 20 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places, but not including public parks, environmental preserves or wetlands, without a separate easement from the Grantor (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Village of Indiantown, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of supplying electricity and other services (what other services... Internet... anything else?) to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof. Notwithstanding the provisions of this section, the Grantee shall not place facilities such that they disturb existing or planned public access, without constructing equally beneficial substitute public access.

Section 2. USE OF PUBLIC RIGHTS OR WAY. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic or other public access over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic and other public access, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with

reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic or other public access, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles, or changes to the rights-of-way for the multi-modal use by other vehicles, including bicycles, personal mobility devices, mopeds, slow-moving vehicles, golf carts, or other multi-modal devices, equestrians, and pedestrians, which causes such installed facilities to unreasonably interfere with said uses. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible, unless otherwise agreed upon with the Grantor. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by

law. The Grantor and Grantee agree to consult and cooperate on the location of all facilities.

Section 3. LIABILITY AND INDEMNITY. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder. The Grantor does not waive or subrogate its rights and privileges under Section 768.28, Florida Statutes, and claims the fullest protection afforded by such statutory provision and any other sovereign immunity laws.

Section 4. REGULATIONS SUBJECT TO LAW. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5. FRANCHISE FEE; SIX (6%) PERCENT LEVY. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each

such payment will equal six percent (6%) of the Grantee's billed revenues, **less actual write-offs**, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed six percent (6%) of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas by public entities); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles) **explain??**; (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges **what is this?**; (h) other service charges. **what are these?**

Section 6. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer"), but not including any of Grantor's departments, dependent districts or agencies, or to any electrical distribution system established solely to serve any retail customer formerly

served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek (HOW?) to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to rates, terms

and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 7. TERMINATION FOR COMPETITION. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 90 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

Section 8. TERMINATION FOR COMPETITIVE DISADVANTAGE. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then

being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 9. DEFAULT BY GRANTEE. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have 180 days after such final determination to make good the default before a forfeiture shall result, with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 10. DEFAULT BY GRANTOR; CONDEMNATION BY GRANTEE. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including, but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with public access; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise, which is subject to appropriate injunctive relief or other civil action in a court of competent jurisdiction, but which shall not entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof. Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 11. ANNUAL AUDIT. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Section 12. INTERDEPENDENCE OF PROVISIONS. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

Section 13. DEFINITIONS. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 14. CONFLICTING ORDINANCES. All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 15. CONDITION PRECEDENT. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this _____ day of _____, 2018.

PASSED AND ADOPTED on second reading this _____ day of _____, 2018.

VILLAGE OF INDIANTOWN, FLORIDA

By: _____

ATTEST:

By: _____ (SEAL)
Clerk, Village of Indiantown, Florida

APPROVED AS TO FORM AND LEGALITY

MISCELLANEOUS
CLASSES OF CUSTOMERS

Residential. Service supplied exclusively for domestic purposes in individually metered dwelling units and in duplexes and triplexes, including the separately metered non-commercial facilities of a residential customer (i.e., garages, water pumps, etc.). Service for non-metered outdoor lighting is also considered Residential when the lighting is supplied exclusively for domestic purposes. Service to commonly owned facilities of condominiums, cooperatives and homeowners associations is Residential, provided the service criteria as specified in FPL's Common Use Facilities Rider is met.

Commercial Service. Service used for business and professional activities in establishments and for purposes not otherwise classified for rate purposes, including: airports, banks, billboards, boarding houses, churches, clubs, commercial buildings, freight terminals, garages, hospitals, hotels, motels, master-metered apartment houses, model homes, office buildings, parking lots, passenger stations, personal service establishments, restaurants, rooming houses, schools, self service laundries, signs, stores, theatres and the like.

Industrial. Service to power equipment used for manufacturing or processing purposes, and to the lighting within and about the buildings, structures and premises housing and enclosing the power-driven and operated machinery and equipment and incident to the use thereof.

Public Street and Highway Lighting. Service for lighting public ways and areas.

Other Sales to Public Authorities. Service with eligibility restricted to governmental entities.

Sales to Railroads and Railways. Service supplied for propulsion of electric transit vehicles.

Sales for Resale. Service to other electric utilities for resale purposes.