TOWN OF LOXAHATCHEE GROVES

TOWN COUNCIL MEETING

AGENDA

TUESDAY, July 7, 2015

Mayor David Browning (Seat 4)

Vice-Mayor Ronald D. Jarriel (Seat 1)

Councilman Tom Goltzené (Seat 5)

Councilman Ryan Liang (Seat 3)

Councilman Jim Rockett (Seat 2)

Town of Loxahatchee Groves
Town Council Meeting
Tuesday, July 7, 2015 - 7:00 p.m. to 10:30 p.m.

(Times established by Resolution No. 2014-08… commencing at 7:00 p.m., and ending no later than 10:30 p.m., which can be extended by motion of the Council.)

TOWN HALL
155 F Road, Loxahatchee Groves, Florida 33470

Mayor David Browning (Seat 4)
Vice-Mayor Ronald D. Jarriel (Seat 1)
Councilman Tom Goltzené (Seat 5)
Councilman Ryan Liang (Seat 3)
Councilman Jim Rockett (Seat 2)

Town Manager William F. Underwood, II
Town Clerk Janet K. Whipple
Town Planning Consultant Jim Fleischmann
Town Attorney Michael D. Cirullo, Jr.

Tentative
Subject to Revision

PUBLIC NOTICE/AGENDA

1. OPENING

a. Call to Order & Roll Call

b. Pledge of Allegiance & Invocation – Mayor Browning

c. Approval of Agenda

2. CONSENT AGENDA

a. Invoice from Goren, Cherof, Doody & Ezrol, P.A.

b. Consideration for Renewal of Hurricane Disaster Debris Removal and Monitoring Agreements.

3. PUBLIC COMMENTS

4. PRESENTATIONS – *NONE*

5. COMMITTEE REPORTS

a. Lung Chiu, Chair of Financial Advisory and Audit Committee (FAAC) to provide May FY 2015 Financial Report.

6. ORDINANCES

a. **ORDINANCE NO. 2015-04: PUBLIC HEARING/SECOND/FINAL READING** *(Date Changes for the 2016 Municipal Election)*

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, SCHEDULING THE DATE OF THE TOWN'S 2016 GENERAL MUNICIPAL ELECTION, PURSUANT TO SECTION 101.75, FLORIDA STATUTES, TO MARCH 15, 2016 TO COINCIDE WITH THE 2016 PRESIDENTIAL PREFERENCE PRIMARY; PROVIDING FOR THE QUALIFYING PERIOD FOR THE 2016 MUNICIPAL GENERAL ELECTION; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

b. **ORDINANCE NO. 2015-05: PUBLIC HEARING/SECOND/FINAL READING** *(Okeechobee Boulevard Moratorium Extension)*

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING ORDINANCE 2014-08, WHICH IMPOSED A MORATORIUM ON THE PROCESSING AND REVIEW OF APPLICATIONS FOR AMENDMENTS TO THE TOWN'S COMPREHENSIVE PLAN, INCLUDING FUTURE LAND USE MAP AMENDMENTS AND TEXT AMENDMENTS, RELATING TO COMMERCIAL LAND USES ON PROPERTIES FRONTING ON OKEECHOBEE BOULEVARD WITHIN THE CORPORATE BOUNDARIES OF THE TOWN, TO EXTEND THE MORATORIUM UNTIL DECEMBER 31, 2015 TO ENABLE THE ADOPTION OF APPROPRIATE AMENDMENTS TO THE TOWN'S COMPREHENSIVE PLAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

c. **ORDINANCE NO. 2015-06: PUBLIC HEARING/FIRST READING** *(ULDC Agricultural Changes)*

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO THE TOWN'S UNIFIED LAND DEVELOPMENT CODE; AMENDING PART I, ENTITLED "ADMINISTRATION AND DEFINITIONS," ARTICLE 10 ENTITLED "DEFINITIONS, ABBREVIATIONS, AND CONSTRUCTION OF TERMS", SECTION 10-015, ENTITLED "DEFINITIONS," TO REVISE THE DEFINITION

OF AGRICULTURE, BONA FIDE, AND ADD THE DEFINITION OF AGRICULTURE, HOBBYIST; TO AMEND ARTICLE 20 ENTITLED "RESIDENTIAL ZONING DISTRICTS" PART II, ENTITLED "ZONING DISTRICTS" SECTION 20-015 "PERMITTED USES"; TO REVISE PART III, ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 65 ENTITLED "AGRICULTURAL USES," SECTION 65 ENTITLED "PURPOSE AND INTENT, SECTION 65-010 ENTITLED "DETERMINATION OF VALID AGRICULTURAL USE", AND SECTION 65-015, ENTITLED "NONAGRICULTURAL USES AND STRUCTURES WITH A BONAFIDE AGRICULTURAL USE"; PROVIDING FOR INTENT OF THE TOWN TO COMPLY WITH THE STATE'S PREEMPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

7. RESOLUTIONS

a. **RESOLUTION NO. 2015-20:** *(1st Amendment to B Road Improvement Agreement)*

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING THE FIRST AMENDMENT TO B ROAD IMPROVEMENT AGREEMENT BETWEEN THE TOWN OF LOXAHATCHEE GROVES, LOXAHATCHEE EQUESTRIAN PARTNERS AND SOLAR SPORTSYSTEMS, INC., ATLANTIC LAND INVESTMENTS, LLC, AND PALM BEACH STATE COLLEGE; AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

b. **RESOLUTION NO. 2015-21:** *(Council to ratify Anita Kane as Councilman Goltzené's appointment to the Finance Audit and Advisory Committee (FAAC) replacing Virginia Standish who has submitted her resignation).*

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPOINTING ANITA KANE TO REPLACE AND SERVE THE REMAINING TERM OF VIRGINIA STANDISH AS A VOTING MEMBER OF THE FINANCE ADVISORY AND AUDIT COMMITTEE; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

8. MANAGER'S REPORT – *Town Manager Underwood*

a. Agenda Item Report (AIR) - Updates on various activities and issues concerning the Town.

b. Palm Beach County Fire Rescue May, 2015 Response Time Report *(on file)*

9. OLD BUSINESS

a. Forfeiture Hearing contemplated under the charter.

10. NEW BUSINESS

a. Town Management Services Request for Proposal (RFP).

b. Discussion, and direction, on the Eighth Addendum to the Law Enforcement Service Agreement between The Town of Loxahatchee Groves and Ric L. Bradshaw, Sheriff of Palm Beach County Florida; and also potential solutions to immediate law enforcement coverage within the Town of Loxahatchee Groves.

c. Discussion, and direction, on an Interlocal Agreements (ILA) with the Loxahatchee Groves Water Control District for accessory road maintenance services.

11. COUNCIL REPORTS - *NONE*

12. CLOSING COMMENTS

a. Public
b. Town Attorney
c. Town Council Members

13. ADJOURNMENT

The next regular Town Council Meeting is tentatively scheduled for July 21, 2015.

Comment Cards: Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 2.a.

Consent Agenda

Attorney Invoice

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-0702400R
STATEMENT NO: 3851

Attn: William F. Underwood, II - Town Manager

General Matters

MDC

			HOURS
04/30/2015	SRW	T/c/c with Russ re: Tufano code enforcement case. E-mail correspondence re: same.	0.30
	MDC	Review ILA and permit per comments from BU.	1.50
05/01/2015	MDC	Review agenda materials for 5/05/15 meeting.	0.70
05/04/2015	MDC	Phone conference with BU on pending code cases, agenda for 5/5/15 meeting.	0.90
05/05/2015	MDC	Review materials, prepare for Council meeting; telephone conference with Council members; telephone conference with BU; attend Council meeting.	5.80
05/06/2015	MDC	Review materials, follow up from 5/05 meeting; revise waste ordinance, review status of advertising matters for 5/19 meeting.	1.10
05/07/2015	MDC	Review comments on Trails ILA and permit received from LGWCD counsel; review draft published notices; prepare resolution on public participation; telephone conference with BU on Trails ILA; telephone conference with JF on planning items.	2.10
05/08/2015	MDC	Revise resolution on public participation; review correspondence on code matters; telephone conference with BU on Trails ILA and permits; revise ILA and permit; telephone conference with JF and BU on Waste Ordinance.	2.10
05/11/2015	MDC	Continue reviewing issues with Trails ILA, review correspondence on pending matters for 5/19/15 meeting; prepare P&Z resolution, telephone conference with MV, FP on Trails ILA; telephone conference with BU on ILA and pending items; review correspondence on code matters.	1.50
05/12/2015	MDC	Revise resolution for P&Z Board, revise comments to Manager's report; review correspondence on Waste Ordinance, revise ordinance; telephone conference with JF on code, planning matters; review ILA approved by BOS; miscellaneous telephone calls on ILA.	1.90
05/13/2015	MDC	Review status of agenda matters for 5/19/15 meeting; review budget resolution, review correspondence on code matters, public records.	0.80

LOXAHATACHEE GROVES/TOWN OF

06/02/2015

ACCOUNT NO: 1574-0702400R
STATEMENT NO: 3851

General Matters

			HOURS	
05/14/2015	MDC	Phone conference with BU, telephone conference with JF; review correspondence on procurement inquiry.	0.40	
05/15/2015	DJD	Telephone conference with Ron Jarrell regarding workshop; follow up with Michael Cirullo.	0.40	
05/18/2015	MDC	Continue reviewing agenda materials for 5/19/15 Council meeting; review materials for workshop, review revised ILA with District.	0.90	
05/19/2015	SRW	Meet w/ MDC re: Tufano. E-mail correspondence with Bill re: same.	0.30	
	MDC	Review materials for workshop, council meeting; miscellaneous telephone conference with BU, council; prepare for, attend workshop and council meeting.	7.40	
05/20/2015	MDC	Miscellaneous followup on items from 5/19/15 meeting; telephone conference with Frank Palen re: ILA, review final document; miscellaneous telephone conference with BU; review document revisions by JF, JW from 5/19/15 Council action.	1.50	
05/21/2015	SRW	Discussion and e-mail correspondence about Tufano case.	0.30	
	MDC	Miscellaneous telephone calls on pending code cases, review correspondence; confer with JGH on ethics for FAAC.	0.80	
05/22/2015	SRW	T/c/c with MDC and Bill re: Tufano code case. Review documents re: same.	1.00	
	MDC	Review code matters with BU, RE; begin preparing moratorium ordinance; prepare resolution on meeting location; meet with JGH on FAAC meeting.	1.80	
	JGH	Sunshine law/public records presentation preparation.	0.50	
05/26/2015	MDC	Follow up on pending items, continue preparing moratorium ordinance; conference with JGH on the ethics training; review cost recovery documents, forward to Day per DU.	0.60	
	JGH	Attend FAAC meeting (sunshine law/public records presentation), presentation preparation.	2.70	
		FOR CURRENT SERVICES RENDERED	37.30	6,900.50

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
D.J. DOODY	0.40	$185.00	$74.00
MICHAEL D. CIRULLO	31.80	185.00	5,883.00
JACOB G. HOROWITZ	3.20	185.00	592.00
STACEY R WEINGER	1.90	185.00	351.50

Photocopies	115.50
TOTAL EXPENSES THRU 05/31/2015	115.50

LOXAHATACHEE GROVES/TOWN OF

06/02/2015

ACCOUNT NO: 1574-0702400R

STATEMENT NO: 3851

General Matters

TOTAL CURRENT WORK	7,016.00
BALANCE DUE	$7,016.00

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-1107562R
STATEMENT NO: 3852

Attn: William F. Underwood, II - Town Manager

adv. Day, Willie and Frankie

			HOURS	
05/12/2015	MDC	Review revised resolution, telephone conference with JF, provide comments to JF.	0.40	
		FOR CURRENT SERVICES RENDERED	0.40	74.00

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
MICHAEL D. CIRULLO	0.40	$185.00	$74.00

TOTAL CURRENT WORK	74.00
BALANCE DUE	$74.00

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-1107571R
STATEMENT NO: 3853

Attn: William F. Underwood, II - Town Manager

adv. Todd McLendon (Code Enforcement Violation)

			HOURS	
05/05/2015	MDC	Review materials, miscellaneous telephone calls on status of case.	0.30	
		FOR CURRENT SERVICES RENDERED	0.30	55.50

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
MICHAEL D. CIRULLO	0.30	$185.00	$55.50

TOTAL CURRENT WORK	55.50
BALANCE DUE	$55.50

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-1107581R
STATEMENT NO: 3854

Attn: William F. Underwood, II - Town Manager

Chamber of Commerce Property

			HOURS	
05/15/2015	RLL	Prepare recording of termination of lease in the public records.	0.40	
		FOR CURRENT SERVICES RENDERED	0.40	50.00

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
RACHEL L LEACH	0.40	$125.00	$50.00

	Photocopies	1.05
	TOTAL EXPENSES THRU 05/31/2015	1.05
05/19/2015	Simplifile E-Recording	15.20
		15.20
	TOTAL ADVANCES THRU 05/31/2015	15.20
	TOTAL CURRENT WORK	66.25
	BALANCE DUE	$66.25

mbc

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-1107582R
STATEMENT NO: 3855

Attn: William F. Underwood, II - Town Manager

2014 Day Property Amendment

			HOURS	
05/05/2015	MDC	Review and revise resolution and notice, provide comments to JF.	0.50	
		FOR CURRENT SERVICES RENDERED	0.50	92.50

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
MICHAEL D. CIRULLO	0.50	$185.00	$92.50

TOTAL CURRENT WORK	92.50
BALANCE DUE	$92.50

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-1107585R
STATEMENT NO: 3856

Attn: William F. Underwood, II - Town Manager

Big Dog Ranch/ Special Exception

			HOURS	
05/07/2015	MDC	Review revised conditions of approval; telephone conference with JF on comments to conditions.	0.60	
05/15/2015	MDC	Review revised conditions of approval, provide comments to Jim Fleischman.	0.30	
		FOR CURRENT SERVICES RENDERED	0.90	166.50

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
MICHAEL D. CIRULLO	0.90	$185.00	$166.50

TOTAL CURRENT WORK	166.50
BALANCE DUE	$166.50

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

LOXAHATACHEE GROVES/TOWN OF
155 F Road
Loxahatchee Groves FL 33470

06/02/2015
ACCOUNT NO: 1574-1107587R
STATEMENT NO: 3857

Attn: William F. Underwood, II - Town Manager

Cherney (1666 C Road - RV Park)

			HOURS	
04/30/2015	SRW	E-mail correspondence re: Kurtz public records request. T/c/c with Russ re: same. E-mail correspondence re: same. E-mail correspondence with Jeff Kurtz re: pending public records requests.	0.60	
05/06/2015	SRW	E-mail correspondence with Jeff Kurtz re: public records request and magistrate hearing.	0.30	
05/07/2015	SRW	E-mail correspondence re: PRR and hearing scheduling.	0.30	
05/13/2015	SRW	Meet w/ MDC. Review file. Draft case chronology and public records requests and inquiries. Multiple e-mail correspondence re: same.	1.00	
05/29/2015	SRW	Discussion with MDC re: property, permits, zoning and RV park. Review correspondence from Health Dept. re: same.	0.30	
		FOR CURRENT SERVICES RENDERED	2.50	462.50

RECAPITULATION

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
STACEY R WEINGER	2.50	$185.00	$462.50

TOTAL CURRENT WORK	462.50
BALANCE DUE	$462.50

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 2.b.

Consent Agenda

Disaster Removal Agreements

RENEWAL AGREEMENT

BETWEEN THE

TOWN OF LOXAHATCHEE GROVES

AND

BERGERON EMERGENCY SERVICES, INC.

DISASTER RECOVERY SERVICES

RFQ NO. 2011-03

This Renewal Agreement, is made and entered into the ___ day of _____, 2015, by and between the Town of Loxahatchee Groves, a Florida municipal corporation ("TOWN"), and BERGERON EMERGENCY SERVICES, INC. ("CONTRACTOR") for Disaster Recovery Services ("Renewal Agreement").

WITNESSETH:

WHEREAS, the TOWN, solicited proposals from firms to perform Emergency Push & Storm Debris Collection and Disposal from TOWN Rights-of-Way Service ("Services"); and

WHEREAS, Proposals were evaluated by the Town Council; and

WHEREAS, the Town Council selected the CONTRACTOR to perform the services; and,

WHEREAS, the TOWN and CONTRACTOR entered into an Agreement for Disaster Recovery Services on July 19, 2011; and,

WHEREAS, the Initial Term of the Agreement for Disaster Recovery Services expired on November 30, 2012; and,

WHEREAS, the Agreement for Disaster Recovery Services provides for additional one (1) year terms ("Renewal Terms") at the option of the TOWN Council; and,

WHEREAS, the Parties renewed the Agreement for one year renewal terms since the Initial Term; and

WHEREAS, the CONTRACTOR has agreed to maintain the same prices during the Renewal Term as set forth in the Agreement for Disaster Recovery Services; and,

WHEREAS, TOWN and CONTRACTOR desire to enter into a Renewal Agreement to renew the Agreement for Disaster Recovery Services for a term from December 1, 2014, through November 30, 2015.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

A. Pursuant to Section 2.2 of the Agreement for Disaster Recovery Services, the parties hereby agree to the exercise of the option to renew the Agreement for Disaster Recovery Services for one (1) additional year (Renewal Term).

B. The Renewal Term shall be from December 1, 2014 through November 30, 2015.

C. All terms, responsibilities and conditions of the Agreement for Disaster Recovery Services remain in full force and effect during the Renewal Term.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

_____
Janet K. Whipple, Town Clerk

APPROVED AS TO FORM:

_____
Michael D. Cirullo, Jr., Town Attorney

BY: _____
David Browning, Mayor

DATED:_____

BERGERON EMERGENCY SERVICES, INC.

_____
WITNESS

_____
PRINT NAME

BY:_____
RONALD M. BERGERON, JR.
President

DATED:_____

MDC

{00082915.1 1574-0702400 }

RENEWAL AGREEMENT

BETWEEN THE

TOWN OF LOXAHATCHEE GROVES

AND

C & C LOADER SERVICE, INC.

DISASTER RECOVERY SERVICES

RFQ NO. 2011-03

This Renewal Agreement, is made and entered into the ___ day of _____, 2015, by and between the Town of Loxahatchee Groves, a Florida municipal corporation ("TOWN"), and C & C LOADER SERVICE, INC. ("CONTRACTOR") for Disaster Recovery Services ("Renewal Agreement").

WITNESSETH:

WHEREAS, the TOWN, solicited proposals from firms to perform Emergency Push & Storm Debris Collection and Disposal from TOWN Rights-of-Way Service ("Services"); and

WHEREAS, Proposals were evaluated by the Town Council; and

WHEREAS, the Town Council selected the CONTRACTOR to perform the services; and,

WHEREAS, the TOWN and CONTRACTOR entered into an Agreement for Disaster Recovery Services on July 19, 2011; and,

WHEREAS, the Initial Term of the Agreement for Disaster Recovery Services expired on November 30, 2012; and,

WHEREAS, the Agreement for Disaster Recovery Services provides for additional one (1) year terms ("Renewal Terms") at the option of the TOWN Council; and,

WHEREAS, the Parties renewed the Agreement for one year terms since the Initial Term; and

WHEREAS, the CONTRACTOR has agreed to maintain the same prices during the Renewal Term as set forth in the Agreement for Disaster Recovery Services; and,

WHEREAS, TOWN and CONTRACTOR desire to enter into a Renewal Agreement to renew the Agreement for Disaster Recovery Services for a term from December 1, 2014, through November 30, 2015.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

A. Pursuant to Section 2.2 of the Agreement for Disaster Recovery Services, the parties hereby agree to the exercise of the option to renew the Agreement for Disaster Recovery Services for one (1) additional year (Renewal Term).

B. The Renewal Term shall be from December 1, 2014 through November 30, 2015.

C. All terms, responsibilities and conditions of the Agreement for Disaster Recovery Services remain in full force and effect during the Renewal Term.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

BY: _____
David Browning, Mayor

_____
Janet K. Whipple, Town Clerk

DATED:_____

APPROVED AS TO FORM:

_____
Michael D. Cirullo, Jr., Town Attorney

C & C LOADER SERVICE, INC.

_____
WITNESS

BY:_____
JOHN CHOQUETTE,
President

_____
PRINT NAME

DATED:_____

MDC

{00082911.1 1574-0702400 }

RENEWAL AGREEMENT

BETWEEN THE

TOWN OF LOXAHATCHEE GROVES

AND

O'BRIEN'S RESPONSE MANAGEMENT, LLC

DISASTER DEBRIS MONITORING SERVICES

RFQ NO. 2011-04

This Renewal Agreement, is made and entered into the ___ day of _____, 2015, by and between the Town of Loxahatchee Groves, a Florida municipal corporation ("TOWN"), and O'BRIEN'S RESPONSE MANAGEMENT, LLC ("CONTRACTOR") for Disaster Debris Monitoring Services ("Renewal Agreement").

WITNESSETH:

WHEREAS, the TOWN, solicited proposals from firms to perform Disaster Debris Monitoring Services ("Services"); and

WHEREAS, Proposals were evaluated by the Town Council; and

WHEREAS, the Town Council selected the CONTRACTOR to perform the services; and

WHEREAS, the TOWN and CONTRACTOR entered into a Disaster Debris Monitoring Services Agreement ("Disaster Debris Monitoring Services Agreement") on August 4, 2011; and,

WHEREAS, the Initial Term of the Disaster Debris Monitoring Services Agreement expired on November 30, 2012; and,

WHEREAS, the Disaster Debris Monitoring Services Agreement provides for additional one (1) year terms ("Renewal Terms") at the option of the TOWN Council; and,

WHEREAS, the Parties renewed the Agreement for one year terms since the Initial Term; and

WHEREAS, the CONTRACTOR has agreed to maintain the same prices during the Renewal Term as set forth in the Disaster Debris Monitoring Services Agreement; and,

WHEREAS, TOWN and CONTRACTOR desire to enter into a Renewal Agreement to renew the Disaster Debris Monitoring Services Agreement for a term from December 1, 2014, through November 30, 2015.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

A. Pursuant to Section 2.2 of the Disaster Debris Monitoring Services Agreement, the parties hereby agree to the exercise of the option to renew the Disaster Debris Monitoring Services Agreement for one (1) additional year (Renewal Term).

B. The Renewal Term shall be from December 1, 2014 through November 30, 2015.

C. All terms, responsibilities and conditions of the Disaster Debris Monitoring Services Agreement remain in full force and effect during the Renewal Term.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

BY: _____
David Browning, Mayor

_____
Janet K. Whipple, Town Clerk

DATED:_____

APPROVED AS TO FORM:

_____
Michael D. Cirullo, Jr., Town Attorney

O'BRIEN'S RESPONSE MANAGEMENT, LLC

_____
WITNESS

BY:_____
NAME:_____
TITLE:_____

_____
PRINT NAME

DATED:_____

MDC

{00082914.1 1574-0702400 }

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 5.a.

COMMITTEE REPORTS

Financials Ending May 30, 2015

BUDGET VS ACTUAL
AS OF MAY 31, 2015
67% Elapsed
General Fund
Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
001-311-100-000	Ad Valorem Taxes	5,620	215,044	-	217,931	(2,887)	99%
	Ad Valorem Taxes Subtotal	**5,620**	**215,044**	**-**	**217,931**	**(2,887)**	**99%**
001-314-100-000	Electric Utility Tax	19,567	136,350	-	203,000	(66,650)	67%
001-315-100-000	Communications Services	7,466	54,421	-	103,352	(48,931)	53%
001-316-200-000	County Occupational License	494	5,865	-	5,000	865	117%
	Local Taxes Subtotal	**27,528**	**196,636**	**-**	**311,352**	**(114,716)**	**63%**
001-323-100-000	FPL Franchise Fee	-	100,889	-	185,000	(84,111)	55%
001-323-125-000	Haulers License Fee	-	1,525	-	-	1,525	NA
001-323-300-000	PBC Water Utility Franchise	516	4,358	-	5,050	(692)	86%
001-329-100-000	Planning & Zoning Permit	1,342	5,970	-	2,000	3,970	298%
	Permits, Franchise Fees & Special Subtotal	**1,858**	**112,742**	**-**	**192,050**	**(79,308)**	**59%**
001-335-120-000	State Revenue Sharing	6,608	52,922	-	90,689	(37,767)	58%
001-335-180-000	Half Cent Sales Tax	23,357	149,484	-	243,375	(93,891)	61%
	Intergovernmentall Revenue Subtotal	**29,965**	**202,406**	**-**	**334,064**	**(131,658)**	**61%**
001-341-000-000	General Government Charges	310	2,821	-	4,000	(1,180)	71%
001-343-349-000	Cost Recovery Fees	5,846	48,098	-	60,000	(11,902)	80%
	Charges for Services Subtotal	**6,156**	**50,918**	**-**	**64,000**	**(13,082)**	**80%**
001-351-100-000	Court Fines	-	-	-	-	-	
001-354-100-000	Code Enforcement Fines	5,700	6,409	-	300	6,109	2136%
	Code Enforcement Fines Subtotal	**5,700**	**6,409**	**-**	**300**	**6,109**	**2136%**
001-361-100-000	Interest	-	33	-	200	(167)	17%
001-369-000-000	Other Misc Income	150	150	-	1,000	(850)	15%
	Other Misc Revenue Subtotal	**150**	**183**	**-**	**1,200**	**(1,017)**	**15%**
001-381-305-000	Transfer from CIP Fund	**29,380**	**434,708**	**-**	**1,000,000**	**(565,292)**	43%
001-399-000-000	Transfer from Fund Balance*	-	-	-	(25,000)	**25,000**	0%
	Other Non-operating Sources Subotal	**29,380**	**434,708**	**-**	**975,000**	**(540,292)**	**45%**
	Grand Total Revenue	**106,357**	**1,219,046**	**-**	**2,095,897**	**(876,851)**	**58%**

Represents consumption of fund balance. This is not true revenue by definition or reflected in GL in transactions

TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF MAY 31, 2015
67% Elapsed
General Fund
Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
001-511-310-000	Professional Services	-	-	-	650	650	0%
001-511-400-000	Travel	-	-	-	3,000	3,000	0%
001-511-492-000	Other Operating Expenses	-	1,574	-	1,500	(74)	105%
001-511-499-000	Other Current Charges - Council Reimbursement	2,500	17,500	-	30,000	12,500	58%
001-511-500-000	Education & Training	-	48	-	1,000	952	5%
001-511-510-000	Office Supplies	55	191	-	300	109	64%
001-511-520-000	Operating Supplies	-	-	-	300	300	0%
001-511-540-000	Books, Publications & Subscriptions	-	1,635	-	1,935	300	85%
001-511-820-000	Special Events/Contributions	(232)	6,086	-	10,000	3,914	61%
	Legislative Total	**2,323**	**27,034**	**-**	**48,685**	**21,651**	**56%**
001-512-340-000	Other Services	22,471	179,769	-	269,653	89,884	67%
001-512-400-000	Travel	125	585	-	1,500	915	39%
001-512-420-000	Postage & Freight - NEW	62	345	-	1,000	655	34%
001-512-490-000	Legal Advertising	(802)	(802)	-	500	1,302	-160%
001-512-492-000	Other Operating Expenses	36	147	-	944	797	16%
001-512-493-000	Election Expense	-	15,637	-	8,010	(7,627)	195%
001-512-510-000	Office Supplies	5,092	14,249	-	12,000	(2,249)	119%
001-512-540-000	Books, Publications & Subscriptions	-	11	-	570	559	2%
	Executive Total	**26,985**	**209,942**	**-**	**294,177**	**84,235**	**71%**
001-513-320-000	Accounting and Auditing	-	2,500	-	18,000	15,500	14%
001-513-470-000	Printing and Binding	-	-	-	1,751	1,751	0%
001-513-490-000	Legal Advertising	-	-	-	2,000	2,000	0%
001-513-491-000	Computer Services	-	5,883	-	11,919	6,036	49%
	Financial & Administrative Total	**-**	**8,383**	**-**	**33,670**	**25,287**	**25%**
001-514-310-000	Professional Services	9,234	53,977	-	90,000	36,023	60%
	Legal Total	**9,234**	**53,977**	**-**	**90,000**	**36,023**	**60%**

TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF MAY 31, 2015
67% Elapsed
General Fund
Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
001-515-310-000	Professional Services	550	$ 16,465.00	-	40,000	23,535	41%
001-515-340-000	Other Services	6,725	$ 53,801.36	-	80,702	26,901	67%
001-515-343-000	Planning & Zoning Contract	1,594	$ 9,300.00	-	20,000	10,700	47%
001-515-349-000	Cost Recovery Expenditure	5,846	$ 69,411.03	-	60,000	(9,411)	116%
001-515-490-000	Legal Advertising - NEW	722	$ 6,023.20	-	10,000	3,977	60%
	Comprehensive Planning & Zoning Total	**15,438**	**155,001**	**-**	**210,702**	**55,701**	**74%**
001-519-315-000	Special Magistrate	1,239	4,622	-	16,000	11,378	29%
001-519-340-000	Other Services	200	200	-	3,000	2,800	7%
001-519-354-000	Code Compliance	2,768	20,623	-	36,000	15,377	57%
001-519-410-000	Communications Services	813	3,848	-	6,100	2,252	63%
001-519-420-000	Building Utilities	345	345	-	-	(345)	NA
001-519-440-000	Rentals and Leases	935	14,693	-	34,783	20,090	42%
001-519-450-000	Insurance	-	1,370	-	18,000	16,630	8%
001-519-460-000	Repair & Maint - Building	3,536	12,459	-	2,100	(10,359)	593%
001-519-490-000	Computer Repair	-	896	-	5,500	4,604	16%
001-519-491-000	Computer Services	77	2,189	-	7,292	5,103	30%
001-519-492-000	Other Operating Expenses	77	142	-	-	(142)	NA
001-519-494-000	Inspector General Office	-	-	-	5,280	5,280	0%
001-519-610-000	Land Acquisition	442	27,414		27,000	(414)	102%
001-519-620-000	Chamber of Commerce Property	18,192	483,008		465,000	(18,008)	104%
001-519-820-000	Loxahatchee Groves CERT	165	375	-	2,000	1,625	19%
001-519-990-000	Contingency	-	-	-	15,524	15,524	0%
001-519-998-000	Transfer To Fund Balance	-	-	-	480,500	480,500	0%
	Other Governmental Services Total	**28,788**	**572,184**	**-**	**1,124,079**	**551,895**	**51%**
001-521-341-000	Professional Services-PBSO	23,590	191,789	-	283,084	91,295	68%
001-521-342-000	Contractual-ADDL PBSO	-	-	-	10,500	10,500	0%
	Law Enforcement Total	**23,590**	**191,789**	**-**	**293,584**	**101,795**	**65%**
001-539-310-000	Other Services	-	-	-	-	-	
001-539-340-000	Professional Services	-	736	-	1,000	264	74%
	Public Works Total	**-**	**736**	**-**	**1,000**	**264**	**74%**
	Grand Total Expenditure	**106,357**	**1,219,046**	**-**	**2,095,897**	**876,851**	**58%**
	Net Revenue	**(0)**	**0**	**-**	**-**		

TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF MAY 31, 2015
67% Elapsed

Transportation Fund

Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
101-312-410-000	1st Local Option Fuel Tax (1 to 6 cent)	23,606	150,412	-	250,858	(100,446)	60%
101-312-420-000	2nd Local Option Fuel Tax (1 to 5 cent)	10,700	70,977	-	117,768	(46,791)	60%
101-399-000-000	Transfer from Fund Balance	-	-	-	412,423	(412,423)	0%
	Total Revenue	**34,306**	**221,389**	**-**	**781,049**	**(559,660)**	**28%**

Represents consumption of fund balance. This is not true revenue by definition or reflected in GL in transactions

Transportation Fund

Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
101-539-340-000	Other Services	-	75				
101-541-467-000	Traffic Control Signs (6 ct) Maint.	-	4,336	-	10,000	5,664	43%
101-541-468-000	Non-District Roads (6 ct) Maint.	-	28,347	-	102,059	73,712	28%
101-541-469-000	District Roads (6 ct) Maint.	-	1,951	-	93,738	91,787	2%
101-541-632-000	Special Projects (6 cent)	-	-	-	60,000	60,000	0%
101-541-920-000	Transfer to Capital Projects	-	-	-	515,252	515,252	0%
	Total Expenditure	**-**	**34,709**	**-**	**781,049**	**746,415**	**4%**
	Net Revenue	**34,306**	**186,680**		**-**		

TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF MAY 31, 2015
67% Elapsed

Capital Improvement Program
Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
305-363-991-000	Contributions from Transportation Fund	-	-	-	555,252	(555,252)	0%
305-399-000-000	Transfer from Fund Balance	-	-	-	1,000,000	(1,000,000)	0%
	Total Revenue	**-**	**-**	**-**	**1,555,252**	**(1,555,252)**	**0%**

Capital Improvement Program
Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
305-541-610-000	Surveying Town Roads	-	-	-	90,374	90,374	0%
305-541-630-000	Okeechobee and D Road Traffic Light	-	-	-	290,944	290,944	0%
305-541-640-000	Town Roads OGEM Projects	-	-	-	25,000	25,000	0%
305-541-650-000	Trails	-	-	-	120,000	120,000	0%
305-541-654-000	Purchase Roads from LGWCD	-	-	-	28,934	28,934	0%
305-581-001-000	Interfund Transfer Out To GF	-	-	-	1,000,000	1,000,000	0%
	Total Expenditure	**-**	**-**	**-**	**1,555,252**	**1,555,252**	**0%**
	Net Revenue	**-**	**-**		**-**		

TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF MAY 31, 2015
67% Elapsed

Solid Waste Fund

Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
405-325-205-000	Solid Waste Assessments	9,188	413,181	-	431,846	(18,665)	96%
405-325-206-000	Discount Fees	-	(13,550)	-	(11,660)	(1,890)	116%
405-343-120-000	SWA Recycling Income	620	2,991	-	6,700	(3,709)	45%
405-361-100-000	Interest	-	2,254	-	-	2,254	NA
405-363-990-000	Contributions from General Fund	-	-	-	14,382	(14,382)	0%
	Total Revenue	**9,808**	**404,877**	**-**	**441,268**	**(36,392)**	**92%**

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
405-534-345-000	Contractual - Waste Over	-	12,548	-	15,000	2,453	84%
405-534-346-000	PBC Administration Fee 1	82	3,985	-	4,318	333	92%
405-534-420-000	Postage & Freight	-	-	-	300	300	0%
405-534-434-000	Solid Waste Contractor	34,513	232,618	-	410,150	177,532	57%
405-534-436-000	Other Sanitation Service	-	3,100	-	11,000	7,900	28%
405-534-490-000	Legal Advertising	-	-	-	500	500	0%
	Total Expenditure	**34,594**	**252,251**	**-**	**441,268**	**189,017**	**57%**
	Net Revenue	**(24,786)**	**152,626**		**-**		

Note: YTD Fines credited to Service Provider invoicing - $8000.00

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 6.a.

ORDINANCES

Ordinance No. 2015-04

Public Hearing/2nd and Final Reading

(Date Changes for 2016 Municipal Election)

TOWN OF LOXAHATACHEE GROVES

ORDINANCE NO. 2015-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, SCHEDULING THE DATE OF THE TOWN'S 2016 GENERAL MUNICIPAL ELECTION, PURSUANT TO SECTION 101.75, FLORIDA STATUTES, TO MARCH 15, 2016 TO COINCIDE WITH THE 2016 PRESIDENTIAL PREFERENCE PRIMARY; PROVIDING FOR THE QUALIFYING PERIOD FOR THE 2016 MUNICIPAL GENERAL ELECTION; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 101.75, Florida Statutes, provides authority for municipalities to move their elections to the same date as any statewide or countywide election by adopting an ordinance confirming the change in the election date and the qualifying period for the election; and,

WHEREAS, Chapter 2015-5, Laws of Florida, amended Section 103.101, F.S. to schedule the Presidential Preference Primary on the third Tuesday in March in those years with a Presidential Preference Primary, which in 2016 is March 15, 2016; and

WHEREAS, the Palm Beach County Supervisor of Elections has advised that she cannot conduct municipal elections on their usual date of March 8, 2016 due to the Presidential Preference Primary being scheduled a week later on March 15, 2016; and

WHEREAS, pursuant to the authority in Section 101.75, F.S., the Town Council desires to move its 2016 General Municipal Election from March 8, 2016 to March 15, 2016; and,

WHEREAS, the Palm Beach County Supervisor of Elections has further advised the Town that it must provide the candidates' names for the March 2016 election on or before December 15, 2015; and

TOWN OF LOXAHATACHEE GROVES

ORDINANCE NO. 2015-04

WHEREAS, pursuant to Section 101.75, F.S., the Town will establish a qualifying period from noon on November 3, 2015 to noon on November 10, 2015; and

WHEREAS, the Town Council deems it to be in the best interests of the citizens and residents of the Town to move the date of the Town's General Municipal Election and the qualifying period for the Town's 2016 Municipal General Election.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and incorporated herein by this reference.

Section 2. The Town Council of the Town of Loxahatchee Groves, Florida, pursuant to the authority of §101.75, Florida Statutes, schedules the date of the Town of Loxahatchee Groves' 2016 General Municipal Election as March 15, 2016.

Section 3. The Town Council hereby provides and sets the qualifying period for the 2016 General Municipal Election shall be noon on Tuesday, November 3, 2015 through noon on Tuesday, November 10, 2015.

Section 4. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. If any clause, section or other part of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affecting the validity of the other provisions of this Ordinance.

TOWN OF LOXAHATACHEE GROVES

ORDINANCE NO. 2015-04

Section 6. This Ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS ___ DAY OF _____, 2015.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS _____ DAY OF _____, 2015.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

_____
Mayor David Browning

_____
Janet K. Whipple, Town Clerk

_____
Vice-Mayor Ron Jarriel

_____
Council Member Tom Goltzené

APPROVED AS TO LEGAL FORM:

_____
Council Member Ryan Liang

_____
Office of the Town Attorney

_____
Council Member Jim Rockett

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~~Strike-thru~~ represents deleted text, and underline represents added text.

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 6.b.

ORDINANCES

Ordinance No. 2015-05

Public Hearing/ Second and Final Reading

(Okeechobee Boulevard Moratorium Extension)

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2015-05

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING ORDINANCE 2014-08, WHICH IMPOSED A MORATORIUM ON THE PROCESSING AND REVIEW OF APPLICATIONS FOR AMENDMENTS TO THE TOWN'S COMPREHENSIVE PLAN, INCLUDING FUTURE LAND USE MAP AMENDMENTS AND TEXT AMENDMENTS, RELATING TO COMMERCIAL LAND USES ON PROPERTIES FRONTING ON OKEECHOBEE BOULEVARD WITHIN THE CORPORATE BOUNDARIES OF THE TOWN, TO EXTEND THE MORATORIUM UNTIL DECEMBER 31, 2015 TO ENABLE THE ADOPTION OF APPROPRIATE AMENDMENTS TO THE TOWN'S COMPREHENSIVE PLAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on February 3, 2015, the Town Council adopted Ordinance 2014-08, which imposed a moratorium until May 31, 2015, on the receipt and processing of applications for Land Use Applications and Text Amendments to the Town's Comprehensive Plan relating to commercial land uses on property fronting Okeechobee Boulevard to provide the Town with time to review the Comprehensive Plan; and,

WHEREAS, since the adoption of Ordinance 2014-08, Town Administration, the Town Planner, and the Town Planning and Zoning Board (Land Planning Agency (LPA)), have worked diligently on reviewing the Town's Comprehensive Plan relating to Okeechobee; and,

WHEREAS, consideration and review of potential amendments to the Town Comprehensive Plan has not been completed and more time is required to develop and adopt such amendments; and,

WHEREAS, at its May 19, 2015, meeting, the Town Council received proposed amendments to the Town Comprehensive Plan relating to Okeechobee Boulevard, but requires

more time to evaluate amendment options and to complete the adoption process; and,

WHEREAS, the Town Council believes that it is in the best interest of the Town, and its residents, to extend the moratorium to provide additional time to review the Town's Comprehensive Plan and for the adoption of amendments to the Plan, in order to enhance the Plan's consistency with the Town's historical conditions and vision of remaining a rural area.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, THAT:

Section 1. The foregoing "WHEREAS" clauses, as well as those in Ordinance 2014-08, 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. Moratorium Extended. Section 4 of Ordinance 2014-08, is amended to extend the moratorium until December 31, 2015, as follows:

> Period of Moratorium. The Town Council of the Town of Loxahatchee Groves herby declares that the moratorium shall be effective for the period through ~~May 31~~December 31, 2015, unless otherwise modified by the Town Council by ordinance.

Section 3. Except as amended herein, the provisions of Ordinance 2014-08 remain in full force and affect.

Section 4. All Ordinances or parts of Ordinances in conflict herewith are repealed to the extent of such conflict.

Section 5. If any Section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 6. This Ordinance shall become effective immediately upon its passage and

adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS ___ DAY OF _____, 2015.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS _____ DAY OF _____, 2015.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

_____
Mayor David Browning

_____
Janet K. Whipple, Town Clerk

_____
Vice-Mayor Ron Jarriel

_____
Council Member Tom Goltzené

APPROVED AS TO LEGAL FORM:

_____
Council Member Ryan Liang

_____
Office of the Town Attorney

_____
Council Member Jim Rockett

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Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 6.c.

ORDINANCES

Ordinance No. 2015-06

Public Hearing/First Reading

(ULDC Agricultural Changes)

Town of Loxahatchee Groves, FLORIDA
Town Council AGENDA ITEM REPORT

AGENDA ITEM NO. 6.c.

MEETING DATE: 7/7/2015

PREPARED BY: William F. Underwood, II

SUBJECT: Agriculture ULDC revisions

1.BACKGROUND/HISTORY

Problem Statement: Staff has prepared ULDC revisions to clarify the issue of bona fide agriculture within the Town

Problem Solution: Adopt ULDC revisions to make a clear distinction between uses that are bona fide agriculture and uses that are not. Revisions to the following ULDC Sections are proposed: Section 10-015 "Definitions"; Section 20-015 "Permitted Uses" of the AR – Agricultural Residential district; and Article 65 "Agricultural Uses".

2.CURRENT ACTIVITY

Staff prepared a draft of proposed ULDC revisions which was presented to the Planning and Zoning Board (PZB) at its June 11, 2015 meeting. PZB reviewed the proposed revisions recommended approval with minor wording revisions by a 4 – 0 vote.

3.ATTACHMENTS

Proposed Ordinance 2015-06

4.FINANCIAL IMPACT

The proposed ordinance was funded by a Council work authorization.

5.RECOMMENDED ACTION

Approval of Ordinance 2015-06 on First Reading.

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2015-06

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO THE TOWN'S UNIFIED LAND DEVELOPMENT CODE; AMENDING PART I, ENTITLED "ADMINISTRATION AND DEFINITIONS," ARTICLE 10 ENTITLED "DEFINITIONS, ABBREVIATIONS, AND CONSTRUCTION OF TERMS", SECTION 10-015, ENTITLED "DEFINITIONS," TO REVISE THE DEFINITION OF AGRICULTURE, BONA FIDE, AND ADD THE DEFINITION OF AGRICULTURE, HOBBYIST; TO AMEND ARTICLE 20 ENTITLED "RESIDENTIAL ZONING DISTRICTS" PART II, ENTITLED "ZONING DISTRICTS" SECTION 20-015 "PERMITTED USES"; TO REVISE PART III, ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 65 ENTITLED "AGRICULTURAL USES," SECTION 65 ENTITLED "PURPOSE AND INTENT, SECTION 65-010 ENTITLED "DETERMINATION OF VALID AGRICULTURAL USE", AND SECTION 65-015, ENTITLED "NONAGRICULTURAL USES AND STRUCTURES WITH A BONAFIDE AGRICULTURAL USE"; PROVIDING FOR INTENT OF THE TOWN TO COMPLY WITH THE STATE'S PREEMPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council directed Town Administration to review provisions of the Town's Unified Land Development Code (ULDC) in order to clarify its meaning and intent; and,

WHEREAS, pursuant to the direction of the Town Council, the Town Administration has reviewed the issue of agriculture, including consulting with the Palm Beach County Property Appraiser (PBCPA) and the Town's Planning and Zoning Board (PZB) related to the regulation of agriculture; and,

WHEREAS, The PZB, at its meeting on June 11, 2015, recommended approval of the proposed ULDC revisions.

WHEREAS, consistent with the direction of the Town Council, and based upon review of state regulations and guidance from PBCPA, the Town Administration has reviewed the provisions of the Town's ULDC and recommends that certain provisions that specifically address agriculture be clarified to avoid any potential misinterpretation ; and

WHEREAS, the Town of Loxahatchee Groves, Florida, believes it is in the best interest of the Town to amend the Town's ULDC in order to clarify the issue of regulating agriculture.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

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. Part I, entitled "Administration and Definitions," Article 10 entitled "Definitions, Abbreviations, and Construction of Terms", Section 10-015, entitled "Definitions," of the Town's Unified Land Development Code, is amended as follows:

Section 10-015. - Definitions.

Agriculture, bona fide. A business on a property that ~~receives~~ has been assigned an Agricultural Use Code by the Palm Beach County Property Appraiser and received a reduction in property tax due to the use of part or of all of the property for the production of products as defined under "Agriculture" in Section 10-015. See Ch. 193.461 F.S. and Article 65 "Bona Fide Agricultural Uses" of this Unified Land Development Code.

Agriculture, hobbyist. An agricultural activity that has not been assigned an Agricultural Use Code by the Palm Beach County Property Appraiser and has not received a reduction in property tax.

Section 3. Part II, entitled "Zoning Districts," Article 20 entitled "Residential Zoning Districts," Section 20-015, entitled "Permitted Uses", of the Town's Unified Land Development Code, is amended as follows:

Section 20-015. - Permitted uses.

Plots located in the Agricultural Residential (AR) zoning districts may be used for the following specified uses.

Principal Uses	Agricultural Residential (AR)
Single Family Dwelling	Permitted
Mobile Home	Permitted w/Special Exception Category B
Public Schools	Permitted
Congregate Living Facility, Type I	Permitted
Non-Profit Community Recreational Facilities	Permitted w/Special Exception Category A
Essential Services	Permitted
Commercial Equestrian Operations	Permitted
Wholesale Nursery	Permitted
Retail Nursery	Permitted w/Special Exception Category A
Aviculture	See Note 1 below
Commercial Kennels	Not Permitted
Chipping and Mulching	Permitted subject to Article 80
Feed Lots	Not Permitted
Commercial Animal Manure Management	Not Permitted
Commercial Chipping and Mulching	Permitted subject to Article 80
Rescued Animal Care	Permitted w/Special Exception Category A
Outdoor Events	Permitted subject to Article 80 and to a Special Exception Category A
Hobbyist Agriculture	Permitted
Bona Fide Agriculture	Permitted
Wireless Communication Facilities	Permitted w/Special Exception Category A
Rodeo Events	Permitted w/Special Exception Category A

Note 1: The regulation of exhibition or sale of wildlife and personal possession of wildlife are preempted by state law and regulated by the State of Florida. See Sections 379.3761 and 379.762, Florida Statutes and Florida Administrative Code Chapters 68A-1.002 and 68A-6.

Section 4. Part III, entitled "Supplemental Regulations," Article 65 entitled "Agricultural Uses," Sections 65-005, entitled "Purpose and Intent", Section 65-010, entitled "Determination of Valid Agricultural Use", and Section 65-015, entitled "Nonagricultural Uses and Structures on Properties with a Bona Fide Agricultural Use" of the Town's Unified Land Development Code, are amended as follows:

Section 65-005. - Purpose and intent.

The purpose and intent of this article is to ~~protect, and provide~~ confirm regulatory relief for~~,~~ bona fide ~~reasonable~~ agricultural activities conducted on farm land in the Town as consistent with the Florida Right to Farm Act (823.14, F.S.).

Section 65-010. - Determination of ~~valid~~ bona fide agricultural use.

Any property owner who seeks the regulatory relief provided for an agricultural use as defined herein, must ~~either~~ provide documentation to the Town from the Palm Beach County Property Appraiser's Office demonstrating that the property is currently ~~classified as agriculture~~ assigned an agricultural Use Code pursuant to F.S. § 193.461, as may be amended from time to time~~,~~. ~~or as an alternative, demonstrate to the Town Council that the use is agricultural, as defined herein.~~ Once documentation is provided, the Town ~~shall maintain an on-going~~ may periodically update the record of such use using Palm Beach County Property Appraiser data ~~and assume~~ in order to determine that ~~each~~ a property continues to maintain its bona fide agricultural status. ~~unless a claim is made otherwise~~. ~~If a claim is made otherwise, the property owner shall demonstrate the use is agricultural as provided for in this section.~~ Location of a property within the Agricultural Residential (AR) zoning district does not, in and of itself, assign bona fide agriculture status to a property.

Section 65-015. - Nonagricultural uses and structures on properties with a partial bona fide agricultural use.

Nonagricultural uses and structures on properties with a valid bona fide agricultural use on a portion of the property shall not qualify for modifications or exceptions to the Code for that portion of the property not so designated based on bona fide agricultural status. ~~unless specifically stated otherwise.~~

Section 65-020 – Hobbyist agricultural uses and structures.

Hobbyist agricultural uses and structures shall comply with the land clearing and land development regulations of this Code.

Section 5. All Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions, in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 7. It is the intention of the Town Council of the Town of Loxahatchee Groves that the provisions of this Ordinance shall become and be made a part of the Unified Land Development Code of the Town of Loxahatchee Groves, Florida, that the Sections of this ordinance may be renumbered, re-lettered, and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

Section 13. This Ordinance shall become effective as provided by law.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS _____ DAY OF _____, 2015.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS ____ DAY OF _____, 2015.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

_____
Mayor David Browning

_____
Janet K. Whipple, Town Clerk

_____
Vice-Mayor Ron Jarriel

_____
Council Member Tom Goltzené

_____
Council Member Ryan Liang

_____
Council Member Jim Rockett

APPROVED AS TO LEGAL FORM:

_____
Michael D. Cirullo, Jr.
Office of the Town Attorney

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 7.a.

RESOLUTIONS

Resolution No. 2015-20

(1st Amendment to B Road Improvement Agreement)

TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2015-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING THE FIRST AMENDMENT TO B ROAD IMPROVEMENT AGREEMENT BETWEEN THE TOWN OF LOXAHATCHEE GROVES, LOXAHATCHEE EQUESTRIAN PARTNERS AND SOLAR SPORTSYSTEMS, INC., ATLANTIC LAND INVESTMENTS, LLC, AND PALM BEACH STATE COLLEGE; AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on February 17, 2015, the Town Council adopted Resolution 2015-08, to approve the B Road Improvement Agreement between Loxahatchee Equestrian Partners, LLC and Solar Sportsystems, Inc., Atlantic Land Investments, LLC., Palm Beach State College, and the Town; and,

WHEREAS, Loxahatchee Equestrian Partners, LLC and Solar Sportsystems, Inc., Atlantic Land Investments, LLC., and Palm Beach State College, seek to amend the B Road Improvement Agreement solely as to the release of escrow funds relating to the Paved Section of B Road, a copy of such amendment is attached hereto; and,

WHEREAS, the Town Council finds it is in the best interest of the Town of Loxahatchee Groves to approve the attached First Amendment to B Road Improvement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

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 Resolution.

Section 2. The Town Council of the Town of Loxahatchee Groves approves the First Amendment to B Road Improvement Agreement, attached hereto and incorporated herein, and authorizes the appropriate Town Officials to execute same.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 5. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THIS 7TH DAY OF JULY, 2015.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

_____
Mayor David Browning

ATTEST:

_____
Janet K. Whipple, Town Clerk

_____
Vice-Mayor Ron Jarriel

_____
Council Member Tom Goltzené

APPROVED AS TO LEGAL FORM:

_____
Council Member Ryan Liang

_____
Office of the Town Attorney

_____
Council Member Jim Rockett

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FIRST AMENDMENT TO B ROAD IMPROVEMENT AGREEMENT

FIRST AMENDMENT TO B ROAD IMPROVEMENT AGREEMENT

THIS FIRST AMENDMENT TO B ROAD IMPROVEMENT AGREEMENT (the "First Amendment") is made as of this _____ of _____, 2015, by and between LOXAHATCHEE EQUESTRIAN PARTNERS, LLC, a Florida limited liability company ("LEP"), SOLAR SPORTSYSTEMS, INC, a New York corporation ("SSI") (collectively, LEP and SSI are referred to herein as "Solar Sports"), ATLANTIC LAND INVESTMENTS, LLC, a Florida limited liability company ("ALI"), THE DISTRICT BOARD OF TRUSTEES OF PALM BEACH STATE COLLEGE, a body corporate created under Florida law ("PBSC"), and THE TOWN OF LOXAHATCHEE GROVES, a municipal corporation organized and existing under the laws of the State of Florida ("Town"). Collectively, Solar Sports, ALI, PBSC, and the Town are referred to herein as the "Parties".

RECITALS

WHEREAS, the Parties entered into that certain B Road Improvement Agreement with an effective date of March 24, 2015 ("Agreement") (all initially capitalized terms used in this First Amendment shall have the meanings set forth in the Agreement); and

WHEREAS, the Parties desire to amend the Agreement to permit Gunster, Yoakley & Stewart, P.A. ("Escrow Agent") to reimburse PBSC for payments it makes to Construction Manager pursuant to the Construction Management Agreement for the permitted components of the B Road Paved Section Project, rather than Escrow Agent making such payments directly to Construction Manager.

NOW THEREFORE, intending to be legally bound, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby amend the Agreement as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference.

2. **Amendment**. Section 4.2, Release of Escrow Funds – Paved Section, of the Agreement is hereby amended to add the following to the end of such Section:

> "Alternatively, Escrow Agent shall, upon receipt of written approval from PBSC, Solar Sports and ALI, reimburse PBSC from the Escrow Funds for payments PBSC has made to Construction Manager pursuant to the Construction Management Agreement for the permitted components of the B Road Paved Section Project. In connection with the foregoing, and as a condition of such written approval from PBSC, Solar Sports and ALI described in the immediately preceding sentence, in addition to PBSC's delivery of billing invoices as required under this Section 4.2, PBSC shall also deliver proof of payment by PBSC to Construction Manager pursuant to the Construction Management Agreement for the permitted components of the B Road Paved Section Project for which disbursement by Escrow Agent under this Section 4.2 is requested."

3. **Miscellaneous**. In the event of any conflict between this First Amendment and the Agreement, this First Amendment shall control. Except as otherwise provided in this First Amendment, the Agreement shall remain unchanged and in full force and effect and is reaffirmed for all purposes. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute a single agreement. Delivery of executed signature pages hereof by facsimile or email transmission shall constitute effective and binding execution and delivery thereof.

[Signature page follows]

IN WITNESS WHEREOF, this First Amendment has been executed by the Parties as of the date above written.

PBSC:

THE DISTRICT BOARD OF TRUSTEES
OF PALM BEACH STATE COLLEGE,
a body corporate under Florida law

By: _____

Print Name: _____

Title: _____

LEP:

LOXAHATCHEE EQUESTRIAN PARTNERS,
LLC, a Florida limited liability company

By:_____

Print Name:_____

Title:_____

ALI:

ATLANTIC LAND INVESTMENTS, LLC,
a Florida limited liability company

By: _____

Print Name: _____

Title: _____

SSI:

SOLAR SPORTSYSTEMS, INC,
a New York corporation

By:_____

Print Name: _____

Title:_____

TOWN:

THE TOWN OF LOXAHATCHEE GROVES, a
municipal corporation organized and existing
under the laws of the State of Florida

By: _____

Print Name: _____

Title: _____

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 7.b.

RESOLUTIONS

Resolution No. 2015-21

(Ratifying Anita Kane for FAAC)

TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2015-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPOINTING ANITA KANE TO REPLACE AND SERVE THE REMAINING TERM OF VIRGINIA STANDISH AS A VOTING MEMBER OF THE FINANCE ADVISORY AND AUDIT COMMITTEE; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, through the adoption of Resolution 2015-13 on April 21, 2015, the Town Council made their appointments to the Town's Finance Advisory and Audit Committee (FAAC), with each voting member to serve a term of one (1) year; and,

WHEREAS, Councilman Tom Goltzené's appointment to the FAAC, Virginia Standish, has announced her intent to resign as a voting member of the FAAC; and,

WHEREAS, Councilman Goltzené has decided to appoint Anita Kane to replace, and serve the remaining term of, Mrs. Standish as his appointment of a voting member to the FAAC.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

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 Resolution.

Section 2. The Town Council hereby accepts the resignation of Virginia Standish as a voting member of the FAAC, and appoints Councilman Goltzené's selected appointment, Anita Kane, as a voting member of the Town's Finance Advisory and Audit Committee (FAAC) to serve the remainder of Mrs. Standish's term.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 5. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THIS 7th DAY OF JULY, 2015.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

_____
Mayor David Browning

ATTEST:

_____
Janet K. Whipple, Town Clerk

_____
Vice-Mayor Ron Jarriel

_____
Council Member Tom Goltzené

APPROVED AS TO LEGAL FORM:

_____
Council Member Ryan Liang

_____
Office of the Town Attorney

_____
Council Member Jim Rockett

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Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 8.a.b.

MANAGER'S REPORT

AIR

Fire Rescue Report

Town of Loxahatchee Groves, Florida
Town Council
AGENDA ITEM REPORT AGENDA
MANAGER'S REPORT ITEM NO.8.a.
MEETING DATE: 07/07/2015

Traffic: Staff is working with Minto to draft an agreement between Minto and the Town for the funding of the traffic light at Okeechobee Boulevard and D Road.

June 30, 2015	No activity on this item
May 11, 2015	No activity on this item
April 15, 2015	This office met with representatives from Minto. Discussion points were covered regarding the proposed funding of the traffic control appurtenances for D Road and Okeechobee. Staff will review the information and report progress at the June 16 Town Council meeting.
April 1, 2015	No activity on this item
March 1, 2015	This office has received communication and we are trying to establish a date and time during the week of March 9th.
February 10, 2015	No activity on this item
January 26, 2015	No activity on this item
January 14, 2015	No activity on this item
December 29, 2014	A discussion with Minto's attorney indicated Palm Beach County would agree for the Town and Minto to enter into a funding agreement which may exclude the County.

Building: Staff had a meeting with the Day property representative to preliminary discuss the prospective site plan for the property on Tuesday, December 9. The meeting was to review site plan requirements and process

June 30, 2015	All funds have been received in this cost recovery accounts.
May 20, 2015	Staff began working with the owner to remediate the outstanding balance from the cost recovery that occurred prior to the settlement.
May 19, 2015	Town Council approved the site plan
May 19, 2015	The site plan with conditions supported by staff is being presented to the Town Council at its May 19, 2015 meeting.
February 19, 2015	Town Attorney spoke with Day's counsel. The Town Attorney has received comments regarding the requested trail easement and will be providing a response soon. The February 19th P&Z and RETGAC joint meeting placed additional conditions upon the site plan such as an equestrian trail on the north boundary of the property from east to west and the Town's engineer provide a review of the conclusions of the traffic study and acceptance.

February 19, 2015	This item is due to be presented to the P&Z and RETGAC committees jointly at their meeting.
January 12, 2015	Staff and Mr. Lipp, met with representatives reviewing Rural Vista guidelines assisting the representatives determine the guidelines.
December 16, 2014	No Activity
December 9, 2014	Discussed the site plan specifically the following: Timing of submittal and hearings addressing conditions of approval perimeter landscaping buffer requirements horse trail potential PBC manages traffic related issues and may need to be at meetings LGWCD to affirm positive outfall for drainage Interconnection to westerly property discussion Set RETGAC meeting for January 2015 P&Z meeting for January 2015 About March present to Town Council. We reviewed the site plan submission requirements

Roads: This office met with Angela Hendrichsen Sandoval, P. E., PMP, Section Leader, and Ken Mudd, Resource Professional IV, representing South Florida Water Management District (SFWMD) in reference to a permit the SFWMD issued in 1982 for a road and swale improvement on 43rd. As I understand the purpose of the meeting, SFWMD was looking to determine whether or not the Town would assist them in correcting a deficiency in the road and swale drainage system on the road. The Town will be contacted in the future regarding the next step to be taken to correct the problem.

June 30, 2015	No meeting has been set by SFWMD and the Town to discuss the contents of the letter.
June 11, 2015	Staff received a proposed letter from SFWMD to the property owners on 43rd
May 27, 2015	Received a telephone call from Ken Mudd regarding a draft letter that will be sent and establishing a meeting date. It is believed the draft letter will be forthcoming in the next week or two.
May 11, 2015	No activity.
April 14, 2015	No activity on this item.
April 1, 2015	No activity.
February 23, 2015	Ms. Hendrichsen Sandoval stated that this office will be notified in advance of a letter will be drafted informing residents of a meeting to discuss the matter.
February 11, 2015	No activity.
January 15, 2015	This office received communication from SFWMD regarding their internal work to plan their path forward. Upon completing their planning effort, they will be in touch with staff.
January 14, 2015	No activity from SFWMD representative
December 16, 2015	No activity

Roads: Speed hump removal is being investigated as to the methodology and cost of eliminating those traffic control devices to meet the Town's distance specifications.

June 30, 2015	Councilman Rockett requests the matter be brought forward to specific Council action to prepare and RFP to remove the humps.
June 8, 2015	Due to time constraints, this office has been unable to specifically identify exact cost.
May 11, 2015	No activity
	Due to time constraints, this office has been unable to get a response from potential vendors; however, the Town consultant believed the cost to be equal or greater than the $700 cost per speed hump to install.

Unauthorized living structures: Pursuant to Town Council instruction, staff initiated action against 1666 C Road for providing for the operations of excess living structures on the property which impacts the Town, at a minimum, through solid waste removal without appropriate payment for the services.

June 30, 2015	Attorney for Mr. Cherney reviewed documents; however, he continues to request additional time and information
May 29, 2015	Attorney for Mr. Cherney reviewed documents; however, he was unable to finish his review
May 11, 2015	Staff is working to complete a public records request relative to this case as of May 11, 2015.
May 5, 2015	Staff began the survey and will finish and work to prepare a report for either the April 21, or May 5, 2015, agenda. Additionally, staff has proceeded with various actions on other properties initiated by individuals.

Law Enforcement: Staff is working with the PBSO to create a Town wide "Citizen On Patrol."

June 8, 2015	No activity to report
April 16, 2015	Staff requested Lt. David L. Combs, consider implementing a COP program in the Town.
April 30, 2015	Sgt. Matthew J. LaVigna, Community Services Division, provided background information on establishing a COP program. While he provided many details, some of the more important items are: We need 30 full time residents to apply; each member must commit to patrol 3 hours per week; each member must attend a monthly unit meeting, and the Town must supply the fuel; PBSO will supply the patrol vehicle that accommodates the Town's roadways, uniform shirts, training and support.

Committee: Finance Accounting and Auditing Committee Town of Loxahatchee Groves - Town Hall

June 22, 2015	Financial reports were accepted by the committee. The committee reviewed the RFP for town management services.

The FAAC voted for a new Chairperson Mr. Lung Chiu, and Vice-chair Greg Tindall. The FAAC was educated on the sunshine law and how committee members are allowed to interact presented by Jacob Horowitz, substituting for Mike Cirullo.

May 26, 2015

The committee did not accept the financial data as it was presented to them very late in the agenda process and the budget to actual report had incorrect formulas in the printed version. Staff indicated that corrections would be made to the formulas prior to presentation to the Town Council; however, the committee decided to not the information due to formulaic errors and lateness of reporting.

Subsequent to this, the committee determined that it would not review the waste monitoring contract brought forward by the prior Chairperson of the committee. Further, the majority of the members indicated the committee does not perform audits of contracts or other items despite that being included as part of their charge and the fact the committee has performed other similar inspections of contracts.

Building: Staff has received a request from Tom DiRocca at 2650 A RD to authorize events 1 day per month for 11 months contrary to the ULDC, section 80-025 (I) Frequency and duration. No outdoor event shall be permitted for a period of time exceeding three consecutive days, except that rodeos shall be limited to a maximum of three consecutive days. A total of **three outdoor events can be permitted** within a calendar year on any given property. ..."

June 8, 2015	No activity to report
June 3, 2015	Provided information to the Town planner for thoughts and comments.

3. ATTACHMENTS

4. FINANCIAL IMPACT

Not applicable.

5. RECOMMENDED ACTION

Motion to receive and file report.

Fire Rescue
Chief Jeffrey P. Collins
405 Pike Road
West Palm Beach, FL 33411
(561) 616-7000
www.pbcgov.com

Palm Beach County Board of County Commissioners

Shelley Vana, Mayor
Mary Lou Berger, Vice Mayor
Hal R. Valeche
Paulette Burdick
Steven L. Abrams
Melissa McKinlay
Priscilla A. Taylor

County Administrator

Robert Weisman

"An Equal Opportunity Affirmative Action Employer"

Official Electronic Letterhead

June 25, 2015

William F. Underwood, II, Town Manager
Town of Loxahatchee Groves
14579 Southern Blvd., Ste. 2
Loxahatchee, FL 33470

Dear Mr. Underwood:

Enclosed is the Response Time Report for the Town of Loxahatchee Groves for the month of May 2015.

If you have any questions or concerns, please contact me at 561-308 4103.

Sincerely,

Michael Arena, Battalion Chief
Palm Beach County Fire-Rescue

Palm Beach County Fire Rescue

Loxahatchee Groves Response Time Report

20150501 to 20150531

6/22/2015

Event #	Station	Location of Event	Date	Received	Entered	Dispatch	Enroute	Onscene	Close	Disp Hand	Turnout	Travel	Resp Time*
Emergency Calls:													
F15066672	21	D RD LOX	05/01/2015		16:26:37	16:26:48	16:27:20	16:35:14	17:17:07	0:00:36	0:00:32	0:07:54	0:09:02
F15066951	21	SOUTHERN BLVD LOX	05/02/2015		01:19:55	01:20:01	01:21:09	01:29:07	02:09:34	0:00:31	0:01:08	0:07:58	0:09:37
F15067293	21	SOUTHERN BLVD PBC	05/02/2015		17:01:30	17:02:23	17:03:07	17:08:01	17:47:15	0:01:18	0:00:44	0:04:54	0:06:56
F15067750	21	BIDDIX RD LOX	05/03/2015	11:28:57	11:29:12	11:29:37	11:30:10	11:34:36	12:07:20	0:00:40	0:00:33	0:04:26	0:05:39
F15068267	21	B RD LOX	05/04/2015	10:39:56	10:40:28	10:40:37	10:41:19	10:47:38	11:20:09	0:00:41	0:00:42	0:06:19	0:07:42
F15068274	20	COLLECTING CANAL RD/OKEECHOBEE BLVD	05/04/2015	10:48:45	10:49:07	10:49:38	10:49:56	10:55:53	10:55:57	0:00:53	0:00:18	0:05:57	0:07:08
F15069091	21	TANGERINE DR LOX	05/05/2015	20:39:06	20:39:35	20:39:40	20:40:31	20:46:49	21:17:49	0:00:34	0:00:51	0:06:18	0:07:43
F15069092	21	A RD LOX	05/05/2015	20:38:53	20:39:52	20:40:33	20:41:19	20:53:47	21:18:25	0:01:40	0:00:46	0:12:28	0:14:54
F15069779	21	CASEY RD LOX	05/07/2015	07:12:30	07:13:07	07:13:21	07:14:21	07:19:39	07:52:33	0:00:51	0:01:00	0:05:18	0:07:09
F15070103	21	D RD LOX	05/07/2015	15:30:16	15:30:37	15:30:47	15:31:37	15:35:30	16:29:44	0:00:31	0:00:50	0:03:53	0:05:14
F15070240	21	D RD/C RD	05/07/2015	20:08:02	20:08:30	20:08:42	20:09:22	20:11:55	20:36:29	0:00:40	0:00:40	0:02:33	0:03:53
F15070776	21	OKEECHOBEE BLVD LOX	05/08/2015		19:58:37	19:58:47	19:59:27	20:02:27	20:36:39	0:00:35	0:00:40	0:03:00	0:04:15
F15072577	21	OKEECHOBEE BLVD/B RD LOX	05/12/2015		00:44:50	00:44:58	00:45:55	00:49:38	01:18:38	0:00:33	0:00:57	0:03:43	0:05:13
F15073951	21	OKEECHOBEE BLVD LOX	05/14/2015		12:54:24	12:54:36	12:55:24	12:57:59	13:29:42	0:00:37	0:00:48	0:02:35	0:04:00
F15074579	21	B RD LOX	05/15/2015		14:13:33	14:13:39	14:14:30	14:20:36	14:34:05	0:00:31	0:00:51	0:06:06	0:07:28
F15074654	21	TANGERINE DR LOX	05/15/2015	16:24:11	16:24:31	16:24:39	16:25:12	16:29:39	17:09:26	0:00:28	0:00:33	0:04:27	0:05:28
F15075207	21	22ND CT N LOX	05/16/2015		17:21:47	17:21:54	17:22:24	17:27:43	18:04:44	0:00:32	0:00:30	0:05:19	0:06:21
F15075601	20	STATE ROAD 80 PBC	05/17/2015	11:57:30	11:57:47	11:57:52	11:58:19	12:03:51	12:21:17	0:00:22	0:00:27	0:05:32	0:06:21
F15076311	21	E RD LOX	05/18/2015	17:44:34	17:45:13	17:45:27	17:46:13	17:50:50	18:44:46	0:00:53	0:00:46	0:04:37	0:06:16
F15076533	21	OKEECHOBEE BLVD LOX	05/19/2015		07:24:49	07:24:59	07:26:11	07:37:25	08:03:41	0:00:35	0:01:12	0:11:14	0:13:01
F15076721	21	F RD LOX	05/19/2015	13:51:46	13:52:32	13:52:42	13:53:26	14:00:03	14:40:24	0:00:56	0:00:44	0:06:37	0:08:17
F15076771	21	C RD/OKEECHOBEE BLVD LOX	05/19/2015	15:25:33	15:25:46	15:26:00	15:26:34	15:30:12	15:52:17	0:00:27	0:00:34	0:03:38	0:04:39
F15078825	21	KAZEE RD LOX	05/23/2015	06:34:32	06:34:56	06:35:04	06:35:59	06:50:36	07:28:06	0:00:32	0:00:55	0:14:37	0:16:04
F15079272	21	24TH CT N LOX	05/23/2015	22:22:53	22:23:43	22:23:48	22:24:52	22:28:27	23:37:34	0:00:55	0:01:04	0:03:35	0:05:34
F15079610	21	SOUTHERN BLVD PBC	05/24/2015	13:50:03	13:50:35	13:50:45	13:51:25	13:56:01	14:15:40	0:00:42	0:00:40	0:04:36	0:05:58
F15079657	21	SOUTHERN BLVD LOX	05/24/2015	15:56:29	15:57:47	15:57:54	15:58:37	16:04:20	16:19:42	0:01:25	0:00:43	0:05:43	0:07:51
F15079975	26	NORTH RD LOX	05/25/2015		07:15:24	07:15:33	07:16:37	07:24:45	08:19:09	0:00:34	0:01:04	0:08:08	0:09:46
F15080683	21	TEMPLE DR LOX	05/26/2015	13:05:35	13:06:10	13:06:39	13:07:18	13:12:51	13:51:02	0:01:04	0:00:39	0:05:33	0:07:16
F15080867	21	BRYAN RD LOX	05/26/2015		19:23:18	19:23:25	19:24:09	19:29:30	20:21:01	0:00:32	0:00:44	0:05:21	0:06:37

Created by Jill Gregory on 10/08/2008 (updated 05/23/2012)

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Palm Beach County Fire Rescue

Loxahatchee Groves Response Time Report

20150501 to 20150531

6/22/2015

Event #	Station	Location of Event	Date	Received	Entered	Dispatch	Enroute	Onscene	Close	Disp Hand	Turnout	Travel	Resp Time*
F15081201	21	CASEY RD LOX	05/27/2015	12:03:46	12:04:16	12:04:24	12:06:01	12:09:40	12:53:00	0:00:38	0:01:37	0:03:39	0:05:54
F15082293	21	E RD LOX	05/29/2015	12:15:53	12:17:44	12:18:51	12:19:05	12:24:35	13:18:00	0:02:58	0:00:14	0:05:30	0:08:42
F15082947	21	E RD/NORTH RD LOX	05/30/2015	15:09:14	15:13:04	15:13:15	15:14:13	15:18:03	15:41:55	0:04:01	0:00:58	0:03:50	0:08:49
F15083060	21	VALENCIA DR LOX	05/30/2015		18:59:44	18:59:55	19:00:09	19:06:10	22:31:04	0:00:36	0:00:14	0:06:01	0:06:51
F15083073	21	SOUTHERN BLVD PBC	05/30/2015	19:20:34	19:21:56	19:22:09	19:22:31	19:30:06	19:56:33	0:01:35	0:00:22	0:07:35	0:09:32
F15083315	21	TANGERINE DR LOX	05/31/2015	08:19:20	08:19:55	08:20:10	08:20:39	08:26:44	08:43:23	0:00:50	0:00:29	0:06:05	0:07:24
F15083394	21	E RD LOX	05/31/2015		11:40:40	11:40:52	11:41:36	11:45:01	12:08:03	0:00:37	0:00:44	0:03:25	0:04:46
								Average Response Times:		**0:00:54**	**0:00:44**	**0:05:47**	**0:07:25**
Non Emergency Calls:													
F15066664	21	E RD LOX	05/01/2015		16:16:15	16:16:18	16:16:22	16:18:25	16:28:04	0:00:28	0:00:04	0:02:03	0:02:35
F15067991	21	44TH ST N LOX	05/03/2015	19:41:31	19:44:36	19:44:51	19:45:58	20:01:13	20:13:52	0:03:20	0:01:07	0:15:15	0:19:42
F15068519	21	D RD LOX	05/04/2015		19:07:39	19:07:54	19:08:50	19:11:58	19:24:36	0:00:40	0:00:56	0:03:08	0:04:44
F15078996	21	E RD/OKEECHOBEE BLVD LOX	05/23/2015		13:21:56	13:22:15	13:23:17	13:26:02	13:56:26	0:00:44	0:01:02	0:02:45	0:04:31
Corrupt Data:													
F15075426	21	F RD LOX	05/17/2015	02:18:30	02:21:49	02:21:57	02:24:35		02:26:09	Empty Time Fields			
F15066620	21	CITRUS DR LOX	05/01/2015		14:14:41	14:14:54	14:16:03		14:19:52	Empty Time Fields			
F15081903	21	CITRUS DR LOX	05/28/2015		17:46:59	17:47:11	17:47:40		17:49:16	Empty Time Fields			
F15082562	21	NORTH RD LOX	05/29/2015		20:42:50	20:42:55	20:44:03		20:50:14	Empty Time Fields			

Total number of Events: **44**

*Represents call received to arrival. If there is no received time, the County annual average call received to call entered time is used.

Created by Jill Gregory on 10/08/2008 (updated 05/23/2012)

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Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 9.a.

OLD BUSINESS

Forfeiture Hearing Contemplation

TOWN OF LOXAHATCHEE GROVES

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2015-008

TO: Mayor David Browning
Members of the Town Council

CC: William Underwood, Town Manager
Janet Whipple, Town Clerk

FROM: Michael D. Cirullo, Jr., Office of the Town Attorney MDC

DATE: June 29, 2015

RE: Town of Loxahatchee Groves / July 7, 2015 Forfeiture Hearing

---

As we outlined to you in our Memorandum 2015-02, the Town has received information relating to a question of forfeiture as to Councilman Ryan Liang pursuant to Section 3(4) of the Town Charter, entitled "VACANCIES IN OFFICE; FORFEITURE; SUSPENSION; FILLING OF VACANCIES." The specific charge relates to Section 3(4)(b)2., which reads:

> (b) Forfeiture of office.—Any council member shall forfeit his or her office upon determination by the council, acting as a body, at a duly noticed public meeting that he or she:
>
> . . .
>
> 2. Is convicted of a felony or enters a plea of guilty or nolo contendere to a crime punishable as a felony, even if adjudication is withheld.

At the direction of the Town Council, this office coordinated the scheduling of the Forfeiture hearing with Mr. Richard Jarolem, who has raised the question, and Councilman Liang's attorney, John Whittles. Mr. Jarolem and Mr. Whittles agreed that they would be available for the July 7, 2015, Town Council meeting. They also agreed that this meeting would also include the hearing contemplated by the Charter, and notice will be published pursuant to the requirements of the Town Charter.

<u>Town Charter</u>

The Town Charter provides the following guidance to the Town Council. Section 3(4) of the Town Charter states, in pertinent part:

"The council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a council member."

"The council member whose qualifications are in question or who is otherwise subject to forfeiture of his or her office shall not vote on any such matters."

"The council member in question shall be entitled to a public hearing on request regarding an alleged forfeiture of office. If a public hearing is requested notice thereof shall be published in one or more newspapers of general circulation in the town at least 1 week in advance of the hearing."

This provision of the Charter uniquely and expressly provides that the Town Council "***shall*** hear all questions relating to forfeiture of a council member," and that is the "***sole*** judge of the qualification of its members." (emphasis added). As a result, the Town Charter requires the Town Council to hear the questions raised as to Councilman Liang, and for the Town Council to render its decision.

Hearing Procedures

Both counsel agreed to provide our office with the materials on which they rely for their positions in advance of the hearing. Those materials were provided to you on June 18, 2015. However, they are also attached to this memorandum, as follows:

- Correspondence and supporting authorities from Mr. Jarolem; and
- Correspondence and supporting authorities from Mr. Whittles

Mr. Jarolem and Mr. Whittles have agreed on the following "rules of the road" for the hearing:

1. Each attorney will be provided fifteen (15) minutes to present;
2. Mr. Jarolem will present first to the Town Council since he brought the charges;
3. Mr. Whittles will present second;
4. After Mr. Whittles concludes, members of the public will be permitted to speak;
5. Mr. Jarolem and Mr. Whittles agreed that as it appears the underlying facts are not in dispute, and the issue is the application of the Charter to the facts presented, no sworn testimony will be presented;
6. At the conclusion of the public comment, the Town Council will deliberate and vote.

Please also be guided by the following three important items:

1. As indicated above, Councilman Liang is not permitted to participate in the Council's consideration of the matter.
2. Section 5(6) of the Town Charter reads: "VALIDITY OF ACTION—No action of the council shall be valid unless adopted by an affirmative vote of the majority of the full council, unless otherwise provided by law." There is no different provision for voting on the forfeiture matter, so an affirmative vote of three (3) councilmembers is required to find that a councilman forfeited his office. In the absence of three affirmative votes for forfeiture, there will be no forfeiture of office.
3. Any final determination of forfeiture must be effectuated by resolution. Should the Town Council adopt a motion at the conclusion of the hearing that Councilman Liang has forfeited his office, our office will prepare a resolution to be adopted at the July 21, 2015, meeting.

Interpretation Guidance

Courts have held that municipal ordinances and charters are to be interpreted in the same fashion as statutes. The following quote sets forth the standards to apply when interpreting the Town Charter:

> It is well settled that statutory rules of construction are applicable to municipal ordinances. *See Rinker Materials Corp. v. City of North Miami,* 286 So.2d 552, 553 (Fla.1973), and cases cited therein. A logical corollary to this principle is that statutory rules of construction apply to the provisions of a city charter as well.
>
> The starting point in the construction of statutes is to discern and to give effect to the legislative will, since "intent is the essence of the law." *City of Boca Raton v. Gidman,* 440 So.2d 1277, 1281 (Fla.1983). Other rules pertinent to the construction question raised in this appeal include the "plain meaning" rule, which provides that words of common usage should be given their plain and ordinary meaning, since it is assumed that the legislative body knows the plain and ordinary meaning of the words used in statutes. *Rinker Materials Corp. v. N. Miami,* 286 So.2d at 553; *Brooks v. Anastasia Mosquito Control District,* 148 So.2d 64, 66 (Fla. 1st DCA 1963). A literal interpretation should not be given, however, when to do so leads to an unreasonable or ridiculous result or to a purpose not designated by the lawmakers. *City of Boca Raton v. Gidman,* 440 So.2d at 1281.

Great Outdoors Trading, Inc. v. City of High Springs, 550 So. 2d 483, 485 (Fla. 1st DCA 1989)

Conclusion

The Charter language is specific, and requires the Town Council to be the sole judge of the qualifications of its members. The Town Council is responsible for interpreting the charter and applying it in this context. As a result, while the Town Attorney Office can provide guidance on the standards to be applied in interpreting the Charter, this office will not render an opinion on the interpretation issue since to do so may taint the Town Council's process, as well as hinder any defense of a decision made by the Town Council should a lawsuit be filed to challenge the decision of the Town Council.

Attachments

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Facsimile (561) 848-8301
www.traublieberman.com

Richard A. Jarolem, Esquire
RJarolem@traublieberman.com

June 15, 2015

Sent by Email Transmission

Mike Cirullo, Jr.
Goren Cherof Doody & Ezrol, P.A.
3099 East Commercial Blvd, Suite 200
Ft. Lauderdale, Florida 33308

Re: Canvasing Board of Loxahatchee Groves

Dear Mr. Cirullo,

Pursuant to your request, I am submitting this packet in support of the removal of Ryan Liang as councilperson based upon his pleading no contest to a felony. I served my initial letter upon you on March 13, 2015. Mr. Liang submitted a letter on March 20, 2015, that I was not copied on. In response to the March 20, 2015, letter, I submitted a letter dated April 7, 2015. Mr. Liang submitted a second letter on May 3, 2015.

After Mr. Whittles May 3, 2105, submission, the Council postponed the hearing, in part due to my request, and the parties (the Town, Mr. Whittles and I) agreed that all interested parties would submit a packet in support of their position on or before June 15, 2015. This constitutes the packet in support of the removal.

In this packet, I will discuss: the Charter; Mr. Liang's offense; the case law supporting the removal; and differentiate the main case cited by Mr. Whittles. In addition, although not mentioned previously, the request and standards for the recusal of Mr. Rockett from deliberation in this matter.

For your convenience, I have attached: 1. My March 13, 2015, letter; 2. My April 7, 2015, letter; The applicable Charter provisions; *Forsythe v Longboat Key Beach Erosion Control District.,* 604 So.2d 452, (Fla.1992); *Hott Interiors, Inc. v. Fostock*, 721 So.2d 1236, 1238 (Fla.

4th DCA 1998); *N.W. v State* 767 So.2d 446 (Fla 2000); and *Zerweck v. State*, 409 So.2d 57 (Fla. 4th DCA 1982).

I. THE CHARTER

The governing document in reviewing the removal of Mr. Liang is the Charter itself. The operative section of the Charter is the Forfeiture Section. That is found in Section (4)(b) which states that a Councilperson forfeits their office if that person:

> **Is convicted of a felony or enters a plea of guilty or nolo contendere to a crime punishable as a felony.** (Emphasis added)

The language of the Charter for this section does not provide for a time frame for the offense.[1] It is my position that the language is clear and unambiguous and therefore there is no room for interpretation on this issue. The principal set forth by Mr. Liang is simply wrong and will be discussed in detail, *infra.*

The law on the matter states that where the language is clear and unambiguous, the Charter's language must be read in its clear and unambiguous terms with no room for re-interpretation by the Court and to do so would violate the Separation of Powers between the Legislature and the Judiciary. In the case of *Forsythe v Longboat Key Beach Erosion Control District.,* 604 So.2d 452, (Fla.1992) the Florida Supreme Court stated:

> It is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation. As this Court set forth more than 70 years ago in *Van Pelt v. Hilliard:*
>
> > "The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. Cases cannot be included or excluded merely because there is intrinsically [7] no reason against it. Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain

[1] The only place in the Charter that speaks to allegations of crimes committed during the time the council-person is an active member of the Council is in section (3)(c) Suspension from office. Therefore, the argument that Liang's crime does not apply is incorrect. This is discussed in detail, infra.

> meaning of the language which is free from ambiguity. If a Legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts. Whether the law be expressed in general or limited terms, the Legislature should be held to mean what they have plainly expressed, and consequently no room is left for construction, but if from a view of the whole law, or from other laws *in pari materia* the evident intent is different from the literal import of the terms employed to express it in a particular part of the law, that intent should prevail, for that, in fact is the will of the Legislature." 2 Sutherland's Statutory Construction, Sec. 366, p. 701.

75 Fla. 792, 798-99, 78 So. 693, 694-95 (1918); [8] *e.g., Streeter v. Sullivan,* 509 So. 2d 268, 271 (Fla. 1987); *Coon v. Continental Ins. Co.,* 511 So. 2d 971, 973 (Fla. 1987); *Holly v. Auld,* 450 So. 2d 217, 219 (Fla. 1984); *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.,* 434 So. 2d 879, 882 (Fla. 1983); *Citizens v. Public Serv. Comm'n,* 425 So. 2d 534, 542 (Fla. 1982); *St. Petersburg Bank & Trust Co. v. Hamm,* 414 So. 2d 1071, 1073 (Fla. 1982); *Carson v. Miller,* 370 So. 2d 10, 11 (Fla. 1979); *Thayer v. State,* 335 So. 2d 815, 817 (Fla. 1976); *McDonald v. Roland,* 65 So. 2d 12, 14 (Fla. 1953). The sum of these cases is that this Court is without power to construe an unambiguous statute."

Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 454-55 (Fla. 1992)

Case law has gone on to hold after the *Forsythe* case that "Where the language of a statute is plain and unambiguous, we must construe the statute" to give effect to the plain meaning of its words and to do so would be a violation of the Separation of Powers. *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236, 1238 (Fla. 4th DCA 1998)(quoting *Palm Beach County Health Care Dist. v. Everglades Mem'l Hosp.*, 658 So. 2d 577, 580 (Fla. 4th DCA 1995), *rev. denied*, 701 So. 2d 867 (Fla. 1997)). We may not go beyond its clear wording and plain meaning to expand or limit its reach. To do so would be to modify the express terms of the statute and, thereby, usurp legislative power. *Id."*Janos v. State, 763 So. 2d 1094, 1096 (Fla. 4th DCA 1999) ; and *N.W. v State* 767 So.2d 446 (Fla 2000) which held "In Florida, it is well settled that where the language of a statute is plain and unambiguous, there is no need for judicial interpretation. *See also* *T.R. v. State*, 677 So. 2d 270 (Fla. 1996); *C.W. v. State*, 655 So. 2d 87 (Fla. 1995)."

In applying the Charter to the instant fact, all that this Council needs to do is make a determination if:

1. Ryan Liang entered a plea of guilty or nolo contendere to a crime punishable as a felony.
2. If the answer is in the negative, he keeps his position. If the answer is in the affirmative, he should be deemed to forfeit his office.

It is clear, from the record, that Mr. Liang did enter a plea of no contest to a crime that was punishable as a felony. Therefore he should be deemed to have forfeited his office.

II. THE FELONY AND THE EXCUSES

In evaluating the felony aspect, Mr. Liang in his March 20, 2015, attempts to downplay the plea that he entered and went through extensive efforts to explain away his actions as something other than what they are. In my April 7, 2015, letter, I addressed those explanations and for convenience, I have once again re-iterated the April 7, 2015, response.

The facts concerning Mr. Liang's offense and plea are pretty straightforward:

1. At the time of the plea, the plea was for a felony.
2. Mr. Liang entered a plea of nolo contendre or "no contest" to that felony.

That is the only inquiry necessary for this Council. The rest is hyperbole. If we want to indulge the specific arguments, then I will do so:

1. *A Third Degree Felony is the lowest possible felony.* The Charter does not exclude third degree felonies from forfeiture. If it intended to do so, it would have so stated. In addition, the Charter does not even require a conviction; it only requires a plea of nolo contendre. All of the elements are still met.

2. *It is a non-intent infraction.* The Charter does not exclude non-intent felonies. If it intended to do so, it would have so stated. Another non-intent crime is sex with a minor. Using the same argument, if a council person pled nolo contendre to that crime, we should discount that as well. It is clear that any narrative which excuses intent is really unpersuasive.

3. *The crime was subsequently downgraded.* Once again, at the time of the plea, it was a felony. If the Charter desired to exclude crimes which have been downgraded after the plea, it would have so stated. Mr. Liang does not dispute that the plea was to a felony, he just opines as to "harshness" of the prior law. In another exaggeration of the point, people convicted of violating the Volsted Act ("Prohibition") were not simply set free when Prohibition was repealed. They were convicted and suffered the consequences of their actions even after the law was repealed. All that counts is the law at the time of the offense, unless specifically mandated by the legislature.

III. DIFFERENTIATING MR. LIANG'S ARGUMENTS PAST AND CURRENT

Mr. Liang has taken numerous positions in refuting the simple fact that he has forfeited his position. In his letter, dated March 20, 2015, Mr. Liang stated that the Charter could not be applied retroactively and served a litany of excuses as to why what he did should not be held against him. I have already addressed the issue of felony, supra. I will now address the application of the Charter and the false notion that it cannot be applied retroactively.

In his latest letter to the Council, Mr. Liang cites to *State ex rel. Turner v Earle*, 295 So.2d 609 (Fla. 1974) to support his premise that the Charter cannot be applied retroactively. In that case the Court does state that where a statute is silent as to time frame, the Court should construe the time to be only during the holding of the office. On its face, this case and the line of cases cited, seem to apply. However, when the facts are actually applied to the holding, they actually support the removal of Mr. Liang.

The first and most obvious distinction is that *Turner* was decided almost two decades before *Forsythe* and almost three decades before *C.W.* Law is an evolution and although there are cases that stand the test of time, there are many cases to which exceptions or differentiations are made, making the original holding limited or inapplicable to different fact sets. That is the case here. The premise set for in *Forsythe* and its followers, are the current state of the law. The language in the Charter is clear, and the Council is not free to re-examine it.

The second differentiation in *Turner*, is the charges and the outcome. In our matter, **Mr. Liang entered a plea of nolo contendre to a felony**. In *Turner*, **Judge Turner was accused and "indicted on a charge of conspiracy to commit the felony of bribery."** In the *Turner* case, **he did not enter a plea, took the matter to trial and "was tried before a jury on these charges and acquitted"**. This is a huge distinction between Mr. Liang and the *Turner* fact set. Ironically, Judge Turner would be eligible to sit as a Councilperson in Loxahatchee Groves, where Mr. Liang is not.

The next distinction is the express and limited analysis concerning one specific inquiry about one specific statute being construed in *Turner*. *Turner* holds, by its very terms,:

> **All dictum in this opinion must be read in the context of the circumscribed facts and not considered a precedent in cases involving different facts. The purpose of the dictum is merely to show the expanse of the total research and the logic supporting the judgment dispositive of the facts in the *Turner* case and no other.** (Emphasis added)
>
> *Id* at 619.

So, in applying *Turner*, in order to be useful, the case law requires the facts to involve the judiciary, the powers of the Judiciary Qualifications Committee, and the specific issue of a Judge being indicted and acquitted of the charges of conspiring to commit bribery. We have none of that in this matter.

If we ignore the specific language in *Turner*, saying it is not precedent, **and** we treat it as precedent, **and** we find that the silence in the time frames constitute an ambiguity, the *Turner* analysis still comes to a different conclusion than in the instant action. Giving all benefit of the doubt and adding all of the necessary conditions to twist the facts into applying *Turner* here, the analysis is as follows:

In *Turner,* and its line, the inquiry ultimately comes down to the Constitution or statute that is being applied to the facts. In *Turner*, the Court stated that there was no enunciated time frame in the specific Constitutional provision and that the legislature was silent on the issue giving no guidance as to interpretation. The Town's Charter is not silent. It is clear in reading the Charter that certain acts, in order to qualify for forfeiture it must be committed during the term of the office, and certain acts do not have any time restrictions: Specifically:

> Section 4(b)(1) of the Charter puts a time frame "at any time or fails to maintain during the term of his or her office. . ."
>
> Section 4(b)(3) of the Charter states this event must arise "directly out of his or her official conduct or duties." Implicit in this definition is that in order to have "official conduct or duties" you must hold the office.
>
> Section 4(b)(4) of the Charter states "Is found to have violated any standard of conduct or code of ethics established by law for public officials." Again, implicit in this definition is that in order to be bound by ethics governing a public official, you must be a public official. So a time frame is enunciated.

> Section 4(b)(5) event arises if the Councilperson "Is absent from three consecutive regular council meetings without good cause. ." Again, attendance is only taken of the office holders, so implicit in this section is that the offense must occur during the term of office.

It is abundantly clear that even if we ignore *Forsythe* and its line of cases and want to apply *Turner,* the actual language of the Charter makes it clear that time frames were contemplated by the enacting authority and that the "silence" of a time frame in Section 4(b)(2) for the Commission and/or pleading of nolo contendere of a Felony was not "silence." It was a statement that no time frame was intended to apply.

Thus, Mr. Liang's argument collapses under the actual analysis of *Turner*. Putting it simply, he is out.

IV. IT IS NO COINCIDENCE THAT MR. LIANG'S 2001 NOLO CONTENDRE PLEA IS BEING BROUGHT UP NOW

Mr. Liang, in his March 20, 2015, letter, asserted that there is "no coincidence" that this matter is being asserted now.

He is correct in his assertion it is no coincidence that this issue is being brought up now. The reason is simple. No one looked this closely at Mr. Liang until now. Until this election, there has never been the probability of the commission of felonies in connection with an election.

In re-hashing the facts known about this election, on or about March 5, 2015, Mr. Ford made allegations that he received an absentee ballot that he did not request. That allegation was made to the Supervisor of Elections. Those allegations were reported on by the Town Crier, the Palm Beach Post, and the local TV networks just prior to the March 10, 2015, election. Unless I am mistaken in what I viewed; in the TV interviews, Mr. Laing admitted that his mother and campaign treasurer improperly requested absentee ballots. That act is a felony for each absentee ballot improperly requested, and potentially a first degree felony for identity theft.

Is it really a surprise that after these facts came to light, that the citizens had a desire to look deeper? And when they did, they found Mr. Liang's plea to a felony. Instead of thanking the citizens, they are being blamed by him. The bigger question is why was this not disclosed previously by Mr. Liang; instead of why wasn't it discovered until now?

As to Mr. Liang's assertion that there has been no allegation about any improper conduct in the election, that has never been the case. From Mr. Ford's initial complaint until today, it has

been asserted over and over that the election was tainted. In particular, at the March 17, 2015, certification of the result, in which Mr. Whittles and I were both present, the following occurred:

1. Councilperson Goltzené raised issues about the propriety of the election;
2. The Mayor acknowledged that "this is not over" referring to the criminal investigation by the State Attorney's Office and FDLE.
3. Mr. Whittles spoke at the podium and encouraged people to reserve judgment until the investigation was over;
4. Numerous citizens expressed their opinions on the record alleging illegalities and/or improprieties;

Prior to the March 17, 2015, Council meeting, it was publically known and reported that:

1. Mr. Ford made his allegations;
2. The Supervisor of Elections turned the matter over to Law enforcement;
3. The State Attorney's office was investigating;
4. FDLE was involved in the investigation;
5. Mr. Liang (on TV) acknowledged that his mother procured absentee ballots without the consent of the voter(s).

After the March 17, 2015, Council meeting:

1. Councilperson Goltzené raised additional objections to the certification at the Audit at the SOE;
2. It was discovered that Mr. Rockett contributed to the Liang Campaign, despite being on the Canvassing Board;
3. It was discovered that Mr. Rockett endorsed and campaigned for Mr. Liang, despite being on the Canvassing Board;
4. That Mr. Rockett failed to file any report or disclose the allegations of Mr. Ford, despite being present when they were made;
5. That Mr. Rockett collected and delivered absentee ballots to the SOE, despite being on the Canvassing Board.
6. And Mr. Harris filed his lawsuit contesting the election.

V. THE RECUSAL OF MR. ROCKETT

As stated above, Mr. Rockett was heavily involved in the allegations concerning the Liang Campaign and gave money to him for his campaign. The State Attorney is currently investigating the Liang election matter. In addition to those facts, it is my understanding that Mr.

Rockett is currently being investigated on an ethics matter arising from the Liang Campaign by the State of Florida Commission on Ethics, Complaint No.: 15-086.

The Charter defers to Florida Statutes governing the ethical obligations of its Councilpersons. Section 112.311(1), Fla. Stat. requires that the "public interest requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist."

Section 112.313(6), Fla. Stat., prohibits a public official from misusing their position to secure a special privilege, benefit or exemption for himself, herself or others. Section 112.3143, Fla. Stat., re-codifies the same principal. Case law has held that the ethics for public officials are done with the mind set to avoid situations which "tempt dishonor" *See Zerweck v. State*, 409 So.2d 57 (Fla. 4th DCA 1982).

Mr. Rockett's part in the Liang election is, at the very minimum, suspect. As such, Mr. Rockett's voting on any matter concerning Mr. Liang should be viewed as a conflict, as no matter which way he votes (for or against forfeiture) he will be subject to accusations that his vote was motivated by either his "relationship with Mr. Liang" if he votes to retain Mr. Liang or "in the interests of avoiding potential consequences in the investigation and/or law suits by potentially rendering them moot" if he votes to remove Mr. Liang. Either way, there is no doubt that any vote would have the appearance of "tempting dishonor." In such a case, recusal from the vote is the appropriate action.

I would hope that you would impart this to Mr. Rockett as well that recusal is the most prudent course of action to avoid any further issues.

VI. CONCLUSION

With all of the above being said, the issue remains simple. The Charter has a requirement. Mr. Liang violated the Charter's requirement, and the Council is required to remove him based upon his violation.

Furthermore, with the existence of the ethics investigation, the State Attorney's investigation of Mr. Liang and the case brought by Mr. Harris, Mr. Rockett should recuse himself from voting under Chapter 112, Fla. Stat. Even if he does not believe that he is precluded, prudence should have him err on the side of caution and recusal.

Sincerely

Richard A. Jarolem

Enclosures

cc: client
John Whittles, Esquire

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Richard A. Jarolem, Esquire
RJarolem@traublieberman.com

March 13, 2015

Sent by Email Transmission & Facsimile

Mike Cirullo, Jr.
Goren Cherof Doody & Ezrol, P.A.
3099 East Commercial Blvd, Suite 200
Ft. Lauderdale, Florida 33308

Re: Ryan Liang's violation of the Town's Charter

Dear Mr. Cirullo

Since my last letter on Friday, some additional facts have been brought to my attention which I believe may impact this election as well.

Under the Town Charter no councilperson may have pled guilty to a felony and/or a forfeiture of the office occurs when any councilmember has pled guilty to a felony regardless of whether or not adjudication has been withheld. See below:

> TOWN CHARTER
>
> VACANCIES IN OFFICE; FORFEITURE; SUSPENSION; FILLING
>
> OF VACANCIES.—
>
> (a) Vacancies.—A vacancy in the office of mayor, vice mayor, or any council member shall occur upon the death of the incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, judicially determined incompetence, or forfeiture of office as described in paragraph (b).
>
> (b) Forfeiture of office.—Any council member shall forfeit his or her office upon determination by the council, acting as a body, at a duly noticed public meeting that he or she:
>
> 1. Lacks at any time, or fails to maintain during his or her term of office, any qualification for the office prescribed by this charter or otherwise required by law;

2. Is convicted of a felony or enters a plea of guilty or nolo contendere to a crime punishable as a felony, even if adjudication is withheld;

It appears that Mr. Liang pled guilty to the felony of molesting crawfish traps in 2001 in violation of Section 317.14(4), Fla. Stat.(2001), which was a third degree felony. According to the records provided, adjudication was withheld. (A copy of the documentation concerning Mr. Liang's plea is attached hereto as a .pdf file to this e-mail for your convenience.)

Nevertheless, according to your charter, it appears that Mr. Liang should be determined to have forfeited his position and is further ineligible to hold the office as a result of the most recent election. As I am sure you are aware ineligibility of a candidate is another ground to contest the election, under Section 102.138(3)(b), Fla. Stat.

My client is hereby making his demand under the Charter that the Council make a determination as to the forfeiture of the position at a duly noticed public meeting at the earliest possible time.

Thank you in advance for your assistance.

/s Richard A. Jarolem

cc. Client

Traffic/Criminal Case Detail Information

Defendant Name	Date of Birth
LIANG, RYAN PETER	2/18/1979

Case Number	Uniform Case Number
CFP01230	442001CF000230000APK

Defense Attorney	Judge
BISWAS, ROBERT	Garcia, Luis

Scheduled Court Appearances

Date	Time	Location/Court Room	Description
9/4/2001	9:0 AM	PK COURTROOM G	ARRAIGNMENT
11/6/2001	1:30 PM	PK COURTROOM G	PRE TRIAL/CRIMINAL
12/10/2001	9:0 AM	PK COURTROOM G	OTHER
2/5/2002	1:30 PM	PK COURTROOM G	PRE TRIAL/CRIMINAL
6/30/2003	1:30 PM	PK COURTROOM G	OTHER

Charges

Offense Date		Statute Code	Statute Description	Date	Disposition
8/17/2001		370.14(4)	MOLESTING CRAWFISH TRAPS	2/15/2002	Def Sent/Guilty - Non Jury Trial/Adj WH
8/17/2001		370.021	VIOLATE SALTWATER FISHERIES	2/15/2002	Def Sent/Guilty - Non Jury Trial/Adj
8/17/2001		327.331(2)	FAIL TO DISPLAY DIVERS DOWN FLAG	2/15/2002	Def Sent/Guilty - Non Jury Trial/Adj
8/17/2001		68B-24.003(1)	POSS UNDERSIZE CRAWFISH		No Action Taken By State

Docket Information

Date	Time	Description	Text
11/14/2003		-	PAYMENT ACCEPTED / RECEIPT # - 00022849
11/14/2003		-	PAYMENT ACCEPTED / RECEIPT # - 00022871
6/30/2003		ORDER GRANTING EARLY TERM OF PROBATION	ORDER GRANTING EARLY TERM OF PROBATION
6/30/2003		-	COURT MINUTES
6/25/2003		-	MOTION FOR EARLY TERM OF PROBATION
6/25/2003		-	NOTICE OF HEARING
6/25/2003		-	OTHER COURT HEARING

			<06/30/2003> 1:30 P.M.
6/17/2003		-	PAYMENT ACCEPTED / RECEIPT # - 00021108
2/18/2003		-	PAYMENT ACCEPTED / RECEIPT # - 00019350
2/18/2003		-	PAYMENT ACCEPTED / RECEIPT # - 00019351
8/19/2002		-	PAYMENT ACCEPTED / RECEIPT # - 00016656
8/19/2002		-	PAYMENT ACCEPTED / RECEIPT # - 00016657
8/19/2002		-	PAYMENT ACCEPTED / RECEIPT # - 00016658
5/7/2002		-	PAYMENT ACCEPTED / RECEIPT # - 00014985
5/7/2002		-	PAYMENT ACCEPTED / RECEIPT # - 00014986
5/7/2002		-	PAYMENT ACCEPTED / RECEIPT # - 00014987
5/7/2002		-	Court Cost Assessed / PA 3.00 LT 2.00 FLGC 200.00 / FACC 50.00 FOCC 2.00 TCP 3.00
5/7/2002		-	Discretionary Cost Assessed / IFMP 75.00 IST 25.00
2/15/2002		-	AJUDICATION WITHELD COUNT 001
2/15/2002		-	ADJUDICATED GUILTY/DELINQUENT COUNT 002
2/15/2002		-	ADJUDICATED GUILTY/DELINQUENT COUNT 003
2/15/2002		-	DE-SENT-DT / 6299 CONSERVATION GENERAL / DT IMPOS: 02/15/2002 EFF DATE: 02/15/2002 / PROB: 002 000 000 / SPEC PRV: DEF/JUV SENTENCED UNDER SENTENCING GUIDELINES
2/15/2002		ORDER OF PROBATION OR: PG:	ORDER OF PROBATION OR: PG:
2/13/2002		DESIGNATION TO TRANSCRIBER	DESIGNATION TO TRANSCRIBER
2/11/2002		DEPO *	DEPO OF DAVID MCDANIEL
2/5/2002		SENTENCING GUIDLINE/SCORE SHT	SENTENCING GUIDLINE/SCORE SHT
2/5/2002		STATEMENT OF NEGOTIATED PLEA	STATEMENT OF NEGOTIATED PLEA
2/5/2002		-	COURT MINUTES
2/5/2002		-	FINGER PRINTS
1/10/2002		-	SUBPOENA RET SRVD OFF MCDANIEL 1/3

12/26/2001		-	NOTICE OF TAKING DEPOS
12/12/2001		-	PRETRIAL HEARING <02/05/2002> 1:30 P.M.
12/11/2001		-	COURT MINUTES /MOTION TO SET ASIDE BOND ESTREATURE AND WARRANT- / GRANTED
12/11/2001		-	ORDER TO QUASH CAPIAS,VACATE BOND ESTREATURE AND REINSTATE TO ORIGINAL / BOND
12/11/2001		-	ORD CONTINUING TRIAL DATE AND PRETRIAL CONFERENCE
12/11/2001		-	RECALLED WARRANT
12/11/2001		BOND ESTREATURE SET ASIDE/ORDER SIGNED	BOND ESTREATURE SET ASIDE
12/11/2001		PRE-TRIAL COURT MINUTES	PRE-TRIAL COURT MINUTES
12/10/2001		-	COURT MINUTES - TAKEN OFF CALENDER, DEFENDANT DID NOT APPEAR IN COURT
12/7/2001		-	OTHER COURT HEARING <12/10/2001> 9:00 A.M.
12/4/2001		-	OTHER COURT HEARING <12/10/2001> 9:00 A.M.
12/4/2001		-	MOTION TO QUASH WARRANT, VACATE ESTREATURE AND REINSTATE BOND
12/4/2001		-	NOTICE OF HEARING
11/7/2001		-	CERTIFICATE AND ORDER OF FORFEITURE
11/7/2001		Conversion: Bond Forefeiture Date	
11/7/2001		BOND ESTREATURE LETTER SENT	BOND ESTREATURE LETTER
11/6/2001		BENCH WARRANT ISSUED <*M/DD/YYYY> BOND IS *	BENCH WARRANT ISSUED, BOND IS $10,000.00
9/7/2001		-	WRIT PLEA ON NG, DEMAND FOR JURY TRIAL
9/6/2001		-	WITNESS LIST
9/6/2001		-	STATES RESPONSE TO DISCOVERY
9/6/2001		-	DISCOVERY EXHIBIT
9/4/2001		-	PRETRIAL HEARING <11/06/2001> 1:30 P.M.
9/4/2001		-	COURT MINUTES
9/4/2001		-	PAYMENT ACCEPTED / RECEIPT # - 00027719
9/4/2001		PRETRIAL ORDER	PRETRIAL ORDER
9/4/2001		ORDER APPT PUBLIC DEF (FELONY)	ORDER APPT PUBLIC DEF

			(FELONY)
8/23/2001		-	NO ACTION FILED COUNT * COUNT 004
8/23/2001		-	INFORMATION
8/23/2001		-	FILED COUNT 003
8/23/2001		-	FILED COUNT 002
8/23/2001		-	FILED COUNT 001
8/22/2001		-	MAGISTRATE FORM
8/20/2001		-	ARRAIGNMENT SET <09/04/2001> 9:00 A.M.
8/20/2001		-	SURETY BOND/MCBB/A061371792/$5000.00
8/17/2001		NOTICE OF ARRAIGNMENT FILED	NOTICE OF ARRAIGNMENT FILED
8/17/2001		-	ARREST FORM
8/17/2001		-	MAGISTRATE FORM

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April 7, 2015

Richard A. Jarolem, Esquire
RJarolem@traublieberman.com

Sent by Email Transmission & Facsimile

Mike Cirullo, Jr.
Goren Cherof Doody & Ezrol, P.A.
3099 East Commercial Blvd, Suite 200
Ft. Lauderdale, Florida 33308

Re: Canvasing Board of Loxahatchee Groves

Dear Mr. Cirullo,

I am writing this letter in connection with the Council's determination of Mr. Liang's eligibility to serve on the Council. I am asking this letter to be provided as supplemental material to the Council for their determination tonight.

I have once again reviewed the Charter and the letter sent on Mr. Liang's behalf dated March 20, 2015. I apologize for my late response; however I first became aware of Mr. Liang's response today as I was not cc'd on the correspondence. The fact that neither, I or my client was cc'd or otherwise informed of the response's existence, I believe speaks volumes as to the "transparency" of the process. This is exactly what my client has been fighting against.

I. THE CHARTER

It is a disingenuous argument to state that the Charter may not be applied retroactively. The Charter's language must be read in its clear and unambiguous terms. This is not me saying it. It is the Courts. In the case of Hott Interiors, Inc. v Fostock, 721 So.2d 1236 (Fla. 4th DCA 1998) the court stated that where the language of a statute is clear and unambiguous, the courts may not interpret *See* also Modder v American National Life Insurance Co., 688 So.2d 330 (Fla. 1997). In addition, case law holds that the legislature is presumed to know what it is doing with regards to the language. With all due respect to Mr. Liang, his statement that "the Charter's forfeiture provision is not (and cannot be) retroactive", is simply a wish and not backed up by substantive law.

If he had the case law, it is my opinion that he would have provided it. His response was written a week after my original letter, giving him ample time to find law supporting his position, yet cites to nothing. This should be telling in and of itself.

In looking at the Charter language, the Charter does not place any time restriction on the issue. Section 3(4)(b)(2) of the Charter does not provide that the felony must be committed during the term of office. It simply says the councilmember "shall forfeit his or her office" if the councilperson "Is convicted of a felony or enters a pleas of nolo contender to a crime punishable as a felony."

The clear and unambiguous language of the Charter does not place any time restriction on the entry of the plea and therefore, as a matter of law one cannot be placed on it now. This is simply beyond the powers of the Council.

As to Mr. Liang's argument that if it were not required to be interpreted as "present tense", all council members would forfeit their office for missing three consecutive council meetings; we agree on something. This is nonsense. Attendance of citizens is not taken at council meetings. Only the attendance of Councilpersons is documented. Therefore, there is no record and if someone were to be removed for this "offense", the claim could not be substantiated and their due process rights would be violated.

II. THE FELONY AND THE EXCUSES

Mr. Liang goes through extensive efforts to explain away his actions as something other than they are. However, the facts are pretty straightforward:

1. At the time of the plea, the plea was for a felony.
2. Mr. Liang entered a plea of nolo contendre or "no contest" to that felony.

That is the only inquiry necessary for this Council. The rest is hyperbole. If we want to indulge the specific arguments, then I will do so:

1. *A Third Degree Felony is the lowest possible felony.* The Charter does not exclude third degree felonies from forfeiture. If it intended to do so, it would have so stated. In addition, the Charter does not even require a conviction; it only requires a plea of nolo contendre. All of the elements are still met.

2. *It is a non-intent infraction.* The Charter does not exclude non-intent felonies. If it intended to do so, it would have so stated. Another non-intent crime is sex with a minor. Using the same argument, if a council person pled nolo contendre to that crime, we should discount that as well. It is clear that any narrative which excuses intent is really unpersuasive;

3. *The crime was subsequently downgraded.* Once again, at the time of the plea, it was a felony. If the Charter desired to exclude crimes which have been downgraded after the plea, it would have so stated. Mr. Liang does not dispute that the plea was to a felony, he just opines as to "harshness" of the prior law. In another exaggeration of the point, people

convicted of violating the Volsted Act ("Prohibition") were not simply set free when Prohibition was repealed. They were convicted and suffered the consequences of their actions even after the law was repealed. All that counts is the law at the time of the offense, unless specifically mandated by the legislature.

III. IT IS NO COINCIDENCE THAT MR. LIANG'S 2001 NOLO CONTENDRE PLEA IS BEING BROUGHT UP NOW

Mr. Liang is correct in his assertion it is no coincidence that this issue is being brought up now. The reason is simple. No one looked this closely at Mr. Liang until now. Until this election, there has never been the probability of the commission of felonies in connection with an election.

In re-hashing the facts known about this election, on or about March 5, 2015, Mr. Ford made allegations that he received an absentee ballot that he did not request. That allegation was made to the Supervisor of Elections. Those allegations were reported on by the Town Crier, the Palm Beach Post, and the local TV networks just prior to the March 10, 2015 election. Unless I am mistaken in what I viewed; in the TV interviews, Mr. Laing admitted that his mother and campaign treasurer improperly requested absentee ballots. That act is a felony for each absentee ballot improperly requested, and potentially a first degree felony for identity theft.

Is it really a surprise that after these facts came to light, that the citizens had a desire to look deeper? And when they did, they found Mr. Liang's plea to a felony. Instead of thanking the citizens, they are being blamed by him. The bigger question is why was this not disclosed prior by Mr. Liang; instead of why wasn't it discovered until now?

As to Mr. Liang's assertion that there has been no allegation about any improper conduct in the election, that has never been the case. From Mr. Ford's initial complaint until today, it has been asserted over and over that the election was tainted. In particular, at the March 17, 2015 certification of the result, in which Mr. Whittles and I were both present, the following occurred:

1. Councilperson Goltzené raised issues about the propriety of the election;
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Prior to the March 17, 2015 council meeting it was publically known and reported that:

1. Mr. Ford made his allegations;
2. The Supervisor of Elections turned the matter over to Law enforcement;
3. The State Attorney's office was investigating;

4. FDLE was involved in the investigation;
5. Mr. Liang (on TV) acknowledged that his mother procured absentee ballots without the consent of the voter.

After the March 17, 2015 Council meeting:

1. Councilperson Goltzené raised additional objections to the certification at the Audit at the SOE;
2. It was discovered that Mr. Rockett contributed to the Liang Campaign despite being on the canvassing board;
3. It was discovered that Mr. Rockett endorsed and campaigned for Mr. Liang despite being on the canvassing board;
4. That Mr. Rockett failed to file any report or disclose the allegations of Mr. Ford despite being present when they were made;
5. That Mr. Rockett collected and delivered absentee ballots to the SOE, despite being on the canvassing board.
6. And Mr. Harris filed his lawsuit contesting the election.

Finally, as Mr. Rockett campaigned for Mr. Liang, endorsed Mr. Liang, gave money to Mr. Liang's campaign; I would highly recommend that he abstain from voting on this issue.

IV. CONCLUSION

With all of the above being said, the issue remains simple. The Charter has a requirement. Mr. Liang violated the Charter's requirement, and the Council is required to remove him based upon his violation.

Sincerely,

Richard A. Jarolem

Cc. client

John Whittles, Esq.

Section 3. Election and terms of office.—

(1) TERM OF OFFICE.—Each council member shall be elected at large for a 3-year term by the electors of the town in the manner provided herein. Council members shall be sworn into office at the first regularly scheduled meeting following their election. Each council member shall remain in office until his or her successor is elected and assumes the duties of the position.

(2) SEATS.—The town council shall be divided into five separate council seats to be designated as seats 1, 2, 3, 4, and 5, to be voted on townwide, with each qualified elector entitled to vote for one candidate for each seat.

(3) QUALIFICATION.—Candidates for each council seat must qualify for council elections by seat in accordance with applicable general law, and the council members elected to those seats shall hold the seats 1 through 5, respectively. To qualify for office:

(a) Filing.—Each candidate for council member shall file a written notice of candidacy with the town clerk at such time and in such manner as may be prescribed by ordinance and shall make payment to the town of any fees required by general law as a qualifying fee.

(b) Registered elector.—Each candidate for council member shall be a registered elector in the state.

(c) Residency.—Each candidate for council member shall have maintained his or her domicile within the boundaries of the town for a period of 1 year prior to qualifying for election and, if elected, shall maintain such residency throughout his or her term of office.

(d) Deadline.—Any resident of the town who wishes to become a candidate for a council member seat shall qualify with the town clerk no sooner than noon on the last Tuesday in January, nor later than noon on the first Tuesday in February, of the year in which the election is to be held.

(4) VACANCIES IN OFFICE; FORFEITURE; SUSPENSION; FILLING OF VACANCIES.—

(a) Vacancies.—A vacancy in the office of mayor, vice mayor, or any council member shall occur upon the death of the incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, judicially determined incompetence, or forfeiture of office as described in paragraph (b).

(b) Forfeiture of office.—Any council member shall forfeit his or her office upon determination by the council, acting as a body, at a duly noticed public meeting that he or she:

1. Lacks at any time, or fails to maintain during his or her term of office, any qualification for the office prescribed by this charter or otherwise required by law;

2. Is convicted of a felony or enters a plea of guilty or nolo contendere to a crime punishable as a felony, even if adjudication is withheld;

3. Is convicted of a first degree misdemeanor arising directly out of his or her official conduct or duties, or enters a plea of guilty or nolo contendere thereto, even if adjudication of guilt has been withheld;

4. Is found to have violated any standard of conduct or code of ethics established by law for public officials and has been suspended from office by the Governor, unless subsequently reinstated as provided by law; or

5. Is absent from three consecutive regular council meetings without good cause, or for any other reason established in this charter,

The council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a council member's office, including whether good cause for absence has been or may be established. The burden of establishing good cause shall be on the council member in question; however, any council member may at any time during any duly held meeting move to establish good cause for his or her absence or the absence of any other commission member from any past, present, or future meeting or meetings, which motion, if carried, shall be conclusive. A council member whose qualifications are in question or who is otherwise subject to forfeiture of his or her office shall not vote on any such matters. The council member in question shall be entitled to a public hearing on request regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the town at least 1 week in advance of the hearing. Any final determination by the council that a council member has forfeited his or her office shall be made by resolution. All votes and other acts of the council member in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

(c) Suspension from office.—Any council member shall be suspended from office upon return of an indictment or issuance of any information charging the council member with any crime which is punishable as a felony or with any crime arising out of his or her official duties which is punishable as a first degree misdemeanor. Pursuant thereto:

1. During a period of suspension, a council member shall not perform any official act, duty, or function or receive any pay, allowance, emolument, or privilege of office.

2. If the council member is subsequently found not guilty of the charge, or if the charge is otherwise dismissed, reduced, or altered in such a manner that suspension would no longer be required as provided herein, the suspension shall be lifted and the council member shall be entitled to receive full back pay and such other emoluments or allowances as he or she would have been entitled to had the suspension not occurred.

(d) Filling of vacancies.—

1. If any vacancy occurs in the office of any council member and the remainder of the council member's unexpired term is less than 1 year and 81 days, the remaining council members shall, within 30 days following the

Positive
As of: June 15, 2015 11:59 AM EDT

Forsythe v. Longboat Key Beach Erosion Control Dist.

Supreme Court of Florida

June 25, 1992, Decided

No. 78,654

Reporter
604 So. 2d 452; 1992 Fla. LEXIS 1129; 17 Fla. L. Weekly S 377

PETER FORSYTHE, et al., Appellants, vs. LONGBOAT KEY BEACH EROSION CONTROL DISTRICT, Appellee.

Subsequent History: [**1] Rehearing Denied September 23, 1992. Released for Publication September 23, 1992.

Prior History: An Appeal from the Circuit Court in and for Manatee County - Bond Validations. Stephen L. Dakan, Chief Judge - Case No. CA-91-1613

Core Terms

special district, municipality, ordinance, Statutes, ambiguity, governing body, second sentence, definitions, districts, counties, provides, Beach, legislative intent, includes, courts, meets, terms

Case Summary

Procedural Posture

Appellant property owners challenged a judgment from the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County (Florida), which validated a bond issue proposed by appellee municipal beach erosion control district.

Overview

A municipality adopted an ordinance that created appellee municipal beach erosion control district, located in two counties. The municipality adopted a second ordinance to correct mistakes in the legal description of the boundary contained in the first ordinance. The ordinance specifically stated that appellee was a dependent special district under Fla. Stat. ch. 189. Appellee sought court approval to issue a certain amount in general obligation bonds. Appellants intervened in the bond validation proceedings. They argued that appellee was illegal because it was an independent special district under *Fla. Stat. ch. 189.403(3)*. The trial court entered judgment in favor of appellee. On appeal, the court determined that pursuant to *Fla. Stat. ch. 189.403(3)*, a district that included more than one county was an independent special district. Appellee was a district located in two counties. As such, appellee could not be created by municipal ordinance, but only by legislative act. The court concluded that appellee was an illegal special district. Therefore, the trial court's judgment was reversed.

Outcome

The trial court's judgment that validated a bond issue proposed by appellee municipal beach erosion control district was reversed because appellee was an illegal special district improperly created by municipal ordinance.

LexisNexis® Headnotes

Civil Procedure > Parties > Intervention > General Overview

HN1 See *Fla. Stat. ch. 75.07*.

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Boundaries

Governments > State & Territorial Governments > Boundaries

HN2 *Fla. Stat. ch. 189.403(3)* provides in part that a district that includes more than one county is an independent special district.

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Boundaries

Governments > State & Territorial Governments > Boundaries

HN3 See *Fla. Stat. ch. 189.403(1)*.

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Boundaries

Governments > State & Territorial Governments > Boundaries

Governments > State & Territorial Governments > Legislatures

HN4 *Fla. Stat. ch. 189.402(1)* (1989) expressly states that it is the specific intent of the legislature that dependent special districts shall be created at the prerogative of the counties and municipalities and that independent special districts shall only be created by legislative authorization as provided herein.

Governments > Legislation > Interpretation

HN5 It is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation. The legislature must be understood to mean what it has plainly expressed and this excludes construction. The legislative intent being plainly expressed so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Boundaries

Governments > State & Territorial Governments > Boundaries

HN6 See *Fla. Stat. ch. 189.403(2)*.

Governments > Legislation > Interpretation

HN7 All parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Boundaries

Governments > State & Territorial Governments > Boundaries

HN8 *Fla. Stat. ch. 189.403(3)* makes clear that a district that includes more than one county is an independent special district, notwithstanding that it satisfies any of the four criteria for a dependent special district in *Fla. Stat. ch. 189.403(2)*.

Governments > Legislation > Interpretation

HN9 It is a cardinal rule of statutory interpretation that courts should avoid readings that would render part of a statute meaningless.

Counsel: David W. Wilcox, Bradenton, Florida, for Appellant.

Daniel U. Livermore of Livermore, Klein & Lott, P.A., Jacksonville, Florida; and Steven J. Chase of Abel, Band, Russell, Collier, Pitchford & Gordon, Chartered, Sarasota, Florida, for Appellees.

Judges: BARKETT, SHAW, McDONALD, GRIMES, KOGAN, HARDING, OVERTON

Opinion by: BARKETT

Opinion

[*453] BARKETT, J.

Peter Forsythe and Alisabethe Jergens Forsythe (Forsythes) appeal the final judgment rendered by the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, validating the bond issue proposed by the appellee, Longboat Key Beach Erosion Control District (District). [1]

The Town of Longboat Key (Town) is a municipality which encompasses the entire island of Longboat Key. **[**2]** The island of Longboat Key is situated such that approximately the north one-half of the island is in Manatee County and the south one-half is in Sarasota County. On July 21, 1990, the Town adopted ordinance 90-21, creating a special district, located in both

[1] We have jurisdiction pursuant to article V, section 3(b)(2), of the Florida Constitution.

Manatee and Sarasota counties, for the purpose of funding beach renourishment on Longboat Key. On April 1, 1991, the Town adopted a second ordinance, 91-06, to correct mistakes in the legal description of the boundary contained in ordinance 90-21. The ordinances specifically state that the District is a *dependent* special district under chapter 189, Florida Statutes (1989).

The District sought court approval to issue $ 14,000,000 in General Obligation Bonds. The Forsythes intervened in the bond validation proceedings as property owners and interested persons pursuant to section 75.07, Florida Statutes (1989). [2] They argued that the district was in fact an *independent* special district under section 189.403(3), Florida Statutes (1989), because it included more than one county. [3] Therefore, they argued, the District was illegal because under chapter 189 independent districts could only be created by the legislature. Additionally, **[**3]** they argued that the municipal ordinances were invalid because ordinance 90-21 contained a faulty boundary description and because ordinance 91-06 was not adopted according to the procedures set forth in chapter 166, Florida Statutes (1989).

After trial, the circuit court entered a final judgment finding, among other things, that the district was a *dependent* special district and that both ordinances were valid. The Forsythes appealed **[**4]** to this Court.

We begin our analysis with the "Uniform Special District Accountability Act of 1989," chapter 189, Florida Statutes (1989). The overall legislative purpose in enacting chapter 189 was to consolidate and unify the provisions of existing law relating to the creation and accountability of special districts. *See* § 189.402(2)(a)-(d), Fla. Stat. (1989).

One of the statute's primary goals is to "[c]larify special district definitions and creation methods in order to ensure consistent application of those definitions and creation methods across all levels of government." § 189.402(2)(e), Fla. Stat. (1989). This purpose is further emphasized in the first section of the "Statement of legislative purpose and intent" that provides:

> It is the intent of the Legislature through the adoption of this chapter *to provide general provisions for the definition,* **[*454]** creation, and operation of special districts.

§ 189.402(1), Fla. Stat. (1989) (emphasis added); *see* Lorraine R. Dempsey et al., *Solving the Accountability Puzzle: Putting the Pieces Together Under the Uniform Special District Accountability Act of 1989,* Fla. B.J., Jan. 1990, at 43, 43; Mary Kay Falconer, *Special* **[**5]** *Districts: The "Other" Local Governments--Definition, Creation, and Dissolution,* 18 Stetson L. Rev. 583, 585-593 (1989).

HN3 The Act defines a special district as

> a local unit of special-purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

§ 189.403(1), Fla. Stat. (1989).

The narrow issue in this case involves the definitional distinction between an independent special district and a dependent special district. The distinction is crucial because the rules regarding the formation of special

---

[2] That section provides:

> ***HN1*** Any property owner, taxpayer, citizen, or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing. At the hearing the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay.

§ 75.07, Fla. Stat. (1989).

[3] ***HN2*** Section 189.403(3) provides in relevant part that "[a] district that includes more than one county is an independent special district."

districts vary depending on whether the special district is dependent or independent. ***HN4*** Chapter 189 expressly **[**6]** states that

> [i]t is the specific intent of the Legislature that dependent special districts shall be created at the prerogative of the counties and municipalities and that *independent special districts shall only be created by legislative authorization* as provided herein.

§ 189.402(1), Fla. Stat. (1989) (emphasis added). The District in this case was created by municipal ordinance. Accordingly, if determined to be an independent district, it would be invalid under the rule in section 189.402(1).

HN5 It is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation. As this Court set forth more than 70 years ago in *Van Pelt v. Hilliard:*

> "The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. Cases cannot be included or excluded merely because there is intrinsically **[**7]** no reason against it. Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. If a Legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts. Whether the law be expressed in general or limited terms, the Legislature should be held to mean what they have plainly expressed, and consequently no room is left for construction, but if from a view of the whole law, or from other laws *in pari materia* the evident intent is different from the literal import of the terms employed to express it in a particular part of the law, that intent should prevail, for that, in fact is the will of the Legislature." 2 Sutherland's Statutory Construction, Sec. 366, p. 701.

75 Fla. 792, 798-99, 78 So. 693, 694-95 (1918); **[**8]** *e.g.,* Streeter v. Sullivan, 509 So. 2d 268, 271 (Fla. 1987); Coon v. Continental Ins. Co., 511 So. 2d 971, 973 (Fla. 1987); **[*455]** Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984); Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879, 882 (Fla. 1983); Citizens v. Public Serv. Comm'n, 425 So. 2d 534, 542 (Fla. 1982); St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071, 1073 (Fla. 1982); Carson v. Miller, 370 So. 2d 10, 11 (Fla. 1979); Thayer v. State, 335 So. 2d 815, 817 (Fla. 1976); McDonald v. Roland, 65 So. 2d 12, 14 (Fla. 1953). The sum of these cases is that this Court is without power to construe an unambiguous statute.

In the case before us, the legislature has provided clear definitions of both dependent and independent districts. ***HN6*** Section 189.403(2), Florida statutes (1989), states:

> (2) "Dependent special district" means a special district that meets at least one of the following criteria:
>
> (a) The membership of its governing body is identical to that of the governing **[**9]** body of a single county or a single municipality.
>
> (b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
>
> (c) During their unexpired terms, members of the special district's governing body are subject to removal by the governing body of a single county or a single municipality.
>
> (d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

Section 189.403(3) provides:

> (3) "Independent special district" means a special district that is not a dependent special district as defined in subsection (2). *A district that includes more than one county is an independent special district.*

(Emphasis added.)

The District concedes that the second sentence of section 189.403(3) means that a district which crosses county lines is an independent special district. [4] Nevertheless, the District argues that the Town of Longboat Key represents a special situation not contemplated by the legislature because, although the District overlaps two counties, it is contained within a single municipality and therefore meets the definitions **[**10]** of *both* an independent and a dependent special district.

The District thus attempts to characterize its argument in terms of ambiguity. However, there is a difference between ambiguity and unexpressed intention. Ambiguity suggests that reasonable persons can find different meanings in the same language. *Black's Law Dictionary* 79 (6th ed. 1990). The language at issue in subsections 189.403(2) and (3) is not susceptible to differing interpretations. The fact that the statute first-defines a dependent special district and then *exempts* multi-county districts from that definition does not render the statute unclear or susceptible to different meanings.

It is axiomatic that ***HN7*** all parts of a statute must be read *together* in order to achieve a consistent whole. *See, e.g.,* Marshall v. Hollywood, Inc., 224 So. 2d 743, 749 (Fla. 4th DCA 1969), *writ discharged,* 236 So. 2d 114 (Fla.), *cert. denied,* 400 U.S. 964 (1970). **[**11]** Where possible, courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another. *E.g.,* Villery v. Florida Parole & Probation Comm'n, 396 So. 2d 1107, 1111 (Fla. 1980). Accordingly, both definitions in section 189.403 must be considered as a whole, and in their entirety, in order to effectuate the legislative intent. *See, e.g.,* Fleischman v. Department of Professional Regulation, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983) ("Every statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts."), *review denied,* 451 So. 2d 847 (Fla. 1984).

Read together, there is no ambiguity in section 189.403 because the qualifying language in the second sentence of ***HN8*** subsection 189.403(3) makes clear that a **[*456]** district that includes more than one county is an independent special district--notwithstanding that it satisfies any of the four criteria for a dependent special district in section 189.403(2). Such a reading harmonizes both definitions. To rule that a district which crosses county **[**12]** lines is dependent because it satisfies the criteria in subsection 189.403(2) would make a nullity of the second sentence in subsection 189.403(3). ***HN9*** It is a cardinal rule of statutory interpretation that courts should avoid readings that would render part of a statute meaningless. *See, e.g., Villery;* Cilento v. State, 377 So. 2d 663, 66 (Fla. 1979); *Fleischman.* Thus, contrary to the District's assertion, it does *not* satisfy *both* statutory definitions because the qualifying language of section 189.403(3) precludes the District from being defined as dependent.

Likewise, the fact that the legislature may not have anticipated a particular situation does not make the statute ambiguous." To return to the quotation from *Van Pelt v. Hilliard:*

> "Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity."

75 Fla. at 798, 78 So. at 694 (quoting *Sutherland's Statutory Construction, supra); see also* Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779, 782 (Fla. 1960) **[**13]** ("If the language of the statute is clear and unequivocal, then the legislative intent must be derived from the words used without involving incidental rules of construction or engaging in speculation as to what the judges might think that the legislators intended or should have intended.").

The plain and unambiguous wording of the statute in this case is that where a special district includes more than one county, that district is an independent special district. Nothing in the statute itself evinces a legislative intent to the contrary. All parties agree that the Longboat Key Beach Erosion Control District includes parts of *both* Manatee and Sarasota counties. It is therefore an independent district under the definition provided in section 189.403(3). As such, the District could not be created by municipal ordinance, but only by legislative act. §§ 189.402(1), 189.404, Fla. Stat. (1989).

We therefore reverse the trial court's ruling and find the Long Boat Beach Erosion Control District to be an

[4] This concession was made clear at oral argument.

illegal special district and its bond issue to be invalid. We do not address the other issues on appeal.

It is so ordered.

SHAW, C.J. and McDONALD, GRIMES, HOGAN and HARDING, JJ., **[**14]** concur.

OVERTON, J., dissents with a opinion.

Dissent by: OVERTON

Dissent

OVERTON, J., dissenting.

I disagree with the majority's holding that the second sentence of *section 189.403(3), Florida Statutes* (1989), creates no ambiguity in this unique case. I find that the second sentence of subsection (3), if read together with subsection (2), does make the statute ambiguous.

The majority states that to find the Longboat Key Beach Erosion Control District to he a dependent district would make the second sentence of subsection (3) a nullity. The majority, although stating that it read subsections (2) and (3) together, in actuality reads the second sentence of subsection (3) in isolation. Read together, I find that the subsections contradict each other. On the one hand, if the district meets certain criteria in subsection (2), it is a dependent district, while, on the other hand, in subsection (3), the statute states that the same district cannot be a dependent district. The majority finds that the second sentence in subsection (3) constitutes language qualifying the previous section. I find that, absent language expressly stating that under subsection (3) a district is an independent district, even if it **[**15]** meets the requirements of subsection (2), the statute is ambiguous as applied to the Longboat Key Beach Erosion Control District.

The majority's holding also ignores the fact that the Town of Longboat Key could **[*457]** have accomplished its intended outcome by first creating two dependent districts, one district encompassing that portion of Longboat Key located within Sarasota County and another encompassing the portion located within Manatee County, and then merging the two districts under *section 189.4042(1), Florida Statutes* (1989). *Section 189.4042(1)* provides:

> The merger of one or more municipalities or counties with special districts, or the merger of two or more special districts, may be adopted by passage of a concurrent ordinance or, in the case of special districts, resolution by the governing bodies of each unit to be affected.

Under this procedure, Longboat Key could have validly created both districts by passing municipal ordinances pursuant to *section 189.402(1), Florida Statutes* (1989). Longboat Key could then merely pass two ordinances or resolutions merging the two districts in order to achieve its goal. Since Longboat Key would be the governing body of both dependent **[**16]** districts, the municipality would need only to engage in a pointless ordinance shuffle in order to validly do what the majority says it cannot. The availability of this process to Longboat Key emphasizes the ambiguity created when reading *sections 189.403(2)* and *(3)* together and that the legislature did not contemplate the existence of a municipality located within two counties.

The majority's literal interpretation of the statutes "leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers. *City of Boca Raton v. Gidman, 440 So. 2d 1277, 1281 (Fla. 1983)*. The majority's construction also places *section 189.403(3)* in conflict with *section 189.4042(1)*. This Court "should avoid a construction which places in conflict statutes which cover the same general field. The law favors a rational, sensible construction." *Id. at 1282* (citation omitted).

I find that *section 189.403(3)* is ambiguous as applied to the Town of Longboat Key. As such, the only reasonable construction is that, although crossing county lines, the district in question is a dependent district because it meets all of the requirements of *section* **[**17]** *189.403(2)*. Accordingly, I would validate the bonds.

Positive
As of: June 15, 2015 11:45 AM EDT

Hott Interiors, Inc. v. Fostock

Court of Appeal of Florida, Fourth District

December 23, 1998, Opinion Filed

CASE NO. 98-0871

Reporter
721 So. 2d 1236; 1998 Fla. App. LEXIS 16061; 24 Fla. L. Weekly D 169

HOTT INTERIORS, INC., Appellant, v. MOUSTAPHA FOSTOCK, ANN FOSTOCK, ABBAS SADRIWALLA, DEBORAH SADRIWALLA, and ANDREW LAMPSONE, Appellees.

Subsequent History: [**1] Released for Publication January 8, 1999.

Prior History: Appeal from the Circuit Court of the Seventeenth Judicial Circuit, Broward County; George A. Brescher, Judge; L.T. Case Nos. 96-8619 (25) and 97-8127 (25).

This Opinion Substituted on Grant of Clarification for Withdrawn Opinion of November 18, 1998, Previously Reported at: 1998 Fla. App. LEXIS 14688.

Disposition: Final judgment affirmed.

Core Terms

recorded, real estate, decree, real property, judgments, holder's, person's address, final judgment, becomes

Case Summary

Procedural Posture

Appellant corporation sought review of a judgment from the Circuit Court of the Seventeenth Judicial Circuit, Broward County (Florida). The trial court granted summary judgment to appellee sellers and appellee buyers on their claim that appellant's judgments against appellee sellers did not comply with the requirements of Fla. Stat. Ann. § 55.10(1) for creating a lien on real property.

Overview

Appellant corporation obtained judgments against appellee sellers, certified copies of which were recorded. However, the judgments only contained the address of appellant's attorneys, not appellant's address. Appellee sellers conveyed real property to appellee buyers. Appellee sellers sought a declaratory judgment that no liens had attached to the real property as a result of the recorded judgments. Appellee sellers and appellee buyers moved for summary judgment against appellant, claiming that the judgments did not comply with the requirements of Fla. Stat. Ann. § 55.10(1) for creating a lien on real property. The trial court granted summary judgment for appellees. The court affirmed. Fla. Stat. Ann. § 55.10(1) expressly required that a judgment creditor's address had to be contained in the judgment or in a simultaneously recorded affidavit for the judgment to become a lien on real estate. The address of appellant's attorneys did not satisfy this explicit statutory requirement. The statutory requirement was not a matter of procedure within the exclusive domain of the state supreme court but an issue of substantive law within the legislative domain.

Outcome

The court affirmed the summary judgment grant to appellee sellers and appellee buyers, who claimed that appellant corporation's judgments against appellee sellers did not satisfy the statutory requirement for creating a lien on real property. The express language of the applicable statute provided that the address of the judgment creditor had to be contained in the judgments, and the address of appellant's attorneys did not meet this requirement.

LexisNexis® Headnotes

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

Real Property Law > ... > Liens > Nonmortgage Liens > Judgment Liens

HN1 Fla. Stat. Ann. § 55.10(1) (1997) requires that a final judgment contain the judgment holder's address to become a lien on real estate. An alternative method of creating such a lien is to record an affidavit in compliance with Fla. Stat. Ann. § 55.10(1). A judgment containing only the address of the judgment holder's attorney does not comply with the statute, so that its recording does not impose a lien on real estate.

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

Real Property Law > ... > Liens > Nonmortgage Liens > Judgment Liens

HN2 See Fla. Stat. Ann. § 55.10(1) (1997).

Governments > Legislation > Interpretation

HN3 An appellate court must construe a statute to give effect to the plain meaning of its words. While extrinsic aids and rules of statutory construction and interpretation are available to the courts where statutes are ambiguously worded, when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

Governments > Legislation > Types of Statutes

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

Real Property Law > ... > Liens > Nonmortgage Liens > Judgment Liens

HN4 A substantive law creates, defines, and regulates rights, while a procedural law prescribes methods of enforcing rights or obtaining redress for the invasion of rights. A statutory determination of what content is necessary for a judgment to become a lien on real property is a substantive law, because it creates the form of judgment that becomes a lien. How this type of lien is created is a matter of legislative prerogative.

Counsel: Kenneth E. Keechl of Brinkley, McNerney, Morgan, Solomon & Tatum, Fort Lauderdale, and June M. Clarkson of June M. Clarkson, P.A., Hollywood, for appellant.

Kimberly Hall Doyle of Atkinson, Diner, Stone & Mankuta, P.A., Hollywood, for Appellee-Moustapha Fostock.

Joseph J. Huss of Romanik Huss Paoli & Ivers, Hollywood, for Appellee-Ann Fostock.

Maurice M. Garcia of Abrams Anton P.A., Hollywood, for Appellees-Abbas Sadriwalla and Deborah Sadriwalla.

Lee Huszagh, Tallahassee, for Amicus Curiae-Florida Land Title Association, Inc.

Judges: GROSS, J. DELL and SHAHOOD, JJ., concur.

Opinion by: GROSS

Opinion

[*1237] CORRECTED OPINION

GROSS, J.

We grant Appellee, Ann Fostock's motion to correct, withdraw our previous opinion, and substitute the following opinion.

[2]** The issue in this case is whether a final judgment becomes a lien on real estate when it contains the address of the plaintiff's attorney but not the address of the plaintiff. We hold that ***HN1*** section 55.10(1), Florida Statutes (1997), requires that a final judgment contain the judgment holder's address to become a lien on real estate. An alternative method of creating such a lien is to record an affidavit in compliance with section 55.10(1). A judgment containing only the address of the judgment holder's attorney does not comply with the statute, so that its recording does not impose a lien on real estate.

Hott Interiors, Inc. (Hott) obtained judgments against Moustapha Fostock for $ 54,003.56 and $ 4,645.32 for costs. Certified copies of both judgments were recorded in Broward County. Neither judgment contained Hott's address, nor were any affidavits containing any address for Hott recorded with the judgments. Both judgments contained the address of Hott's attorneys.

Thereafter, Fostock and his wife Ann, conveyed real property to Abbas and Deborah Sadriwallas (Sadriwallas). The Fostocks sued for declaratory relief seeking a ruling that no liens had attached to the real property as **[**3]** a result of the recordation of Hott's judgments. The Fostocks and Sadriwallas filed motions for summary judgment, asserting that the judgments failed to comply with the requirements of section 55.10(1) for creating a lien on real property.

[*1238] The trial court granted the motions for summary judgment. The court ruled that while certified copies of the final judgments had been duly recorded in the official records of Broward County, the failure to comply with section 55.10(1) resulted in no liens attaching to any real property.

Section 55.10(1), Florida Statutes (1997), provides that:

HN2 A judgment, order, or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, whichever is maintained at the time of recordation, and it shall be a lien for a period of 7 years from the date of the recording *provided that the judgment, order, or decree contains the address of the person who has a lien as a result of such judgment, order, or decree or a separate affidavit is recorded simultaneously with the judgment, order, or decree stating the address of the person who has a lien* as a result of such **[**4]** judgment, order, or decree. *A judgment, order, or decree does not become a lien on real estate unless the address of the person who has a lien as a result of such judgment, order, or decree is contained in the judgment, order, or decree or an affidavit with such address is simultaneously recorded with the judgment*, order, or decree.

(Emphasis supplied).

HN3 We must construe section 55.10(1) "to give effect to the plain meaning of its words." Palm Beach County Health Care Dist. v. Everglades Mem'l Hosp., 658 So. 2d 577, 580 (Fla. 4th DCA 1995), rev. denied, Everglades Mem'l Hosp. v. Palm Beach County Health Care Dist., 701 So. 2d 867 (Fla. 1997). As articulated by our supreme court in Modder v. American Nat'l Life Ins. Co. of Texas, 688 So. 2d 330, 333 (Fla. 1997):

In Holly v. Auld, 450 So. 2d 217 (Fla. 1984), this Court explained that while extrinsic aids and rules of statutory construction and interpretation are available to courts where statutes are ambiguously worded, "when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; **[**5]** the statute must be given its plain and obvious meaning." Id. at 219 (quoting A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So. 157 (1931)).

Because the wording of section 55.10(1) is not ambiguous, unreasonable, or illogical, we may not go beyond its clear wording and plain meaning to expand its reach. *See* Palm Beach Community College Found., Inc. v. WFTV, Inc., 611 So. 2d 588 (Fla. 4th DCA 1993). To do so would be to extend or modify the express terms of the statute, which would be an improper abrogation of legislative power. *See* Oruga Corp., Inc. v. AT&T Wireless of Florida, Inc., 712 So. 2d 1141 (Fla. 3d DCA 1998).

As if to insist on one interpretation, the statute in this case says the same thing in two different ways. In separate sentences, section 55.10(1) specifies that the address of a judgment creditor must be contained in the judgment or in a simultaneously recorded affidavit in order for the judgment to become a lien on real estate. First, the statute states how a judgment becomes a lien: "[a] judgment . . . becomes a lien on real estate . . . [when properly recorded] . . . provided that the judgment . . . contains the address of the person **[**6]** who has a lien as a result of such judgment." To emphasize this point, in the next sentence, the statute states that a judgment does *not* become a lien "unless the address of the person who has a lien as a result of such judgment . . . is contained in the judgment." We cannot expand this clear statutory directive to say that the address of the judgment holder's attorneys may be substituted for that of the judgment holder.

In Robinson v. Sterling Door & Window Co., 698 So. 2d 570 (Fla. 1st DCA 1997), the first district dealt with a similar issue and reached a similar result. In *Robinson*, only the *names* of the judgment creditor's attorneys, not the attorneys' address, were included on a final judgment. Ruling that no lien on real estate had been created by such a judgment, the first district held that section 55.10(1) "unambiguously requires" that the judgment holder's address be contained in the judgment for it to become a lien on real estate.

Hott also argues that section 55.10(1) is unconstitutional because forms contained **[*1239]** at Florida Rules of Civil Procedure 1.990, 1.991, 1.993, 1.994, and 1.996 do not require the inclusion of a judgment creditor's name and address. **[**7]** Hott contends that the inclusion of an address in a judgment is a matter of procedure within the exclusive purview of the supreme court. *See* Art. V, § 2(a), Fla. Const.

We reject this argument for two reasons. First, the forms at issue do not conflict with the statutes; they concern only the body of the judgment, without any reference to the addresses which a judgment must

contain. More importantly, in section 55.10(1), the requirement that a judgment holder's address be included in a judgment to become a lien on real property is a matter of substantive law, which is properly within the power of the legislature.

HN4 A substantive law creates, defines, and regulates rights, while a procedural law prescribes methods of enforcing rights or obtaining redress for the invasion of rights. *See* *Alamo Rent-A-Car v. Mancusi, 632 So. 2d 1352, 1358 (Fla. 1994)*. A statutory determination of what content is necessary for a judgment to become a lien on real property is a substantive law, because it creates the form of judgment that becomes a lien. How this type of lien is created is a matter of legislative prerogative. As explained by the supreme court in *Smith v. Venus Condominium Ass'n,* [**8] *Inc.*, 352 So. 2d 1169, 1170-71 (Fla. 1977):

At common law, except for debts due the King, the lands of a debtor were not liable to the satisfaction of a judgment lien against him, and consequently, a judgment did not operate as a lien on the real estate of the debtor. *Judgment liens on land are statutory liens and their existence depends upon the legal effect of the statute by which they are created.*

(Citations omitted) (emphasis supplied).

For these reasons, we affirm the final judgment.

DELL and SHAHOOD, JJ., concur.

Positive
As of: June 15, 2015 11:46 AM EDT

N.W. v. State

Supreme Court of Florida

September 7, 2000, Decided

No. SC95882

Reporter
767 So. 2d 446; 2000 Fla. LEXIS 1762; 25 Fla. L. Weekly S 653

N.W., a child, Petitioner, vs. STATE OF FLORIDA, Respondent.

Subsequent History: **[**1]** As Corrected September 21, 2000.

Prior History: Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict. Second District - Case No. 2D97-04640. (Pinellas County).

Core Terms

juvenile, delinquent, adjudicated, withheld, supervision, misdemeanor, Statutes, second-degree, adult, detention, delinquent children, maximum, days, indeterminate period, found guilty, trial court, time limit, limitations, withholding, six-month, contempt

Case Summary

Procedural Posture

Appellant juvenile challenged the judgment of the Florida District Court of Appeal for the Second District, which affirmed the trial court's judgment ordering appellant to remain on community control until December 1997, and certified conflict with another case.

Overview

When appellant was charged with disruption of a school function in November 1996, adjudication was withheld. Because appellant violated the terms imposed on him due to the charge, the trial court adjudicated him delinquent in June 1997 and ordered him to remain on community control for six months. In August 1997, a petition alleging a violation of community control was filed. Appellant filed a motion to dismiss, contending that the trial court lacked jurisdiction because the six-month limitation on his supervision, starting in November 1996, had expired. The trial court denied the motion on the ground that the limitation did not begin to run until he was adjudicated in June 1997 and therefore it had jurisdiction to order appellant to remain on community control. The court of appeal affirmed and certified conflict with a decision of another district court of appeal. The court affirmed, holding that the plain language of Fla. Stat. ch. 39.054, setting forth the six month limitation, applied only to juveniles who had been adjudicated delinquent, and not where adjudication had been withheld.

Outcome

Judgment affirmed because the trial court properly exercised its jurisdiction over appellant on the August 1997 violation of community control petition since the six-month limitation period commenced only when appellant was adjudicated delinquent and placed on community control in June 1997.

LexisNexis® Headnotes

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview

HN1 When a court finds that a juvenile has committed a delinquent act it may proceed to either: (1) withhold adjudication pursuant to Fla. Stat. ch. 39.053(2) (renumbered as Fla. Stat. ch. 985.228(4) (1997)); or (2) adjudicate the juvenile delinquent and proceed under Fla. Stat. ch. 39.054(1) (renumbered as Fla. Stat. ch. 985.231(1) (1997)).

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview

HN2 See Fla. Stat. ch. 39.054.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview

HN3 Under Fla. Stat. ch. 39.054(1), (4), an adjudicated juvenile may not be placed under supervision for a period longer than the period for which an adult could be imprisoned if found guilty of the same offense. The further limitation provides that if the offense is a second-degree misdemeanor the period of supervision may not exceed six months.

Governments > Legislation > Interpretation

HN4 In Florida, it is well settled that where the language of a statute is plain and unambiguous, there is no need for judicial interpretation.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview

HN5 The limitations provided in Fla. Stat. ch. 39.054(1) apply to juveniles only after they are adjudicated delinquent.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > General Overview

HN6 The Florida Supreme Court disapproves of the decision in *G.R.A. v. State, 688 So. 2d 1027 (Fla. Dist. Ct. App. 1997)*.

Counsel: James Marion Moorman, Public Defender, and Brad Permar, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida, for Petitioner.

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, and Angela D. McCravy and Diana K. Bock, Assistant Attorneys General, Tampa, Florida, for Respondent.

Judges: WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

Opinion

[*446] PER CURIAM.

CORRECTED OPINION

We have for review *N.W. v. State, 736 So. 2d 710 (Fla. 2d DCA 1999)*, based on certified conflict with *G.R.A. v. State, 688 So. 2d 1027 (Fla. 5th DCA 1997)*, on the issue of whether the time limitations imposed by section 39.054(1), Florida Statutes (1995), relating to juveniles who are adjudicated delinquent, are, or should be, equally applicable to juveniles who have had adjudication **[**2]** withheld. We have jurisdiction. See *Art. V, § 3(b)(4), Fla. Const.* For the reasons detailed below, we conclude that the time limitations set forth in section 39.054(1) are only applicable upon adjudication. While the result of this statutory application may seem questionable on occasion, the statutory words are clear. Thus, we approve the Second District's decision in N.W. and disapprove the Fifth District's decision in G.R.A.

FACTS

On November 12, 1996, the State of Florida filed a petition charging N.W. with disruption of a school function, in violation of *section 877.13, Florida Statutes* (1995), a second-degree misdemeanor. N.W. waived his right to counsel and entered a guilty plea on December 13, 1996. He was ordered to abide by the rules and curfew established by his parents; attend school on a daily basis; remain on the honor roll; and write a letter of apology to the principal. [1] At that time, adjudication was withheld.

[3]** Subsequent to this disposition, N.W. was before the court on several charges of indirect criminal contempt stemming from alleged violations of the terms and conditions imposed in connection with the original charge. The first instance was on April 15, 1997, when N.W. pled guilty to contempt of court, and the juvenile judge placed him in secure detention for five days. Less than one month later, on May 6, 1997, the court again found N.W. in contempt of court for violating the terms of his disposition order, and ordered him to secure detention for fifteen days. Yet **[*447]** again, on May 28, 1997, N.W. pled guilty to contempt of court, and was ordered to fifteen days in secure detention. On this occasion, however, he was adjudicated delinquent through an order dated June 2, 1997. At the disposition hearing on June 11, 1997, N.W. was ordered to remain on community control for a period of six months.

On August 26, 1997, a formal petition alleging a violation of community control was filed. The court placed N.W. in secure detention on September 1, 1997. The next day, at the detention hearing, after admitting guilt, he was found in contempt of court and sentenced to fifteen

[1] The record is unclear as to whether N.W. was formally placed on "community control" at that time. However, during oral argument in this Court, counsel for the State noted that N.W. was in fact placed on community control on December 13, 1996.

days' secure detention. **[**4]** At that time, an assistant public defender raised the issue of whether the court had jurisdiction to enter a disposition on this violation. Defense counsel argued that the six months of community control imposed on June 11, 1997, necessarily related back to the original charge addressed on December 13, 1996, and extended only into June of 1997. Thus, counsel reasoned that the juvenile court lacked jurisdiction to dispose of the August 26, 1997 petition. Counsel's argument was premised on section 39.054(1)(a)1, which limits the time period of supervision or community service program to a maximum of six months for a child adjudicated delinquent of a second-degree misdemeanor. The State, on the other hand, maintained that the six-month limitation period commenced in June of 1997, when N.W. was adjudicated delinquent, and, therefore, the court retained jurisdiction over the juvenile until December of 1997. The juvenile court judge reserved ruling to review the case law and released N.W. from secure detention. At a second status check a few days later, N.W's attorney filed a motion to dismiss based on lack of jurisdiction. After conducting a hearing, the judge denied the motion and ordered **[**5]** N.W. to remain on community control until December of 1997. N.W. sought review of this determination.

On appeal, the Second District affirmed the lower court's ruling. In so doing, the court relied on its own decision in *M.G. v. State, 696 So. 2d 1340 (Fla. 2d DCA 1997)*, and the Fourth District's decision in *M.B. v. State, 693 So. 2d 1066 (Fla. 4th DCA 1997)*. Both of these cases stand for the proposition that the limitations on supervision set forth in section 39.054(1)(a)1 apply only to juveniles who have been adjudicated delinquent. In the present case, the district court reasoned that because N.W. was not adjudicated delinquent until June of 1997, the six-month limitation on his supervision did not expire until December of 1997. Thus, the district court concluded that the trial court properly exercised jurisdiction over the August 26, 1997, petition alleging a violation of community control.

Nonetheless, the Second District echoed the trial court in noting that its decision was in conflict with *G.R.A., 688 So. 2d at 1028* (finding that even when adjudication is withheld, the court should not be able to impose a penalty that is **[**6]** more harsh than that permitted if the juvenile were adjudicated delinquent or were an adult offender). As a result, the Second District certified conflict with the Fifth District's decision in G.R.A. [2]

ANALYSIS

The juvenile delinquency proceedings below were governed by chapter 39 of the Florida Statutes. [3] **[**7]** ***HN1*** Under the pertinent statutes, when a court finds that a juvenile **[*448]** has committed a delinquent act it may proceed to either: (1) withhold adjudication pursuant to section 39.053(2); [4] or (2) adjudicate the juvenile delinquent and proceed under section 39.054(1). [5]

HN2 Section 39.054 provides in pertinent part:

> 39.054 Powers of disposition.
>
> (1) The court that has jurisdiction of an adjudicated delinquent child may ...:
>
> (a) Place the child in a community control program ....
>
> 1.... If supervision or a program of community service is ordered by the court, the duration of such supervision or program ... may not exceed the term for which sentence could be imposed if the child were committed for the offense, except that the duration of such supervision or program for an offense that is a misdemeanor of the second degree, or is equivalent to a misdemeanor of the second degree, may be for a period not to exceed 6 months....
>
> ....
>
> (4) Any commitment of a delinquent child to the Department of Juvenile Justice must be for an

[2] This case became moot in December 1997 when the six months of community control expired. However, because periods of supervision or community control may expire before a case may be reviewed, this case presents a controversy capable of repetition, yet evading review, which should be considered on its merits. See Kight v. Dugger, 574 So. 2d 1066 (Fla. 1990).

[3] The statutes pertaining to juvenile delinquency proceedings were renumbered and incorporated into chapter 985, Florida Statutes (1997), pursuant to chapter 97-238, Laws of Florida, effective October 1, 1997.

[4] This provision has been renumbered as section 985.228(4), Florida Statutes (1997).

[5] This provision has been renumbered as section 985.231(1), Florida Statutes (1997).

> indeterminate period of time, which may include temporary release, but the time may not exceed **[**8]** the maximum term of imprisonment that an adult may serve for the same offense.

(Emphasis supplied.) Thus, reading these two subsections together, ***HN3*** an adjudicated juvenile may not be placed under supervision for a period longer than the period for which an adult could be imprisoned if found guilty of the same offense. The further limitation provides that if the offense is a second-degree misdemeanor, as in the present case, the period of supervision may not exceed six months. [6]

Section 39.054(1) could not be written more clearly. It doubtlessly delineates the powers of disposition to be followed by a "court that has jurisdiction of an adjudicated delinquent child." (Emphasis supplied.) See also *T.R. v. State, 677 So. 2d 270, 271 (Fla. 1996)* (noting that section 39.054(1) "empowers the trial court to determine an appropriate sanction **[**9]** and rehabilitative program for the adjudicated delinquent child"). Moreover, nothing in the legislative history of this section suggests an intent that it govern instances where adjudication is withheld. Despite the clear wording of section 39.054(1), Florida case law is split on the issue of whether that section also applies to juveniles who have received a withhold of adjudication.

In M.B., the trial judge found M.B. guilty of battery, withheld adjudication, and placed him on community control for an indeterminate period of time. On appeal, MB argued that an indeterminate period of community control exceeded the maximum term permitted under section 39.054(1)(a)1. The Fourth District upheld the indeterminate period of community control. See *693 So. 2d at 1067*. In so doing, it reasoned that sections 39.054(1) and 39.054(4) "are applicable only when the court is dealing with a child who has been adjudicated delinquent.... [T]hus, the restrictions relating to commitment or comparisons to adult sanctions are not involved." *Id. at 1066-67*; accord *M.G., 696 So. 2d at 1341*.

In a similar manner, the Fifth District at one point also **[**10]** recognized the distinction that section 39.054(1) only applies to juveniles who have been adjudicated delinquent. For example, in *D.V.S. v. State, 632 So. 2d 221 (Fla. 5th DCA 1994)*, just as in N.W., a juvenile was found guilty of a second-degree misdemeanor. The court withheld adjudication and placed D.V.S. on community control for six months. D.V.S. challenged his six-month community control **[*449]** disposition, arguing that under section 39.054(1)(a)1 and section 39.054(4), the maximum period of time he could be placed on community control was sixty days (i.e., the maximum period of imprisonment that an adult could serve for the same offense). [7] The district court proceeded to make the specific distinction that section 39.054(1) "applies only when the court is dealing with 'an adjudicated delinquent child.' Since D.V.S. was non-adjudicated, the provisions of 39.053 are applicable and the restrictions relating to 'commitment' or comparisons with adult sanction are not involved." *Id. at 222* (citation omitted). As a result, it upheld the six-month term of community control under section 39.053. *See id.*

[11]** In G.R.A., however, the Fifth District receded from D.V.S. G.R.A. was found guilty of a second-degree misdemeanor. The juvenile court withheld adjudication and the juvenile was placed on community control for a period of one year. G.R.A. argued that the one-year term of community control exceeded the time limitations set out in section 39.054(1)(a)1. Despite its recognition that the time limitations set forth in section 39.054(1) do not apply to a juvenile who has had adjudication withheld, the district court stated that "[n]onetheless, the court should not be able to impose a penalty harsher than that permitted if G.R.A. were adjudicated delinquent or if G.R.A. were an adult offender." *688 So. 2d at 1028*; see also *E.J. v. State, 595 So. 2d 282 (Fla. 1st DCA 1992)* (applying section 39.054(1) in a case where adjudication was withheld). Thus, it reduced G.R.A.'s community control on the second-degree misdemeanor to six months, pursuant to section 39.054(1)(a)1. See *688 So. 2d at 1029*.

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[6] Because of this exception, section 39.054(4) does not control the duration of community control for a juvenile found guilty of a second-degree misdemeanor.

[7] D.V.S.' case was controlled by the 1993 version of the Florida Statutes. At that time, section 39.054(1)(a)1 did not include the sentence, which was included in the 1995 version applicable in N.W.'s case, carving out an exception for juveniles found guilty of second-degree misdemeanors (i.e., adult term of incarceration becomes irrelevant and the maximum term of supervision is six months). Had it included that exception, the issue would have been moot since DVS was sentenced to six months of community control (i.e., the same amount of time that could have been imposed had he been adjudicated). However, the import of this decision is in the Fifth District's recognition that section 39.054(1) is only applicable to juveniles who have been adjudicated delinquent.

In its opinion in G.R.A., the Fifth District noted that, "[w]hile section 39.054 specifies the disposition powers of a trial court when it has jurisdiction **[**12]** over an adjudicated delinquent child, there is no corresponding statute governing a court's disposition powers when adjudication is withheld." *Id. at 1028* (citation omitted). This view seems to overlook other statutory provisions. For example, section 39.053(2) reads in pertinent part:

> If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency and placing the child in a community control program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind, community service, a curfew, urine monitoring, revocation or suspension of the driver's license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation is substance abuse treatment, or school or other educational program attendance. If the court **[**13]** later finds that the child has not complied with the rules, restrictions or conditions of the community-based program, the court may, after a hearing to establish lack of compliance, but without further evidence of the state of delinquency, enter an adjudication of delinquency, and shall thereafter have full authority under **[*450]** this chapter to deal with the child as adjudicated.

(Emphasis supplied.)

Perhaps, what the G.R.A. court intended to communicate by its statement that there is no corresponding statute relating to juveniles who have adjudication withheld was that there are no time limitations provided in the statute dealing with circumstances in which adjudication is withheld, as there are in the statute dealing with juveniles who have been adjudicated delinquent. That fact cannot be simply ignored as a legislative oversight. In section 39.054(1) the legislature made it abundantly clear that it knows how to impose time restrictions upon dispositions of juveniles who have been adjudicated delinquent. Had the Florida Legislature intended the same time limitations to apply in cases when adjudication is withheld, it would and could have easily incorporated direct language **[**14]** to that effect.

Moreover, the phrase "and shall thereafter have full authority under this chapter to deal with the child as adjudicated" in 39.053(2) indicates that the limitation periods for disposition of a juvenile for whom adjudication has been initially withheld, but who is later adjudicated delinquent, should be calculated as commencing at the time of adjudication. Thus, it provides further support for the lower court's conclusion that the period of community control imposed in June of 1997 did not expire until December of 1997, and did not relate back, as N.W. suggests, to the original disposition on December 13, 1996.

CONCLUSION

HN4 In Florida, it is well settled that where the language of a statute is plain and unambiguous, there is no need for judicial interpretation. See, e.g., *T.R. v. State, 677 So. 2d 270 (Fla. 1996)*; *C.W. v. State, 655 So. 2d 87 (Fla. 1995)*. Accordingly, we resolve the certified conflict by finding that ***HN5*** the limitations provided in section 39.054(1) apply to juveniles only after they are adjudicated delinquent. In so doing, we approve the lower court's decision in N.W. and ***HN6*** disapprove of the decision in **[**15]** G.R.A.

The practical import of this holding is that juveniles who are not adjudicated delinquent at the initial disposition of their case may be subject to an indeterminate period of supervision because section 39.053(2) does not provide dispositional limits. See, e.g., *M.G., 696 So. 2d at 1341* (citing *M.B., 693 So. 2d at 1066*). As a result, this period of supervision may be shorter or longer than the period prescribed by the statute for juveniles who are adjudicated delinquent. However, even in a case where the juvenile could potentially be subject to supervision for a longer period of time than that prescribed by section 39.054(1), the result may be justified because a juvenile who has adjudication withheld is, in essence, given a second chance. That is, the child is not labeled a "delinquent" so long as he or she comports with the conditions established by the court. In short, withholding adjudication provides the child with an opportunity to get his or her life back on track without developing a delinquency record. However, because the withholding of adjudication may subject the juvenile to the jurisdiction and control of the court for **[**16]** a longer period than if an adjudication of delinquency occurs, the juvenile courts are required to fully inform the juvenile of such facts.

Because we conclude that section 39.054(1) is only applicable when the court takes action with regard to children who have been adjudicated delinquent, it follows that the six-month limitation period commenced only when N.W. was adjudicated delinquent and placed on community control on June 11, 1997. As a result, we hold that the trial court appropriately exercised its jurisdiction over N.W on the August 26, 1997, violation of community control petition. If the Florida Legislature intends identical limitation periods to apply both when adjudication occurs and when adjudication is withheld, such intent **[*451]** can be easily accomplished by the insertion of very few words into the present statutory scheme-a legislative prerogative, not a judicial function.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

Cited
As of: June 15, 2015 11:42 AM EDT

Zerweck v. State

District Court of Appeal of Florida, Fourth District

January 6, 1982

No. 80-1203

Reporter
409 So. 2d 57; 1982 Fla. App. LEXIS 18856

JOHN ZERWECK, Appellant, v. STATE OF FLORIDA, COMMISSION ON ETHICS, Appellee

Subsequent History: [**1] Rehearing Denied February 16, 1982.

Prior History: Appeal from the State of Florida Commission on Ethics.

Core Terms

Properties, Ethics, Statutes, public duty, city commission, recurring, conflicting interest, ***public official***, voting

Case Summary

Procedural Posture

Appellant former city official challenged an order of the State of Florida Commission on Ethics, which found that appellant's outside employment posed a frequently recurring conflict with public duties in violation of *Fla. Stat. ch. 112.313(7)(a)* (1979). Conflicts were found even though conflicts of interest were addressed before taking on the outside employment and even though appellant was no longer in office.

Overview

Appellant former city official took on a developer position while serving as mayor and city commissioner. A complaint was filed and the State of Florida Commission on Ethics found that appellant's developer position posed a frequently recurring conflict with public duties, even though conflicts of interest were addressed before taking the position and even though appellant was no longer in office. The court affirmed the order and violation, holding that judicial review was required under *Fla. Stat. ch. 112.3241*(1979), even though no formal determination was made, nor penalty imposed. Appellant was not exempt from *Fla. Stat. ch. 112.313(7)(a)* (1979) where the public positions held were responsible for performing executive, legislative, judicial, or regulatory functions which created conflicts. Ch. 112.313(7)(a) was not unconstitutionally vague where the definition of conflict was precise enough to satisfy the notice requirements of due process for the conduct for which it prohibited. Substantial, competent evidence existed to affirm the order that appellant's developer position posed a frequently recurring conflict of interest which violated *Fla. Stat. ch. 112.313(7)(a)* (1979).

Outcome

The court affirmed the order of the State of Florida Commission on Ethics, holding that judicial review was required even though no final determination was made, nor penalties imposed. Appellant former city official's outside employment posed a frequently recurring conflict of interest.

LexisNexis® Headnotes

Governments > Local Governments > Claims By & Against

HN1 See *Fla. Stat. ch. 112.313(7)(a)* (1979).

Administrative Law > Judicial Review > Reviewability > General Overview

Administrative Law > Judicial Review > Reviewability > Reviewable Agency Action

HN2 See *Fla. Stat. ch. 112.3241* (1979).

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > General Overview

HN3 See *Fla. Stat. ch. 112.313(7)(a)* (1979).

Governments > Legislation > Overbreadth

Governments > Legislation > Vagueness

HN4 The test to determine whether a statute is unconstitutionally vague is whether persons of common understanding and intelligence must necessarily guess at its meaning. Legislative enactments are presumed constitutional and doubts as to the validity of a statute are to be resolved in favor of a finding of constitutionality. Moreover, a less stringent standard as to vagueness is used in examining non-criminal statutes, though minimal constitutional standards for definiteness must still be met.

Governments > Fiduciaries

Governments > Local Governments > Duties & Powers

Legal Ethics > Client Relations > ***Appearance of Impropriety***

HN5 A primary objective of the Code of Ethics is that government officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public.

Governments > Local Governments > Claims By & Against

HN6 See *Fla. Stat. ch. 112.311(5)* (1979).

Governments > Legislation > Interpretation

HN7 *Fla. Stat. ch. 112.312(6)* (1979), defines conflict or conflict of interest as a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

Governments > Legislation > Interpretation

Governments > Legislation > Overbreadth

HN8 *Fla. Stat. ch. 112.313(7)(a)* (1979) establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which "tempts dishonor." The court does not believe that the statute could be more precise and still fulfill its broad purpose. To make a statute sufficiently certain to comply with constitutional requirement it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.

Counsel: David R. Mackenzie, of Allsworth, Doumar, Schuler, Padula & Laystrom of Fort Lauderdale, for appellant.

Jim Smith, Atty. Gen., Patricia R. Gleason, Asst. Atty. Gen. and Philip C. Claypool, Staff Atty., Commission on Ethics, Tallahassee, for appellee.

Judges: HURLEY, J. DELL, J., concurs. SHARP, G. KENDALL, Associate Judge, concurs specially with opinion.

Opinion by: HURLEY

Opinion

[*59] HURLEY, Judge.

HURLEY, Judge.

Appellant, a former commissioner and mayor of the City of Margate, challenges the applicability and constitutionality of *Section 112.313(7)(a), Florida Statutes* (Florida's Code of Ethics for Public Officers and Employees). We hold that the Code governed appellant's conduct as a ***public official***, that it is not unconstitutionally vague, and that the Commission on Ethics finding of a code violation is supported by substantial, competent evidence. Accordingly, we affirm.

John Zerweck was elected to the Margate City Commission in 1974. He was reelected in 1976 and 1978. From March, 1977, through August, 1979, he served as mayor of Margate. In June of 1978, Mr. Zerweck accepted the position **[**2]** of development coordinator for DJM Properties, Inc., an industrial site developer engaged in the business of building and leasing warehouse facilities in the City of Margate. In this management-level position, Mr. Zerweck was responsible for the leasing of space, the control and direct maintenance of all warehouse properties, approval of bills, ordering of materials and equipment, coordination of construction schedules, hiring of subcontractors, obtaining building permits from the city, and requesting and coordinating city building department inspections of DJM warehouse properties. Between June, 1978, and January, 1980, forty-two items came before the Margate City Commission which affected, directly or indirectly, property owned by DJM Properties or David J. Mears, the controlling stockholder of DJM Properties, Inc. On each of these occasions Mr.

Zerweck acknowledged his relationship with DJM Properties and either abstained from voting or voted and filed a voting conflict statement.

In November, 1979, a complaint was filed with the State Commission on Ethics charging Mr. Zerweck with a violation of ***HN1*** Section 112.313(7)(a), Florida Statutes (1979). That statute provides in part:

> **[**3]** No public officer ... shall have or hold any employment ... with any business entity ... which is subject to the regulation of ... an agency of which he is an officer ..., nor shall an officer ... have or hold any employment ... that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

After a hearing, the Commission on Ethics found that Mr. Zerweck's "employment with DJM Properties, Inc., posed a frequently recurring conflict with public duties." The Commission noted, however, that Mr. Zerweck had sought advice from the Margate city attorney as to possible conflicts of interest prior to accepting employment with DJM Properties and had sought an advisory opinion from the Commission on Ethics before any complaint was filed. The Commission further noted that Mr. Zerweck was no longer in office and, therefore, concluded that "nothing is served by either a determination of violation or imposition of any penalties." This appeal ensued.

At the outset, we reject the state's contention that Mr. Zerweck is not entitled to judicial review **[**4]** due to the Commission's alleged failure to make a "formal determination" of violation and its decision not to impose a penalty. ***HN2*** Section 112.3241, Florida Statutes (1979), provides in part:

> Any final action by the commission taken pursuant to this part shall be subject to review in a District Court of Appeal upon the petition of the party against whom an adverse opinion, finding, or recommendation is made.

[*60] It is incontrovertible that the final report of the Commission concluded that Mr. Zerweck's "employment with DJM Properties, Inc., posed a frequently recurring conflict with public duties." This is an explicit finding that Mr. Zerweck violated the statute and, thus, his entitlement to judicial review is clear. It is of no consequence that the Commission, in the exercise of its discretion, declined to "formalize" its finding or to impose further penalties. Branding a ***public official*** as a law violator is a penalty in itself. More importantly, the right to judicial review is not dependent on the imposition of a penalty. Rather, it turns upon the existence of an adverse opinion, finding, or recommendation. Once articulated, the Commission cannot shield its **[**5]** finding from judicial scrutiny by failing to "formalize" it.

Turning to the merits of the appeal, we note Mr. Zerweck's initial suggestion that he is exempt from the strictures of ***HN3*** Section 112.313(7)(a) by virtue of subsection (7)(a)(2). That subsection provides:

> When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

To understand this claim of exemption, it is necessary to review the governmental structure of the City of Margate. A city manager is charged with the responsibility of performing the executive functions of government, while the city commission fulfills the legislative role. The commission, however, is also involved in the regulatory process. Moreover, it is critically important to note that the commission's involvement in the regulatory **[**6]** process is not limited to the enactment of laws or ordinances. For example, the city's charter empowers the commission to appoint the members of various regulatory boards, *e.g.*, the Planning and Zoning Board, the Beautification Commission, the Board of Adjustment and the Civil Service Commission. The charter further indicates that the city commission shall be the ultimate arbiter of all appeals from these boards. Thus, the commission is required to act on a case-by-case basis to discharge this aspect of its regulatory power. Consequently, the Margate City Commission is not an exempt legislative body within the meaning of Section 112.313(7)(a)(2), Florida Statutes (1979).

Next, Mr. Zerweck argues that Section 112.313(7)(a) is too vague to pass constitutional muster. Specifically, he suggests that the term "conflict," which is used in Section

112.313(7)(a) and which is defined in Section 112.312(6) is too imprecise to satisfy the notice requirements of due process. We do not agree.

HN4 The test to determine whether a statute is unconstitutionally vague is whether persons of common understanding and intelligence must necessarily guess at its meaning. State v. Rodriquez, 365 So.2d 157 [**7] (Fla. 1978). Legislative enactments are presumed constitutional and doubts as to the validity of a statute are to be resolved in favor of a finding of constitutionality. Department of Legal Affairs v. Rogers, 329 So.2d 257 (Fla. 1976). Moreover, a less stringent standard as to vagueness is used in examining non-criminal statutes, though minimal constitutional standards for definiteness must still be met. D'Alemberte v. Anderson, 349 So.2d 164 (Fla. 1977).

HN5 A primary objective of the Code of Ethics is that government officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public. There is nothing new or startling about this concept. The avoidance of the ***appearance of impropriety*** is an ethical norm which has governed the conduct of attorneys and judges for decades. Certainly, there is nothing to prevent the Legislature from extending the application of this norm to all branches of government. Indeed, this is precisely what **[*61]** the Legislature intended as can be seen from ***HN6*** Section 112.311(5), Florida Statutes (1979):

> It is hereby declared to be the policy of the **[**8]** state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

HN7 Section 112.312(6), Florida Statutes (1979), defines "conflict" or "conflict of interest" as "a situation in which regard for a private interest tends to lead **[**9]** to disregard of a public duty or interest." Looking first at the word "tend", it is not an inherently ambiguous term. Webster's Seventh New Collegiate Dictionary (1972) defines "tend" as "to move, direct, or develop one's course in a particular direction; to exhibit an inclination or tendency."

Turning next to the age-old notion of conflict, Justice Terrell made this observation in City of Coral Gables v. Coral Gables, Inc., 119 Fla. 30, 160 So. 476 (1935):

> No principle of law is better settled than that the same person cannot act for himself and at the same time with respect to the same matter as the agent of another whose interests are conflicting. The two positions impose different obligations, and their union would at once raise a conflict between interest and duty and, constituted as humanity is, in the majority of cases duty would be overborne in the struggle. Id. at 479.

In the same vein, the United States Supreme Court in United States v. Mississippi Valley Generating Co., 364 U.S. 520, 81 S. Ct. 294, 5 L. Ed. 2d 268 (1961), upheld a federal conflict of interest statute and noted:

> It is also significant, we think, that the statute does not specify as **[**10]** elements of the crime that there be actual corruption or that there be any actual loss suffered by the Government as a result of the defendant's conflict of interest. This omission indicates that the statute establishes an objective standard of conduct, and that whenever a government agent fails to act in accordance with that standard, he is guilty of violating the statute, regardless of whether there is positive corruption. *The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor.* This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught

with temptation." (Emphasis supplied). 364 U.S. at 549-550, 81 S. Ct. at 309.

As with the federal statute referred **[**11]** to above, ***HN8*** Section 112.313(7)(a), Florida Statutes (1979), establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private employment to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which "tempts dishonor." We do not believe **[*62]** that the statute could be more precise and still fulfill its broad purpose. Indeed, as has been noted, "to make a statute sufficiently certain to comply with constitutional requirement it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited." Smith v. State, 237 So.2d 139, 141 (Fla. 1970) (quoting *People v. Smith*, 36 Cal. App. Supp. 2d 748, 92 P. 2d 1039, 1042 (1939)). Avoiding conflicts of interest is a well understood and traditionally accepted ethical norm. The statute merely adopts this norm and proscribes, as precisely as possible, unethical conduct which can manifest itself in infinite forms.

We have carefully reviewed the record and conclude that the Commission's determination that Mr. Zerweck's employment with DJM Properties, Inc., posed a frequently **[**12]** recurring conflict of interest, is supported by substantial, competent evidence. Thus, we affirm the Commission's finding and hold that the language of Section 112.313(7)(a), Florida Statutes (1979), is sufficiently definite to provide adequate notice of the conduct which it prohibits.

Accordingly, the order on appeal is AFFIRMED.

DELL, J., concurs.

SHARP, G. KENDALL, Associate Judge, concurs specially with opinion.

Concur by: SHARP;KENDALL

Concur

SHARP, G. KENDALL, Associate Judge, concurring specially.

I concur with the majority opinion which affirms the finding of the Commission on Ethics that Mr. Zerweck's employment with D.J.M. Properties, Inc. posed a frequently recurring conflict with public duties. This was the only fact the Commission found, and hence, the Commission took no action nor gave any recommendation.

Mr. Zerweck is entitled to review before this court from the conclusions and action taken by the Commission on Ethics.

The Commission noted that Mr. Zerweck sought an advisory opinion and concurred that this particular section of the Code of Ethics is "more amenable to the advisory opinion procedures."

I believe the respondent is entitled to some advice.

[13]** When the City Commission voted on issues affecting D.J.M. Properties, Inc. did Zerweck's abstentions on voting conflict statements "impede the full and faithful discharge of his public duties?" Section 112.313(7)(a).

Would his employment by D.J.M. Properties, Inc. preclude him from again seeking public office?

> Section 112.311(2) Florida Statutes states:
>
> Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve...."

I would remand the case back to the Commission requiring the advice they failed to give the respondent.

Mathison Whittles, LLP

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March 20, 2015

VIA U.S. MAIL AND ELECTRONIC MAIL TRANSMISSION to mcirullo@cityatty.com

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Re: Recent allegations regarding Loxahatchee Groves Councilperson Ryan Liang

Dear Mr. Cirullo:

I have become aware of a recent series of letters and email communications from residents of Loxahatchee Groves, addressed to you and the Council, which demand that the Town Attorney prepares a resolution of forfeiture of office and that the Council entertains a "forfeiture of office" proceeding regarding Mr. Liang. From my understanding of the allegations, that demand is patently inappropriate but, because of the seriousness of what is being sought, a brief response on behalf of Mr. Liang is appropriate.

The facts.

The "felony" that has been referred to involving Mr. Liang is a 2001 third-degree felony charge (the lowest possible felony charge) against Mr. Liang, who (then 22 years old) was free diving in the Florida Keys with his girlfriend and inadvertently hand-caught undersized spiny lobsters. It is a non-intent infraction that, at that time, was a third-degree felony – even for unsuspecting, free-diving 22-year olds. In 2008, the law was amended[1] so that first-time, non-commercial offenders would not receive what, in my opinion, is the harshness of a "felony" charge under these circumstances. Based on the law in 2001 however, on the advice of a Monroe County Public Defender, Mr. Liang paid a fine and pled guilty. Adjudication was withheld and he received a two-year probation, which was terminated early to reward him for his faithful compliance with the terms of that probation. That is the extent of the "history" on this issue.

[1] In 2001, Mr. Liang's infraction was codified as Fla. Stat. § 370.14. Effective July 1, 2008, that statute was transferred to Fla. Stat. § 379.367, which in turn refers to Fla. Stat. § 379.401(4) and (5), which state that first-time, non-commercial infractions will be considered a second degree misdemeanor. While the law in 2001 controls, it is telling that the law has since changed to reduce the seriousness of the infraction.

The Loxahatchee Groves Charter does not apply; the Charter's forfeiture provision is not (and cannot be) retroactive.

The Charter is not retroactive. It reads in pertinent part as follows:

(4) VACANCY IN OFFICE; FORFEITURE, SUSPENSEION, FILLING OF VACANCIES

(a) Vacancies. – A vacancy in the office of mayor vice mayor or any council member shall occur upon the death of the incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, judicially determined incompetence, or forfeiture of office as described in paragraph (b).

(b) Forfeiture of office. – Any council member shall forfeit his or her office upon determination by the council acting as a body, at a duly noticed public meeting that he or she;

1. ***Lacks*** at any time or fails to maintain during his or her time or fails to maintain during his or her term of office any qualification for the office prescribed by this charter or otherwise required by law;

2. ***Is*** convicted of a felony or enters a plea of guilty or nolo contendere to a crime punishable as a felony even if adjudication is withheld.

3. ***Is*** convicted of a first degree misdemeanor arising directly out of his or her official conduct or duties or enters a plea of guilty or nolo contendere thereto, even if adjudication of guilt has been withheld.

4. ***Is*** found to have violated any standard of conduct or code of ethics established by law for public officials and has been suspended from office by the Governor unless subsequently reinstated as provided by law; or

5. ***Is*** absent from three consecutive regular council meetings without good cause, or for any other reason established by this Charter.

Loxahatchee Groves Charter at Section 3 (4) (2006) (Emphasis added).

The Charter cannot be construed as retroactive. Subparagraphs 1 – 5, including the specific recall events of a "felony" in subparagraph 2, are specifically framed ***in the present tense***. They have to be. If the Charter applied retroactively, Mr. Liang would also be subject to forfeiture for missing three consecutive regular council meetings before he was a council member. See Subparagraph 5. So would every other council member. That is simply nonsensical and there are no grounds for a recall.

The sudden concern about Mr. Liang's 2001 spiny lobster infraction is transparent and, at best, misplaced.

It is no coincidence that this lobster issue is only brought up now, having been a matter of public record for thirteen (13) years and Mr. Liang a sitting council member for six (6) years. He was elected previously; not once but twice and this issue arises only because of the displeasure over this, his third election. The council can and should consider the source when determining whether even the exercise of a forfeiture of office procedure is at all appropriate.

At the swearing-in on Tuesday, I witnessed certain citizens of Loxahatchee Grove acting passionately regarding the issues involved in this election, and while in one sense I applaud any citizen for speaking his or her heart and acting on their convictions, those passions are misplaced in this instance. No "spiny lobster" issue has affected Mr. Liang's ability to act as a councilperson in the last six (6) years and there is no legitimate issue; suddenly; now.

It is the pallor of alleged "election fraud" that is driving this issue; plain and simple. It bears repeating that whatever conduct Mr. Liang's mother did or did not engage in regarding ballot ***requests***, there has been no allegation of any improper conduct whatsoever regarding ***ballots***, ***voting*** or the ***result of the election***. Mr. Liang's rightful re-election was further confirmed when the Supervisor's hand-recount matched the election results 100%. Mr. Liang's mother will need to deal with whatever her legal issues are but the illogical leap from alleged improper ballot requests to a fraudulent election result is unsupportable and should not be countenanced by this Council. I am hopeful that cooler heads will prevail and the Council will not entertain a forfeiture of office procedure for the reasons set forth in this letter. The additional threat of establishing a recall committee would be subject to the procedures established by general law, as stated in the Town Charter, Section 7(7)(h). Thanks for reading this and I hope and expect that you will share the contents of this letter with the Council and Town Manager in whatever manner that you deem is the most appropriate.

Sincerely,

JOHN R. WHITTLES

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May 5, 2015

VIA U.S. MAIL AND ELECTRONIC MAIL TRANSMISSION to mcirullo@cityatty.com

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Re: May 5, 2015 Loxahatchee Groves City Council Meeting – case law citation re forfeiture issue

Dear Mr. Cirullo:

In anticipation of the City Council meeting tonight, I refer you to my April 27, 2015 letter for our position on the issue of forfeiture regarding Mr. Liang's seat, which I understand the City Council will address. In sum, the City Charter cannot be read to forfeit Mr. Liang's office in 2015 for an infraction involving spiny lobster that occurred in 2001; years before Mr. Liang took office, years before he was twice re-elected, and years before the City Charter even existed.

The legal support for our position is best stated by the Florida Supreme Court in State ex rel Turner v. Earle, 295 So. 2d 609 (Fla. 1974). In that case, the Court reviewed a proceeding against a sitting judge for an alleged infraction committed before the judge took office. In rejecting the notion that a judge can be disciplined while a judge for alleged conduct that occurred before he was a judge, the Florida Supreme Court succinctly stated:

> Recognizing that there are divergent views, we find that the rule supported by the great weight of authority and specifically adopted by this Court in construing statutory and constitutional provisions authorizing the removal of public officers guilty of misconduct when such provisions do not refer to the term of office in which the misconduct occurred is that ***a public officer may not be removed from office for misconduct which he committed in another public office or in a prior term of office in the absence of disqualification to hold office in the future because of such misconduct.*** (See Article VI, Section 4, Florida Constitution 1968, F.S.A.) In Re Advisory Opinion to the Governor, 31 Fla. 1, 12 So. 114 (1893); In Re Advisory Opinion to Governor, 64 Fla. 168, 60 So. 337 (1912); State ex rel. Hardee v. Allen, 126 Fla. 878, 172 So. 222 (1937); Rosenfelder v. Huttoe, 156 Fla 682, 24 So.2d 108 (1945); State ex rel. Hawthorne v. Wiseheart, 158 Fla. 267, 28 So.2d 589 (1946); In re Proposed Disciplinary Action by the Florida Bar Against a Circuit Judge, 103 So.2d 632 (Fla.1958); Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); Woods v. Varnum, 85 Cal. 639, 24 P. 843; Speed v. Common Council of City of Detroit et al., 98 Mich. 360, 57 N.W. 406 (1894); Thurston v. Clark, 107 Cal. 285, 40 P. 435 (1895); State ex rel. Schultz v. Patton, 131

Mo.App. 628, 110 S.W. 636 (1908); State ex rel. Attorney General v. Hasty, 184 Ala. 121, 63 So. 559 (1913); State ex rel. Thompson v. Crump, 134 Tenn. 121, 183 S.W. 505 (1916); State v. Scott, 35 Wyo. 108, 247 P. 699 (1926); Jacobs v. Parham, 175 Ark. 86, 298 S.W. 483 (1927); Barham v. McCollum, 174 Ark. 1179, 298 S.W. 484 (1927); Board of Commrs. of Kingfisher County v. Shutler, Okl., 139 Okla. 52, 281 P. 222 (1929); Edson v. Superior Court, 98 Cal.App. 367, 277 P. 194; State v. Blake, 138 Okl. 241, 280 P. 833 (1929); In re Fudula et al., 297 Pa 364, 147 A. 67 (1929); Montgomery v. Nowell, 183 Ark. 1116, 40 S.W.2d 418 (1931); Rice v. State, 204 Ark. 236, 161 S.W.2d 401 (1942); People ex rel. Bagshaw v. Thompson, 55 Cal.App.2d 147, 130 P.2d 237 (1942); State ex rel. Agee et al. v. Hassler, 196 Tenn. 158, 264 S.W.2d 799 (1954); State ex rel. Chitwood v. Murley, 202 Tenn. 637, 308 S.W.2d 405 (1957); People v. Hale, 232 Cal.App.2d 112, 42 Cal.Rptr. 533 (1965); Letcher v. Commonwealth, 414 S.W.2d 402 (Ky.1966); State ex rel. Stokes v. Probate Court of Cuyahoga County, 22 Ohio St.2d 120, 51 Ohio Ops. 2d 180, 258 N.E.2d 594 (1970); Smith v. Godby, 154 W.Va. 190, 174 S.E.2d 165 (W.Va.1970), 42 ALR3d 675; see also House of Representatives 42nd Cong., 3d Sess., Report No. 81, Inquiry as to Impeachment in Credit Mobilier Testimony as contained in Impeachment, Selected Materials, Committee on the Judiciary, House of Representatives, Ninety-third Congress, First Session, United States Government Printing Office, Washington, 1973. This principle is equally applicable to judicial officers who are clearly encompassed within the classification of public officials.

This Court speaking through the revered late Justice Terrell in Rosenfelder v. Huttoe, 156 Fla. 682, 24 So.2d 108 (1945), emphatically stated:

> ***No rule is better settled under our democratic theory than this; When one is re-elected or re-appointed to an office or position he is not subject to removal for offenses previously committed.***

State ex rel Turner v. Earle at 613-14 (Emphasis added).

For the sake of completeness, it is important to note that, twenty years later, in the matter of In re Davey, 645 So. 2d 398 (Fla. 1994), the Florida Supreme Court noted a revision to the Florida Constitution itself, which revision empowered Florida's Judicial Qualifications Commission to remove from office judges who engaged in conduct demonstrative of unfitness from a date certain, even if prior to the term of office. In doing so, the Florida Supreme Court again noted the Turner decision above and did not recede from that position as a general rule of law, even though it had every opportunity to. It instead merely carved from that general rule a specific category of public officers (judges) that had been specifically mandated for different treatment in a revision to the Florida Constitution.

I believe these case and the cases they cite directly make our point. Putting aside the factual and common sense arguments on this issue, the law simply does not support forfeiture of Mr. Liang's seat on these facts. I presume you will circulate this letter to the City Council prior to the meeting and I look forward to addressing the City Council members on this issue.

Sincerely,

JOHN R. WHITTLES

cc: Richard Jarolem, Esquire (via email)

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State ex rel. Turner v. Earle

Supreme Court of Florida

February 27, 1974

No. 44339

Reporter
295 So. 2d 609; 1974 Fla. LEXIS 3892

STATE of Florida ex rel. Jack M. TURNER, Relator, v. Richard T. EARLE, Jr., Chairman, et al., Respondents

Core Terms

misconduct, removal, suspension, judicial qualifications, elected, impeachment, circuit judge, recommendation, investigate, discipline, suspend, duties, provides, public official, criminal court, proceedings, commissioned, precedents, charges, grounds, disciplinary, disability, member of the judiciary, alleged misconduct, qualifications, acquitted, occurring, conduct unbecoming, judicial officers, constitutional provision

Case Summary

Procedural Posture

Relator circuit judge petitioned for writ of prohibition seeking to prohibit respondent commission from further acting in a formal proceeding initiated by respondent against relator for improper acts allegedly committed by relator while he served as a criminal court judge.

Overview

Relator circuit judge petitioned for writ of prohibition to prevent respondent committee from further participating in a formal proceeding respondent initiated surrounding misconduct allegedly committed by relator while he was a criminal judge. The court held that prohibition was not the appropriate remedy to challenge proceedings by respondent. However, the court had jurisdiction under its rule making power and the all writs provisions of the state constitution. The court held relator could not be disciplined or removed from office for misconduct alleged to have occurred while relator was a criminal court judge and not within respondent's jurisdiction. Further, a jury acquitted relator of the charges that were the subject of respondent's proceeding. Respondent could only investigate relator's alleged misconduct within a reasonable time backwards from the date he entered his circuit judge position, not to exceed two years, to develop evidence germane to charges that allegedly occurred during relator's current term of office.

Outcome

The court held that respondent committee could not proceed against relator circuit judge for alleged misconduct that occurred while he was serving as a criminal court judge and while he was not subject to respondent's jurisdiction.

LexisNexis® Headnotes

Administrative Law > Separation of Powers > Primary Jurisdiction

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Exclusive Jurisdiction

Governments > Courts > Judges

Legal Ethics > Judicial Conduct

HN1 The Florida Judicial Qualifications Commission is not a judicial tribunal or commission within the purview of *Fla. Const. art. V. § 3(b)(4)*. Rather it is the duty of the commission to investigate judicial conduct and make recommendations when agreed to by two-thirds of the members as to discipline of a judge to the Supreme Court of Florida. The commission is an adjunct of the judicial branch of the government and shares the responsibility with the court in matters involving discipline of judges. It is the court which must take the final action. The commission is in fact an arm of the court dealing with a vital function of the court and under

its exclusive jurisdiction. While the power to render the ultimate judgment in these cases is vested in the court, the findings and recommendations of the commission are entitled to receive due consideration and are of persuasive force. However, the ultimate responsibility of making a determination rests with the court.

Civil Procedure > Remedies > Writs > General Overview

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN4 See *Fla. Const. art. V, § 3(b)(4)*.

Legal Ethics > Judicial Conduct

HN5 See *Fla. Const. art. V, § 12(d)*.

Civil Procedure > Remedies > Writs > General Overview

Civil Procedure > ... > Writs > Common Law Writs > Prohibition

HN2 Prohibition is that process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi-judicial powers from exceeding its jurisdiction in matters over which it has cognizance or usurping jurisdiction over matters not within its jurisdiction to hear and determine. Prohibition is an extraordinary writ, a prerogative writ, very narrow in its scope of operation, used with great caution where ordinary remedies provided by law are not applicable or adequate. Statutes regulating the procedure in issuing writs of prohibition contemplate the use of the writ only to restrain the unlawful exercise of judicial or quasi judicial power.

Administrative Law > Judicial Review > Remedies > Prohibition

Civil Procedure > Remedies > Writs > General Overview

Civil Procedure > ... > Writs > Common Law Writs > Prohibition

HN3 At common law a writ of prohibition must be directed to some judicial tribunal or officer. In other words, it lies only to prevent or control judicial or quasi judicial action, as distinguished from legislative, executive, or ministerial action. Accordingly, it is generally held that prohibition will not lie to prevent the performance of ministerial duties by executive or administrative officers, or to restrain the performance by the courts of duties which are merely administrative and ministerial.

Civil Procedure > Dismissal > Involuntary Dismissals > General Overview

HN6 See *Fla. Const. art. V § 2(a)*.

Governments > Courts > Judges

Legal Ethics > Judicial Conduct

HN7 See *Fla. Const. art. V, § 12(c)*.

Civil Procedure > Remedies > Writs > General Overview

HN8 See *Fla. Const. art. V, § 3(b)(4)*.

Governments > Courts > Judges

Legal Ethics > Judicial Conduct

HN9 It is not the prerogative of the Florida Judicial Qualifications Commission to suspend or remove a member of the judiciary from office, but rather only to make recommendations to this effect to the Supreme Court of Florida.

Criminal Law & Procedure > ... > Abuse of Public Office > Illegal Political Activity > Penalties

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

HN10 The rule supported by the great weight of authority and specifically adopted by the Supreme Court of Florida in construing statutory and constitutional provisions authorizing the removal of public officers guilty of misconduct when such provisions do not refer to the term of office in which the misconduct occurred is that a public officer may not be removed from office for misconduct which he committed in another public office or in a prior term of office in the absence of disqualification to hold office in the future because of such misconduct. This principle is equally applicable to judicial officers who are clearly encompassed within the classification of public officers.

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

HN11 When one is re-elected or re-appointed to a public office or position he is not subject to removal for offenses previously committed.

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

HN12 When the effect of the removal or suspension is not disqualification from holding office in the future, misconduct in a previous public office can not be a basis for removal from office in another office or subsequent term of office.

Criminal Law & Procedure > ... > Obstruction of Administration of Justice > Perjury > General Overview

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

HN13 The Florida Constitution has not given to the suspension or removal the effect of disqualifying the suspended or removed person from holding the same or any other office in the future; on the contrary, not only is there an utter absence of any such provision, but an intention that it shall not have this effect is also shown in a separate and distinct declaration of what the framers of the constitution and the people intended should have that effect, which declaration is to be found in *Fla. Const. art. V, § 5*. Section 5 directs the legislature to enact the necessary laws to exclude from every office of honor, power, trust, or profit, civil or military, within the state, all persons convicted of bribery, perjury, larceny, or of infamous crime, and for other causes therein stated, yet provides that this legal disability shall not accrue until after trial and conviction in due form of law.

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

HN14 A suspension or removal not having of itself the effect to taint the person or officer, either while suspended or after removal, with any disqualification to hold any office, does not affect his right to exercise the functions of a future term of the same office. He is as qualified for or as eligible to election to a future term pending the suspension, or after the removal, as he was before the suspension.

Civil Rights Law > Protection of Rights > Prisoner Rights > Restoration of Rights

Governments > State & Territorial Governments > Employees & Officials

HN15 See *Fla. Const. art. VI, § 4*.

Governments > State & Territorial Governments > Employees & Officials

HN16 A public officer is elected for a term and sworn to duties of office for that term. One term of office has been generally held to be separate and distinct from other terms of the same office. Each term of office is a separate entity and that suspension may not be had for official misconduct during a prior term of office.

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

Legal Ethics > Judicial Conduct

HN17 Pertinent constitutional provisions relative to the disciplinary and removal proceedings of judicial officers do not refer to the term in which the misconduct occurred and thus the precept adopted by the majority of jurisdictions including Florida, that acts of a public officer during a previous office or previous term are not cause for removal from office in the absence of disqualification to hold office in the future, applies. An office must be limited to a single term in which the misconduct in office charged against the public officer occurred and in the absence of clear legislative language making conduct in prior terms a ground for removal from office. The ground alleged for removal must have occurred during the term in which he was sought and subsequent to the exercise of the power to elect vested in the electors.

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

Legal Ethics > Judicial Conduct

HN18 The Florida Judicial Qualifications Commission is in effect an investigatory commission and as such it has the right to investigate matters occurring within a reasonable time but not exceeding two years behind its origin where such investigation and matters are germane to an alleged act of misconduct occurring after January 1, 1973. It may investigate backwards for a reasonable time behind a present term of office as a basis for misconduct in a present office or term of office only when such investigation is in relation to a charge of misconduct occurring in a present term of office.

Governments > Courts > Judges

Governments > State & Territorial Governments > Employees & Officials

HN19 The acts of an officer during a previous term, though not grounds for impeachment, may be considered in so far as they are connected with or bear upon his general course of conduct during his present term, for the limited purpose of inquiring into his motive and intent as to the acts and omissions charged to him during his second term.

Counsel: [**1] Marion E. Sibley, of Sibley, Giblin, Levenson & Ward, Miami Beach, for relator.

Wm. Reece Smith, Jr., of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Thomas C. MacDonald, Jr., of Shackleford, Farrior, Stallings & Evans, John Germany of Holland & Knight, Tampa, and Sam Daniels, Miami, for Respondents.

Judges: Roberts, Justice. Carlton, C.J., and Adkins and McCain, JJ., concur. Ervin, J., dissents with opinion concurred in by Boyd, J. Boyd, J., dissents with opinion concurred in by Ervin, J.

Opinion by: ROBERTS

Opinion

[*610] This cause is before us on petition for writ of prohibition by which relator seeks to prohibit the Judicial Qualifications Commission from proceeding further in the formal proceeding initiated by the Commission against him. Relator urges that the Commission is without constitutional jurisdiction to proceed against him for acts allegedly committed by him while he served as Criminal Court of Record Judge and prior to the time he was elected and commissioned as a Circuit Judge, in and for the Eleventh Judicial Circuit of this State.

Preliminarily, we directed that rule nisi in prohibition issue and in said order circumscribed the following question for briefing [**2] by the respective parties:

"Does the Judicial Qualifications Commission have jurisdiction to investigate and if appropriate to recommend discipline of, an incumbent circuit judge for misconduct alleged to have been committed prior to the time he became a circuit judge (and while he held another office not within the jurisdiction of the Judicial Qualifications Commission)?"

Relative to our jurisdiction and the remedy employed by relator to vest this court with jurisdiction of the immediate cause, we must initially conclude that prohibition does not lie herein because the Judicial Qualifications Commission has no power to enter judgments or orders. ***HN1*** The Judicial Qualifications Commission is not a judicial tribunal or commission within the purview of *Article V, Section 3(b)(4), Florida Constitution*, F.S.A. [1] [**5] But rather it is the duty of this commission to investigate judicial conduct and make recommendations when agreed to by two-thirds of the members as to discipline of a judge to [*611] the Supreme Court. [2] The commission is an adjunct of the judicial branch of the government and shares the responsibility with the Supreme Court in matters involving discipline [**3] of judges. It is the Supreme Court which must take the final action. In In Re Kelly, a proceeding on recommendation of the commission, this court opined that, "The commission is in fact an arm of this Court dealing with a vital function of the Court and under its exclusive jurisdiction. While the power to render the ultimate judgment in these cases is vested in this Court, the findings and recommendations of the Florida Judicial Qualifications Commission are entitled to receive due consideration and are of persuasive force. . . . However, the ultimate responsibility of making a determination rests with this Court. . . ." ***HN2*** Prohibition is that process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi-judicial [3] powers from exceeding its jurisdiction in matters over which it has cognizance or usurping jurisdiction over matters not within its jurisdiction to hear and determine.

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[1] ***HN4*** Article V, Section 3(b)(4), Florida Constitution (1973), F.S.A., provides: "May issue writs of prohibition to courts and commissions in causes within the jurisdiction of the supreme court to review, and all writs necessary to the complete exercise of its jurisdiction."

[2] ***HN5*** Article V, Section 12(d), Florida Constitution (1973), F.S.A., provides: "Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary, or be involuntarily retired for any permanent disability that seriously interferes with the performance of his duties. After the filing of a formal proceeding and upon request of the commission, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry."

[3] See Modlin v. City of Miami Beach, 201 So.2d 70 (Fla.1967), DeGroot v. Sheffield, 95 So.2d 912 (Fla.1957).

Prohibition is an extraordinary writ, a prerogative writ, very narrow in its scope of operation, used with great caution where ordinary remedies provided by law are not applicable or adequate. State ex rel. B. F. Goodrich Co. v. Trammell, 140 Fla. 500, 192 So. 175 [**4] (1939); Burkhart v. Circuit Court of Eleventh Judicial Circuit et al., 146 Fla. 457, 1 So.2d 872 (1941); State ex rel. Gillham v. Phillips, 193 So.2d 26 (Fla.App.1966); State ex rel. Ferre v. Kehoe, 179 So.2d 403 (Fla.App.1965); Owen et al. v. Bond et al., 83 Fla. 495, 91 So. 686 (1922). In State ex rel. Swearingen et al. v. Railroad Commissioners of Florida, 79 Fla. 526, 84 So. 444 (1920), this Court succinctly stated:

> "The statutes regulating the procedure in issuing writs of prohibition contemplate the use of the writ only to restrain the unlawful exercise of judicial or quasi judicial power. ***HN3***
>
> "At common law it is well settled that a writ of prohibition must be directed to some judicial tribunal or officer. In other words, it lies only to prevent or control judicial (or quasi judicial) action, as distinguished from legislative, executive, or ministerial action. Accordingly, it is generally held that prohibition will not lie to prevent the performance of ministerial duties by executive or administrative officers, or to restrain the performance by the courts of duties which are merely administrative and ministerial."

Since the commission lacks the power essential to judicial or quasi-judicial tribunals either to reach a final decision or to implement that decision, prohibition is an inappropriate remedy, sub judice.

HN6 However, in view [**6] of Article V, Section 2(a), Florida Constitution as amended 1973, F.S.A., which provides in pertinent part that ". . . no cause shall be dismissed because an improper remedy has been sought," ***HN7*** Article V, Section 12(c), Florida Constitution 1973, F.S.A., which provides:

> "The supreme court shall adopt rules regulating proceedings of the commission, the filling of vacancies by the appointing [*612] authorities and the temporary replacement of disqualified or incapacitated members. After a recommendation of removal of any justice or judge, the record of the proceedings before the commission shall be made public."

and ***HN8*** Article V, Section 3(b)(4), Florida Constitution 1973, F.S.A., which provides:

> "(b) *Jurisdiction*. The supreme court:
>
> ". . .
>
> "(4) May issue . . . all writs necessary to the complete exercise of its jurisdiction."

we have jurisdiction of this cause and in this posture we will proceed with the disposition of the question of law presented.

We are primarily concerned at this time with the above posited question which was specified in our order directing that rule nisi in prohibition issue. With regard to this issue, the following [**7] facts presented by Turner in his petition are pertinent. Jack M. Turner is a duly elected and commissioned Circuit Judge of the Eleventh Judicial Circuit in and for Dade County, Florida. He was elected to a six-year term which commenced on the first Tuesday after the first Monday in January, 1973, and was commissioned to this office as Circuit Judge on November 8, 1973. Prior to becoming a Circuit Judge, Turner had been elected and commissioned for a term of four years from the first Tuesday after the first Monday in January, 1969, to the office of Judge of the Criminal Court of Record of Dade County, Florida, and had served in such capacity until the first Tuesday after the first Monday in January, 1973. On April 6, 1973, an indictment was returned against Turner charging that he, as a judicial officer, namely a Criminal Court of Record Judge, on August 14, 1972 through October 13, 1972, conspired to commit the felony of bribery. The Judicial Qualifications Commission initiated formal proceedings against Turner charging him with conduct unbecoming a member of the judiciary based on the events described in the indictment occurring from August 14, 1972, and continuing and including [**8] October 13, 1972, alleged acts and conduct which occurred while Turner served as a Criminal Court of Record Judge and before he was commissioned as a Circuit Judge. Based on the aforestated charges, the commission filed a request for suspension of Turner on April 16, 1973, upon which this Court declined to act at that time since Turner filed a statement of his intent not to discharge his duties as Circuit Judge pending disposition of the charges. Subsequently, on August 14, 1973, he was tried before a jury on these charges and was acquitted. Turner states that he has been informed that the commission is proceeding against him and intends to file a second request for his suspension with this Court based upon the same grounds, the charges included in the indictment as above explained.

Relator contends that the commission lacks power to further proceed against him for alleged acts committed by him in another public office. There is no dispute between the parties herein involved that prior to January 1, 1973, the "new" commission [4] could not have investigated or made recommendations to this Court regarding relator since he was not a member of that part of the judiciary within the [**9] commission's jurisdiction as defined by Article V, Section 17, Florida Constitution 1968, F.S.A. Prior to January 1, 1973, the Judicial Qualifications Commission had jurisdiction only of alleged misconduct on the part of justices of the Supreme Court, judges of the District Courts of Appeal, and judges of the Circuit Courts. *No other judgeships were under the jurisdiction of the Judicial Qualifications Commission.* Because of this factual background, the Court in disposing of the matter, circumscribed the above-described question containing particularly the bracketed words "*and while he held another office not* [*613] *within the jurisdiction of the Judicial Qualifications Commission.*" The issue now presented is whether the new commission may now proceed against relator for alleged misconduct occurring prior to his commission as Circuit Judge and while he was in another public office.

HN9

Although as aforestated, [**10] it is not the prerogative of the Judicial Qualifications Commission to suspend or remove a member of the judiciary from office, but rather only to make recommendations to this effect to the Supreme Court, we are compelled to render a decision by the facts of the instant cause and the necessity to avoid duplicitous and lengthy future proceedings on this matter when such may be avoided by an opinion in the form of a rule-making opinion dispositive of the issue.

HN10 Recognizing that there are divergent views, we find that the rule supported by the great weight of authority and specifically adopted by this Court in construing statutory and constitutional provisions authorizing the removal of public officers guilty of misconduct when such provisions do not refer to the term of office in which the misconduct occurred is that a public officer may not be removed from office for misconduct which he committed in another public office or in a prior term of office in the absence of disqualification to hold office in the future because of such misconduct. (See Article VI, Section 4, Florida Constitution 1968, F.S.A.) In Re Advisory Opinion to the Governor, 31 Fla. 1, 12 So. 114 (1893); In Re Advisory [**11] Opinion to Governor, 64 Fla. 168, 60 So. 337 (1912); State ex rel. Hardee v. Allen, 126 Fla. 878, 172 So. 222 (1937); Rosenfelder v. Huttoe, 156 Fla 682, 24 So.2d 108 (1945); **State ex rel. Hawthorne v. Wiseheart, 158 Fla. 267, 28 So.2d 589 (1946)**; In re Proposed Disciplinary Action by the Florida Bar Against a Circuit Judge, 103 So.2d 632 (Fla.1958); Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); Woods v. Varnum, 85 Cal. 639, 24 P. 843; Speed v. Common Council of City of Detroit et al., 98 Mich. 360, 57 N.W. 406 (1894); Thurston v. Clark, 107 Cal. 285, 40 P. 435 (1895); State ex rel. Schultz v. Patton, 131 Mo.App. 628, 110 S.W. 636 (1908); State ex rel. Attorney General v. Hasty, 184 Ala. 121, 63 So. 559 (1913); State ex rel. Thompson v. Crump, 134 Tenn. 121, 183 S.W. 505 (1916); State v. Scott, 35 Wyo. 108, 247 P. 699 (1926); Jacobs v. Parham, 175 Ark. 86, 298 S.W. 483 (1927); **Barham v. McCollum, 174 Ark. 1179, 298 S.W. 484 (1927)**; Board of Commrs. of Kingfisher County v. Shutler, Okl., 139 Okla. 52, 281 P. 222 (1929); Edson v. Superior Court, 98 Cal.App. 367, 277 P. 194; State v. Blake, 138 Okl. 241, 280 P. 833 (1929); In re Fudula et al., 297 Pa 364, [**12] 147 A. 67 (1929); Montgomery v. Nowell, 183 Ark. 1116, 40 S.W.2d 418 (1931); Rice v. State, 204 Ark. 236, 161 S.W.2d 401 (1942); People ex rel. Bagshaw v. Thompson, 55 Cal.App.2d 147, 130 P.2d 237 (1942); State ex rel. Agee et al. v. Hassler, 196 Tenn. 158, 264 S.W.2d 799 (1954); State ex rel. Chitwood v. Murley, 202 Tenn. 637, 308 S.W.2d 405 (1957); People v. Hale, 232 Cal.App.2d 112, 42 Cal.Rptr. 533 (1965); Letcher v. Commonwealth, 414 S.W.2d 402 (Ky.1966); State ex rel. Stokes v. Probate Court of Cuyahoga County, 22 Ohio St.2d 120, 51 Ohio Ops.2d 180, 258 N.E.2d 594 (1970); Smith v. Godby, 154 W.Va. 190, 174 S.E.2d 165 (W.Va.1970), 42 ALR3d 675; [5] [**13] see also House of Representatives [*614] 42nd Cong., 3d Sess., Report No. 81, Inquiry as to Impeachment in Credit Mobilier Testimony as contained

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[4] As created by Article V, Section 12 Constitution of Florida, as amended 1973, F.S.A.

[5] The commission cites as additional authority for the proposition that removal may be had for misconduct in a previous office the decision of the Court on Judiciary of Oklahoma in Sharpe v. State of Oklahoma ex rel. Oklahoma Bar Assoc., Okl., 448 P.2d 301. However, in that case the court pointed out that a specific statutory provision enacted by the Oklahoma Legislature in 1955, 22 O.S.1961, § 1181.1, relating to *removal of officers* in general, which specifically provides: "Removal for acts of commission, omission, neglect. - All elective officers in the State of Oklahoma, including elective officers of the State and

in Impeachment, Selected Materials, Committee on the Judiciary, House of Representatives, Ninety-third Congress, First Session, United States Government Printing Office, Washington, 1973. [6] This principle is [*615] equally applicable to judicial officers who are

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elective officers in each County, City, Town or School District of the State of Oklahoma, but excluding any elective officers liable to impeachment, shall be subject to removal from office in such manner and for such causes as now provided by law, or as may be provided by law passed subsequent to this Act, and any such officer or officers may be removed or ousted from office for any act or acts of commission or omission or neglect which may be committed, done or omitted during the term in which such ouster or removal proceedings may be filed, and any such officer or officers, may be removed or ousted from office for any act or acts of commission, omission, or neglect committed, done or omitted during a previous or preceding term in such office. Laws 1955, p. 200, § 1." The people of Oklahoma adopted Article 7-A, Constitution of Oklahoma, May 3, 1966, which created a "Court on the Judiciary." Section 1, thereof provides: "Removal of judges from office - Compulsory retirement - Causes - (a) In addition to other methods and causes prescribed by the Constitution and laws, the judges of any court, exercising judicial power under the provisions of Article VII, or under any other provision, of the Constitution of Oklahoma, shall be subject to removal from office, or to compulsory retirement from office, for cause herein specified, by proceedings in the Court on the Judiciary. (b) Cause for removal from office shall be: Gross neglect of duty; corruption in office; habitual drunkenness; commission while in office of any offense involving moral turpitude; gross partiality in office; oppression in office; *or other grounds as may be specified hereafter by the legislature*."

[6] The following excerpts from this material is pertinent:

"It will be seen from a few illustrations that it hardly could have been the intendment of the Constitution that an officer could be impeached for a crime committed by him before his entry into the office from which he is to be removed because, if this were so, there is no constitutional, and, thus far, no legal limitation as to the time during which he may be held so amenable to such impeachment.

". . .

"Your committee have been unable, from their investigation, to find warrant for this assertion. We have already shown that all the precedents under the Constitution show impeachments to have been for acts done in the very office from which the accused was sought to be removed. We are unaware that there is any case to the contrary in the later decisions in England, or in any States of the Union, and we grieve that the committee, for whom we have so high a respect, have not seen fit to give authority to the House for this so grave and important a proposition of constitutional laws.

". . .

"We submit, with some confidence, that the House might expel an insane man, because it might not be safe or convenient for the House to have him within the legislative hall. The can also clearly expel a man for disorderly proceedings in the body, or for such acts outside of the body as render it at the time manifestly improper for him to be in the House. But your committee are constrained to believe that the power of expelling a member for some alleged crime, committed it may be years before his election, is not within the constitutional prerogative of the House. "We do not overlook the argument presented by the learned committee, upon whose report we are observing, by the phrase: Every consideration of justice and sound policy would seem to require that the public interests be secured and those chosen to be their guardians be free from pollution of high crimes, no matter at what time that pollution had attached.

"But the answer seems to us an obvious one that the Constitution has given to the House of Representatives no constitutional power over such considerations of 'justice and sound policy' as a qualification in representation. On the contrary, the Constitution has given this power to another and higher tribunal, to wit, the constituency of the member. Every intendment of our form of government would seem to point to that. This is a Government of the people, which assumes that they are the best judges of the social, intellectual, and moral qualifications of their Representatives whom they are to choose, not anybody else to choose for them; and we, therefore, find in the people's Constitution and frame of government they have, in the very first article and second section, determined that 'the House of Representatives shall be composed of members chosen every second year by the people of the States,' not by Representatives chosen for them at the will and caprice of members of Congress from other States according to the notions of the 'necessities of self-preservation and self-purification' which might suggest themselves of the reason or caprice of the members from other States in any process of purgation or purification which two-thirds of the members of either House may 'deem necessary' to prevent bringing 'the body into contempt and disgrace.'

"Your committee are further emboldened to take this view of this very important constitutional question, because they find that in the same section it is provided what shall be the qualifications of a Representative of the people, so chosen by the people

clearly encompassed within the classification of public officials.

[**14] This Court speaking through the revered late Justice Terrell in Rosenfelder v. Huttoe, 156 Fla. 682, 24 So.2d 108 (1945), emphatically stated:

> ***HN11*** "No rule is better settled under our democratic theory than this; When one is re-elected or re-appointed to an office or position he is not subject to removal for offenses previously committed."

Therein, the acts with which appellee had been charged had occurred when he had held another and different position from which he had later been promoted.

In In re Advisory Opinion to Governor, 64 Fla. 168, 60 So. 337 (1912), this Court held that,

> "The power thus given the Governor to suspend the incumbent of an office and to fill the office by appointment is necessarily confined to the current term of the office. See Advisory Opinion to Governor, 31 Fla. 1, 12 So. 114, 18 L.R.A. 594. The causes for suspension are 'malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency,' and the Constitution contemplates that the causes for suspension from office shall arise from the conduct of the officer during the term for which the officer is then in commission. [**15] You are therefore respectfully advised that the Constitution does not authorize the Governor to suspend an incumbent of the office of county commissioner for an act of malfeasance or misfeasance in office committed by him prior to the date of the beginning of his present term of office as such county commissioner."

Likewise, in State ex rel. Hawthorne v. Wiseheart, 158 Fla. 267, 28 So.2d 589 (1946), this Court explained that the power of suspension and removal for misconduct in office is limited to the current term. See also, In re Proposed Disciplinary Action by The Florida Bar Against a Circuit Judge, 103 So.2d 632 (Fla.1958); State ex rel. Hardee v. Allen, 126 Fla. 878, 172 So. 222 (1937). ***HN12*** Reasoning that when the effect of the removal or suspension is not disqualification from holding office in the future, misconduct in a previous public office can not be a basis for removal from office in another office or subsequent term of office, this Court in In Re Advisory Opinion to the Governor, 31 Fla. 1, 12 So. 114 (1893), opined:

> ***HN13*** "Again, the constitution has not given to the suspension or removal the effect of disqualifying the suspended or removed person from holding [**16] the same or any other office in the future; on the contrary, not only is there an utter absence of any such provision, but an intention that it shall not have this effect is also [*616] shown in a separate and distinct declaration of what the framers of the constitution and the people intended should have that effect, which declaration is to be found in the fifth section of the sixth article. That section directs the legislature to enact the necessary laws to exclude from every office of honor, power, trust, or profit, civil or military, within the state, all persons convicted of bribery, perjury, larceny, or of infamous crime, and for other causes therein stated, yet provides that this legal disability shall not accrue until after trial and conviction in due form of law. The legislation enforcing this section is to be found in the Revised Statutes, § 211; and the 214th section enacts that every office shall be deemed vacant upon the conviction of the incumbent of any felony or of an offense involving a violation of his official

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themselves. On this it is solemnly enacted, unchanged during the life of the nation, that 'No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.'

"Your committee believe that there is no man or body of men who can add to or take away one jot or title of these qualifications. The enumeration of such specified qualifications necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such members as are left after the process of 'purgation and purification' shall have been exercised for the public safety, such as may be 'deemed necessary' by any majority of the House. The power itself seems to us too dangerous, the claim of power too exaggerated, to be confided in any body of men; and, therefore, most wisely retained in the people themselves, by the express words of the Constitution.

". . .

"Who, then, will dare assert that for offenses committed ten years ago, yea, five years, or one year ago, before the election of a member the House has power to expel at its caprice, under a constitutional provision which declares 'the House may punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member?'"

oath. The limited effect which it was intended that the suspensions and removals under discussions should have is also shown by the provision of the [**17] section which authorizes them, (section 15, art. 4) that 'the suspension or removal herein authorized shall not relieve the officer from indictment for any misdemeanor in office.' ***HN14***

"A suspension or removal not having of itself the effect to taint the person or officer, either while suspended or after removal, with any disqualification to hold any office, we are unable to see how it can affect his right to exercise the functions of a future term of the same office. He is as qualified for or as eligible to election to a future term pending the suspension, or after the removal, as he was before the suspension. . . ."

See also *State ex rel. Thompson v. Crump, 134 Tenn. 121, 183 S.W. 505, 508 (1916)*; *State ex rel. Chitwood v. Murley, 202 Tenn. 637, 308 S.W.2d 405 (1957)*; see also *Speed v. Common Council of City of Detroit et al., 98 Mich. 360, 57 N.W. 406 (1894)*. *Article VI, Section 4, Florida Constitution, 1968*, F.S.A., provides the grounds for disqualification from holding public office. ***HN15*** This section provides:

"No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration [**18] of civil rights or removal of disability."

In *State ex rel. Schultz v. Patton, et al., 131 Mo.App. 628, 110 S.W. 636 (1908)*, it was held:

"The proceeding is authorized thereby for 'cause shown'; and while it seems that the defalcation in the office of collector ought to be sufficient cause for removal from the office of treasurer within the contemplation of the statute, supra, the weight of authority indicates and supports the law to be that, unless the incumbent has been convicted in a court of law prior to such proceeding, the misconduct for which a removal is sought, in the absence of statutory specifications to the contrary, must be misconduct with respect to the execution of the particular office from which the incumbent is sought to be ousted, and such misconduct must constitute a legal cause for removal, and affect a proper administration of such office."

HN16 A public officer is elected for a term and sworn to duties of office for that term. *State ex rel. Chitwood v. Murley, supra.* One term of office has been generally held to be separate and distinct from other terms of the same office. *People ex rel. Bagshaw v. Thompson, 55 Cal. App. 2d 147, 130* [**19] *P.2d 237 (Cal.1942)*; *Thurston v. Clark, 107 Cal. 285, 40 P. 435*. It was held in *Jacobs v. Parham, 175 Ark. 86, 298 S.W. 483 (1927)*, that each term of office is a separate entity and that suspension may not be had for official misconduct during a prior term of office. *People v. Hale, 232 C.A.2d 112, 42 Cal.Rptr. 533 (1965)*.

HN17 The pertinent constitutional provision relative to the disciplinary and removal proceedings of judicial officers do not refer to the term in which the misconduct [*617] occurred [7] and thus the precept adopted by the majority of jurisdictions including Florida, i.e., that acts of a public officer during a previous office or previous term are not cause for removal from office in the absence

[7] This precept above explained has been held to apply when statutes or constitution do not specifically provide for disqualification from future office for such misconduct or where they do not specifically provide for going behind previous term. Although not applicable to the instant cause we note that in the 1969 session the Legislature promulgated Chapter 69-277, Laws of Florida, (amended by Chapter 71-333, Laws of Florida), Section 112.42, Florida Statutes, F.S.A., relating to the governor's power to suspend. This section provides: "112.42 Period during which grounds may have occurred. - The governor may suspend any officer on any constitutional ground for such suspension that occurred during the existing term of the officer or during the next preceding four years." The constitutional question as to whether the Legislature can enlarge the suspension power of the Governor as conveyed by Article IV, Section 7, Florida Constitution has not as yet been raised. The constitutionality of this statute which obviously relates only to the Governor's authority to suspend has not been measured against Article IV, Section 7, Florida Constitution, F.S.A., which provides: "Suspensions, filling office during suspensions. - (a) By executive order stating the grounds and filed with the secretary of state, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor. (b) The senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by

of disqualification to hold office in the future, applied sub judice. The court in State ex rel. Stokes v. Probate Court of Cuyahoga County, 22 Ohio St.2d 120, 51 Ohio Op.2d 180, 258 N.E.2d 594 (1970), stated that an office must be limited to a single term in which the misconduct in office charged against the public officer occurred and in the absence of clear legislative language making conduct in prior terms a ground for removal from office. The ground alleged for removal [**20] must have occurred during the term in which he was sought and subsequent to the exercise of the power to elect vested in the electors.

[**21] Respondents rely upon the decision of the Supreme Court of Pennsylvania in In Re Greenberg, 442 Pa. 411, 280 A.2d 370 (1971), for a contrary view. However, therein the misconduct charged against Judge Greenberg occurring prior to his ascendancy to the bench amounted to a *conviction* of a federal offense - twenty-one counts of using the mails to defraud. The Pennsylvania court explained:

> "In its conclusions of law the Board stated that the conviction in the United States District Court of a judge of the court of common pleas of a conspiracy to use the United States mail to defraud, 'a felony-type offense', 'constitutes conduct which prejudices the proper administration of justice and brings the judicial office into disrepute.' It also concluded that it is contrary to the intent and purpose of Article V, Sec. 18 of the Constitution of Pennsylvania that a judge of the court of common pleas 'hold judicial office, administer the judicial power of the Commonwealth, exercise judicial functions and perform judicial acts while he himself stands convicted of unlawful and felonious acts.' We accept both the findings and conclusions of the Board."

It, therefore, becomes [**22] significant that Turner in the instant matter was acquitted rather than convicted of the acts charged.

We are not unmindful of the existence of a minority rule as set forth by the New [*618] York court in Sarisohn v. Appellate Division of the Supreme Court, 21 N.Y.2d 36, 286 N.Y.S.2d 255, 233 N.E.2d 276 (1967). However, since such is a minority view and the Supreme Court of Florida has five times aligned itself to the majority rule to the contrary, [8] this Court prefers to follow the doctrine of stare decisis and adhere to the view stated by Mr. Justice Terrell in Rosenfelder v. Huttoe, supra.

Furthermore, we must note that the question involved sub judice was not before this Court in In Re Kelly, 238 So.2d 565 (Fla.1970). This opinion does not recede from and is not to be confused with the decision [**23] in In Re Kelly, supra. In the *Kelly* case, the investigation did extend backwards for a long period of time and into another term of Judge Kelly but it must be remembered that at all times complained of Judge Kelly was a *circuit judge* and *within the jurisdiction* of the Qualifications Commission. *Therein lies the difference in the two cases.* Turner's alleged misconduct occurred when he was *not* within the jurisdiction of the Qualifications Commission *as a matter of law and fact.* Kelly's misconduct occurred when he *was within* the jurisdiction of the Qualifications Commission as a matter of law and fact. *Therein lies the difference between the two cases and calls for a different rule of law.*

Relator cannot be removed from office by the new Judicial Qualifications Commission for acts occurring during a prior term in a different office, i.e., Criminal Court of Record Judge, absent conviction of felony or other disqualification from holding office. We reiterate that the final decision as to reprimand or removal of a judge when warranted is for the Supreme Court when proceeding under Article V, Section 12(d). ***HN18*** The Judicial Qualifications Commission is in [**24] effect an investigatory commission and as such it has the right to investigate matters occurring within a reasonable time but not exceeding two years [9] behind its origin where such investigation and matters are germane to an alleged act of misconduct occurring after January 1, 1973. It may investigate backwards for a reasonable time behind a present term of office as a basis for misconduct in a present office or term of office only when such investigation is in relation to a charge of

a majority of its membership. (c) By order of the governor any elected municipal officer indicted for crime may be suspended from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.

[8] In Re Advisory Opinion to the Governor, supra; In Re Advisory Opinion to Governor, supra; State ex rel. Hardee v. Allen, supra; Rosenfelder v. Huttoe, supra; and ***State ex rel Hawthorne v. Wisehart, supra.***

[9] The statute of limitations on crimes less than capital is two years and this is the rule generally followed by grand juries. This is the nearest thing to a declaration of public policy on the question of a reasonable time for investigation.

misconduct occurring in a present term of office. The Supreme Court of Pennsylvania in In Re Fudula, et al., supra, stated, and we agree:

> "This case states, what seems to be the correct rule, that ***HN19*** 'the acts of an officer during a previous term, though not grounds for impeachment, may be considered in so far as they are connected with or bear upon his general course of conduct during his present term, for the limited purpose of inquiring into his motive and intent as to the acts and omissions charged to him during his second term.'"

and in State ex rel. Attorney General v. Hasty, supra, the Supreme Court of Alabama declared:

> "While we have eliminated the acts of the previous **[**25]** term, as grounds of impeachment, we have considered some of them as evidential facts, in so far as they are connected with or bear upon the respondent's general course of conduct during the second term, for the limited purpose of inquiring into the motive and intent of the respondent as to the acts and omissions charged to him during the second term."

These pronouncements are in accord with our recent decision in In Re Kelly, supra, wherein we stated as obiter dicta **[*619]** that the commission may at any time consider acts of misconduct reflecting adversely upon the proper performance of the duties of the judicial office held. In this cause, we have cited with approval the *Kelly* case and now specifically adhere to the ruling of the case because it related **[**26]** to entirely different facts. Incidentally, the decision in the *Kelly* case was a partial receding from the pronouncement of the Court authored by the late Justice Glenn Terrell in Rosenfelder v. Huttoe, 156 Fla. 682, 24 So.2d 108 (1945).

All dictum in this opinion must be read in the context of the circumscribed facts and *not considered a precedent in cases involving different facts.* The purpose of the dictum is merely to show the expanse of the total research and the logic supporting the judgment dispositive of the facts in the Turner case *and no other.*

By way of caveat, we have observed that there is an hiatus in the law in certain matters where election law violations become a subject of disciplinary investigation. For example, where an attorney is a candidate for and is elected to a judgeship and commits flagrant election law violations in so doing, he escapes investigation by The Florida Bar upon becoming a Circuit Judge under the ruling of this Court in In Re Proposed Disciplinary Action by

The Florida Bar Against a Circuit Judge, supra. [10] Yet, he also would escape investigation by the Judicial Qualifications Commission in that he was not a judge at the time **[**27]** of the alleged offense. We, therefore, respectfully call to the attention of the Legislature this deficiency with the thought that it might want to provide some corrective remedy by submitting a resolution for constitutional amendment.

Thus, it is our opinion, and we hold:

(1) Prohibition is not an appropriate remedy to challenge proceedings by the Judicial Qualifications Commission, but this Court has jurisdiction in this cause under its rule making power and the all writs provisions of the Constitution.

(2) Consistent with the overwhelming **[**28]** weight of authority in the nation as hereinabove set forth, we hold that a public official cannot be disciplined or removed from the office of Circuit Judge upon which he entered January 2, 1973, for misconduct alleged to have occurred in 1972 while such public officer held the office of Judge of the Criminal Court of Record, and office *not* within the jurisdiction of the Judicial Qualifications Commission at anytime during the year of 1972. This holding is not intended in any manner or wise to recede from the *Kelly* case, supra, which was anchored to an entirely different set of facts as hereinabove mentioned and set forth. Significantly but not controlling, Judge Turner was acquitted by a jury of the charges complained of by the Judicial Qualifications Commission.

(3) The Judicial Qualifications Commission may investigate the alleged misconduct of the Relator, Judge Jack M. Turner, within a reasonable time backwards but not exceeding two years behind the date upon which he assumed new duties having been elected *Circuit Judge*

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[10] "Since the assumption of judicial duties suspends all rights and privileges to engage in the practice of law [Sec. 18, Art. V, Florida Constitution], it should, logically, operate as a suspension of disciplinary procedures designed simply to ensure that such rights and privileges shall not be exercised by one who has shown himself unfit to practice law, and not to penalize or punish the offending member. ***Application of Harper, Fla., 84 So.2d 700, 702, 54 A.L.R.2d 1272***."

in the 1972 elections, but any misconduct established during 1972 cannot, standing alone, serve as a basis for his discipline as a Circuit Judge [**29] but can be used only insofar as such investigation develops evidence germane to charges allegedly occurring in the current term of office.

It is hardly to be expected that the exact situation here would ever arise again because, [*620] under revised Article V which became effective January 1, 1973, all courts were abolished except the Supreme Court, District Court of Appeal, Circuit Courts, and County Courts, all of which, under the revised Article V, are within the jurisdiction of the Judicial Qualifications Commission.

The former views being dispositive of the cause sub judice, it is not necessary to consider other questions at this time.

The commission has consistently complied with the rules adopted by this Court regulating proceedings of the commission, and we have no idea that the commission will do otherwise in these proceedings or otherwise. However, if such should ever occur, jurisdiction is available to this Court through the all writs provision of the Constitution, *Article V. Section 3(b)(4), Constitution of Florida*, 1973 F.S.A.

Having thusly announced the principles of law applicable to the present controversy and believing as just above stated that final [**30] judgment is unnecessary, jurisdiction of the subject matter and the parties is retained for the purposes of making such future judgment in the premises as the exigencies of the situation may require or permit.

It is so ordered.

CARLTON, C.J., and ADKINS and McCAIN, JJ., concur.

ERVIN, J., dissents with opinion concurred in by BOYD, J.

BOYD, J., dissents with opinion concurred in by ERVIN, J.

Dissent by: ERVIN; BOYD

Dissent

ERVIN, Justice (dissenting):

Section 12 of Article V of the Florida Constitution, F.S.A., contains no such impediments upon the Commission's investigating and recommending authority as are read into it by the majority from extraneous precedents relating to gubernatorial suspensions and legislative removals or impeachments of public officers. Section 12 is a new approach to the problems involved in disciplining judges and the business of seeing to it that they are of fit character for their judicial roles. It was proposed to the public for ratification as a new disciplinary process relating only to the judiciary and different in scope from old forms of suspension and removals and impeachments of public officers generally.

Section 12 provides in pertinent parts: [**31]

> "(d) Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties *or for other conduct unbecoming a member of the judiciary*, or be involuntarily retired for any permanent disability that seriously interferes with the performance of his duties. . . .
>
> "(e) The power of removal conferred by this section shall be both *alternative* and *cumulative* to the power of impeachment and to the power of suspension by the governor and removal by the senate."

It ill behooves this Court to issue a writ of prohibition or an "all writs" order in this matter, which latter term is nothing more than "shorthand" for all extraordinary writs necessary to the complete exercise of its jurisdiction. Issuance of a writ herein is a premature intrusion into the constitutional functions of the Commission. Judicial restraint dictates that this Court await the recommendation of the Commission in the Judge Turner matter without moving in to preclude [**32] its ever making an investigation therein.

I am not in agreement with the view the Commission is an "arm of the Court" as [*621] characterized in the Judge Kelly case [1] and in the majority opinion. It is an independent constitutional body whose membership is not selected by this Court or subject to its control as, e.g., is the Florida Board of Bar Examiners pursuant to

[1] In re Kelly (Fla.1970), 238 So.2d 565.

Section 15, Article V, Florida Constitution, F.S.A. It is no more an arm of this Court than are judicial nominating commissions.

The quoted language from Section 12 does not fix any specific time limits or periods beyond which particular acts of misconduct of a judge may not be investigated by the Commission. The power to remove and discipline is made "cumulative" to the grounds of impeachment and gubernatorial suspension and is not geared down by time limitation precedents applying to those forms of suspension and removal. This "cumulative" power relates to any "conduct unbecoming a member [**33] of the judiciary" without reference to time of its occurrence. Impeachment under Sec. 17, Art. IV Const., F.S.A., is limited to "misdemeanor *in office*"; but Sec. 12 is not.

"Conduct unbecoming a member of the judiciary" has reference not only to the old grounds for impeachment or suspension of public officers, but also to judicial codes of ethics and to modern rules relating to conflicts of interest. The Code of Judicial Conduct, recently adopted by this Court (281 So.2d 21), is a good index to the nature of conduct that is unbecoming of a judge.

The rules this court has adopted for the procedural operation of the Commission in no way bring forward old concepts or precedents relating to timeliness of impeachments and suspension proceedings or limit the Commission to the traditional grounds or processes for impeachment or suspension. They set no time limits upon investigations of judicial conduct.

Insofar as any alleged misconduct of a judge may reasonably be considered to have a pertinent bearing or impact upon the question of his present fitness as a judge, it lies within the jurisdiction of the Commission to make investigation of it unrestrained by time limitations applying [**34] to suspensions or impeachments.

While there are no technical absolutes as to the timeliness of Judicial Commission investigations, there are, of course, practicable limitations both overt and subtle on its investigative authority which the native intelligence of reasonable men in keeping with principles of good conscience require the Commission to apply. Many things in the background of a judge remote in time to an investigation should not be "dredged up" for consideration. No investigation should be carried backward in time to the point of capricious ridiculousness. The passage of time and changed environmental or behavioral conditions may have eroded away early acts of misconduct in a judge's life and brought rehabilitative and redemptive processes to bear, completely reforming his character.

Shakespeare wrote: "They say best men are moulded out of faults. And, for the most, become much more the better for being a little bad."

The Commission should never be unmerciful or Draconian. Nor should it take a Pecksniffian or crusading stance. Pecadillos of a judge should be ignored by the Commission unless they cumulatively reflect upon the present quality of his judicial service [**35] or render him an object of disrespect and derision in his role to the point of ineffectiveness. A juvenile crime of a judge, long forgotten in the public mind; a remote crime that a judge allegedly committed and for which he was not prosecuted or was acquitted hardly should trouble the Commission years after the fact. Even where a judge has been recently charged with a crime but has been acquitted by a jury, the Commission should be very careful in essaying an inquiry into the underlying elements of the alleged crime. Due respect by the Commission for the [*622] jury's verdict as an end of the matter should be accorded unless aggravating circumstances are involved that appear to have an unredeeming impact upon the judge's character that require the Commission to go behind the jury's verdict. [2]

Where unbecoming or corrupt conduct is charged to a judge, the evidence to substantiate the charge should be by clear proofs [**36] and something more than mere preponderance. [3]

It is my understanding the Commission's practice is not to concern itself with trifles or "mares' nests" or unsubstantiated charges against a judge or to allow its authority to be used for the venting of spleen of disappointed litigants or special groups with an axe to grind.

The Commission has not been an instrument of oppression - it has not allowed itself to become a lever of any special group or interest to threaten the independence of Florida judges. The fear that "silk

[2] Cf. 3 Fla.Jur., Attorneys at Law § 99. A jury's acquittal may not be a defense.

[3] Cf. The Florida Bar v. Rayman (Fla.1970), 238 So.2d 594.

stocking" elements of the Bar and Bench through the medium of the Commission would ride herd upon highly independent judges has not materialized, with the one possible exception of Judge Kelly's case. [4]

[**37] Despite the implicit or tacit limitations which good conscience impose upon the Commission, it has the duty to take into account any serious and obvious misconduct of a judge that reasonably has a pertinent bearing upon his present fitness as a judge. As before indicated, the time of origin or occurrence of the misconduct does not necessarily exclude investigation. If the alleged misconduct of a judge reasonably has a germane nexus to or bearing upon his judicial character or likelihood of possible adverse effect upon the quality of his service, it may be considered by the Commission. Within the nature of things there may be a carry-over deleterious effect upon a judge's character from former acts of misconduct, as the following examples will illustrate.

Where a judge prior to assuming office has become a thrall to organized criminal or subversive elements or any special interest group through accepting gratuities or favors so that he stands in a position of doubtful loyalty to justice or in constant fear of exposure or public disgrace, his character and fitness as a judge may be jeopardized to the point of discipline.

Where a judge prior to assuming office knowingly violates [**38] the election laws [5] and does not disclose illegal campaign contributions, he renders himself suspect as a fit judge and well may have placed himself beyond the pale of judicial propriety.

Where a judge harbors the secret knowledge of a crime he has committed - one of serious proportions; possibly acceptance of a bribe while holding another office or embezzlement of trust funds of a client while he was a practicing attorney, or some other reprehensible undisclosed act violative of the lawyer's professional code of ethics - he may be subject to investigation upon disclosure of such conduct to the Commission, even though the statutes of limitations on the criminal acts have run or impeachment or suspension would not lie.

Of course, however, old or remote acts of misconduct should not be given fresh impetus for disciplinary action against a judge if there is clear evidence that his character has reformed; that there [**39] is nothing to warrant he has not afterwards lived a sober, law-abiding life and there appears no evidence of reversion or regression to bad character.

In human behavior it is not true that the leopard cannot change his spots. History is strewn with numerous examples from St. Paul downward of sinners' redemptions. [*623] Nevertheless, if from the totality of the circumstances relating to a judge's character there is strong reason to infer from previous misconduct that he has present weakness of judicial character and possible predilection to corruptive influences, the Commission should take the same into account. But in the nature of things few men are so vile as to be beyond redemption or reform or bear ineradicable taint.

Judges should not be made so timorous by the existence of the Commission and its administration that they have almost to be priests fearful to exercise the privileges and independence of free men guaranteed citizens by the Constitution. "Holier than thou" critics should not be able to seize upon small faults or remote acts of misconduct and blow them out of all proportion and emasculate a judge's power of honest independence to do justice fearlessly under [**40] the Constitution. No harsh "sword of Damocles" or constant threat of nitpicking discipline should render a judge afraid of his shadow. Only the judge of proven unmistakably bad character or venal or corrupt tendency [6] should have reason to fear.

I do not believe a writ of prohibition or an "all writs" rule should issue in Judge Turner's case. It may well be that if Judge Turner is recommended for discipline the jury's acquittal verdict in his case would absolve him in this Court's judgment. However, for the reasons stated I believe that in Judge Turner's matter any relevant acts of alleged misconduct on his part that occurred prior to his assuming the office of Circuit Judge can be investigated by the Commission and especially those that may have occurred while he was Criminal Court of Record Judge of Dade County, Florida. The alleged acts of misconduct charged to him are said to have occurred only some nineteen months ago when he was Criminal Court of [**41] Record Judge of Dade County.

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[4] See dissent in In re Kelly, 283 So.2d p. 574 et seq.

[5] See dissent in Maloney v. Kirk (Fla.1968), 212 So.2d 609, particularly pages 621 and 622.

[6] See In re Kelly, 238 So.2d, pages 578 and 579.

He became a Circuit Judge of the Eleventh Judicial Circuit in January of 1973.

Under the scheme of Revised Article V, criminal courts of record were abolished and their former jurisdictions merged into the circuit courts and county courts, creating a two trial court system. Because of this change in the system eliminating his former judgeship, Judge Turner sought and was elected circuit judge to one of the circuit judgeships in Dade County in the new two-tier system. His background and qualifications as a criminal court of record judge were consequently important factors taken into account by the electorate in promoting him to the circuit court. In view of these considerations it is hardly reasonable to contend that his conduct as criminal court judge is now off limits from Commission inquiry.

To recapitulate, I conclude that under paragraph (e) of Section 12 the power of the Commission to remove and discipline for judicial misconduct is in addition to the power of the Governor to suspend and the Senate to remove or impeach and may be exercised uncontrolled by former precedents and limitations relating to such gubernatorial suspension or legislative **[**42]** removal power. It is made a cumulative power, unrestricted by those limitation precedents.

It is a power to discipline not only for the old grounds of impeachment or suspension but for "*other conduct* unbecoming a member of the judiciary." Logically this prescription for discipline is not limited to the current term of a judge. It is made broad enough in ambit to reach to the full spectrum of a judge's character and especially conduct of a judge in his judicial capacity, whether in a lower judgeship or in an earlier judicial term.

Any overt act of misconduct having a present rational relation to the nature of a judge's character may be considered subject to the limitations of good conscience before mentioned.

[*624] It is unrealistic to hold that alleged acts of misconduct occurring during a preceding term as a criminal court of record judge only some nineteen months ago are barred from Commission consideration. It would cause public dismay and incredulity if the Commission's power is so narrowly construed. Remoteness or time limitation appears to be no excuse in the instant situation although other factors (the jury's verdict in Judge Turner's case, for example) **[**43]** may well have exonerating effect.

There are strong precedents from other jurisdictions which substantiate the position I take. See *In re Greenberg (1971), 442 Pa. 411, 280 A.2d 370*; *Sarisohn v. Appellate Division of the Supreme Court (1967), 21 N.Y.2d 36, 286 N.Y.S.2d 255, 233 N.E.2d 276*, and see 42 A.L.R.3d 713, et seq. Cf. *In re Fudula (1929), 297 Pa. 364, 147 A. 67*; *Sharpe v. State of Oklahoma ex rel. Oklahoma Bar Ass'n, Okl., 448 P.2d 301*; *State ex rel. Atty. Gen'l. v. Hasty (1913), 184 Ala. 121, 63 So. 559*.

The proper course for this Court to take in its relationship with this constitutional Commission is to await its recommendations on a case-by-case basis and then weigh the same on review according to the merits of each recommendation, developing in the process a body of disciplinary precedential law.

This Court should not precipitously and prematurely intrude in a particular disciplinary case to restrain in advance an investigation of a judge. This is contrary to the intent of Section 12 and to the rule of law applicable in disciplinary cases involving public officers. This Court would never undertake to restrain in advance of final action the Governor or the Legislature **[**44]** in the exercise of their disciplinary processes against public officials, although the Court might invalidate the action finally taken. Neither should it interfere with the Commission at this stage of the Judge Turner investigation.

Section 12 is a new approach to the judicial disciplinary problem differing from the old methods of impeachment and suspension. It should not be emasculated by narrow, restrictive precedents which are not expressly written into it. Each disciplinary case should follow the routine of dismissal or recommendation without advance intervention and suppression by this Court.

I would dismiss the petition.

BOYD, J., concurs.

BOYD, Justice (dissenting).

I respectfully dissent.

I am fully aware of the legal authorities cited in the very able majority opinion, but I feel that this case must be decided purely upon the provisions of *Section 12 of Article V of the Constitution of the State of Florida*, F.S.A., establishing the Judicial Qualifications Commission, particularly subsection (d) thereof, which provides:

"(d) Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that the [**45] justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary, or be involuntarily retired for any permanent disability that seriously interferes with the performance of his duties. After the filing of a formal proceeding and upon request of the commission, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry."

There is no provision in the foregoing section limiting the time of consideration of misconduct to the specific term of office being held by the judge then under investigation by the Judicial Qualifications Commission. *Inter alia*, grounds for removal are "conduct unbecoming a member of the judiciary, or . . . any permanent [*625] disability that seriously interferes with the performance of his duties. . . ." There is simply nothing in Section 12 stating that the misconduct or disability must occur or arise from acts committed during the current term of office of the judge under investigation.

Webster's [**46] Unabridged Dictionary defines misconduct as follows: "Mismanagement esp. of governmental or military responsibilities . . . intentional wrongdoing; deliberate violation of a rule of law or standard of behavior esp. by a government official. . . ." The definition further specifically makes reference to misconduct of governmental officials; and, said definition further gives examples of specific cases of judicial misconduct and improper behavior.

The same dictionary also defines disability, *inter alia*, as follows: "Deprivation or lack esp. of physical, intellectual, or emotional capacity or fitness . . . a particular weakness or inadequacy . . . or condition that incapacitates in any way . . . a . . . condition that hinders, impedes or incapacitates. . . ."

When the people of Florida voted to adopt this Constitutional amendment, they were given the opportunity to read the language of the Constitution stated above, and to anticipate that, in construing said language, judges would give it the meaning normally understood and expressed in Webster's Unabridged Dictionary. Since the Constitution does not specifically limit the time during which an investigation of a judicial officer [**47] may occur, the public is entitled to expect that any and all misconduct and disability committed *at any time* by a judge or justice could be a proper subject for a Judicial Qualifications Commission investigation. Applying the normal use of the word "misconduct" in the Constitution, and recognizing that there is no specified limitation on the time, it would seem reasonable to me that the Constitutional intent clearly permits the Judicial Qualifications Commission to consider alleged misconduct of judicial officers committed while holding prior terms of judicial, or any other, public office, and would also empower the Commission to consider misconduct committed at times while not holding public office. [1]

[**48] When considering the words "misconduct" and "disability" mentioned above, one could easily determine that if a judge, while in office, should be exposed as a person whose previous conduct was of such shocking and improper nature as to erode public confidence in such person as a judge, and otherwise eliminate public respect for such person as a judicial officer, the judge or justice could become so ineffective as to deserve removal from the office. This, surely, was the intention of the people in adopting this Constitutional provision.

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[1] A similar conclusion was reached by the Court of Appeals of New York in Sarisohn v. Appellate Division of Supreme Court, 21 N.Y.2d 36, 46, 286 N.Y.S.2d 255, 262, 233 N.E.2d 276, 281 (1967), wherein the Court held:

> "As a general rule conduct of officials prior to their incumbency may not base disciplinary actions against them . . . however . . . *an exception exists as to conduct that may result in debarment from future office*. . . . Moreover, *it has been held that subsequent election to office does not bar charges on undisclosed prior conduct affecting general character and fitness for office*. . . . Nor is it material that the cited cases involved conduct during prior terms for the same office when, as here, the prior office is of the same generic character and carries judicial responsibility. It would be an unseemly and unsound distinction with respect to a matter affecting general character and fitness to immunize a Judge from his prior misconduct as a Judge of lessor or higher rank."

See also In re Greenberg, 442 Pa. 411, 280 A.2d 370 (1971), which held that a conviction, for the federal crime of conspiring to use the mails to perpetrate a fraud, warranted suspension from performance of judicial functions, *even if the conduct in question occurred before the judge ascended to the bench.*

[*626] It is presumed that the Judicial Qualifications Commission, and the Supreme Court, will give a common sense application to the Constitutional provisions and would not embarrass a judicial officer by holding him up to public ridicule because of some minor departure from the "straight and narrow paths of righteousness" committed in the long distant past and having no practical relationship to his present capacity to hold office.

It is well known that persons seeking admission to practice law in the State of Florida must present "the entire story of their lives," admitting any and all misconduct, and are carefully investigated from the [**49] time of their birth until the date of their admission to the Bar. Surely, by the above mentioned Constitutional provision, the people of Florida did not intend to create a lower standard of ethical conduct for judges than is required for lawyers practicing before, and being subject to, disciplinary action by the Courts.

I take notice that Judge Jack M. Turner has been tried and acquitted of criminal charges relating to the matters being investigated by the Judicial Qualifications Commission at this time. My views expressed herein neither favor nor disfavor the standing of Judge Turner as an individual. I limit my views solely to the question of the area and time in which the Judicial Qualifications Commission may investigate alleged misconduct of a judicial officer.

While I am keenly aware that Judge Turner was tried and acquitted by a Circuit Court Jury for the same misconduct on which the Judicial Qualifications Commission now seeks to act, it must be noted, however, that to convict a person of a crime, the jury must find that person to be guilty beyond and to the exclusion of a reasonable doubt; a different standard - a lower standard - based upon the greater weight of the [**50] evidence, is used by the Judicial Qualifications Commission. Thus, the Commission might technically be qualified to investigate and recommend removal or reprimand of a judge who had been acquitted in Criminal Court if the Commission found that the evidence contained a basis for reprimand or removal. Again, I strongly emphasize that I express no opinion herein on the integrity, ability, or guilt of Judge Turner.

The three branches of government are intended to be equal. Regardless of how capable, honest, sincere and dedicated those serving in executive and legislative offices may be, the form of government now existing in this country could not stand without courts of justice operated by persons of high integrity, dedication, and legal knowledge. I believe that in adopting the above Constitutional provisions, the people of Florida intended to create a system by which the Judicial Qualifications Commission and the Supreme Court could quickly deal with judges unworthy of their offices and have them replaced by people meeting the highest ethical standards. The Courts constitute the principal and ultimate shield against tyranny and oppression. In my opinion, today's majority decision [**51] is not in the spirit of the people's intent. Those who cannot stand the bright light of public scrutiny should not hold judicial offices.

ERVIN, J., concurs.

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In re Davey

Supreme Court of Florida

October 13, 1994, Decided

No. 82,328

Reporter
645 So. 2d 398; 1994 Fla. LEXIS 1538; 19 Fla. L. Weekly S 514

INQUIRY CONCERNING A JUDGE NO. 93-62; RE: P. KEVIN DAVEY

Subsequent History: [**1] Rehearing Denied December 2, 1994. Released for Publication December 2, 1994.

Prior History: Original Proceeding - Judicial Qualifications Commission.

Core Terms

misconduct, charges, recommendation, reprimand, cases, removal, lack of candor, Canons, clear and convincing evidence, negotiations, unfitness, witnesses, handling, convert, taking place, discipline, settlement, concealed, public confidence, investigate, judicial qualifications, settlement check, false statement, judicial office, made payable, hold office, misrepresentation, termination, violations, commission's finding

Case Summary

Procedural Posture

The court reviewed a recommendation of the Judicial Qualifications Commission to remove a judge from office.

Overview

The Judicial Qualifications Commission sought to remove a judge from office. The commission filed charges against the judge alleging he violated Fla. Code Jud. Conduct Cannons 1 and 2A nine years earlier in his handling of two cases during his breakup with his former firm. The court held the commission had constitutional authority to investigate pre-judicial acts and recommend to the court the removal for unfitness or reprimand for misconduct of a sitting judge. The commission showed by clear and convincing evidence that the judge committed misconduct in handling one case after being elected to judicial office, but failed to show he committed misconduct in handling the other case or that he deliberately made false statements before the commission. In light of extenuating circumstances, the court did not remove the judge from office. A public reprimand was appropriate discipline under the facts of the case. The record failed to show he was presently unfit to perform judicial duties. The court did not believe that the public confidence in the integrity of the judiciary would be eroded if the judge remained on the bench.

Outcome

The court found that, although the judge committed misconduct in his handling of a case during his departure from his former law firm after being elected to public office, a public reprimand was appropriate discipline under the facts of the case.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Abuse of Public Office > Neglect of Office > Elements

Legal Ethics > Judicial Conduct

HN1 Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that a justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary. *Fla. Const. art. V, § 12(d)*.

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Governments > Courts > Judges

Daniel Welch

Legal Ethics > Judicial Conduct

HN2 There shall be a Judicial Qualifications Commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, demonstrates a present unfitness to hold office, and to investigate and recommend the reprimand of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, warrants such a reprimand. *Fla. Const. art. V, § 12(a)*.

Legal Ethics > Judicial Conduct

HN3 The language of *Fla. Const. art. V, § 12* is unambiguous on its face, and it means just what it says: The Judicial Qualifications Commission may investigate and recommend the removal or reprimand of any judge whose conduct in or outside of office warrants such action. Pre-judicial conduct may be used as a basis for removal or reprimand of a judge.

Legal Ethics > Judicial Conduct

HN4 The findings and recommendations of the Judicial Qualifications Commission are of persuasive force and should be given great weight. However, the ultimate power and responsibility in making a determination rests with the Florida Supreme Court. Because of the serious consequences attendant to a recommendation of reprimand or removal of a judge, the quantum of proof necessary to support such a recommendation must be clear and convincing. There must be more than a preponderance of the evidence, but the proof need not be beyond and to the exclusion of a reasonable doubt.

Evidence > Inferences & Presumptions > General Overview

HN5 This intermediate level of proof, clear and convincing evidence, entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

Evidence > Inferences & Presumptions > General Overview

Evidence > Burdens of Proof > Clear & Convincing Proof

HN6 To establish a fact by clear and convincing evidence, the facts to which witnesses testify must be distinctly remembered; the details in connection with a transaction must be narrated exactly and in order; the testimony must be clear, direct and weighty, and the witnesses must be lacking in confusion as to the facts at issue.

Legal Ethics > Judicial Conduct

HN7 Only where lack of candor is formally charged and proven may it be used as a basis for removal or reprimand. The Judicial Qualifications Commission's own rules provide that if that body finds probable cause to proceed against a judge, the judge shall be notified of all charges that may result in removal or reprimand.

Administrative Law > Judicial Review > Reviewability > Factual Determinations

Legal Ethics > Judicial Conduct

HN8 Discipline based on lack of candor may be imposed only where the Judicial Qualifications Commission makes particularized findings on specific points in the record.

Civil Procedure > Judicial Officers > Judges > General Overview

Evidence > ... > Testimony > Competency > Affirmations & Oaths

Legal Ethics > Judicial Conduct

HN9 A lack of candor must be knowing and willful. It is not enough that the Judicial Qualifications Commission finds a particular judge's version of events unworthy of belief, or finds the testimony of another witness more credible or logical. If such were the case, then every judge who unsuccessfully defends against a charge of misconduct would be open to a charge of lack of candor. Rather than showing simply that a judge made an inaccurate or false statement under oath, the commission must affirmatively show that the judge made a false statement that he or she did not believe to be true.

Criminal Law & Procedure > ... > Abuse of Public Office > Neglect of Office > Elements

Legal Ethics > Judicial Conduct

HN10 Upon recommendation of two-thirds of the members of the Judicial Qualifications Commission, the Supreme Court may order that the justice or judge be

disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office. Fla. Const. art. V, § 12(f).

Legal Ethics > Judicial Conduct

HN11 The court has mandatory standards governing the conduct of Florida judges by which fitness may be measured.

Legal Ethics > Judicial Conduct

HN12 A judge should uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. Fla. Code Jud. Conduct, Cannon 1.

Legal Ethics > Judicial Conduct

HN13 A judge should avoid impropriety and the appearance of impropriety in all his activities. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Fla. Code Jud. Conduct, Canon 2A.

Legal Ethics > Judicial Conduct

Legal Ethics > Sanctions > Disbarments

HN14 Lawyers are disbarred only in cases where they commit extreme violations involving moral turpitude, corruption, defalcations, theft, larceny or other serious or reprehensible offenses. Judges should be held to even stricter ethical standards because in the nature of things even more rectitude and uprightness is expected of them. But they too should not be subjected to the extreme discipline of removal except in instances where it is free from doubt that they intentionally committed serious and grievous wrongs of a clearly unredeeming nature. The judge should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. He should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Legal Ethics > Judicial Conduct

HN15 The court has removed judges where their conduct demonstrated a present unfitness to hold office.

Civil Procedure > Judicial Officers > Judges > General Overview

Legal Ethics > Judicial Conduct

HN16 In determining fitness to hold judicial office, the court looks at the relevant circumstances surrounding each particular act of misconduct. Substantive violations of the Florida Code of Judicial Conduct weigh heavily against a judge.

Counsel: Joseph J. Reiter, Chairman and Ford L. Thompson, General Counsel, Tallahassee, Florida; and Charles P. Pillans, III of Bedell, Dittmar, DeVault & Pillans, P.A., Jacksonville, Florida, for Petitioner.

Richard C. McFarlain, Charles A. Stampelos, Harold R. Mardenborough and Christopher Barkas of McFarlain, Wiley, Cassedy & Jones, P.A., Tallahassee, Florida, for Respondent.

Robert P. Smith, Tallahassee, Florida, Amicus Curiae.

Jimmy Hatcher, Bristol, Florida, Amicus Curiae.

Judges: OVERTON, SHAW and KOGAN, JJ., and McDONALD, Senior Justice, concur. HARDING, J., concurs with an opinion. GRIMES, C.J., dissents with an opinion.

Opinion by: PER CURIAM

Opinion

[*399] PER CURIAM.

We have for review a recommendation of the Judicial Qualifications Commission that Judge P. Kevin Davey be removed from office. We have jurisdiction. Art. V, § 12, Fla. Const. Based on this record, we impose a public reprimand.

I. FACTS

Judge P. Kevin Davey was a partner in the law firm of Douglass, Davey, Cooper & Coppins, P.A. (the firm), prior to becoming a judge. In the late spring of 1984, he announced to **[**2]** the firm's members that he had

decided to run for a vacant seat as judge of the Circuit Court of the Second Judicial Circuit. The shareholders subsequently met and agreed on the terms of Davey's separation from the firm and the disposition of his cases.

A. Davey's Divorce from the Firm

The shareholders of the firm agreed on June 6, 1984, that Davey would cease to be a partner after June 30, 1984, and that all members would confer "ASAP" to inventory his contingent fee cases to determine the percentage of completion. Davey would be paid on a pro-rata basis on all cases partially completed by June 30; those cases on which he performed no work by that date would be reassigned. Davey and Douglass could not agree, however, on the amount Davey was to be paid for his share in the ownership of the building housing the firm. Davey and Douglass [*400] disagreed vehemently on this topic and this caused Davey's relationship with the firm to rapidly deteriorate. The firm ultimately presented Davey with a "lock-out" letter on September 1, 1984, delivered to Davey's doorstep and discovered by his children. The letter was signed by the partners and advised Davey that he was being expelled from the firm, [**3] that he would lose his health and malpractice insurance, and that the locks to his office would be changed. This issue of Davey's share in the building was ultimately resolved in Davey's favor in a civil lawsuit.

Davey was elected judge on September 4, 1984, with his term to begin on January 8, 1985. The members of the firm entered into a second termination agreement on September 20, 1984, wherein Davey agreed that he would "take responsibility for completing or reassigning to other attorneys within the firm or other qualified attorneys outside the firm all cases he was handling as of June 6, 1984, and afterwards."

Nine years after Davey left the firm, the Judicial Qualifications Commission (the Commission) filed the present charges against him alleging violations of Canons 1 [1] and 2A [2] of the Florida Code of Judicial Conduct based on his handling of two cases during the breakup of the firm.

[**4] B. The Bryant Case

John Cooper, a member of the firm, testified that he and two other members of the firm, Michael Coppins and Tom Powell, met with Davey in the first two weeks of November 1984 to go over Davey's case list. When they came to the Bryant case, Davey said that the case was not a good case, that he had discussed it with the client, that the client had decided not to file suit, and that Davey was going to close the file. Cooper's testimony was corroborated by Coppins. Evidence adduced before the Commission showed that in August and September 1984, Davey corresponded with the adjusters for the insurer, and in October a settlement of $ 24,000 was offered and accepted by Davey, who had the check made out to himself and mailed to his home. Upon receipt of the check, Davey executed a release and closing statement on October 31, 1984. The settlement check was negotiated through Davey's personal account and a fee of $ 8,000 was deposited in his account pursuant to his agreement with Bryant.

Members of the firm learned of Davey's disposition of the Bryant case by happenstance and decided to confront him. Cooper testified that at a meeting on November 21, 1984, he and Davey again [**5] went over Davey's case list and when they reached the Bryant case, Davey responded the same as before--that it was not a good case, that the client was not pursuing it, and that he was closing the file. According to Cooper, when he presented Davey with a copy of the negotiated check, Davey admitted that he had concealed the case and said that he had done so because he was afraid that the firm would not honor its termination agreement. Davey said that he was holding the money as security.

Davey's testimony concerning the Bryant case is basically similar to Cooper's except for the following explanations. According to Davey, the initial meeting concerning the Bryant case took place not in November but in July 1984, shortly after the June termination agreement calling for a meeting on Davey's cases "ASAP." At that meeting, Davey told Cooper and Coppins that the case was a poor one because he was having difficulty in obtaining Bryant's medical records and in finding an expert to establish causation. Cooper suggested that Davey refer the case to an outside attorney for disposition. Davey tried unsuccessfully several times to contact the outside attorney to give him the case, and was surprised [**6] when the adjuster eventually called and offered $ 24,000 in settlement. Davey testified that at the second meeting with the

[1] Canon 1 is titled "A Judge Should Uphold the Integrity and Independence of the Judiciary."

[2] Canon 2 is titled "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities."

partners, the partners burst into the room and accused him of stealing. He did not recall telling the partners at that time that it was a bad case or that he kept the money as security. He testified [*401] that he did not disclose the case to the firm because he believed the firm had abandoned it and that if the partners found out about the fee they would want a part of it. Davey ultimately paid the firm its share, approximately $ 1,400, on December 20, 1984.

C. The Breyer Case

Carol Breyer was severely injured in an accident and agreed in June 1982 to have the firm represent her. Because the tortfeasor's insurance policy was limited to $ 10,000, it was clear that the bulk of the recovery would come from the uninsured motorist (UM) claim. The claim against the tortfeasor was settled in June 1983 for $ 10,000. Davey removed portions of the office file relating to the UM claim and closed the file on August 6, 1984, by filling out a "Closed File Check List" and signing his secretary's initials.

Davey subsequently entered into negotiations between September 18 and December [**7] 13 with the adjuster representing the UM carrier. The adjuster wrote Davey a letter dated December 6, addressed to Davey's home, in which the adjuster made a settlement offer of $ 127,500. Davey accepted the offer and asked that the check be mailed to his home. The check was mailed on December 13 and Davey took it to the firm's bank on December 21; it was collected and credited to the firm's account on December 31. The Commission found that the check was made payable to the firm and that this alone foiled Davey's attempt to convert the entire fee.

Cooper, Coppins, and Douglass testified that they met with Davey at some time between November 26 and December 21 to discuss Davey's failure to disclose the Bryant case noted above, and that at that meeting Douglass specifically asked Davey, "Are there any other cases like the Bryant case that we should know about?" Davey replied, "No, sir. There are not," and did not mention the Breyer case. Cooper testified that he first learned of the Breyer case on December 21 when Davey approached him at a social function and told him that he had settled the case for $ 127,500, which should produce a fee of about $ 40,000. Cooper at first testified [**8] that he was uncertain if he ever saw the settlement check, but later said that he saw a copy and that it was payable to the firm. Douglass testified that he first learned of the case when the bank called him concerning the settlement check. Douglass testified that he too was uncertain if he ever saw the check, but later said that he believed he did.

Davey testified that he signed his secretary's initials to the file, but said that he had done so on other occasions and did so here because the $ 10,000 tortfeasor claim was completed. He concealed the UM portion of the case from the firm in order to "keep my options open," and contended that the check was made out to himself and that if he had intended to convert the entire fee he could easily have negotiated the check through his personal account.

D. The Commission's Findings and Conclusions

After hearing testimony and accepting evidence, the Commission found that Davey intended to convert to himself the entire fee in both the Bryant and Breyer cases:

> 22. With respect to the Emma Bryant case, the Commission finds that the evidence is clear and convincing that Judge Davey intended to convert the entire Bryant fee to himself, that [**9] Judge Davey misrepresented the merits and value of the Bryant case to Messrs. Cooper and Coppins, and that, even if the first meeting to discuss Judge Davey's cases occurred in July 1984, Judge Davey nevertheless misrepresented the case to Cooper in November 1984 after he had settled the case and negotiated the draft through his personal account. The Commission rejects Judge Davey's claim that the Firm had "abandoned" the Bryant case because any abandonment was based upon a misrepresentation of the merits and value of the case. In any event, after it was apparent to Judge Davey that the insurance carrier was seeking to settle the case and, in fact, had offered to settle the case for $ 24,000, Judge Davey had an affirmative responsibility under the termination agreement with the firm to share that information and the fee with the Firm.
>
> [*402] 23. With respect to the Carol Breyer case, the evidence is also clear and convincing that the actions of Judge Davey, by closing the Breyer file on August 6, 1984; by forging his secretary's initials to the Closed File Check List; by failing to advise the Firm with respect to the existence of the Breyer case or his ongoing negotiations between September [**10] and December 1984 to settle the

case; by his untruthful response to Mr. Douglass' question, "are there any other cases like the Bryant case?" at a time when he was engaged in negotiations for settlement of the case for a substantial sum, to which the Firm was unquestionably entitled to share in the fee; by his failure, after receiving a firm written offer of settlement on December 6, 1984, and settling the case on December 13, 1984, to advise the Firm of the settlement until December 21, 1984; by his signing as witness to the Breyer release using his home address; and by directing the adjuster to send the draft to his home address in order to keep his options open, all constitute clear and convincing evidence that Judge Davey intended to convert the Breyer fee and was thwarted in that effort only because the draft was payable to the Firm and the Bank contacted Mr. Douglass regarding receipt of the draft.

The Commission found that public confidence in the judiciary would be substantially eroded if Judge Davey were to remain on the bench. He misrepresented the Bryant and Breyer cases to the members of the firm, the Commission found, and "lied under oath to the Commission" about **[**11]** it. This demonstrates "his present unfitness to hold office," the Commission concluded:

24. Public confidence and perception of the judiciary would be substantially eroded if Judge Davey remains on the Bench in the face of the findings of the Commission that he attempted to convert the Bryant fee and the Breyer fee and in the course thereof made numerous misrepresentations and untrue statements to the members of his Firm and lied under oath to the Commission at the trial of this cause in an attempt to justify his conduct. The record, therefore, shows and the Commission finds by clear and convincing evidence that Judge Davey's conduct with respect to the Emma Bryant case demonstrates his present unfitness to hold judicial office in this State. The record further shows and the Commission also finds by clear and convincing evidence that Judge Davey's conduct with respect to the Carol Breyer case demonstrates his present unfitness to hold judicial office in this State.

The Commission concluded that Davey's handling of the Bryant and Breyer cases evidences "character flaws" unmitigated by the passage of time, and that this problem has been "compounded" by Davey's false testimony **[**12]** before the Commission. Davey should be removed from office, the Commission recommended:

Judge P. Kevin Davey, by conducting himself in the manner set out in the above Findings of Fact, intentionally committed serious and grievous wrongs of a clearly unredeeming nature. The Commission rejects Judge Davey's contention that the events which occurred in 1984 and which gave rise to the charges are too remote to affect Judge Davey's present fitness to serve as a judge. Judge Davey's conduct with respect to the Emma Bryant case and with respect to the Carol Breyer case evidence character flaws which the passage of time alone does not mitigate or justify. In addition, Judge Davey has compounded his original misconduct by appearing before the Commission and attempting to explain his conduct through testimony that the Commission finds to be false in material respects. . . . Judge Davey has rendered himself an object of disrespect and public confidence in the judiciary will by eroded if he remains a member of it. Judge Davey is guilty of violating Canons 1 and 2A of the Code of Judicial Conduct. The Commission finds by clear and convincing evidence that Judge Davey's violations of these Canons **[**13]** demonstrate a present unfitness to hold office.

E. Issues Presented

Davey initially contends that this Court lacks jurisdiction over the acts in issue because they took place before he assumed **[*403]** office as judge. Davey next claims that the Commission erred in its findings of guilt and recommendation of removal because its material findings of fact were not supported by clear and convincing evidence. Further, he contends that the Commission's recommendation of removal was based in part on its conclusion that he lied to the Commission, but that he was never charged with being untruthful and never had an opportunity to defend against that accusation. And finally, Davey contends that removal is not warranted under existing caselaw.

II. JURISDICTION

Article V, section 12, Florida Constitution, was adopted by special election in 1972 and originally provided for removal of a judicial officer for misconduct, but did not specify when the misconduct may have occurred:

HN1 Upon recommendation of two-thirds of the members of the judicial qualifications commission,

> the supreme court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with [**14] termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary . . . .

Art. V, § 12(d), Fla. Const. (1973).

This Court in interpreting this provision held that the Commission lacked authority to investigate a sitting circuit judge's activities that occurred while he held the prior office of judge of a criminal court of record. *See* State ex rel. Turner v. Earle, 295 So. 2d 609 (Fla. 1974). We reasoned that the majority of jurisdictions held that where a constitutional provision authorizes removal for misconduct but does not specify the term of office in which the misconduct must occur then the officer cannot be removed for acts that take place in other than the present term.

Subsequent to our decision in *Turner*, Florida voters approved by general election in 1974 an amendment to section 12 that addressed the issue of when the misconduct may have occurred. Section 12 was amended to read in part:

> ***HN2*** There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any [**15] justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the reprimand of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such a reprimand.

Art. V, § 12(a), Fla. Const.

Judge Davey argues that the 1974 amendment was enacted to negate *Turner*'s holding that a judge cannot be removed for misconduct that took place during a prior term in a different judicial office. Thus, Davey reasons, the misconduct referred to in amended section 12 contemplates only those acts occurring during a prior term of judicial office--not acts occurring outside judicial office. We disagree.

HN3 The language of section 12 is unambiguous on its face and we conclude that it means just what it says: The Commission may investigate and recommend the removal or reprimand of any judge whose conduct in or outside of office warrants such action. This Court has consistently ruled that pre-judicial conduct may [**16] be used as a basis for removal or reprimand of a judge. *See, e.g.*, In re Meyerson, 581 So. 2d 581 (Fla. 1991); In re Carnesoltas, 563 So. 2d 83 (Fla. 1990); In re Capua, 561 So. 2d 574 (Fla. 1990); In re Sturgis, 529 So. 2d 281 (Fla. 1988); In re Berkowitz, 522 So. 2d 843 (Fla. 1988); In re Byrd, 511 So. 2d 958 (Fla. 1987); In re Speiser, 445 So. 2d 343 (Fla. 1984).

We hold that the Commission has constitutional authority to investigate pre-judicial acts and recommend to this Court the removal (for unfitness) or reprimand (for misconduct) of a sitting judge. We conclude that the Commission acted within its authority in the present case in investigating Judge Davey's handling of the Bryant and Breyer cases in order to assess Davey's present fitness as a judge.

[*404] III. CLEAR AND CONVINCING EVIDENCE

"***HN4*** The findings and recommendations of the Judicial Qualifications Commission are of persuasive force and should be given great weight. However, the ultimate power and responsibility [**17] in making a determination rests with this Court." In re LaMotte, 341 So. 2d 513, 516 (Fla. 1977)(citation omitted). Because of the serious consequences attendant to a recommendation of reprimand or removal of a judge, the quantum of proof necessary to support such a recommendation "must be 'clear and convincing.' There must be more than a 'preponderance of the evidence,' but the proof need not be 'beyond and to the exclusion of a reasonable doubt.'" *Id.*

HN5 This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

> Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without

hesitancy, [**18] as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

Applying this standard to the present case, we conclude that the Commission's ultimate findings concerning Davey's handling of the Bryant case are supported by clear and convincing evidence. The testimony of Cooper, Coppins, and Douglass as to when the various meetings with Davey took place and what transpired at those meetings is direct, unequivocal, and consistent. Their version of events is logical and supported by written evidence. Davey's testimony, on the other hand, is vague, indecisive, and unsupported. We approve the Commission's findings that Davey misrepresented the merits of the case, and that he concealed the negotiations, settlement, and fee from his former partners.

The Commission's ultimate findings concerning Davey's handling of the Breyer case, on the other hand, are not supported by sufficient evidence. The Commission relied on the cumulative weight of the following evidence: Davey closed the Breyer office file by signing his secretary's initials more than a year after the tortfeasor portion of the claim had [**19] been settled; Davey concealed from the firm both the case and his negotiations with the carrier; Davey responded untruthfully to Douglass' question, "Are there any other cases like the Bryant case?"; and Davey had the correspondence and settlement check sent to his home address. The Commission concluded that Davey intended to convert the entire fee and was thwarted in his effort only because the settlement check was made payable to the firm, not him.

We note that Davey testified that he closed the Breyer office file because the tortfeasor claim was completed and that he had in other cases signed his secretary's initials to closed files. He testified that he did not conceal the file, that it was listed as a closed file on the case list reviewed by the partners. He concealed the negotiations in order "to keep my options open," presumably in case the firm tried to shortchange him under the termination agreement. He testified that he never intended to permanently deprive the firm of the entire fee. All parties agree that Davey voluntarily disclosed the Breyer settlement to the firm on December 21, 1984, and relinquished the check to the firm's account.

The Commission's theory of wrongdoing [**20] turns upon its conclusion that Davey was thwarted in his effort to convert the fee only by the fact that the settlement check was made payable to the firm instead of to Davey. Yet, this conclusion is unsupported by the record. The Commission never introduced a copy of the check into evidence to show to whom it was payable, and instead relied on the testimony of Cooper and Douglas. The record shows that when Cooper was questioned by Davey's lawyer Cooper testified that he could not certify that he ever saw the check:

> [*405] Q. Do you remember seeing the Breyer draft?
>
> A. I can't tell you, Mr. Barkas, that I have an independent recollection that I saw it. But I think I can tell you that if I followed my ordinary routine and practice, I most likely did see it at some time.
>
> Q. Before it would have been deposited?
>
> A. I don't know. I may have seen a copy or what, I just don't know. If it was a draft that came into the firm that was a big one like that, I would usually take a peek at it just to look at it.
>
> Q. You are guessing? You don't know?
>
> A. That's my routine. I can't tell you independently that I actually looked at the draft.

And then several minutes later in [**21] response to a question by a member of the Commission, Cooper inexplicably said the exact opposite--that he did see a copy of the check, and it was payable to the firm.

> JUDGE GILLMAN: But the main question that I was going to ask you before . . . which is the draft of December 21st in the Breyer case, to whom was that draft from the insurance company, from GEICO, made payable?
>
> THE WITNESS: I do not have it in front of me, but I have seen a copy of it, and my recollection is that it was made payable to the client and to the law firm.

Cooper was not questioned concerning his change in testimony.

The only other testimony on this point on which the Commission could have relied was that of Douglass. The record shows that his testimony is no more conclusive than that of Cooper:

Q. But at some point in time, did you thereafter learn that there was a Breyer case and that that case had, in fact, been settled?

A. Yes, I learned from the events that a draft made payable to the firm was being presented by Davey involving this case, which I knew nothing about.

. . . .

Q. The bank draft in the Breyer case, you didn't see that, did you?

A. I don't know that I **[**22]** ever saw it. I could have. I could have even been the one that signed it.

Q. But you don't have any specific recollection of seeing it?

A. No. I think I did see a copy of it.

Testimony before the Commission on this point is indecisive, confused, and contradictory--a far cry from the level of proof required to establish a fact by clear and convincing evidence: "***HN6*** The facts to which the witnesses testify must be distinctly remembered; the details in connection with the transaction must be narrated exactly and in order; the testimony must be clear, direct and weighty, and the witnesses must be lacking in confusion as to the facts at issue." *Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)* (quoting *Nordstrom v. Miller, 227 Kan. 59, 605 P.2d 545, 552 (Kan. 1980))*.

The record fails to support the Commission's finding that the settlement check was made payable to the firm rather than Davey. Absent this key finding, the Commission's ultimate finding that Davey intended to convert the entire Breyer fee is not supported by clear and convincing evidence in the record. We disapprove the Commission's **[**23]** findings on this issue.

IV. LACK OF CANDOR

The Commission, as a constitutional body charged with the duty to investigate the state judiciary, has a right to expect absolute candor from the judges appearing before it. Where a judge admits wrongdoing and expresses remorse before the Commission, this candor reflects positively on his or her present fitness to hold office and can mitigate to some extent a finding of misconduct. *See, e.g., In re Byrd, 511 So. 2d 958 (Fla. 1987)*. Simply because a judge refuses to admit wrongdoing or express remorse before the Commission, however, does not mean that the judge exhibited lack of candor. Every judge who believes himself or herself truly innocent of misconduct has a right--indeed, an obligation--to express that innocence to the Commission, for the Commission above all is interested in seeking the truth.

[*406] The parties direct us to no Florida case defining the circumstances under which lack of candor before the Commission can be used as a basis for the reprimand or removal of a judge. In light of the subjective nature of such a finding and its serious consequences, we set forth the following guidelines.

[24]** First, ***HN7*** only where lack of candor is formally charged and proven may it be used as a basis for removal or reprimand. [3] The Commission's own rules provide that if that body finds probable cause to proceed against a judge, the judge *shall be* notified of all charges that may result in removal or reprimand:

[25]**

RULE 7. FORMAL CHARGES--PROCEEDINGS

(a) If the Commission finds probable cause that formal charges should be filed against the judge . . . . it shall direct Counsel to cause to be served on the judge a copy of Notice of Formal Charges. . . .

(b) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege essential facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him . . . .

[3] *See, e.g., In re Leon, 440 So. 2d 1267 (1983)* (judge removed after being formally charged with making false statements to the Commission). *Cf. Bernal v. Department of Professional Regulation, 517 So. 2d 113 (Fla. 3d DCA 1987)* (order revoking medical license reversed where lack of candor before hearing officer was not formally charged). ***But cf.*** *The Florida Bar v. Barket, 633 So. 2d 19 (Fla. 1994)*(lawyer disbarred after Florida Supreme Court found he exhibited lack of candor at criminal trial, even though lack of candor was not charged in Bar proceeding); *The Florida Bar v. McKenzie, 581 So. 2d 53 (Fla. 1991)* (lawyer disbarred after testifying in "shocking and incredible" manner before the referee, even though lack of candor was not charged).

Fla. Jud. Qual. Comm'n R. 7. The judge *shall have* the right and opportunity to defend against the charges:

> RULE 16. PROCEDURAL RIGHTS OF JUDGE
>
> (a) A judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by attorney(s), and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

Fla. Jud. Qual. Comm'n R. 16.

We see no reason to treat lack of candor differently from any other charge that the Commission investigates. **[**26]** Indeed, given the consequences that attach to a finding of lying under oath, every judge has a right to expect adequate notice and an opportunity to be heard on this issue.

Where a judge demonstrates lack of candor in testifying before the Commission, that body is free to file an amended notice of formal charges embracing the misconduct. *In re Leon, 440 So. 2d 1267 (Fla. 1983)*. Formal charges permit the judge to prepare and present a defense, and this in turn gives the Commission an opportunity to evaluate evidence it might otherwise have overlooked in its quest for the truth. More important, though, it gives this Court a chance to perform its constitutional duty by reviewing, evaluating, and weighing both sides of the issue.

Second, ***HN8*** discipline based on lack of candor may be imposed only where the Commission makes particularized findings on specific points in the record. Again, this is necessary to facilitate our review. Without such findings, this Court is left to guess at which points in the record the Commission believed the judge was untruthful and in what manner he or she lied. In short, we are deprived of the benefit of the Commission's eyes and **[**27]** ears. As a reviewing body, we possess limited insight into such subjective matters as a witness's sincerity, demeanor, or tone, or the comparative credibility of competing witnesses. Without the Commission's insight, we can do little more than take a stab in the dark on such matters.

And finally, ***HN9*** the lack of candor must be knowing and willful. *See, e.g., In re Berkowitz,* **[*407]** 522 So. 2d 843 (Fla. 1988). It is not enough that the Commission finds a particular judge's version of events unworthy of belief, or finds the testimony of another witness more credible or logical. If such were the case, then every judge who unsuccessfully defends against a charge of misconduct would be open to a charge of lack of candor. Rather than showing simply that a judge made an inaccurate or false statement under oath, the Commission must affirmatively show that the judge made a false statement that he or she did not believe to be true. *Cf. § 837.02, Fla. Stat.* (1993) ("Whoever makes a false statement, which he does not believe to be true, under oath in an official proceeding in regard to any material matter shall be guilty of [perjury]."). The statement must concern **[**28]** a material issue in the case.

In the present case, the Commission found Davey's testimony "not to be worthy of belief," found that Davey "lied under oath to the Commission," and concluded that "Judge Davey has compounded his original misconduct by appearing before the Commission and attempting to explain his conduct through testimony that the Commission finds to be false in material respects." Presumably, the Commission's recommendation of removal was based in part on these findings and this conclusion.

The Commission, however, lodged no formal complaint against Davey charging him with lack of candor in testifying before that body. Further, the Commission failed to make particularized findings on specific points in Davey's testimony to facilitate our review. And finally, the Commission failed to show that Davey knowingly and willfully made a false statement under oath that he did not believe to be true in asserting his innocence before that body. Although Davey concealed the Bryant fee from his former partners, he admitted that fact to the Commission and explained why he did it. And although his actions were clearly ill-advised, evidence presented before the Commission falls short **[**29]** of clear and convincing proof that Davey *deliberately* testified untruthfully at any point. We disapprove the Commission's findings and conclusion on this point.

V. THE LAW GOVERNING FITNESS

Article V, section 12, Florida Constitution, states that two sanctions are available to this Court for dealing with judicial misconduct--reprimand or removal.

> ***HN10*** Upon recommendation of two-thirds of the members of the judicial qualifications commission,

the supreme court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office. . . .

Art. V, § 12(f), Fla. Const.

HN11 This Court has established mandatory standards governing the conduct of Florida judges by which fitness may be measured. Canons 1 and 2A of the Florida Code of Judicial Conduct provide:

CANON 1

HN12 A Judge Should Uphold the Integrity and

Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, **[**30]** maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

HN13 A Judge Should Avoid Impropriety and the

Appearance of Impropriety in

All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Fla. Code Jud. Conduct, Canons 1, 2A.

This Court has noted in caselaw the heavy duty placed on judges to uphold the integrity of their office:

HN14 **[*408]** Lawyers are disbarred only in cases where they commit extreme violations involving moral turpitude, corruption, defalcations, theft, larceny or other serious or reprehensible offenses. Judges should be held to even stricter ethical standards because in the nature of things even more rectitude and uprightness is expected of them. But they too should not be subjected to the extreme discipline of removal except in instances where it is free from doubt that they intentionally committed serious and grievous wrongs **[**31]** of a clearly unredeeming nature. The judge should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. He should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In re LaMotte, 341 So. 2d 513, 517-18 (Fla. 1977).

HN15 We have removed judges where their conduct demonstrated a present unfitness to hold office. *See, e.g.*, In re Graham, 620 So. 2d 1273 (Fla. 1993) (judge removed for abuse of power) *cert. denied*, 114 S. Ct. 1186, 127 L. Ed. 2d 537 (1994); In re Garrett, 613 So. 2d 463 (Fla. 1993) (judge removed for shoplifting TV remote control device); In re LaMotte, 341 So. 2d 513 (Fla. 1977) (judge removed for charging personal air transportation on a state air travel card). And we have declined to remove judges where the conduct was mitigated by other circumstances or otherwise failed to demonstrate present unfitness. *See, e.g.*, In re Fowler, 602 So. 2d 510 (Fla. 1992) **[**32]** (judge not removed for furnishing false information concerning a traffic accident where this was an isolated act).

In the present case, we find that Judge Davey violated Canon 1 of the Florida Code of Judicial Conduct in his handling of the Bryant case after he had been elected to judicial office--i.e., he failed to observe a high standard of conduct that would preserve the integrity and independence of the judiciary. We further find that he violated Canon 2A by the same conduct--i.e., he failed to conduct himself in a manner that would promote public confidence in the integrity and impartiality of the judiciary. We approve the Commission's recommendation that Davey be found guilty of violating these canons. We must now determine whether this misconduct renders Davey unfit to perform judicial duties.

VI. FACTORS AFFECTING FITNESS

HN16 In determining fitness to hold judicial office, this Court looks at the relevant circumstances surrounding each particular act of misconduct. Substantive violations of the Florida Code of Judicial Conduct weigh heavily

against a judge. In the present case, as noted above, Judge Davey violated Canons 1 and 2A. His violations were substantive and deserving [**33] of substantial discipline.

In counterpoint to this misconduct, extensive testimony attesting to Davey's good character and high integrity was presented before the Commission. The Commission noted the following in its report:

> Judge Davey called as character witnesses Stephen C. O'Connell, former Chief Justice of the Florida Supreme Court and former President of the University of Florida; C. DuBose Ausley, a Tallahassee attorney, former member of the Florida Ethics Commission and a member of the Board of Regents; Judge J. Lewis Hall, Jr., Circuit Judge, Second Judicial Circuit; Judge Phil Padovano, Chief Judge, Second Judicial Circuit; and offered the affidavits of Roosevelt Randolph, a member of The Florida Bar; John F. Harkness, Jr., Executive Director of The Florida Bar; and Nancy Daniels, Public Defender for the Second Judicial Circuit. Each of the four character witnesses appearing before the Commission testified that Judge Davey's reputation for truth and veracity was good. Mr. Ausley and Judge Padovano also testified that, in their opinion, Judge Davey was presently fit to serve and Judge Hall testified that, in his opinion, Judge Davey was well qualified to serve. Messrs. [**34] Randolph and Harkness, in their affidavits, stated that, in their opinion, even if the charges were true, they do not affect Judge Davey's present fitness to serve as a judge. Ms. Daniels, in her affidavit, stated that, in her opinion, the charges were too [*409] remote and that she knew of nothing that affected Judge Davey's present fitness to sit as a judge.

Specific testimony before the Commission included the following:

> --"I think Kevin's reputation is an excellent one, as an honest, capable, hard-working judge, highly ethical. He is well respected by lawyers, other judges and by those people in the community who know him."--Stephen C. O.Connell, former Chief Justice of the Florida Supreme Court.
>
> --"Judge Davey I found to be a very competent judge, who was fair, honest. He ruled promptly. He was very impartial in his rulings. He worked hard. My experience is that he is well prepared, and treats all parties and all lawyers with respect and impartiality."--DuBose Ausley, former Chairman of the Florida Ethics Commission.
>
> --"[Judge Davey has] a reputation for being a truthful man of integrity. . . . I have worked with Judge Davey, I have seen his work, I am familiar with [**35] his work. I know the time of deliberation and how he sweats over those cases . . . ."--Judge J. Lewis Hall, Jr.

In addition to this testimonial evidence of present fitness, we note the following extenuating circumstances:

> --Davey's misconduct was not directly related to the office of judge. The conduct did not involve clients or the courts.
>
> --The conduct in issue was remote in time. It took place nearly a decade ago. The Commission did not file charges until nine years after the conduct took place.
>
> --The misconduct took place in a highly-charged emotional atmosphere. Davey was in the midst of a bitter law firm breakup involving a great deal of animosity on both sides. The breakup generated a lock-out letter and two civil lawsuits spanning many years.
>
> --The misconduct was an isolated incident. Davey's record before and after the conduct in issue is spotless. The record shows no prior complaints filed with The Florida Bar or the Commission. Nor does the record show any filed since.

VII. CONCLUSION

The Commission showed by adequate proof that Judge Davey committed misconduct in his handling of the Bryant case after being elected to judicial office. He violated [**36] Canons *1* and 2A of the Florida Code of Judicial Conduct by misrepresenting the merits of the case to his former partners, and by concealing the negotiations, settlement, and fee.

The Commission, on the other hand, failed to show by adequate proof that Davey committed misconduct in his handling of the Breyer case. Further, the Commission

failed to show that Davey deliberately made false statements before that body.

Davey's misconduct is serious and deserving of substantial discipline. We do not believe, however, it calls for removal in light of the extenuating circumstances noted above. The record fails to show that Judge Davey is presently unfit to perform judicial duties. Rather, the record suggests that his misconduct was an isolated incident--an aberration--produced by the highly-charged law firm breakup.

If Davey's conduct were truly evidence of a character flaw affecting fitness, we believe that some hint of this flaw would have surfaced in the many intervening years of rigorous and oftentimes stressful judicial assignments. Yet, no such evidence was presented before the Commission. Instead, virtually every piece of evidence on the subject contained in the record shows just the **[**37]** opposite--that Davey is an excellent, extraordinarily hard-working judge, who has compiled a spotless record over nearly a decade of public service. Davey's boss, Chief Judge Philip Padovano of the Second Judicial Circuit, after attesting to Davey's reputation for truth and veracity, concluded: "He's probably the hardest working judge we have in the whole circuit."

We do not believe that public confidence in the integrity of the judiciary will be eroded if Judge Davey remains on the bench. No evidence showing this was presented before the Commission. Instead, virtually all the evidence on this subject contained in the **[*410]** record shows just the opposite--that the public and legal profession continue to regard Judge Davey highly. It is our abiding belief that public confidence in the judiciary is best served by the fair application of the law.

This case is analogous to that of attorney Harry King. *See* *The Florida Bar v. King*, 174 So. 2d 398 (Fla. 1965). The Florida Bar charged King with testifying untruthfully before a grand jury eight years earlier during a heated bid for presidency of the Florida Senate. This Court approved the finding of guilt, but noted **[**38]** that "disciplinary . . . proceedings should be handled with dispatch." *Id.* at 403. We approved the following recommendation of the referee:

> "If this matter had been brought before me shortly after the acts of misconduct, I believe that I would have unhesitatingly recommended disbarment for a substantial period, if not permanently. However, the situation has been drastically changed by the lapse of time and the actions of the respondent in the interim. The misconduct took place over eight years ago. It is the only act of misconduct ever attributed to the respondent. Before and since that time, he has conducted himself in an exemplary fashion and earned and retained the confidence of the Bench and Bar of his circuit. Under these circumstances, to recommend either disbarment or suspension would accomplish no worthy objective."

Id. at 402. We concluded that a public reprimand would be appropriate discipline for King:

> In spite of the respondent's gross misconduct of nine years ago, we believe that by his subsequent exemplary conduct he has earned the right to continue to serve his profession. We believe that he will **[**39]** at all times in the future conduct himself in such manner as to rectify, insofar as he can, the blemish that he has placed upon his record.

Id. at 404.

Based on the foregoing, we find a public reprimand appropriate discipline under the facts of this case. We hereby reprimand Judge P. Kevin Davey for the actions noted above.

It is so ordered.

OVERTON, SHAW and KOGAN, JJ., and McDONALD, Senior Justice, concur.

HARDING, J., concurs with an opinion.

GRIMES, C.J., dissents with an opinion.

Concur by: HARDING

Concur

HARDING, J., concurring.

I concur with the majority that Judge Davey violated Canons *1* and 2A of the Florida Code of Judicial Conduct in connection with the Bryant matter. Further, I concur that a public reprimand is the appropriate sanction. In addition to the reasons set forth by the majority, I reach this conclusion in large part because the conduct which brought Judge Davey before the JQC was known before he ever took judicial office and has never been

concealed since he took office. Even though this conduct was public knowledge, it was not brought before the JQC until nine years later.

I recognize that there is no statute of limitation on actions **[**40]** relating to judicial discipline. Yet, I am persuaded that a reprimand is the appropriate sanction in this case primarily because of the delay in bringing these charges. The matters which caused Judge Davey to be called before the JQC have been the subject of civil litigation over the years. Although the record is silent as to why there was such a delay in bringing the charges against Judge Davey, it has been suggested that the civil litigation had not concluded. If this is in fact the case, I find it unseemly. The pendency of civil litigation would not have tolled a statute of limitation for criminal charges.

Judge Davey was found guilty of misrepresentation and he, in effect, admitted his guilt. I agree with the majority that this is an isolated case. Had it been the result of a character flaw, it would have evidenced itself elsewhere over the years. Yet, it is troublesome to know that a judge has been guilty of being less than candid and honest. As the majority notes, we have ruled that judges are held to a higher standard than lawyers. Majority op. at 22; *In re LaMotte, 341 So. 2d 513, 517-18* **[*411]** (Fla. 1977). Even so, I find no reason that the concept **[**41]** of rehabilitation embodied in the Florida Bar Admission Rules and the Rules Regulating the Florida Bar should not apply here. Persons not admitted to the Bar because of a lack of candor or misrepresentation are allowed to reapply after a period of two to five years. Fla. Bar Admiss. R., art. III, § 4d. (applicant may petition Court two years after adverse finding by Board of Bar Examiners, but where applicant has made material misrepresentations or false statements in application process Board has discretion to extend that period up to five years). The rules even set forth the criteria to be used in determining whether the applicant has been rehabilitated. *Id.* at § 4e. In addition, a person who has been disbarred is permitted to apply for readmission after five years and permitted to show proof of rehabilitation. *R. Regulating Fla. Bar 3-7.10(a)*. While there is no certainty that such an applicant will be admitted to the Bar, the existence of these procedures in the rules evidences a belief that persons guilty of misrepresentation may be able to rehabilitate themselves. Here, the evidence of Judge Davey's' rehabilitation is overwhelming. Majority op. at 24-25.

Notwithstanding the **[**42]** above, I still find Judge Davey's conduct to be very serious. I concur with majority's analogy of this case to *The Florida Bar v. King*, 174 So. 2d 398 (Fla. 1965). Majority op. at 27-28. Had this charge been timely brought against Judge Davey, I would be inclined to remove him from office. As troublesome as the delay in bringing these charges has been to Judge Davey, to the JQC, and to this Court, that delay has worked in Judge Davey's favor. Because of the delay, Judge Davey has been able to show his present fitness to continue in office in a way that would not have been possible if the charges had been timely brought. I find that Judge Davey's present fitness mitigates the appropriate sanction to a reprimand. GRIMES, C.J., dissenting.

The Judicial Qualifications Commission made findings that through deceit and misrepresentation Judge Davey intended to convert the entire Bryant and Breyer fees to himself. If Judge Davey engaged in such conduct, he is not presently fit to hold office despite his unblemished judicial record. While some of the testimony is in conflict or subject to differing interpretations, there is clear and convincing evidence in the **[**43]** record to support the commission's findings. Therefore, I am compelled to conclude that Judge Davey should be removed from office.

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 10.a.

NEW BUSINESS

Town Management Services Request for Proposal

TOWN OF LOXAHATCHEE GROVES

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2015-009

TO: Mayor David Browning
Members of the Town Council

CC: William Underwood, Town Manager
Janet Whipple, Town Clerk
Jacob Horowitz, Assistant Town Attorney

FROM: Michael D. Cirullo, Jr., Office of the Town Attorney *MDC*

DATE: June 29, 2015

RE: Town of Loxahatchee Groves/Town Manager Request for Proposals 2015

At its June 16, 2015, meeting, the Town Council adopted a motion to direct the issuance of a Request for Proposal (RFP) for Town Management Services. This office had coordinated the 2011 RFP for Town Management Services and provided the 2011 documents to the Town shortly after the June 16, 2015, meeting.

On June 22, 2015, the Town's Finance and Audit Advisory Committee (FAAC) met and discussed the proposed RFP. Notes of that meeting were provided to the Town Attorney's Office on June 23, 2015.

This office has updated the 2011 documentation for review by the Town Council at its July 7, 2015, meeting. Attached please find:

1. Draft of the Request for Proposals
2. Form of Professional Services Agreement
3. June 25, 2015 Proposal from Deming & Associates

Request for Proposal:

The draft RFP is red-lined to reflect changes from the 2011 RFP. Note the following:

- In 2011, the Town contracted with Philip S. Deming & Associates to complete a background check on proposers. This was accomplished through an Addendum. This office contacted Mr. Deming, received a proposal for services for the 2015 RFP, and included the information sheet in the initial RFP as an Appendix. A copy of the proposal will be provided separately.
- In 2011, the Town received some questions relating to Town equipment and software. That information should be updated and inserted in the RFP.

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- A copy of the form Professional Services Agreement is included in the RFP packet.

The following information must be confirmed and/or updated in order to final the RFP for issuance:

1. Clarification of FAAC recommendation of planning and zoning matters.
2. List of Town's current software.
3. List of Town's current hardware.
4. The manner in which the Town backs up its data.
5. Confirmation of the proposed RFP schedule (see below).
6. Whether the effective date of the Agreement should be prior to October 1, 2015, to provide some transition time for selected Responder.
7. Whether the Town Council desires to engage Deming and Associates to run the background checks on Responders as was done in 2011.
8. Who will be responsible for advertising the RFP, and where should it be advertised.

Proposed Schedule for RFP process:

Review of RFP and Direction from Council	Tuesday, July 7, 2015*
Issuance of RFP	Friday, July 10, 2015
Deadline to Submit Questions to Town Attorney:	Monday, July 27, 2015
Responses to Questions from Town Attorney	Friday, July 31, 2015
Responses to RFP Due (Town Hall, 2:00 pm)	Thursday, August 6, 2015
Shortlist of submittals by Town Council (if necessary)	Wednesday, August 12, 2015* ++
Presentations and selection of top ranked responder	Tuesday, August 18, 2015*
Award/Approval of Contract	Tuesday, September 1, 2015*

* Town Council meetings

NOTE: Need sufficient time between shortlisting and presentation/selection. Also need sufficient time between selection and approval of contract.

++ If Town receives less than seven (7) proposals, then no shortlisting, the August 12, 2015, meeting will be cancelled and all Responders will present at the August 18, 2015, meeting.

If you have any questions or need any additional information, please do not hesitate to contact me.

MDC

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of the ___ day of _____, 2015, by and between the **TOWN OF LOXAHATCHEE GROVES**, a Florida municipal corporation organized and operating pursuant to the laws of the State of Florida, with a business address of 155 F Road, Loxahatchee Groves, Florida 33470 ("Town") and _____**,** a Florida _____ company with a business address of _____.

WITNESSETH:

WHEREAS, _____ was organized to provide professional management and other specialized services to the Town and, for those purposes, the Town has retained _____ to provide those services to the Town; and

WHEREAS, _____ desires to be retained by the Town for the purpose of providing Town Manager services to the Town, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation. The foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2. Retention of _____.

(a) Subject to the terms and conditions of this Agreement, the Town hereby retains _____ to provide the Services (hereinafter defined) commencing on October 1, 2015 (the "Commencement Date") and _____ hereby agrees to provide the Services to the Town. For purposes hereof, the "Services" shall mean the exercise and discharge of all of the powers, authority, duties and responsibilities of the Town Manager of the Town as such powers, authority, duties and responsibilities are set forth in the Town Charter of the Town (the "Town Charter"), including those services described in the Scope of Work which is attached hereto as **Exhibit "A".**

(b) The Services include providing a Town Manager on a full-time basis, Town Clerk and clerical staff during Town business hours, and financial services required by the Town as provided in the Scope of Work attached hereto as **Exhibit "A".**

(c) Beginning on the Commencement Date and continuing during the Term (hereinafter defined), _____ shall perform the Services in compliance with all applicable federal, state and local laws associated with the position of Town Manager of a Florida municipality.

(d) The Town agrees that, to the fullest extent permissible under the law, in performing the Services, _____ shall be entitled to all the rights, privileges and immunities afforded to individuals serving in the capacity of Town Manager of a Florida municipality pursuant to the United States Constitution, the Florida Constitution and all Federal, state and local laws and regulations.

(e) In connection with the retention of _____ as described in this Agreement, it is the express intent of the Town to have the individuals named in _____'s response to the RFP 2015-____ serve in the capacities identified. _____ recognizes and understands that the Town is relying on the use of these individuals when contracting with _____ and, except for the Town Manager position, _____ shall advise the Town Council in writing of any changes to the assigned personnel as set forth in _____'s response to the RFP 2015-____, and the Town Council shall have the right to approve any replacements, which approval shall not be unreasonably withheld. As to the Town Manager position, such may not be changed without the advance approval of the Town Council, which may approve or reject same for any or no reason; provided that if the change is to appoint _____, approval by the Town Council shall not be unreasonably withheld.

3. Fee and Expenses.

(a) In return for the Services, _____ shall be entitled to receive from the Town **[TO BE COMPLETED BASED UPON FEE SCHEDULE/PROPOSAL FOR SELECTED RESPONDER]**

Each month during the Term, _____ shall submit an invoice for the Fee then payable by the Town. The terms of the Florida Prompt Payment Act, Florida Statute Sections 218.70-.80, are hereby incorporated herein by this reference and the Town agrees to make payment in accordance with same.

(b) Commencing on the Commencement Date and throughout the Term hereof, the Town shall make available to _____, at no charge, offices, facilities, equipment and supplies as appropriate to enable _____ to perform the Services as Town Manager. _____ agrees that such offices, facilities, equipment and supplies shall be used solely for the Services, and shall not be used for any other services or purposes of _____.

(c) _____ shall be responsible for payment of all fees and/or costs associated with maintaining professional designations, certifications or licenses of any individuals required to possess a professional designation, certification or license by the Town Charter or the RFP 2015 , subject to appropriation by the Town Council. _____ may request that any fees and/or costs associated with maintaining professional designations, certifications or licenses under this section be reimbursed by the Town by application to the Town Council for reimbursement, which the approval or denial of a request for reimbursement will be in the discretion of the Town Council.

4. Term; Termination. The initial term of this Agreement (the "Initial Term") shall commence on the Commencement Date hereof and shall continue up to and including September 30, 2018, subject to the right of the parties to mutually agree, in writing, to extend the Initial Term for additional one year terms (the "Renewal Term") in each case subject to the right of earlier termination as hereafter provided. A decision by the Town Council not to renew is not a termination of the agreement, or a termination of the Town Manager pursuant to the Charter. The Initial Term, together with any Renewal Term, is referred to herein as the "Term." The Town may terminate the Term of this Agreement at any time, without regard to any breach hereof by _____ and without any liability or obligation to _____, only upon sixty (60) days prior written notice, and subject to the Town Charter requirements. _____ may terminate the Term of this Agreement at any time, without regard to any breach hereof by the Town and without any liability or obligation to the Town, upon one hundred twenty (120) days prior written notice to the Mayor of the Town and the Town Council. In the event of a termination by either party under this paragraph, _____ shall be entitled solely to payment of fees accrued but not yet paid through the date of termination. The rights and obligations of the Town and _____ that arise prior to expiration of the Term, including the Town's obligation to pay to _____ any earned and unpaid portion of the Fee, shall survive any termination or expiration of the Term of this Agreement.

5. Representations, Warranties and Covenants of _____ and the Town.

(a) _____ hereby represents and warrants that (i) it is a Florida limited liability company, duly organized, existing and in good standing under the laws of the State of Florida; (ii) it has the legal power and authority to enter into this Agreement and that the execution, delivery and performance of this Agreement has been duly authorized by _____; (iii) it has the professional expertise, experience and personnel to enable it to perform the Services; and (iv) it possesses any and all licenses or certifications required to perform the Services, that such licenses or certifications are current and that _____ is and shall be in good standing with respect to such requirements throughout the Term of this Agreement.

(b) _____ shall not commence performance hereunder until all insurance required under Sections 5(c) hereof and such insurance has been confirmed by the Town, nor shall _____ allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and approved.

(i) Certificates of Insurance reflecting evidence of the required insurance shall be filed with the Town's Attorney prior to the Commencement Date. These Certificates shall contain a provision that coverages afforded under these policies will not be cancelled until at least forty-five days (45) prior written notice has been given to the Town. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than "A-VI" in the latest edition of "Best Key Rating Guide", published by A.M. Best Guide.

(ii) Insurance shall be in force until the obligations required to be fulfilled under the terms of the Agreement are satisfied. In the event the insurance certificate

provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, _____ shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. _____ shall not commence nor continue to provide any Services pursuant to this Agreement unless all required insurance remains in full force and effect. _____ shall be liable to Town for any lapses in service resulting from a gap in insurance coverage.

(c) Pursuant to Section 5(b) hereof, during the Term _____ shall obtain and maintain the following minimum insurance:

(i) Errors & Omissions Coverage for Directors and Officers with a $1,000,000 limit

(ii) Worker's Compensation Insurance for all _____ employees, with the following limits:

A. Worker's Compensation Statutory Limits
B. Employer's Liability $500,000 each accident
$500,000 Disease-policy limit
$500,000 Disease-each employee

If _____ is or claims to be exempt from all or a portion of this requirement of Section 5(c)(ii), _____ shall provide Town proof of such exemption along with a written request on _____ letterhead for Town to exempt _____, which exemption shall not be unreasonably withheld.

(iii) Comprehensive Auto Liability coverage which shall include owned, hired and non-owned vehicles, with the following limits:

A. Bodily Injury
1. Each Occurrence $100,000
2. Annual Aggregate $500,000

B. Property Damage
1. Each Occurrence $100,000
2. Annual Aggregate $500,000

(iv) _____ is required to post a Dishonesty Bond or its equivalent, as shall be determined to be necessary by the Town, in an amount equal to $1,000,000.00 with a deductible of no more than $5,000.00.

(d) _____ shall name the Town as an additional insured on each of the policies required herein, and provide a certificate of insurance to the Town evidencing such coverages.

(e) The Town hereby represents and warrants that (i) it is duly organized and validly existing as a municipal corporation of the State of Florida; (ii) it has the legal power and authority to enter into this Agreement; and (iii) the execution, delivery and performance of this Agreement has been duly authorized by the Town Council.

(f) All required insurance shall be an expense of _____.

(g) Notwithstanding any other provision of Section 5 herein, in the event that _____ certifies in writing to the Town Council that it is unable to obtain the insurance coverages required by Section 5(c), _____ shall obtain the maximum available insurance coverage for each required category of insurance. If evidence of an available higher insurance coverage than that obtained by _____ is presented to _____, _____ shall obtain the higher insurance coverage up to those amounts required in Section 5(c).

6. Indemnification.

(a) _____ hereby indemnifies and holds harmless the Town, its elected and appointed officers, agents and employees from and against any and all claims, demands or causes of action of whatsoever kind or nature, and any losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the Town, its elected and appointed officers, agents and employees arising out of or resulting from the grossly negligent acts, or willful or fraudulent conduct of _____ or other _____ personnel performing the Services or otherwise arising from this Agreement.

(b) To the extent not prohibited by Florida law or inconsistent with the Town's sovereign immunity rights as contained in Section 768.28, Florida Statutes, Town hereby indemnifies and holds harmless _____, its managers and appointed officers, agents and employees from and against any and all claims, demands or causes of action of whatsoever kind or nature, and any losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by _____, its managers and appointed officers, agents and employees arising out of or resulting from grossly negligent acts, or willful or fraudulent conduct of the Town or other Town officials arising from this Agreement.

(c) Each party acknowledges the receipt of Ten Dollars ($10.00) and other good and valuable consideration as the specific consideration for the indemnities provided by each party herein.

(d) The provisions of this Section shall survive the termination or expiration of the Term of this Agreement.

7. Miscellaneous.

(a) *Notices*. Any and all notices permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice and shall be delivered personally, telecopied, telexed, or sent by certified mail or overnight mail via nationally

recognized courier service (such as Federal Express), to the other party at the address set forth below, or at such other address as may be supplied in writing and of which receipt has been acknowledged in writing. The date of personal delivery, telecopy or telex or two (2) business days after the date of mailing (or the next business day after delivery to such courier service), as the case may be, shall be the date of such notice. For the purposes of this Agreement the address of the Town and _____ shall be as follows:

To _____: _____
c/o _____ , Manager
(address)

Telephone No.
Facsimile No.

To Town: David Browning, Mayor
155 F Road
Loxahatchee Groves, FL 33470
Telephone No. (561) 793-2418
Facsimile No. (561) 793-2420

With copy to: Office of the Town Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (561) 276-9400
Facsimile No. (954) 771-4923

or to such other address or such other person as any party shall designate, in writing, to the other for such purposes and in the manner hereinabove set forth.

(b) *Entire Agreement*. This Agreement sets forth all the promises, covenants, agreements, conditions and understandings between the parties hereto, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, expressed or implied, oral or written, except as herein contained.

(c) *Amendment*. The parties hereby irrevocably agree that no attempted amendment, modification, termination, discharge or change (collectively, "Amendment") of this Agreement shall be valid and effective, unless the Town and _____ shall agree in writing to such Amendment.

(d) *No Waiver*. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

(e) *Headings*. The headings set forth in this Agreement are for convenience only and shall not be considered as part of this Agreement in any respect nor shall they in any way affect the substance of any provisions contained in this Agreement.

(f) *Governing Law*. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, and any proceeding arising between the parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be held in Palm Beach County, Florida.

(g) Relationship of Parties. This Agreement does not create an employee/ employer relationship between the parties. It is the intent of the parties that _____ is an independent contractor under this Agreement and not the Town's employee for any and all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. _____ shall retain sole and absolute discretion in the judgment of the manner and means of carrying out its activities and responsibilities hereunder. _____ agrees that it is a separate and independent enterprise from the Town, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between _____ or other _____ personnel and the Town, and the Town will not be liable for any obligation incurred by _____ or other _____ personnel, including but not limited to unpaid minimum wages and/or overtime premiums.

(h) *Extent of Agreement.* This Agreement represents the entire and integrated agreement between the Town and _____ and supersedes all prior negotiations, representations or agreements, either written or oral.

(i) *Legal Representation.* It is acknowledged that each party to this Agreement had the opportunity to be represented by legal counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

(j) *Amendment.* It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

(k) *No Contingent Fees.* _____ warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for _____ to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the Town shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

(l) *Assignment.* This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by _____ without the prior written consent of the Town.

(m) *Records*. Both Parties shall keep, maintain and preserve books and records for the required retention periods, as provided by Ch. 119, F.S., as amended from time to time.

(n) *Exhibits.* Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

(o) *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same instrument.

(p) *Provisions Severable*. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations of the jurisdictions in which the parties do business. If any provision of this Agreement, or the application thereof to any person, entity or circumstance shall, for any reason or to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons, entities or circumstances shall not be affected thereby, but rather shall remain in full force and effect, and be construed and enforced to the greatest extent permitted by law as if such invalid or unenforceable provision(s) were omitted.

(q) *Public Records*. _____ shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, _____ shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service;

2. Provide the public with access to such public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;

3. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

4. Meet all requirements for retaining public records and transfer to the Town, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the agency.

The Town shall have the right to immediately terminate this Agreement for the refusal by the _____ to comply with Chapter 119, Florida Statutes. The _____ shall retain all records associated with this Agreement for a period of five (5) years from the date of expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

By:_____
David Browning, Mayor

ATTEST:

_____
Janet K. Whipple, Town Clerk

APPROVED AS TO FORM:

_____
Michael D. Cirullo, Jr.,Town Attorney

By: _____
Name: _____

STATE OF FLORIDA)
) ss:
COUNTY OF)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____ of _____, and acknowledged execution of the foregoing Agreement as the duly authorized official of _____ , to execute same, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2015.

_____
NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT "A"

SECTION I., “SCOPE OF WORK,” RFP 2015-

REQUEST FOR PROPOSAL

DATE: JULY __~~25~~, ~~2011~~2015 **RFP NO.** ~~2011~~2015-___~~006~~

ALL INTERESTED PARTIES:

The Town of Loxahatchee Groves, Florida, hereinafter referred to as the "TOWN", will receive sealed Responses at the office of the Town Office at 155 "F" Road~~14579 Southern Boulevard, Suite 2~~, Loxahatchee Groves, Florida 33470 for the services described below:

TOWN MANAGEMENT SERVICES

Sealed Responses must be received and time stamped in by the Town Clerk's Office, either by mail or hand delivery, no later than 2:00 p.m. local time on **THURSDAY~~TUESDAY~~, AUGUST 6, 2015~~23, 2011~~**. Any Responses received after 2:00 p.m. local time on said date will not be accepted under any circumstances. Any uncertainty regarding the time a Response is received will be resolved against the Offeror.

Town of Loxahatchee Groves Ordinance 2008-09 (Ordinance) governing the Town's purchasing and procurement requirements. All Responders shall be expected to be familiar with the terms and conditions of this ordinance, which is incorporated herein. To the extent of a conflict between the terms of this RFP and the Ordinance, the Ordinance shall prevail.

TOWN reserves the right to reject any or all Responses, to waive any informalities or irregularities in any Responses received, to re-advertise for Responses, to award in whole or in part to one or more offerors, or take any other such actions that may be deemed to be in the best interests of the TOWN.

~~Ann Harper~~Janet Whipple
Town Clerk, Loxahatchee Groves

I. SCOPE OF WORK

Request for Proposal (RFP) for Town Management Services
The Town of Loxahatchee Groves is requesting responses from firms and individuals ("Respondents") to provide Town Management services for the Town of Loxahatchee Groves. The scope of services includes all services as outlined in this Request for Proposal.

TOWN MANAGER:

Qualifications for Town Manager as directed by the Town Charter:

1) The Town Manager shall have the minimum qualifications of a combination of a bachelor's degree in public administration, business administration, or other related fields from an accredited college or university and 3 years' public administration experience or 6 years' experience in a city manager or assistant city manager position, preferably in an International City/ County Management Association-recognized local government.
2) It is preferred that the Town Manager be an International City/County Management Association-credentialed manager or obtain such credential within 2 years after being appointed.
3) The Town Manager will not be an employee of the Town. All Town Management Services will be through a Contract for Town Management Services with the Town Council.
4) The Town Manager shall have completed the National Incident Management System-Federal Emergency Management Agency (NIMS-FEMA) courses ISO 100 and ISO 700.

Town Charter Description of Duties for Town Manager:

1) As the chief administrative officer, the Town Manager shall:
    a. Direct and supervise the administration of all departments, offices, and agencies of the town, except the office of town attorney, and except as otherwise provided by this charter or by law.
    b. Appoint, suspend, or remove any employee of the town or appointive administrative officer provided for, by, or under this charter, except the office of town attorney, and except as may otherwise be provided by law, this charter, or personnel rules adopted pursuant to the charter. The Town Manager may authorize any administrative officer who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency.
    c. Ensure that all laws, provisions of this charter, Town's Vision and acts of the council are faithfully executed.
    d. Prepare and submit the annual budget and capital program to the council in the form prescribed by ordinance.
    e. Attend meetings of the town council.
    f. Draw and sign vouchers upon depositories as provided by ordinance and keep, or cause to be kept, a true and accurate account of same.
    g. Sign all licenses issued by the town, issue receipts for all moneys paid to the Town of Loxahatchee Groves Management Team, and deposit such moneys in the proper depositories on the first banking day after receipt.
    h. Provide administrative services in support of the official duties of the mayor and the council.
    i. Keep the council advised as to the financial condition and future needs of the town and make recommendations to the council concerning the affairs of the town.

j. Sign contracts pursuant to and consistent with the authority provided by the Town's Charter and Ordinances.
k. Provide administrative and staff support to all advisory committees, and boards, formed and appointed by the Town Council.
l. Submit to the council, and make available to the public, the Town Management report on finances and administrative activities of the Town as of the end of June of each fiscal year. This Town Management Report will be part of the annual evaluation process by the Town Council.
m. Perform such other duties as are specified in this charter or as may be required by the council.

Town Manager Operational Responsibilities:

1) **Meetings**
   a. Prepares all regular, special, intergovernmental coordination and workshop meeting agendas with the Town Attorney.
   b. Coordinates all special meetings and workshops (location, preparation and legal advertising)
   ~~b.~~c. Coordinate all meetings, including preparing agendas for, all Town board and committees
2) **Contract Manager**
   a. Monitors all independent contractors on specific projects and on-going contractual agreements on behalf of the Town. Ensures proper compliance with the contract's terms and conditions.
   b. Monitors all contracts to ensure adherence to contractual obligations and report to Town Council when contract is not being fulfilled. Corrective measures will be recommended to the Town Council and enforced.
   c. Will make recommendations on any contracts should the contractual relationship change or the needs of the Town change.
   d. Serves as Contract Administrator on behalf of the Town for the Solid Waste Services Agreement between the Town and the Town's solid waste collection contractor, which at the time of this RFP is Waste Pro. Also, serves as the liaison between the residents and Waste Pro to assist and help resolve customer complaints.
   e. Serves as direct liaison between the Town and Palm Beach County Sheriff's Office. Responsible for additional enforcement for speed enforcement and other matters directed by the Town Council.
   f. Oversees grant applications on behalf of the Town, including but not limited to, the oversight of application preparation and follow-up and, in the case of granted obtained, the maintenance of the records, the providing of required reports to grant providers and auditors, and compliance with the terms of the grant.
   g. Coordinates with the Town Council, Town Attorney and the Town Finance and audit Advisory Committee to competitively bid for services and capital improvements consistent with state and county laws, and the Town's procurement Ordinance. The Town Manager shall negotiate contracts with selected vendors with terms and conditions in the best interest of the Town. The Town Manager will also review draft agreements with the Town's Finance and Audit Advisory Committee and Town Attorney as part of the final contract recommendations to the Town Council.
   h. Ensure the Town's Compliance with the requirements of the Palm Beach County Office of Inspector General (OIG) Ordinance, including providing the OIG notice of all meetings where procurement is being scheduled to be discussed, responding to OIG inquiries, and providing information as may be requested from time to

time by the OIG. The Town Manager should also use the resources of the OIG should he or she is concerned about possible violations of the OIG ordinance by Town vendors and contractors.

3) **Planning, Zoning, Building Matters**
   a. The Town has adopted its own land development code. The Town Manager is responsible administrating planning and zoning activities pursuant to the Town's land development regulation. Should such be done on a contractual basis with another entity, the Town Manager shall manage and oversee that contract.
   b. Liaison with Palm Beach County as to any agreements with the County on planning matters
   c. Should a land planning firm be contracted by the Town Council to handle all these matters on behalf of the Town, the Town Manager will manage and oversee the firm or individual that is retained to handle all Planning, Zoning, Building and Environmental Regulation matters on behalf of the Town.

Comment [g1]: "A" AND "C" CAN BE COMBINED

Comment [g2]: Comment from notes received Re: FAAC meeting

4) **Emergency Management *(coordination during an emergency/disaster)***
   a. Serves as the manager of the Town's Emergency Operations Center and performs all duties as outlined in the Town's Emergency Operations Procedure Manual. The Town Manager will be expected to be present within the Town during an emergency in order to coordinate emergency responses and services unless prohibited by law or orders of government agencies in which case the Town Manager should be located in as close proximity as he or she is safely able.
   b. Liaison with the Loxahatchee Groves CERT.
   c. Liaison with the LGWCD (Town's EOC)
   d. Serves as Manager for the Town's Point of Dispensing (POD) should the Strategic National Stockpile activate to protect public health for Palm Beach County.
   e. Liaison with PBC EOC (attends Emergency Management Meetings)
   f. Liaison with the Federal Emergency Management Agency (FEMA) and State of Florida Division of Emergency Management (FDEM)
   g. Manages and oversees the Town's Disaster Debris Removal Firms
   h. Manages and oversees the Town's Disaster Debris Removal Monitoring Contractor
   i. Liaison with Palm Beach County Solid Waste Authority
   j. Oversees any Town action and/or responses relating to post-event review by FEMA or FDEM
   k. Ensures all contractors comply with FEMA requirements, and is responsible for submitting invoices to FEMA with accompanying documentation as required for reimbursement.
   l. Keep Town Council informed of all these activities.
   m. Coordinates with the Palm Beach County Sheriff's Office, which provides law enforcement services to the Town, and Palm Beach County Fire Rescue which provides fire rescue and emergency medical services to the Town.
   n. Liaison with the Florida Division of Forestry.

5) **Code Enforcement**
   a. Manages the Town's Code Enforcement Officers
   b. Coordinates and prepares all necessary material, case files, and agendas for Code Enforcement Special Magistrate. ~~Executes all Special Magistrate Orders~~.
   c. Provides reports to the Council on Code Enforcement matters on a schedule determined by the Council.

6) **Financial**
   a. Annual Budget

i. Present the draft Budget to the Financial Advisory and Audit Committee with explanations of basis for each major line item and budget forecast. Obtain the Committee's input before recommending to the Town Council.
ii. Research, prepare and present annual budget for approval
iii. Research and propose millage rate necessary to fund the operations of the Town, consistent with state law.
iv. Meet with Town Council members and Town Attorney to finalize budget.
v. Schedule and legally advertise budget hearings (coordinate with PBC Property Appraiser's Office; Dino Maniotis)
vi. Non-Ad Valorem Assessment Preparation:
    1. Update NAV database
    2. Transmit to PBC Tax Collector's Office
vii. Coordinate with the Town Attorney on the budget and special assessment schedule of hearings, and required notices.

b. Annually review and update database and other information for:
    i. Property valuations and necessary millage rates
    ii. State of Florida 1/2 cent sales tax
    iii. State of Florida Local Option Gas Taxes (5 cent and 6 cent)
    iv. State of Florida Communications Service Tax
    v. State of Florida Revenue Sharing
    vi. Palm Beach County Water Utilities Department Franchise Fee
    vii. FPL Public Utility Tax and Franchise Fee
    viii. All other revenue sources
c. Procurement:
    i. Purchasing Agent for Town
    ii. Develop and adhere to the Town's Procurement Procedures Manual and the Town's Procurement Ordinance.
    iii. Comply with Palm Beach County OIG requirements
d. Oversees Financial Manager's daily, monthly and yearly activities
e. Coordinates financial activities with the Town's Finance and Audit Advisory Committee as directed by the Town Council. Provides administrative support to the Town's Finance Advisory and Audit Committee in the selection and recommendations of an external auditor.

7) **Town Clerk:** Manages Town Clerk's daily, monthly and yearly activities

8) **Communication with residents and landowners:**
    a. Maintains all design and content and keeps current the Town's official website.
    b. Creates, edits and produces monthly newsletters and all flyers for special meetings, workshops and events.
    c. Provide information on resident and property owner inquiries to Town Council as may be requested.

9) **Water Control District:**
    a. Work cooperatively with the Loxahatchee Groves Water Control District, including with its Administrator, and as may be directed by the Town Council.
    b. Attend the Intergovernmental Coordination Committee meetings between the Town and the Water Control District

10) **Technology:**
    a. Maintains and keeps current all software.

Note: The Town's current software is as follows:

Windows operating system

Microsoft Office & Microsoft Works
Outlook Express for email
Adobe and Nuance PDF programs
Goldwave for audios
Picasa 3 for photos
Olympus programs for audio & photos as well
Carbonite for off-site cyber storage (backs up each night)
Blackbaud SaaS

Comment [g3]: Verify and Update to current list

b. Maintains and keeps current all computer hardware

Note: The Town's current hardware is as follows:

1 Toshiba Laptop
1 HP Laptop
1 Compaq Desktop
(1 spare HP Laptop)
1 HP desktop color printer
1 HP desktop color printer/scanner/fax
1 commercial Gestetner printer/scanner
1 Dymo Label maker

Comment [g4]: Verify and Update

c. Maintains an official on-site and off-site backup of all information stored on the Town's computer.

Note: The Town currently backs up its data onsite.

Comment [g5]: Update and Verify

11) **Meetings attended by the Town Manager:** The Town Manager is expected to attend all meetings of Town committees and boards, as well as government agencies and associations. For the Fiscal Year ~~2011~~2015-2016~~2012~~, the meetings are:

Comment [mdc6]: Update and confirm

a. Town Council regular and special meetings and workshops
b. Town Finance and Audit Advisory Committee
c. Town Roadway, Equestrian Trials and Greenway Advisory Committee
d. Town Planning and Zoning Board
e. Palm Beach County League of Cities
f. Loxahatchee Groves Water Control District (LGWCD)
g. Intergovernmental Coordinating Committee (Voting Member)
h. Palms West Chamber of Commerce
i. Palms West Economic Development Task Force (Voting Member)
j. Western Communities Council
k. Palm Beach County Emergency Management Meeting (Mandatory*) (For Hurricane and Disaster Preparations; all public & private entities)
l. PBC Emergency Management-LMS (Mandatory*)
m. PBC Emergency Management-Municipalities Only (Mandatory*)
n. PBC Emergency Management- EM TEAM (Mandatory*)(Note:*Mandatory means being NIMS Compliant for FEMA funding)
o. Palm Beach County Solid Waste Authority (Town issues only)

p. Palm Beach County Water Utility Department (Town issues only)
q. South Florida Water Management District (Town issues only)
r. FDOT-SR-80 Southern Blvd. expansion project.

12) **Town Office.** Staff the Town Offices to be open Monday through Friday from 9:00 am to 4:00 pm, except government holidays as approved by the Council.

Summary of Primary Weekly Town Manager Operational Tasks:

☐**Town Council and Committee Meetings:** The Town Council conducts two regular meetings a month. The Town also has the following boards and committees:

Financial Advisory and Audit Committee
Roadway, Equestrian Trails and Greenway Advisory Committee
Planning and Zoning Board

For these meetings, the Town Management shall:

- Town Council, Committee and Board meetings: Provide staff as part of the contracted services to take minutes and perform the duties of Town Clerk during the actual meetings *(roll call and direction on agenda items)*. These minutes need to be transcribed and formatted to the Town Council, or the respective committee or board, within 2 weeks. The corrections need to be followed up as well. Once the documents are approved, they need to be certified, scanned to be put on the website then filed in the appropriate location.
- Agenda Packets. Provide staff as part of the contracted services to coordinate all backup material and research in order to construct the agenda packets. For Town Council meetings, an agenda memo needs to be written for each item with specific information so that the Town Council can be armed with the tools to make informed decisions. These packets need to be produced and assembled for distribution on the Wednesday before each meeting.
- Establish, approve, and post agendas. This needs to be finalized no later than the Wednesday before each meeting. Once finalized, the agenda and backup needs to be posted on the web, available at the Town Office, and sent to the media, Town Council and Town Attorney.

☐**Legal Notices:** All legal notices need to be drafted, posted, and advertised in a timely fashion in accordance with the Town's charter and Florida State Statutes for all meetings, hearings and ordinances.

☐**Coordination with Town Attorney's Office:** Coordinate matters with the Town Attorney's Office on an as needed basis.

☐**Monthly Task Plan:** After each Town Council meeting, a task plan needs to be created by using the bullet points created from the Town recordings. This task list is then divided up between the Town Manager and Town Attorney. This list needs to be managed throughout the month so that all of the tasks are completed in time as scheduled by the Council. *(The list is*

created and distributed to members of the Town Council within 24 hours of the completion of the Town Council meeting)

TOWN CLERK (as detailed in the Town Charter):

(5) TOWN CLERK.—The town manager shall appoint a town clerk or management firm to serve as town clerk (the "clerk"). The clerk shall give notice of council meetings to its members and the public, keep minutes of its proceedings, and perform such other duties as the council or town manager may prescribe from time to time. The clerk shall report to the town manager.

The Town Clerk Function is part of the contracted services.

TOWN CLERK OPERATIONAL RESPONSIBILITIES:

- Administers records management and election procedures in accordance with State Statutes and Town Charter and Code of Ordinances; attends Town Council meetings and prepares minutes;
- Acts as the Town election official and coordinates all activities relating to the Election Process for all elections, and serves as a member of the Town's canvassing board.
- Maintains Town records and provides records and documents to the public and staff; interprets State, County and Town rules and regulations for records management and election procedures; ensures all Town documents are processed pursuant to legal procedures; interprets state and Town laws, rules, and regulations regarding the functions of the office.
- Prepare Council Agenda for Regular Meetings, Special Meetings, Workshops and Committee Meeting Packets
- Town Clerk or Town Staff Designee shall attend all Town Council Regular Meetings, Special Meetings, Workshops and Committee and Board Meetings to record and transcribe the minutes.
- Prepares and finalizes meeting minutes for Town Council approval
- Prepared and finalized minutes for Committee and Board meetings
- Index final adopted version of the minutes of Council meetings.
- Records all meetings and uploads to the Town's website
- Index ordinances and resolutions
- Maintain index of agreements/contracts between Town and various entities or individuals.
- Answer telephone, correspondence and citizen inquiries, including those regarding Town records or ordinances.
- Prepare proclamations and certificates.
- Prepare and transmit deeds to the Clerk of Court for recording in the public records of Palm Beach County.
- Prepare legal notices and advertisements as required Florida State Statutes

Note: The Town will provide audio and video equipment for recording Town meetings.

FINANCIAL MANAGEMENT

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Financial Management is part of the contracted services.

FINANCIAL MANAGEMENT OPERATIONAL RESPONSIBILITIES:

- Follows all statutory requirements in maintaining the proper municipal accounting and financial systems necessary for proper reporting and auditing. Provides professional advice to Town Council.
- Oversees the posting and reconciliation of ledgers and accounts.
- Forecasts, estimates, and monitors the financial condition of the Town to assure the fiscal well being of the Town.
- Prepares annual department budget requests for submission to the Town Manager.
- Directs the preparation of state and federal financial reports.
- Maintains accounting and budgetary procedures in accordance with the Town's Accounting Policy and Procedures Manual, a copy of which is available through the Town Clerk's office.
- Prepares monthly and annual reports of financial activities, consistent with or equivalent to the Town's current format, an example of which is attached hereto.
- The Financial Manager shall review and approve the monthly and annual reports prior to their presentation to the Financial Advisory and Audit Committee and Town Council.
- Processes all invoices and payments
- Manages all investments and operating bank accounts
- Prepare and transmit all information necessary for yearly audit

Special Notes:

1. *The Town has recently purchased and is in the process of implementing Blackbaud SaaS. It is mandatory that the selected Town Management firm use this software, including participating in training. The Town of Loxahatchee Groves shall be responsible for the costs of implementation and training, as well as the monthly fees and upgrades for he software. There are no electronic interfaces currently in place to other internal or external systems for the financial software. ~~use an accounting software that specializes in Municipal Government Accounting~~*

~~1.~~2. *Electronic copies of the Town's current FY 2014-2015 Budget is available on the Town's website. The proposed FY 2015-2016 budget information is scheduled for the July 21, 2015, Town Council meeting.*

Comment [g7]: Verify

PROFESSIONAL SERVICES AGREEMENT

Included with this package is the proposed Professional Services Agreement that the selected Responder will be expected to execute, with non-substantive changes to reflect information specific to the selected Responder. Any issues, questions or concerns must be submitted by the deadline for submittal of written questions to Town Attorney. The Exhibit "A" to the Professional Services Agreement will be Section I, "Scope of Work" of this Request for Proposals.

The Palm Beach County Inspector General Ordinance, set forth in Article XII of the Palm Beach County Code, is applicable to the Town. Sections 2-429 and 2-439.1 of the Palm Beach County Inspector General Ordinance requires the Town to pay to the Office of the Inspector General (OIG) as its proportionate share of the OIG costs 0.25% ($25 for every $10000) of certain contract expenses. Responders will be responsible, through the Contract for Town Management Services, for this cost, and should include such in the cost proposal of a Response to this RFP.

REVIEW OF CONTRACT FOR TOWN MANAGEMENT SERVICES

Performance Criteria and Evaluation: The Contract for Town Management Services shall be reviewed annually. This annual review will be comprised of performance and evaluation criteria established and managed by the Town Council based upon the duties contained in the Contract for Town Management Services along with the Town Management Report through June of the current year prepared by the Town Manager. This annual review of the Contract for Town Management Services shall occur no later than August 1 of each year. The Town Manager is responsible for placing this annual review on a Town Council agenda.

II. TIME REQUIREMENTS

A. PROPOSAL CALENDAR

The schedule of events, relative to the procurement shall be as follows:

Event	Date (on or by)
1. Issuance of Request for Proposal	Friday, July 10, 2015~~Monday, July 25, 2011~~
2. Deadline for submittal of written questions to Town Attorney:	Monday, July 27, 2015~~Tuesday, August 16, 2011~~
3. Responses to Questions from Town Attorney:	Friday, July 31, 2015
4~~2~~. Responses Due (2:00 p.m.)	Thursday, August 6, 2015~~Tuesday, August 23, 2011~~
5~~3~~. Short List of Submittals by Town Council (If necessary, see note below):	Wednesday, August 12, 2015~~Monday, August 29, 2011~~*
6~~4~~. Short List Presentations to Town Council & selection of highest ranked proposer~~award of contract~~ (7:00 p.m.)	Tuesday, August 18, 2015.8~~September 6, 2011~~
7. Resolution approving Agreement and Appointing Town Manager	Tuesday, September 1, 2015.

* In the event the Town receives less than seven (7) proposals, there will be no shortlisting, the August 12, 2015~~29, 2011~~ meeting will be cancelled, and all Responders will be expected to make presentations on August 18, 2015~~September 6, 2011~~.

** Pursuant to Sections 119.071(1)(b) and 286.0113, Florida Statutes~~Chapter 2011-140, Laws of Florida~~, portions of meetings where responders in a competitive selection process are making oral presentations to a selection committee are exempt from Florida public meeting laws. As a result, Responders will not be permitted in the room while other Responders make their presentations to the Town Council.

TOWN reserves the right to change and/or delay scheduled dates.

B. ANTICIPATED COMMENCEMENT OF CONTRACT

Thursday~~Saturday~~, October 1, ~~2011~~2015.

Comment [g8]: If Town wants transition period, consider earlier effective date for contract, but not of start for new manager.

III. REQUIREMENTS FOR RESPONSES

A. SUBMISSION OF RESPONSES

The following materials should be submitted by a Respondent to be considered:

1. An original copy (so marked) of the Proposal, seven (7) copies and ~~an~~ one (1) electronic version should be submitted to the Town of Loxahatchee Groves, 155 F Road~~14579 Southern Blvd, Suite 2~~, Loxahatchee Groves, FL 33470 to the attention of Janet Whipple~~Ann Harper~~, Town Clerk.
2. Responses must be submitted in a sealed envelope clearly marked with the name of the firm/consultant "Request for Proposal RFP ~~2011~~2015- ~~006~~, Contract for Town Management Services."

B. REQUIRED INFORMATION TO BE PROVIDED IN RESPONSES

1. **Cover Letter:** (not to exceed four pages)
2. **Respondent Background**: Describe the Respondent's historical background relative to the requirements of the RFP (can be submitted in the form of a resume). Should include description of experience working with special districts and coordinating with other governmental entities.
3. **Methodology and Approach** to the overall operation of the Town Management office to include a detailed response to achieving all of the tasks outlined in the RFP.
4. **Fees**: Provide a rate schedule and total monthly / annual fee for proposal, for the initial three (3) year term, including outlining whether the fee is fixed for the initial three (3) year term and if not how annual adjustments in the fee will be determined,
5. **References:** The proposer should list a minimum of three (3) verifiable references.
6. **Subcontracting.** In the event Responder intends to provide any of the services required by this RFP through subcontractors, please specifically identify the services to be contracted out, and the intended subcontractors. Responder must clearly identify which subcontracting costs are included in your proposed fee, and which would be in addition to the proposed fee.

~~6.~~7. "Disclosure For Business Screening Regarding Procurement of Consumer Report." (Disclosure Form) All Responders must submit this fully completed form with a Response to the RFP. All information must be included, even if such is exempt from Florida's public records laws. The Town will be take steps necessary to secure such exempt information if need be. The failure to do so will render the RFP non-responsive.

~~7.~~8. **Appendices:**

a. Offeror's Certification
b. Non-Collusive Affidavit
c. Acknowledgement
d. Disclosure Form
~~c.~~e. Form of Professional Services Agreement

IV. EVALUATION OF RESPONSES

A. Evaluation Method and Criteria

The Town of Loxahatchee Groves Town Council will evaluate responses submitted. The Town Council, in its sole discretion, has the right to reject any and all responses or waive any minor irregularity or technicality in any responses received.

The Town of Loxahatchee Groves will select/award the Respondent which best meets the interests of the Town, all factors considered.

Although price is a factor in the decision, the experience, background and proposed plan for operations as Town Manager is the main factor in the Town Council's decision. The Town Council shall be the sole judge of the Town's best interests, the responses, and the resulting negotiated agreement. The decision of the Town Council shall be final.

VI. AWARD OF CONTRACT

The Town Council shall direct the Town Attorney to negotiate a Contract for Town Management Services with the Responder whose response is determined to be the most advantageous to the Town, taking into consideration the evaluation factors and criteria set forth in the Request for Proposals. **The Council reserves the right to enter into a Contract for Town Management Services with the selected responder for all or a portion of the services that are part of this Request for Proposal.**

VIII. GENERAL CONDITIONS

A. PUBLIC ENTITY CRIMES INFORMATION STATEMENT: A person or Affiliate who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplies, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

B. DISCRIMINATORY VENDOR LIST: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or

consultant under contract with any public entity, and may not transact business with any public entity.

C. **ADDENDA AND INTERPRETATIONS**: No interpretations of the meaning of the specifications or other contract documents will be made orally to any Responder. Responders must request from the ~~City~~Town Attorney such interpretation in writing. To be considered, such request must be received by the deadline for submittal of written questions to the Town Attorney~~at least seven (7) days prior to the date fixed for the deadline for submittal of the Proposals~~. Any and all interpretations and any supplemental instructions will be in the form of a written addenda which, if issued, will be sent to all potential Responders who have provided the Town with their contact information as having an interest in the RFP at the address furnished for such purpose not later than two (2) days prior to the date fixed as the deadline for submittal of proposals. Responses or Addenda may be issued via electronic mail as well. Failure of any Responder to receive any such addenda or interpretation shall not relieve any Responder from any obligation under the proposal as submitted. All addenda so issued shall become a part of the contract document. Responder shall verify that it has all addenda before submitting a Proposal.

D. **QUESTIONS ABOUT THE RFP:** Questions regarding the RFP, ~~or~~ the proposal process, or the terms of the form of Professional Services Agreement, shall be directed in writing to the Town Attorney: Michael Cirullo, Goren, Cherof, Doody and Ezrol, PA, 3099 East Commercial Blvd. Suite 200, Fort Lauderdale, FL 33308, by fax at 954-771-4923, or electronic mail at mcirullo@cityatty.com. Responders are responsible for confirming timely receipt by the Town Attorney of any questions submitted by Responders.

E. **CONFLICT OF INTEREST:** The Responder must represent that it has no interest, and shall not acquire such interest, financial or otherwise, direct or indirect, nor engage in any business transaction or professional activity or incur any obligation of any nature which would conflict in any manner with the performance of scope of service required hereunder.

Without receiving prior written authorization by the Town, the Respondent shall not:

(i) retain any individual or company with whom the Respondent or any individual member thereof has a financial or other conflict of interest; nor

(ii) in fulfillment of the Contract for Town Management Services, do business with a for-profit entity in which the Respondent or any individual member has a financial or other interest therein.

The Respondent warrants to the Town that no gifts or gratuities have been or will be given to any Town employee or agent, either directly or indirectly, to obtain the Contract for Town Management Services.

F. **NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT (ADA).** The Town of Loxahatchee Groves will not discriminate against qualified individuals with disabilities on the basis of disability in the Town's services, programs, or activities. The Town will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the Town's programs, services, and activities, The Town will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all Town programs, services, and activities. A person with a disability may receive an auxiliary aid or service to effectively participate in town government activities by contacting the Town Clerk's Office at voice (561) 793-2420 as soon as possible but no later than 48 hours before the event or deadline date.

IX. INSURANCE

After award and prior to the execution of the Contract for Town Management Services, the successful Responder shall provide proof of insurance as required herein. Responder The Responder shall procure and maintain, at its own expense, the following insurance

(i) Errors & Omissions Coverage for Directors and Officers with a $1,000,000 limit

(ii) Worker's Compensation Insurance for all Responder's employees, with the following limits:

A. Worker's Compensation Statutory Limits
B. Employer's Liability $500,000 each accident
$500,000 Disease-policy limit
$500,000 Disease-each employee

If Responder is or claims to be exempt from all or a portion of these requirements, Respondent shall provide Town proof of such exemption. However, any exemption is at the sole discretion of the Town Council.

(iii) Comprehensive Auto Liability coverage which shall include owned, hired and non-owned vehicles, with the following limits:

A.	Bodily Injury	
	1.Each Occurrence	$100,000
	2.Annual Aggregate	$500,000
B.	Property Damage	
	1.Each Occurrence	$100,000
	2.Annual Aggregate	$500,000

(iv) A Dishonesty Bond or its equivalent, as shall be determined to be necessary by the Town, in an amount equal to $1,000,000.00 with a deductible of no more than $5,000.00.

All insurance and bonds shall be kept in effect during the full term of the Contract for Town Management Services. Additionally, any subcontractor hired by the Respondent for any services under the Contract for Town Management Services shall provide insurance coverage as well.

Responder shall name the Town as an additional insured on each of the policies required herein, and provide a certificate of insurance to the Town evidencing such coverages.

X. TERM AND TERMINATION

Subject to the termination provisions set forth hereinafter, the initial term of the Contract for Town Management Services shall be three (3) years, commencing on or about October 1,

Comment [g9]: Do you want an earlier start date for transition?

~~2011~~2015. The Contract for Town Management Services may be renewed for two (2) additional one (1) year terms upon the agreement of the parties.

The Town may terminate the Term of the Contract for Town Management Services at any time, without regard to any breach hereof by Responder and without any liability or obligation to Responder only upon sixty (60) days prior written notice. Responder may terminate the Term of the Contract for Town Management Services at any time, without regard to any breach hereof by the Town and without any liability or obligation to the Town, only upon one hundred twenty (120) days prior written notice to the Mayor of the Town and the Town Council. The rights and obligations of the Town and Responder that arise prior to expiration of the Term, including the Town's obligation to pay to Responder any earned and unpaid portion of the Fee, shall survive any termination or expiration of the Term of the Contract for Town Management Services.

XI. LEGAL ENTITY FOR CONTRACTING

In the event an individual is awarded the Contract for Town Management Services, he or she must form a legal business entity registered to do business in the State of Florida in order to enter into a Contract for Town Management Services. The Town Council will enter into the Contract for Town Management Services only with that entity.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS AN INDIVIDUAL

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal form this _____ day of _____, 20~~0~~15 .

By: _____
Signature of Individual

_____
Witness

_____
Printed Name of Individual

_____

_____

_____
Witness

_____
Business Address

_____
Town/State/Zip

_____
Business Phone Number

State of_____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____(Name), who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

_____
(Name of Notary Public: Print, Stamp,
or type as Counciled)

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A FICTITIOUS OR TRADE NAME

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal Form this _____ day of _____, 2015~~0~~.

_____
Printed Name of Firm/consultant

By:_____
Signature of Owner

_____
Witness

_____
Printed Name of Individual

_____
Witness

_____
Business Address

_____
Town/State/Zip

_____
Business Phone Number

State of_____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____ , ~~2011~~2015 by_____ (Name), who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

_____
(Name of Notary Public: Print, Stamp,
or type as Counciled)

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS A PARTNERSHIP

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal Form this day of_____, 201~~50~~.

_____
Printed Name of Partnership

By:_____
Signature of General or Managing Partner

_____
Witness

_____
Printed Name of partner

_____
Witness

_____
Business Address

_____
Town/State/Zip

_____
Business Phone Number

_____
State of Registration

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____ , ~~2011~~2015, by _____(Name), _____(Title) of _____ (Name of Company) who is personally known to me or who has produced as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

_____
(Name of Notary Public: Print, Stamp,
or type as Counciled)

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS A CORPORATION

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal Form this _____ day of _____, 2015~~0~~.

_____
Printed Name of Corporation

_____
Printed State of Incorporation

By:_____
Signature of President or other authorized officer

(CORPORATE SEAL)

_____
Printed Name of President or other authorized officer

ATTEST:

_____
Address of Corporation

By_____
Secretary

_____
Town/State/Zip

_____
Business Phone Number

State of_____

County of _____

The foregoing instrument was acknowledged before me this ____day of _____ , ~~2011~~2015, by _____(Name), _____(Title) of _____ (Company Name) on behalf of the corporation, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

_____
(Name of Notary Public: Print, Stamp, or type as Counciled)

NON-COLLUSIVE AFFIDAVIT

State of _____)
)ss.
County of_____)

_____ being first duly sworn, deposes and says that:

(1) He/she is the _____, (Owner, Partner, Officer, Representative or Agent) of _____ the Bidder that has submitted the attached Bid;

(2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm/consultant, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from bidding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Bidder, firm/consultant, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Bidder, or to secure trough any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered
in the presence of:

_____ By: _____

_____ _____
(Printed Name)

_____
(Title)

Dated: _____

ACKNOWLEDGMENT

State of_____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015~~0__~~, by _____(Name), who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

_____
(Name of Notary Public: Print, Stamp,
or type as Counciled)

DISCLOSURE FOR BUSINESS SCREENING REGARDING PROCUREMENT OF CONSUMER REPORT." (DISCLOSURE FORM)

PROFESSIONAL SERVICES AGREEMENT

Philip S. Deming & Associates

Philip S. Deming, CPP, CFE, SHRM-SCP
PRINCIPAL

25 June 2015

Members of the Loxahatchee Groves Town Council
c/o Michael D. Cirullo, Jr., Esquire
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, FL 33308

Re: Proposed Services for Employment Background Investigations

Dear Members of the Loxahatchee Groves Town Council:

Kindly allow this correspondence and the attachments to serve as our proposal to provide professional services in connection with conducting background investigations on prospective candidates for employment by the Town of Loxahatchee Groves.

I. Background of the Principal

Mr. Deming has over 30 years of experience in consulting on human resource, security and risk management matters. He has developed human resource policies and procedures, conducted organizational investigations; provided corporate training programs; conducted employee-climate surveys; developed global recruiting management programs; and designed functional security programs for clients worldwide. He has served as an expert witness on human resource practices relating to negligent hiring and wrongful termination claims.

He served as a Special Agent with the United States Treasury Department and conducted criminal investigations as well as background investigations for Top Secret Clearance. Subsequently, Mr. Deming established a consulting firm specializing in human resource and security risk management. Mr. Deming was the Senior Vice President of Administration at Trans Healthcare, Inc., a healthcare organization with 22,000 employees, and he was responsible for human resources, recruiting, training, organizational development and risk management. [Refer to Exhibit "A"]

II. Proposed Services

The firm of Philip S. Deming and Associates (hereinafter referred to as "the firm") proposes to provide background investigative services to the Town of Loxahatchee Groves, which will entail obtaining the following data on the candidates: database searches, credit reports, searching specially designated nationals and blocked persons, public records (i.e., criminal convictions), verification of the candidates' education, prior employment verification, interviewing professional references (up to three persons), and media data searches.

630 FREEDOM BUSINESS CENTER DRIVE • THIRD FLOOR • KING OF PRUSSIA, PA 19406 (610) 354-0948
web site: www.demingassociates.net e-mail: philip.deming@demingassociates.net

Prior to commencing the described services, each prospective candidate will be required to complete a "Disclosure for Business Screening Regarding Procurement of a Consumer Report" form in compliance with the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. [Refer to Exhibits "B" and "C" for "A Summary of Your Rights Under the Fair Credit Reporting Act" and the Questionnaire]

Upon completion of the investigation, a written report will be prepared, which will summarize the investigative findings. [Refer to Exhibit "D" for Sample Report]

The firm agrees not to disclose any privileged or confidential information, work product, opinions, facts and/or data unless such disclosure has been authorized previously in writing by the Town Council of Loxahatchee Groves and/or representing legal counsel. If the firm receives a request or subpoena for any of the documents or information which are subject to this agreement, the firm agrees to notify the Town Council of Loxahatchee Groves and/or representing legal counsel immediately.

III. Cost of Services

The firm has an hourly rate of $150.00 for professional services and agrees not to exceed $750.00 in professional fees (excluding any incidental costs) per individual candidate search. Further, the firm agrees to submit a detailed invoice for professional fees and incidental costs (e.g., credit checks, courthouse charges) to the Town Council of Loxahatchee Groves or their designee for payment. Upon receipt of the invoice, payment shall be made to the firm within thirty (30) days.

I thank you for this opportunity to present this proposal. Should you have any questions, please feel free to contact my office.

If Members of the Loxahatchee Groves Town Council agree to the terms and conditions of the stated services herein, an authorized agent can sign and date below for the acceptance.

Very truly yours,

Philip S. Deming, CPP, CFE, SHRM-SCP

ACCEPTANCE BY: _____
Authorized Agent for the Loxahatchee Groves Town Council

THIS ____DAY OF JULY 2015

PSD/ds
Enclosures: (3)

EXHIBIT "A"

PHILIP S. DEMING, CPP, CFE, SHRM-SCP

630 Freedom Business Center Drive – Third Floor
King of Prussia, PA 19406
610-354-0948

philip.deming@demingassociates.net
www.demingassociates.net

EXPERIENCE

PHILIP S. DEMING AND ASSOCIATES, King of Prussia, PA **1982-present**
Principal
Managed all aspects of a human resources and risk management consulting practice serving clients both domestically and internationally. Served as the chief human resources officer in multiple interim assignments, which included managing the human resources, training/organizational development, talent acquisition and succession planning functions for large healthcare organizations as well as served in a like capacity with an international nonprofit organization. Served as national spokesperson in the cable industry for Showtime. Received special appointment to the Senate of Pennsylvania – Judiciary Committee and responsible for conducting an inquiry in connection with the Pennsylvania Parole system. Consulting assignments have also included developing multi-faceted approaches utilizing human resources *Best Practices* to address organizational dynamics as well as assisted in shaping strategic teams in highly competitive and risk-intensive environments. Additionally, Mr. Deming has served as an expert witness on security claims relating to premises liability and human resource matters relating to negligent hire, negligent retention and wrongful termination.

Western Dental Services, Inc., Orange, CA **2012-2014**
Interim Vice President of Human Resources
Responsible for all aspects of Human Resources Management, Training/Organizational Development, and Talent Acquisition/Recruiting. Mr. Deming managed a staff of 42 employees and contractors, which provided services to over 4,500 employees located throughout five states.

The Pew Charitable Trusts, Philadelphia, PA **2009-2010**
Interim Deputy Director of Human Resources
Responsible for the function areas of Employee Relations, Recruiting, Benefits, Compensation, and Performance Management. Managed a professional staff of 17 employees and contractors in Philadelphia, PA and Washington, D.C.

TRANS HEALTHCARE, INC., Sparks, MD **2004-2006**
Senior Vice President
Responsible for all aspects of Human Resource Management, Organizational and Talent Development, Recruiting, Risk Management, External Marketing and Administrative Services for over 220 healthcare centers in 20 states, with more than 22,000 employees and 30,000 patients.

U. S. TREASURY **1977-1982**
Special Agent
Responsible for conducting criminal investigations relating to violations of federal law of alcohol, tobacco, firearms, explosives and arson. Assigned to Presidential and foreign dignitary protection details.

EDUCATION

Bachelor of Science in Criminal Justice with Honors, Northeastern University, Boston, MA
Masters of Human Organizational Science, Villanova University, Villanova, PA
Masters of Human Resource Development, Villanova University, Villanova, PA

PROFESSIONAL QUALIFICATIONS

SHRM-SCP (Senior Certified Professional)
by the Society for Human Resource Management

Certified Protection Professional (CPP)
by the ASIS International

Certified Fraud Examiner (CFE)
by the Association of Certified Fraud Examiners

PUBLICATIONS

"Proving Security's Value," *Security Management*, September 2012, p. 148
"A Systematic Process for Creating Business Watch Programs in Private Organizations,"
The Police Chief, January 2010, Volume LXXVII, Number 1, pp. 53-55
Premises Security Liability: From a Workplace Violence Perspective
SHRM® Information Center – White Paper – July 2004
Crisis Management Planning: A Human Resource Challenge
SHRM® Information Center – White Paper – April 2002
Safeguarding HR Records
SHRM® Information Center – White Paper – March 2002
Sample Policy – Human Resource Policy on Investigating Workplace Conduct
SHRM® Information Center – Policies – February 2002
Workplace Prevention Violence Programs: From an Organizational Development Approach
SHRM® Information Center – White Paper – July 2001 and March 2006
Workplace Violence: Trends and Strategic Tools for Mitigating Risk
SHRM® Information Center – White Paper – October 2000 and March 2006 *CPP Study Guide* (11th, 12th and 13th Editions)

COMMUNITY SERVICE

Member of the Transition Team for Mayor-Elect Michael A. Nutter (City of Philadelphia)
(Term: 2007-2008)
Civil Service Commissioner (Chairman) for the Township of Radnor – Police Department
(Second Term: 2007-2013)
Chairman of the Board of Directors for Whitemarsh Continuing Care Retirement Community, with a Full Service Healthcare Center
(Term: 2007-2015)

EXHIBIT "B"

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Consumer Help (FRCH) P O Box 1200 Minneapolis, MN 55480 Telephone: 888-851-1920 Website Address: www.federalreserveconsumerhelp.gov Email Address: ConsumerHelp@FederalReserve.gov
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600

State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation , Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture 202-720-7051

EXHIBIT "C"

DISCLOSURE FOR BUSINESS SCREENING REGARDING PROCUREMENT OF A CONSUMER REPORT

In connection with your potential employment relationship, the Town of Loxahatchee Groves, Florida, has engaged the firm of Philip S. Deming and Associates to conduct a background investigation. This firm may procure a "consumer report" on you as part of our business relationship screening process.

The Fair Credit Reporting Act gives you specific rights in dealing with consumer reporting agencies. You will be given a summary of these rights together with this document, if any adverse information is obtained in connection with our screening process.

By your signature below, you hereby authorize Philip S. Deming and Associates to obtain a consumer report and/or an investigative report. Further, you hereby authorize Philip S. Deming and Associates and/or their designee to conduct an investigation into your character, reputation, and personal characteristics, which may include but not be limited to checking your educational credentials (including transcripts), any criminal convictions, civil actions, bankruptcy filings, employment, driving record, professional licensing and other information.

Applicant's Name: _____
(Including Maiden Name) (PLEASE PRINT)

Social Security Number: _____

Date of Birth: _____

Applicant's Address: _____

City/State/Zip: _____

Former Address: _____

City/State/Zip: _____

Former Address: _____

City/State/Zip: _____

Professional Licensing: _____

License Number: _____

Expiration: _____

REFERENCES

1. Name: _____

   Address: _____

   City/State/Zip: _____

   Telephone Number: _____

   Relationship: _____

2. Name: _____

   Address: _____

   City/State/Zip: _____

   Telephone Number: _____

   Relationship: _____

3. Name: _____

   Address: _____

   City/State/Zip: _____

   Telephone Number: _____

   Relationship: _____

EDUCATIONAL EXPERIENCE
(IMPORTANT: Include address(es) and year(s) attended or year of graduation)

_____

_____

LEGAL

1. Have you ever been a litigant in any civil matter? _____

2. If so, please identify the parties of the civil case:

   _____

   Jurisdiction (e.g., United States District Court, State Court, Municipality):

   _____

   Date of filing: _____

   Case Status: _____

3. Have you ever been a party of any bankruptcy action? If so please identify the petitioner:

   _____

   Jurisdiction: _____

   Date of filing: _____

   Disposition: _____

4. Have you been convicted of any crime other than a traffic violation? _____

5. If so, please identify the jurisdiction, date of the criminal filings, and case status:

   _____

   _____

   _____

   _____

Signature: _____

Date: _____

EXHIBIT "D"

SAMPLE REPORT

25 June 2015

Mr. John Doe
Vice President
First Bank
123 Main Street, Suite 400
Philadelphia, PA 19143

Re: Sam Good
Our File No.: 10-0102

Dear Mr. Doe:

Pursuant to your request, our office conducted a background investigation on Mr. Sam Good, inclusive of database searches, credit history reporting, Specially Designated Nationals and Blocked Persons (under the Office of Foreign Asset Control of the United States Treasury Department) and public record searches. This background investigation was conducted in accordance with the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., inclusive of Mr. Good executing the release form. [Refer to Exhibit "A"]

I. Database Searches:

We conducted a database search using the National Comprehensive Report on Mr. Good, with a social security number of XXX-XX-XXXX and date of birth of XXXXXXX. We were able to verify the address representations XXXXXXXXX. Furthermore, there were no "possible criminal records," "sexual offenses," bankruptcies, liens and judgments, and/or UCC filings found. [Refer to Exhibit "B"]

II. Specially Designated Nationals and Blocked Persons

We conducted a manual search of the Specially Designated Nationals and Blocked Persons (under the Office of Foreign Asset Control of the United States Treasury Department) for the period ending 25 June 2015 and found no listings for Mr. Good.

III. Public Records Search:

A. U.S. District Court:

We conducted a computerized data search in the U. S. District Court system for the period from 1 January 2015 to 25 June 2015 for any and all civil, bankruptcies, criminal and appellate filings for Sam Good. [Refer to Exhibits "C," "D," "E," "F," "G," and "H"]

B. State of California Jurisdiction:

On 25 June 2015, we conducted a data search in the court system for the County of Orange for any and all civil and criminal matters listing Mr. Good as a named party. We found no name matches.

IV. Education Verification:

We verified that Mr. Good was "No Degree – Enrollment only" for the period 9/1956 to 2/3/1966 at the University of Southern California. Further, we attempted to verify his attending the University of California – Berkeley, but to no avail. [Refer to Exhibits "I" and "J"]

V. Business References:

VI. Media Data Search:

We conducted a computerized data search for any media reports on Mr. Good and his related business affiliations. We found a number of references to Mr. Good. [Refer to Exhibit "K"]

We shall reserve comment on our findings until after you have had an opportunity to review our report in its entirety.

Very truly yours,

Philip S. Deming, CPP, CFE, SHRM-SCP

Enclosures

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 10.b.

NEW BUSINESS

Law Enforcement Agreement and Alternatives

EIGHTH ADDENDUM TO THE LAW ENFORCEMENT SERVICE AGREEMENT
SHERIFF RIC L. BRADSHAW AND TOWN OF LOXAHATCHEE GROVES

This Eighth Addendum to the Law Enforcement Service Agreement is made by and between Town of Loxahatchee Groves (hereinafter referred to as "Loxahatchee Groves") located in Palm Beach County, and Ric L. Bradshaw, Sheriff of Palm Beach County, Florida (hereinafter referred to as "Sheriff"). Loxahatchee Groves and the Sheriff shall hereinafter be referred to as the "Parties."

WHEREAS, the Parties executed a Law Enforcement Service Agreement effective October 01, 2007, a First Addendum effective October 01, 2008, a Second Addendum effective October 01, 2009, a Third Addendum effective October 01, 2010, a Fourth Addendum effective October 01, 2011, a Fifth Addendum effective October 01, 2012, a Sixth Addendum effective October 01, 2013, and a Seventh Addendum effective October 01, 2014, (the "Agreement"),by which the Sheriff agreed to perform law enforcement services; and

WHEREAS, the Parties wish to renew said Agreement for an additional twelve (12) months, effective October 01, 2015.

NOW, THEREFORE, in consideration of the mutual covenants herein contained the receipt and sufficiency of which are hereby acknowledged, it is agreed upon as follows:

1. In accordance with Article 7, Section A. of the Law Enforcement Service Agreement, the Parties have agreed to renew the Agreement for an additional twelve (12) month term. The term of this renewal is October 01, 2015 through September 30, 2016.

2. Article 6, Section A. of the Law Enforcement Service Agreement is amended as to the total amount due for law enforcement services as follows: The total cost of personnel and equipment shall be $288,746.00. Monthly payments shall be $24,062.17. Last payment shall be $24,062.13.

3. In all other respects and unless otherwise stated, the terms and conditions of the Agreement, which includes prior Addendums, shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed the Addendum to this Agreement as of the last date all signatures below are affixed.

PALM BEACH COUNTY SHERIFF'S OFFICE	**TOWN OF LOXAHATCHEE GROVES**
BY: _____ Ric L. Bradshaw	BY: _____
Title: Sheriff	Print Name: _____
	Title: _____
Witness: _____ Daniel R. Smith, Major	Witness: _____
DATE: _____	DATE: _____

Florida's Last Frontier

Town of

LOXAHATCHEE GROVES

Item 10.c.

NEW BUSINESS

ILA for Road Services

AGREEMENT FOR ADDITIONAL ROAD MAINTENANCE SERVICES FOR TOWN ROADS WITHIN THE TOWN OF LOXAHATCHEE GROVES

This **AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2015 (the "Effective Date"), by and between:

> **TOWN OF LOXAHATCHEE GROVES**, a municipal corporation existing under the laws of the State of Florida, hereafter referred to as "TOWN,"
>
> and
>
> **LOXAHATCHEE GROVES WATER CONTROL DISTRICT**, an independent special district existing under the laws of the State of Florida, hereafter referred to as "DISTRICT," (with the TOWN and DISTRICT each referred to as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, the TOWN is a municipal corporation of the State of Florida, the powers of which are defined in the TOWN's Charter and State law; and

WHEREAS, there are roads within the geographical boundaries of the TOWN under the maintenance and control of the TOWN, which have been designated by the TOWN as "Town Roads," and are the responsibility of the TOWN; and

WHEREAS, the TOWN is in need of services, equipment and materials for additional services for Town Roads; and

WHEREAS, the DISTRICT is currently providing road repair and grading services on Town Roads for the Town pursuant to an Agreement dated August 1, 2013 (Road Repair and Grading Agreement), and is capable of providing additional road maintenance services; and,

WHEREAS, the TOWN Council and the DISTRICT Board of Supervisors have determined that this Agreement is in the best interest of the health, safety, and welfare of the residents within the TOWN.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereafter set forth, DISTRICT and TOWN agree as follows:

ARTICLE I - RECITALS

1.1 The foregoing recitations are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.

ARTICLE 2 – ADDITIONAL TOWN ROAD MAINTENANCE SERVICES

2.1 Upon receipt of the written request from the TOWN, the DISTRICT will provide the TOWN with a cost estimate for the requested Town Road Maintenance Services that include ROAD WATERING, TRAFFIC SIGN INSTALLATION, MOWING AND HEDGING. The DISTRICT will proceed with the Additional Town Road Maintenance Services only upon receipt of written confirmation from the TOWN directing the DISTRICT to proceed with exception the Town will provide all necessary street signage.

2.2 Additional Town Road Maintenance Services shall be performed under separate written work authorizations that will identify the scope of needed Additional Town Road Maintenance Services. Notwithstanding the foregoing, the TOWN shall have no obligation to engage the services of DISTRICT for a specified number of times.

2.3 DISTRICT will ensure that all equipment used is properly registered. The TOWN reserves the right to verify this information. DISTRICT further represents that it shall comply with all federal, state, and local laws, rules, regulations, and ordinances that may be applicable to the operation of the equipment provided for gravel road grading services. All equipment must be appropriately equipped with a revolving or flashing amber light so drivers can locate equipment from a distance.

2.4 DISTRICT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good construction and engineering practice.

2.5 DISTRICT agrees that no subcontracting is permitted without the advance, written approval of the TOWN Manager.

ARTICLE 3 – PAYMENT

3.1 DISTRICT shall provide town road watering, mowing, or sign installation services upon the written request from the Town Manager or designee and upon completion of the requested Service, the DISTRICT will submit an invoice for actual costs for such Maintenance Services, which will include acceptable documentation to substantiate its costs. Should the TOWN determine that the documentation for a particular Maintenance Service is incomplete, it shall request additional information from the DISTRICT within ten (10) working days of receipt of the original invoice.

3.2 Payment shall be made accordance with the Florida Prompt Payment Act.

ARTICLE 4 - TERM OF AGREEMENT

4.1 This Agreement shall be deemed to have commenced on the date it is executed by the last party to do so, and shall continue until terminated by either party upon thirty (30) days written notice provided to the other party, which termination may be for any or no reason.

4.5 Notice of termination shall be provided in accordance with the terms of the Road Repair and Grading Agreement.

4.6 In the event this Agreement is terminated, any compensation payable by TOWN shall be withheld until all documents reasonably required are provided to TOWN. In no event shall the TOWN be liable to DISTRICT for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

ARTICLE 5 – APPLICABILITY OF TERMS OF THE ROAD REPAIR AND GRADING AGREEMENT

5.1 As the parties hereto have entered into a separate Road Repair and Grading Agreement that contains terms and conditions applicable to this Agreement, the parties agree that Articles 5 through 7 of that Agreement shall apply hereto to the extent that such do not conflict with this Agreement. In the event of any such conflict, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement between TOWN and DISTRICT on the respective dates under each signature: TOWN, signing by and through its _____ Mayor, authorized to execute same by Council action on the ____ day of _____, 2015 and the DISTRICT, signing by and through its Chairman, authorized to execute same by Board of Supervisor's action on the ____ day of _____, 2015.

Executed by **TOWN** this _____ day of _____, 2015

TOWN OF LOXAHATCHEE GROVES,
a Florida Municipal Corporation

ATTEST:

By _____
David Browning, Mayor

_____
Janet K. Whipple, Town Clerk

[TOWN SEAL]

APPROVED AS TO FORM:

By_____
Michael D. Cirullo, Jr., Town Attorney

Executed by **DISTRICT** this _____ day of _____, 2015

LOXAHATCHEE GROVES WATER CONTROL DISTRICT, an Independent Special District of the State of Florida

ATTEST:

By _____
David DeMarois, Chairman

_____
Secretary

[DISTRICT SEAL]

EXHIBIT "A"

LIST OF TOWN ROADS

Town Road Mileage Chart
2014

A Road	From Okeechobee Blvd to North Rd	2.001
C Road - South	From Collecting Canal Rd to Okeechobee Blvd	1.236
C Road - North	From Okeechobee Blvd to North Rd	1.981
D Road - North	From Okeechobee Blvd to North Rd	1.996
10TH PLACE NORTH	BLOCK B	0.081
11TH TERRACE	BLOCK C	0.244
12TH PLACE NORTH	BLOCK E	0.197
131ST TERRACE NORTH	BLOCK F	0.147
13TH PLACE NORTH	BLOCK F (F ROAD)	0.166
140TH STREET NORTH	CUT-THRU / SUNSPORT	0.100
147TH AVENUE NORTH	BLOCK C	0.126
147TH DRIVE NORTH	BLOCK C	0.115
148TH TERRACE NORTH	T: 43S / R: 41E	0.339
14TH PLACE NORTH	BLOCK E	0.257
152ND WAY NORTH	BLOCK B	0.068
160TH STREET NORTH	T: 43S / R: 41E	0.394
161ST TERRACE NORTH	T: 43S / R: 40E	2.014
17TH ROAD NORTH	BLOCK B	0.076
21ST ROAD NORTH	BLOCK C	0.126
22ND COURT NORTH	BLOCK F	0.292
22ND ROAD NORTH	BLOCK C (C ROAD)	0.248
22ND ROAD NORTH	BLOCK E (E ROAD)	0.156
22ND ROAD NORTH	BLOCK F (F ROAD)	0.210
23RD COURT NORTH	BLOCK E	0.189
24TH CIRCLE NORTH	BLOCK C	0.177
24TH COURT NORTH	BLOCK C (C ROAD)	0.282
24TH COURT NORTH	BLOCK D (E ROAD)	0.194
24TH COURT NORTH	BLOCK E (WEST F)	0.250
24TH COURT NORTH	BLOCK F (EAST F)	0.406
25TH PLACE NORTH	BLOCK B (C ROAD)	0.136
27TH LANE NORTH	BLOCK C	0.135
30TH COURT NORTH	BLOCK B (C ROAD)	0.141
30TH COURT NORTH	BLOCK D (D ROAD)	0.132
34TH PLACE NORTH	BLOCK C	0.135
35TH PLACE NORTH	BLOCK D	0.127
41ST ROAD NORTH	T: 43S / R: 41E	0.068
42ND ROAD NORTH	T: 43S / R: 41E	0.153
42ND STREET NORTH	T: 43S / R: 41E (OFF 160TH)	0.234
43RD ROAD NORTH	T: 43S / R: 41E (GLOBAL)	0.194
43RD ROAD NORTH	T: 43S / R: 41E	0.269
44TH STREET NORTH	T: 43S / R: 41E (OFF 160TH)	0.235
8TH PLACE NORTH	BLOCK C	0.319

Town Road Listing
January 2014

TOWN ROAD NAME	PLAT DESIGNATION	MILEAGE
APRIL DRIVE	BLOCK C	0.164
BIDDIX ROAD	BLOCK D	0.191
BRYAN ROAD	BLOCK F	0.749
BUNNY LANE	BLOCK C	0.244
CANAL MAINTENANCE RD	T: 43S / R: 41E (40TH ST N)	1.462
(WILSON) CASEY ROAD	BLOCK F	0.748
CITRUS DRIVE	BLOCK K	0.243
COMPTON ROAD	BLOCK F	0.748
EAST CITRUS DRIVE	BLOCK K	0.501
EDITH ROAD	BLOCK E	0.197
FARLEY ROAD	BLOCK E	0.197
FERRIS LANE	BLOCK A	0.194
FLAMINGO DRIVE	BLOCK C	0.186
FOREST LANE	BLOCK B	0.188
FORTNER DRIVE	BLOCK B (C ROAD)	0.135
FOX TRAIL	BLOCK E	0.204
GLOBAL TRAIL	T: 43S / R: 41E	0.519
GRUBER LANE	BLOCK C	0.489
HYDE PARK ROAD	BLOCK E	0.518
IAN TRAIL	T: 43S / R: 41E	0.384
JEWEL LANE	BLOCK B	0.103
KAZEE ROAD	BLOCK G	0.432
KERRY LANE	BLOCK E	0.260
LOS ANGELES DRIVE	BLOCK B	0.244
LOXAHATCHEE AVENUE	BLOCK K	0.180
MARCELLA BOULEVARD	BLOCK F	0.749
MARCH CIRCLE	BLOCK F	0.174
MORROW COURT	BLOCK B	0.180
ORANGE AVENUE	BLOCK K	0.075
PARADISE TRAIL	BLOCK C	0.186
QUAIL ROAD	BLOCK F	0.135
RACKLEY ROAD	BLOCK F	0.146
RAYMOND DRIVE	BLOCK F	0.337
ROBERTS WAY	BLOCK B	0.229
SAN DIEGO DRIVE	BLOCK B	0.244
SCOTTS PLACE	BLOCK B	0.213
SNAIL TRAIL	BLOCK C	0.244
TANGERINE DRIVE	BLOCK K	0.510
TEMPLE DRIVE	BLOCK I	0.100
TRIPP ROAD	BLOCK D	0.242
VALENCIA DRIVE	BLOCK K	0.136
WEST "B" ROAD	BLOCK A	0.340
WEST "C" ROAD	BLOCK B	0.623
WEST "D" ROAD	BLOCK I (SOUTH C.C.)	0.314
WEST 'D' ROAD	BLOCK C (NORTH C.C.)	0.388
WEST 'F' ROAD	BLOCK E	0.198
WILLIAMS DRIVE	BLOCK B	0.193
	MILEAGE =	**33.670**

TOWN OF LOXAHATCHEE GROVES

TOWN COUNCIL MEETING AGENDA

TUESDAY, JULY 7, 2015 @ 7:00 P.M.

ADDENDUM #1: Addition under Council Reports:

11.a. Councilman Rockett would like a discussion on speed humps.

Mayor David Browning (Seat 4)

Vice Mayor Ron Jarriel (Seat 1)

Councilman Tom Goltzené (Seat 5)

Councilman Ryan Liang (Seat 3)

Councilman Jim Rockett (Seat 2)