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Received Event (Event Succeeded)

Date: 11/12/03
Pages: 32
Remote CSID: Michael Wm. Morell

Time: 1:39 PM
Sender: Michael Wm. Morell

From: Michael Morell 561-366-0000 To: DOAH CLERK Ann Cole

Date: 11/12/2003 Time: 1:43:10 PM

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Michael Wm. Morell
Attorney at Law
P.O. Box 18649
West Palm Beach, Florida 33416-8649

OB 4292F
JLJ closed
OB-07186m

FACSIMILE COVER PAGE

To: DOAH CLERK Ann Cole	From: Michael Morell
Fax #: 1-850-921-6847	Fax #: 561-366-0000
Company: Division of Administrative	Tel #: 561-832-0530
Subject: Current v. Town of Jupiter & DCA, DOAH 03-0718GM - Motion for Sanctions	
Sent: 11/12/2003 at 1:43:08 PM	Pages: 32 (including cover)

MESSAGE:

Dear Ann,

Attached for filing in DOAH Case No. 03-0718GM (ALJ J. Lawrence Johnston) please find a 31 page pleading titled Petitioner's Verified Motion for Sanctions Against the Town of Jupiter Under Section 57.105, F.S. Simultaneously with the filing of this Verified Motion for Sanctions, I am also filing a Notice of Filing and Presentment of the Verified Motions for Sanctions.

Ann, this is the Motion for Sanctions Under 57.105 which I spoke to you about a few weeks ago. At that time we discussed how motions such as these are new and were authorized in administrative proceedings by the 2003 Legislature. However, unlike other motions for attorney's fees and sanctions filed under Ch. 120, Section 57.105 motions are usually filed before the RO is issued, not after. The Notice of Filing and Presentment accompanying the filing of the motion summarizes the facts of what happened earlier in this case regarding the service (but not filing) of the motion, the ALJ's ruling on the motion (without the motion having even been filed) and the entry of the RO.

Thank you!

Michael Wm. Morell

IF ANY PROBLEM CALL 561-832-0530. RETURN FAX TO 561-366-0000

Confidential Material Attached

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this fax is strictly prohibited. If you have received this fax in error, please immediately notify us by telephone and return this original message to us by U.S. Mail. Please mail to Post Office Box 18649, West Palm Beach, Florida 33416-8649. We will reimburse you for the cost of postage. Thank you!

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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

ANNA R. CURRENT,

Petitioner,

v.

TOWN OF JUPITER and STATE OF
FLORIDA, DEPARTMENT OF
COMMUNITY AFFAIRS

DOAH Case No.: 03-0718GM
DCA Docket No.: 02-2-NOI-5018-(A)-(I)

Respondents.

**PETITIONER'S VERIFIED MOTION FOR SANCTIONS
AGAINST THE TOWN OF JUPITER UNDER SECTION 57.105, FLORIDA STATUTES**

Pursuant to Section 57.105, Florida Statutes (2003), Petitioner, Anna R. Current, by and through her undersigned counsel, respectfully requests that the Division of Administrative Hearings Administrative Law Judge enter an order imposing sanctions, including but not limited to, striking a portion of a PRO, an award of attorney's fees and costs and/or other sanctions against the Town of Jupiter, Florida, and as grounds for seeking such relief would state as follows:

1. On September 9, 2003, counsel for Respondent Town of Jupiter (Town) filed the Town's Proposed Recommended Order (PRO). For the first time in these proceedings the Town asserted a claim or entitlement to an award of attorney's fees and costs to be paid by the Petitioner. Town's PRO at page 13. Specifically, the Town's claim was in the form of a recommendation to the Administrative Law Judge (ALJ) that the Division of Administrative Hearings (DOAH) "reserve jurisdiction to determine the entitlement to an award of attorney's fees and costs and to award reasonable attorney's fees and costs should it deem appropriate..."

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2. During the 2003 Regular Session, the Florida Legislature enacted legislation which amends Florida's Administrative Procedures Act (FAPA). Committee Substitute for Committee Substitute for Senate Bill 1584, 2003 Fla. Laws ch 94. Section 9 of the bill amended Section 57.105, Florida Statutes, to make it clear that this particular statute also applies to administrative proceedings. "By making the provisions of Section 57.105 expressly applicable to administrative proceedings, the legislature clearly has expanded the grounds for sanctions from simply 'improper purpose' to both unsupported claims and dilatory tactics." 2003 Fla. Laws ch 94, §9; Lawrence E. Sellers, Jr., The 2003 Amendments to the Florida APA, 77 Fla. B. J. 74, 76 (October 2003).

3. Subsection 57.105(1), Florida Statutes (2003), now provides that upon the ALJ's initiative, or by motion of any party, DOAH shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney when the losing party or the losing party's attorney knew or should have known that a particular claim or defense was not supported by the material facts necessary to establish the claim or defense.

4. The Town's claim for attorney's fees and costs included in its PRO is an unsupported claim which the Town and the Town's counsel knew or should have known was not supported by material facts necessary to establish the claim. Therefore, the Town's claim violates the provisions of Section 57.105(1)(a) as now applied to administrative proceedings by Section 57.105(5), Florida Statutes.

5. The Town's claim for attorney's fees and costs included in its PRO without the support of any material facts could not have been asserted in good faith.

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Specific factual and legal support establishing that the Town of Jupiter's unfounded claim for attorney's fees and costs is sanctionable

6. On February 21, 2003, Petitioner filed her Petition for Administrative Hearing with the Department of Community Affairs ("DCA" or "Department"). Petitioner is challenging the Town's Comprehensive Plan Amendment 2002-02 adopted by Ordinance No. 62-02 on grounds that the plan amendment is not in compliance as defined in and required by the "Local Government Comprehensive Planning and Land Development Regulation Act," Section 163, Part II, Florida Statutes ("Growth Management Act" or "GMA"). The DCA forwarded the petition to DOAH where it was filed with the DOAH Clerk on February 28, 2003. Specifically, Petitioner challenges the Town's plan amendment on the grounds that the Town has failed to follow both public participation and notice procedures in preparing and adopting the plan amendment as is required by both the minimum criteria contained in the GMA and the Town's own resolution. The Town's public participation and notice criteria adopted under its own home rule adopted resolution exceed the minimum criteria contained in the GMA.

7. Petitioner's challenge was filed in good faith as part of her effort to "call the Town into accountability" for failure to follow the public participation and notice procedural requirements of both the GMA and the Town's own resolutions. Tr. 19-20. Petitioner sincerely believes that the Town's violation of the public participation and notice procedures in turn restricts her and other citizens of the Town from participating in the Town's comprehensive planning program "to the fullest extent possible" as is provided for by law. Section 163.3181(1), Florida Statutes. Petitioner hopes that the ALJ will agree with her position that the Town's plan amendment is "not in compliance" with the GMA. She hopes that after the ALJ enters his order "of non-compliance", his ruling will facilitate the Town taking action to begin to follow the

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public participation and notice requirements of the GMA and the Town's own resolution to avoid fiscal sanctions imposed by the state which the Town would otherwise face if it did not take such action.

8. At the Town Council's meeting of March 4, 2003, counsel for the Town reported to the Council that Petitioner had filed her petition for administrative hearing which conformed to the Department of Community Affairs' (DCA) rules. Based upon counsel's recommendation, the Town Council then specifically authorized its counsel to request, if he deemed it appropriate, that the final hearing in Petitioner's case be expedited by the ALJ so that it could be held within 30 days after the filing of the request with the ALJ. The minutes of the Town Council's meeting do not reflect either a discussion of the subject of seeking attorney's fees and costs from the Petitioner or that the Town Council recommended that counsel for the Town seek to obtain (or have the discretion to seek to obtain) attorney's fees and costs from the Petitioner. (A copy of the minutes of the Town Council's meeting of March 4, 2003 are attached to this verified motion as Exhibit #1 and are incorporated by reference herein.)

9. A review of the agendas and minutes of each Town Council meeting which was held between February 21, 2003 (the date the petition was filed with DCA) and September 9, 2003 (the date that the Town first asserted its claim for attorney's fees and costs in its PRO), does not reveal that at any time did counsel for the Town use the procedure provided by Section 286.011(8), Florida Statutes, to advise the Council at a public meeting that he desired the Council's advice concerning litigation expenditures related to the Town's litigation with Petitioner including whether or not the Council desired that he seek (or have discretion to seek) attorney's fees and costs from Petitioner.

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10. The pleadings filed in this case show that neither the Town nor its counsel have filed any of the following pre-hearing pleadings in which the Town could have raised its claim for attorney's fees and costs from the Petitioner: (a) an answer to the petition; (b) a motion to strike and/or dismiss the petition; and/or (c) a motion for sanctions seeking attorney's fees and costs.

11. The record evidence in this case does not reveal any bad faith or improper purpose on Petitioner's part in bringing her challenge to the Town's plan amendment.

12. The only documentary evidence admitted in these proceedings which even mentions the subject of attorney's fees and costs was Exhibit #100 which was introduced into evidence by the Petitioner herself. Petitioner's Exhibit #100 is a copy of an e-mail message dated January 22, 2003 from David Kemp, the Town's principal planner, to Sam Shannon, the Town's Director of Community of Development. In the e-mail message, Kemp, who was the Town's only witness at the hearing in this case, purports to partly respond to a question posed by Shannon as to who must incur costs associated with the Town's defense of challenges to adopted plan amendments. Kemp's e-mail purports to respond to Shannon's question by reproducing the text of Section 163.3184(12), Florida Statutes, regarding good faith filings of pleadings, motions or other papers in local government plan compliance proceedings. In his e-mail message, Kemp also stated that he would report to Shannon again after he had discussed the subject of seeking attorney's fees and costs with representatives of the DCA. (A copy of Kemp's e-mail message to Shannon dated January 22, 2003 is attached to this verified motion as Exhibit #2 and is incorporated by reference herein.) There are no facts in Kemp's e-mail message to Shannon that

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even mention Petitioner or establish that she acted in bad faith or with an improper purpose in bringing her petition to challenge the Town's plan amendment.

13. At the hearing, Petitioner in her testimony referred to Kemp's January 22, 2003 e-mail message to Shannon for the limited purpose of showing that the Town's planning staff had been exploring ways for the Town to recoup its costs associated with defending potential challenges to the Town's Comprehensive Plan Amendment 2002-02 at least twelve (12) days before DCA's notice of intent to find the Town's plan amendment "in compliance" was published in the Palm Beach Post on February 4, 2003 and 30 days before Petitioner filed her Petition with DCA on February 21, 2003. Although Kemp, the author of the e-mail message, testified at the hearing, neither his testimony nor any other witnesses' testimony, or any documentary evidence introduced by the Town rebutted Petitioner's admission of the Kemp e-mail message into evidence or her testimony about the message.

14. In its PRO, the Town did not propose any findings of fact or conclusions of law regarding Petitioner's bad faith or improper purposes in bringing her challenge to the Town's plan amendment.

15. In its PRO, the Town did not propose any findings of fact or conclusions of law which would support the Town's claim to entitlement for attorney's fees and costs from the Petitioner. Instead, all it did was boldly assert a naked claim for fees and costs in its PRO 41 days after the final hearing was concluded and the evidentiary record in the case had been closed to the Town.

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16. On October 1, 2003, counsel for the Petitioner conferred with counsel for the Town by both telephone and correspondence in an effort seek a stipulation of the parties whereby they would file an agreed upon motion to amend the Town's PRO to remove the Town's unsupported claim for attorney's fees and costs from the Petitioner. (A copy of counsel for the Petitioner's letter to counsel for the Town dated October 1, 2003 is attached to this verified motion as Exhibit #3 and is incorporated by reference herein.)

17. On October 2, 2003, counsel for the Town responded by letter to counsel for Petitioner's suggested stipulation stating that he "may discuss [counsel for the Petitioner's] request with [the Town Council]" and would respond to counsel for the Petitioner the following week. (A copy of counsel for the Town's letter to counsel for the Petitioner dated October 1, 2003 is attached to this verified motion as Exhibit #4 and is incorporated by reference herein.)

18. On October 3, 2003, counsel for the Petitioner again corresponded with counsel for the Town explaining that time was of the essence if the parties were going to stipulate because, in the event the parties did not stipulate, remedies were available to Petitioner that may expire after the ALJ entered his recommended order and relinquished jurisdiction of the case to either the Administration Commission or DCA. In his October 3, 2003 correspondence, counsel for Petitioner even suggested an alternative stipulation to that which he originally suggested in his letter of October 1, 2003 in order to accommodate counsel for the Town. Under the alternative stipulation he proposed, the parties would file an agreed upon motion requesting that the ALJ refrain from entering his recommended order until the matter of the Town's claim for fees and costs from the Petitioner could be resolved either through the agreement of counsel, the agreement of the parties after counsel for the Town discussed the matter with the Town Council,

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or through the filing of a subsequent motion like the instant verified motion for sanctions. (A copy of counsel for the Petitioner's letter to counsel for the Town dated October 3, 2003 is attached to this verified motion as Exhibit #5 and is incorporated by reference herein.)

19. Simultaneously at the time counsel for Petitioner served this verified motion for sanctions on opposing counsel he also served a notice of service of the verified motion for sanctions with the DOAH Clerk. At the time of both the service of the motion and the filing of the notice of service, counsel for the Town had neither responded to counsel for the Petitioner's letter of October 3, 2003 nor agreed to either of the two stipulations proposed by counsel for the Petitioner which, if agreed to, might have eliminated the need for Petitioner to file the instant verified motion for sanctions.

20. Unfortunately, this is not the first time that the Town of Jupiter and counsel for the Town have filed an unsupported claim for attorney's fees and costs in a growth management case pending before DOAH after having failed to establish or introduce any record evidentiary support for the claim during the DOAH final hearing. In the case of Restigouche, Inc. v. Department of Community Affairs and the Town of Jupiter, DOAH Case No. 91-3827 (Final Order entered by ALJ Stuart M. Lerner on August 10, 1992), the Town (represented by the same counsel that represents the Town in the instant case) and DCA asserted for the first time in respondents' joint proposed final order, a claim or entitlement to an award of attorney's fees and costs to be paid by Restigouche, Inc. In expressly rejecting the Town and Department's claim for attorney's fees and costs in the Restigouche, Inc. case, ALJ Lerner ruled:

In their joint proposed final order, the Town and the Department contend that, in pursuing the instant administrative challenge to the land use restrictions imposed by Ordinance 15-90, Petitioner has acted in contravention of the requirements of this statutory provision and that it should therefore be ordered to pay the Town's and the Department's attorney's fees and costs. The record evidence, however, does not support this contention. It does not reveal any bad faith or "improper purpose" on Petitioner's part. Absent such evidence, the Hearing Officer is without authority, under Section 163.3213(8), Florida Statutes, to impose sanctions against Petitioner as requested by the Town and the Department.

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Restigouche, Inc., Conclusion of Law ¶128 (Emphasis supplied.).

21. The record evidence in the instant case, like the record evidence in the Restigouche, Inc. case, does not reveal any evidence which would support a claim for attorney's fees and costs based upon Petitioner's bad faith or "improper" purpose under any attorney's fee statute in the FAPA or the GMA. The view that the record in the instant case does not contain any evidence to support such a claim is bolstered by the fact that in the Town's PRO filed in the instant case, the same counsel for the Town which failed to put forth any evidence to support the Town's claim for fees and costs against Restigouche, again failed to put forth any evidence to support the Town's claim against Petitioner in the instant case. In the instant case, however, the Town and its counsel have ignored Judge Lerner's ruling in the Restigouche, Inc. case on the law of attorney's fees sanctions in growth management cases. They have again sought attorney's fees and costs without any evidentiary support, but here the Town and its counsel did even less than they did in the Restigouche, Inc. case by failing to propose even a single finding of fact and/or conclusion of law. This time, however, their mistakes should be found to be fatal to their claim for fees and costs because the Legislature has now applied 57.105 to administrative proceedings.¹

¹ The behavior of the Town and its counsel in both the 1992 Restigouche, Inc. v. Town of Jupiter case and the 2003 Current v. Town of Jupiter case reminds one of the old saying, attributed variously to the Scottish, Native Americans, and the Chinese, which goes something like: "Fool me once, shame on you. Fool me twice, shame on me." Fortunately, today citizens who desire to participate in community growth management programs to the fullest extent possible as party litigants in DOAH plan amendment compliance proceedings, and DOAH ALJ's who are responsible for presiding over such proceedings, should be able to find some comfort in the fact that the Florida Legislature was "not fooling" when it enacted Section 9 of CS/CS for Senate Bill 1584 which "seeks to minimize unnecessary delays in the administrative hearing process by discouraging unsupported claims..." Lawrence E. Sellers, Jr., The 2003 Amendments to the Florida APA, 77 Fla. B. J. 74, 75 (October 2003).

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22. There are, however, two (2) notable differences between the unfounded claim for attorney's fees and costs filed in the Restigouche, Inc. case in 1992 and the unfounded claim for attorney's fees and costs filed in the instant case in 2003:

(A) First, the DCA has wisely decided not to join with the Town in filing an unsupported claim for attorney's fees and costs against the Petitioner like it did in the Restigouche, Inc. case. Subsequent to the Restigouche, Inc. case, the Department appears to have adopted the sound policy (based upon a reasonable interpretation of the GMA) not to pursue sanctions against petitioners for bringing growth management cases before DOAH where they seek to constructively participate in good faith in the planning process "to the greatest extent possible" as provided for under the public participation provisions of the GMA. See Section 163.3181(1), Florida Statutes; and

(B) Second, "[by] making the provisions of §57.105 expressly applicable to administrative proceedings, the legislature clearly has expanded the grounds for sanctions from simply 'improper purposes' to both unsupported claims and dilatory tactics. As such it seems obvious that the legislature intended to authorize – indeed require – ALJs to make more liberal use of fees and sanctions to discourage both unsupported claims and dilatory actions." Lawrence E. Sellers, Jr., The 2003 Amendments to the Florida APA, 77 Fla. B. J. 74, 76 (October 2003)(Emphasis in original quotation.)

23. Therefore, the Movant is entitled to sanctions including, but not limited to, the striking of the Town's unfounded claim for attorney's fees and costs, an award of attorney's fees and costs, and such other sanctions as the ALJ deems necessary, just or appropriate. See Forum v. Boca Burger, 788 So. 2d 1055 (Fla. 4th DCA 2001) and Section 57.105(1), Fla. Stat.

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WHEREFORE, Petitioner Anna R. Current, respectfully requests that the Division of Administrative Hearings Administrative Law Judge grant Petitioner's Verified Motion for Sanctions Against the Town of Jupiter Under Section 57.105, Florida Statutes, and enter an Order Imposing Sanctions under Section 57.105, Florida Statutes, which includes but is not limited to the following:

A. That the Order Imposing Sanctions Under Section 57.105, Florida Statutes, strike the following language which appears as the last sentence in the second paragraph at page 13 of the Town of Jupiter's Proposed Recommended Order filed in this case on September 9, 2003:

The Court reserves jurisdiction to determine the entitlement to an award of attorney's fees and costs and to award reasonable attorney's fees and costs should it deem appropriate and to order any other further relief this Court deems, necessary, just or appropriate.

B. An award of attorneys' fees and costs incurred by Petitioner in bringing this Verified Motion for Sanctions Against the Town of Jupiter Under Section 57.105, Florida Statutes; and

C. Such other sanctions and/or relief as the DOAH ALJ deems necessary, just or appropriate.

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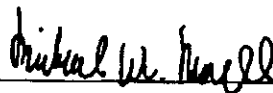
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Respectfully served on counsel for the Town of Jupiter by hand delivery on this 7th day of
October, 2003, and on counsel for DCA by U.S. Mail on this 7th day of October, 2003.



Michael Wm. Morell
Attorney at Law
Florida Bar No. 0570280
(561) 832-0530 OFFICE
(561) 366-0000 FAX
E-mail: morellmw@bellsouth.net

Mailing Address: P.O. Box 18649
West Palm Beach, FL
33416-8649

Office Address: 422 Sunset Road
West Palm Beach, FL 33401

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VERIFICATION

1. I, Anna R. Current, am a property owner and resident of the Town of Jupiter, Florida, Palm Beach County, Florida.
2. I am over eighteen (18) years of age, and I am authorized to give this verification on behalf of myself. I am making this affidavit based upon my personal knowledge.
3. I am the Petitioner in the case of Anna R. Current v. Town of Jupiter, Florida and the Department of Community Affairs, DOAH Case No. 03-0718GM.
4. I have read the foregoing Petitioner's Verified Motion for Sanctions Against the Town of Jupiter Under Section 57.105, Florida Statutes, and the facts contained therein (which facts are hereby incorporated by reference into this verification) and state that said facts are true and correct.

By: Anna R. Current
Name: Anna R. Current

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

S.S. No. N/A

The foregoing instrument was acknowledged before me this 11 day of October, 2003 by Anna R. Current who is personally known to me or has produced Drivers License as identification and who did/did not take an oath.



Susan J. Hollen
MY COMMISSION # 00158854 EXPIRES
October 21, 2006
BONDED THRU TROY FARM INSURANCE, INC.

Commission Expires:

Notary Public, State of Florida

Sign Name: Susan J. Hollen

Print Name: SUSAN J. HOLLEN

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CERTIFICATE OF SERVICE OF

PETITIONER'S VERIFIED MOTION FOR SANCTIONS ON COUNSEL OF RECORD

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Verified Motion for Sanctions Against the Town of Jupiter Under Section 57.105, Florida Statutes, was furnished on October 7, 2003, and again November 12, 2003: by hand delivery to Thomas J. Baird, Esquire, Thomas J. Baird, P.A., 11891 U.S. Highway One, Suite 105, North Palm Beach, Florida 33408; by Fax and U.S. Mail to: Timothy E. Dennis, Assistant General Counsel and David L. Jordan, Acting General Counsel, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100.

A copy was also furnished by U.S. Mail to Colleen Castille, Secretary, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100 on November 12, 2003.

Michael Wm. Morell

Michael Wm. Morell

**CERTIFICATE OF SERVICE OF NOTICE OF FILING AND PRESENTMENT OF
PETITIONER'S VERIFIED MOTION FOR SANCTIONS UNDER SECTION 57.105,
F.S., AND DOCUMENTS EXCHANGED BETWEEN THE PARTIES
DURING THE 36-DAY SAFE HARBOR**

I HEREBY CERTIFY that a copy of the Petitioner's Notice of Filing and Presentment of Petitioner's Verified Motion for Sanctions Against the Town of Jupiter Under Section 57.105, F.S. and Documents Exchanged between the Parties During 36-Day Safe Harbor was filed simultaneously with Petitioner's Verified Motion for Sanctions. The Notice of Filing and Presentment was furnished this 12th day of November, 2003: by fax to Ann Cole, DOAH Clerk, Division of Administrative Hearings, The Desoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, Fax: (850)921-6847; by fax to Timothy E. Dennis, Assistant General Counsel and David L. Jordan, Acting General Counsel, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100, Fax: (850)922-2679; by Hand Delivery to Thomas J. Baird, Esquire, Thomas J. Baird, P.A., 11891 U.S. Highway One, Suite 105, North Palm Beach, Florida 33408, Fax: (561)625-0610; and by U.S. Mail to Colleen Castille, Secretary, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100.

Michael Wm. Morell

Michael Wm. Morell

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**FINAL AGENDA AND COUNCIL MINUTES
TOWN COUNCIL REGULAR MEETING
TOWN OF JUPITER
MARCH 4, 2003**

The meeting was called to order by Mayor Karen J. Golonka 7:02 P.M.

PRAYER AND PLEDGE OF ALLEGIANCE:

ROLL CALL: Present were: Mayor Karen J. Golonka; Vice-Mayor Barbara P. Henderson; Councilors Donald D. Daniels; and Jim Kuretski; Robert J. Bartolotta, Town Manager; Thomas J. Baird, Town Attorney; and Sally M. Boylan, Town Clerk. Councilor Kozinski was not able to attend.

MINUTES: February 18, 2003 Regular Meeting, and February 25, 2003 Workshop Meeting

Councilor Daniels asked for the following clarifications:

February 18, 2003

Page 7, Paragraph 4, Delete: "was given"; and **Insert:** "asked if he could be provided"

February 25, 2003

Page 2, Paragraph 4, Insert: "between expanded intersections".

Vice-Mayor Henderson asked for the following clarifications:

February 18, 2003

Page 7, Paragraph 4, Insert: "due to her employer being the closing agent for this parcel of vacant land"

February 25, 2003

Page 3, Paragraph 3, Insert: "Vice-Mayor Henderson agreed".

Page 4, Paragraph 3, Delete: "connections"; and **Insert:** "land acquisitions"; and Last Paragraph, **Insert:** "having only one major east/west roadway"

Mayor Golonka asked for the following clarification:

February 25, 2003

Page 4, Asked the Clerk to check the tape, and include her comments regarding congestion and 8-laning Indiantown Road.

Councilor Daniels moved to approve Minutes of February 18, 2003 Regular Meeting and February 25, 2003 Workshop Meeting, as amended; seconded by Vice-Mayor Henderson; motion passed.

Golonka	Henderson	Daniels	Kuretski
Yes	Yes	Yes	Yes

ORDER OF BUSINESS

Quasi Judicial Hearings:

- Swearing In (For anyone planning to address Council)
- Disclosure of ex parte communications (Council only)
- Staff and Planning and Zoning Commission recommendations
- Presentation by applicant
- Public to be heard - Three (3) minute limit
- Motion on the floor

Received Event (Event Succeeded)

Date: 11/12/03
Pages: 32
Remote CSID: Michael Wm. Morell
From: Michael Morell <41304@0001> TO: COAH CLERK Ann Cole

Time: 1:39 PM
Sender: Michael Wm. Morell
Date: 11/12/2003 Time: 1:43:10 PM

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T/C MINUTES – PAGE 2
March 4, 2003

CITIZENS COMMENTS

Ms. Anna Current, resident of Ryan Road, expressed concerns related to the Code Enforcement Board proceedings on February 26, 2003. She felt the Board's behavior was condescending and at times abrupt.

Mr. Phil Cipolla, resident of Berkshire Avenue, mentioned he attended the same Code Enforcement Board meeting and had a totally different opinion. He supported the Board's actions and felt the problem was with the owner of the property and the lessee.

Mr. Tom Boyhan, resident of Stonebrier Avenue and business owner on Toney Penna, mentioned he also attended the Code Enforcement Board meeting and agreed with Ms. Current. He suggested Staff provide the lessee with a list of what specific corrections were required.

CONSENT AGENDA

All items listed in this portion of the agenda are considered to be routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilor or citizen so requests; in which event, the item will be removed and considered in the regular agenda.

Mayor Golonka removed Item 2.

Ex-parte Communications – None

Councilor Daniels moved to approve the Consent Agenda, as amended; seconded by Vice-Mayor Henderson; motion passed.

Golonka	Henderson	Daniels	Kuretski
Yes	Yes	Yes	Yes

PUBLIC HEARINGS

1. Resolution 26-03 - Council approval of the Plat entitled "Abacoa Town Center, Plat No. 3 *Quasi-judicial*

PUBLIC BUSINESS

2. Resolution 30-03 – Water Service Agreement – Alexandria Apartments.
MOVED TO REGULAR AGENDA
3. Resolution 36-03 – Supporting the continued funding of the State's Beach Management Trust Fund.
4. Resolution 39-03 – Authorizing the Assignment of Contract No. U02-3 with Stemle – Anderson and Associates to JLA Geosciences, Inc.

Received Event (Event Succeeded)

Date: 11/12/03

Pages: 32

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Time: 1:39 PM

Sender: Michael Wm. Morell

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T/C MINUTES - PAGE 3

March 4, 2003

CONSENT AGENDA

PUBLIC BUSINESS

- 4.1 **Resolution 42-03** - Authorizing the Mayor to execute two (2) Easement Agreements with North Palm Beach Heights Water Control District for purpose of Construction of Public Park Amenities.
5. Council approval of the Perry Institute Lease (First Union Bank Building).
6. Council approval to extend Traffic consultant contracts with Joe Pollock and Susan O'Rourke.
7. Confirmation of the following Meeting schedule: #
-Tuesday, March 25, 2003, Council Retreat Follow up, 5:00 P.M. - 9:30 P.M.-
Jupiter Beach Resort, Parlor Room (A/B), 5 Indiantown Road, Jupiter.

END OF CONSENT AGENDA

ITEMS REMOVED FROM CONSENT AGENDA TO REGULAR AGENDA

PUBLIC BUSINESS

2. **Resolution 30-03** - Water Service Agreement - Alexandria Apartments.

Mayor Golonka asked if the applicant was present. Staff indicated the applicant was not present. Mayor Golonka mentioned concerns with the project not having Staff approval, and still in the Planning and Zoning process. She noted the limited square footage within the apartments, and pointed out the apartment size met Town code. She expressed concerns on the location within the Pine Gardens South. She noted if it was intended as a rooming house it would need to be approved as a special exception, and was not a use by right.

Councilor Daniels and Vice-Mayor Henderson agreed that the size was very small. Mayor Golonka asked for clarification on the use of the units. Councilor Kuretski noted the lack of kitchen space on the plans. Vice-Mayor Henderson felt the plans were poorly designed, and suggested Staff provide more information on new developments, since Council would not be approving this as a site plan.

Vice-Mayor Henderson moved to table Resolution 30-03; seconded by Councilor Kuretski; motion to table passed.

Golonka	Henderson	Daniels	Kuretski
Yes	Yes	Yes	Yes

END OF ITEMS REMOVED FROM THE CONSENT AGENDA TO REGULAR AGENDA

T/C MINUTES - PAGE 4

March 4, 2003

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Pages: 32

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REGULAR AGENDA

PUBLIC HEARINGS

8. **Ordinance 77-02, Second Reading, Landscaping Standards** – Modifications to the Environmental and Vegetation Preservation Code to allow ficus hedges on single-family residential lots and modifications to the Landscaping Code to remove a conflict between sections addressing applicability and landscape maintenance.

Councilor Daniels moved to approve Second Reading of Ordinance 77-02, including Staff's recommendations.

Mayor Golonka passed the gavel to Councilor Kuretski.

Seconded by Mayor Golonka.

Councilor Kuretski mentioned he did not support including ficus as an approved hedge material. He felt the amendment would create future Code Enforcement problems due to the high growth rate of 2-3 feet per year. He felt it was not practical to maintain the hedge at or near six feet, and noted it would increase the quantity and cost of vegetative trash removal to the Town.

Title read by Councilor Kuretski.

Golonka	Henderson	Daniels	Kuretski
Yes	Yes	Yes	No

Motion passed.

Councilor Kuretski returned the gavel to Mayor Golonka.

ADJOURN PUBLIC HEARINGS

PUBLIC BUSINESS

9. Council authorization to execute the Agreement with the Weitz Company establishing the Guaranteed Maximum Price (GMP) for South Jupiter Community Park, Phase I, and North Palm Beach Heights Neighborhood Park. (Continued from 02/18/03)

Mr. Bernie Schattner, Director of Engineering and Public Works gave a brief overview of the history of the Jupiter South Community Park. He indicated Council had previously authorized Staff to enter into an agreement with the Weitz Company for pre-construction services. He recommended approval of Amendment No. 1 to the Agreement for construction services. He noted the Guaranteed Maximum Price (GMP) was the ceiling price for the construction, but indicated prices could still be negotiated and incorporated to reduce the overall cost of the project. He noted the completion date was scheduled for October 2003.

T/C MINUTES – PAGE 5
March 4, 2003

REGULAR AGENDA

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Pages: 32

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PUBLIC BUSINESS

9. Council authorization to execute the Agreement with the Weitz Company establishing the Guaranteed Maximum Price (GMP) for South Jupiter Community Park, Phase I, and North Palm Beach Heights Neighborhood Park. (Continued from 02/18/03)

Vice-Mayor Henderson suggested a user fee for the courts. Mayor Golonka indicated she could not support a user fee. Mr. Bartolotta noted the Town has tried to keep to a uniform standard throughout the Town. Vice-Mayor Henderson explained there would always be newer technology as time progresses, and the Town would continue to have more options.

Councilor Daniels felt charging a fee would eliminate some children from using the courts. He indicated he would not support the user fee, or the upgraded tennis courts at this time. Mayor Golonka mentioned there would be residents from other nearby neighborhoods using the park, not just Abacoa. She noted Council represented all residents. She indicated she would not support some of the suggestions to pay for costs: 1) hiring a tennis pro, and the use of additional facility space; or 2) a user's fee. Council discussion followed on the public use of the courts. Mr. Bartolotta indicated if the courts were free, the Town probably would not have them staffed, or if the Town charged a fee it could be a variable fee charge. He suggested, as an option, make the courts free to residents and charge for non-residents.

Vice-Mayor Henderson suggested the Town would still need to monitor the courts to see who was actually using the courts. Mr. Ruskay reviewed the user fees for the City of Palm Beach Gardens, and Jupiter Ocean Racquet Club. Mayor Golonka felt there would be two kinds of users; the more experienced tennis players; and children that just want to play tennis. She felt a public municipal court should be assessable to children as well as adults, without a fee.

Councilor Kuretski suggested having a balance of different court surfaces within the Town was important. He felt the Town could take the risk, and with supervision see how the courts were being used. He indicated he would support incremental to the upgraded courts to add that as an option within the Town, but reiterated he does not support the overall agreement. Mr. Bartolotta suggested the tennis courts could be addressed as a change order to the contract.

Mr. Ruskay noted as Phase II was completed, it would be staffed due to the services offered, and the tennis courts could be monitored at that time. Mayor Golonka indicated she would like Staff to investigate how the Town would control the use of the courts, and investigate the time the schools allow public use of the tennis courts. Mr. Ruskay noted the Town was in the process of drafting an Interlocal Agreement with the adjacent school to use all their recreation facilities.

Vice-Mayor Henderson moved to approve the Agreement, with condition that the tennis courts surface to be revisited by Council; seconded by Councilor Daniels; motion passed.

Golonka	Henderson	Daniels	Kuretski
Yes	Yes	Yes	No

T/C MINUTES - PAGE 7

March 4, 2003

REGULAR AGENDA

10. Council discussion - Ordinance regarding Underground Utility Lines.

Received Event (Event Succeeded)

Date: 11/12/03

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Sender: Michael Wm. Morell

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Mr. Bartolotta asked Council direction on the issue of undergrounding. He reviewed the language in the Indiantown Overlay Zone (IOZ), and asked Council on how they would like to proceed along Indiantown Road, and throughout the Town. He explained the current code required new businesses and small developments along Indiantown Road to underground only the service drop lines. He felt if it was Council's desire to have new businesses and small developments underground all existing lines, then the code would need to be revised. He questioned whether Council was considering extending the current code or a revised code to all commercial districts in the Town.

Mr. Bartolotta reviewed the options for undergrounding. He explained if all the distribution lines and transmission lines were to be buried it could be very costly. He mentioned distribution lines were cheaper to bury than transmission lines, and pointed out east of Center Street was mainly transmission lines, and west of Center Street was mainly distribution lines. He noted there were very few undeveloped parcels on commercially zoned parcels remaining to be developed along Indiantown Road.

Vice-Mayor Henderson mentioned the applicant on the River Plaza project felt undergrounding could only enhance his project. She supported undergrounding powerlines for safety purposes, as well as aesthetics.

Councilor Daniels suggested establishing a fund as part of the permitting process for applicant's to pay for their portion of the cost to underground. He indicated he would support undergrounding if the cost issues could be worked out. He felt undergrounding would raise property values, and improve the overall look of the IOZ District. He felt outside funding sources needed to be investigated, and suggested he would rather see a large section completed, then to piecemeal the project.

Mr. Bartolotta pointed out the issue would be how to collect and pay for undergrounding sections in areas already built. Councilor Daniels suggested the cost of undergrounding could be reduced if they were buried at the time of 8-laning Indiantown Road. He felt the proposed ordinance was needed, but suggested a mechanism be in place to use the funds collected from new developers.

Councilor Kuretski agreed with Councilor Daniels in looking at a sensible approach, but mentioned concerns on the cost to underground. He suggested Council should attempt to come to a consensus on the scope of work, and the cost to the Town and the residents. He pointed out the Palm Beach County Residents Survey indicated 61% would not be willing to pay for undergrounding. He felt undergrounding was cost-prohibitive, and impractical to implement by piecemeal, and indicated cable and telephone may also need to be looked at. He felt the roadway crossings would be challenging and problematic, and had not been totally discussed.

T/C MINUTES - PAGE 8

March 4, 2003

REGULAR AGENDA

10. Council discussion - Ordinance regarding Underground Utility Lines.

Mayor Golonka felt the last time undergrounding was discussed Council focused on the major intersections and historical/cultural areas. She asked Staff for the cost figures previously

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From: Michael Wm. Morell [mailto:m.morell@townofindianapolis.org] To: BOAH CLERK Ann Cole

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provided to Council. She felt it was not practical to piecemeal undergrounding. She agreed with Councilor Daniels on the applicant contributing funds, but suggested a program would need to be established so that it would work. She felt more discussion was needed on the cost of distribution lines versus transmission lines, and cable and telephone. Councilor Kuretski indicated Council was provided an estimate on undergrounding Indiantown Road during the 8-laning discussions, and felt that was a fairly reasonable estimate.

Mr. Bartolotta asked for Council direction on the intent of the ordinance, and whether Council wanted to apply to pre-existing or new facilities. He indicated the proposed ordinance would apply Townwide.

Mayor Golonka mentioned she would not support the list provided to Council on the Districts and the commercial zones, due to the ordinance stating the developers would have to underground off-site. She felt the ordinance was too broad. Vice-Mayor Henderson agreed and felt the ordinance should be more specific.

Mayor Golonka felt the burden should be borne by those that would benefit from the undergrounding. She reiterated the citizens do not want to pay for undergrounding lines. She felt Council agreed there were other major issues primarily related to the Town's major commercial corridors not in the ordinance. She questioned the current code requirements for undergrounding. Mr. Bartolotta advised the code requirement was for the IOZ District, but had found inconsistencies in administering the code in that area. Consensus of Council agreed that Indiantown Road was the first priority for undergrounding, followed by U.S. Highway One.

Mayor Golonka asked for clarifications on the proposed ordinance. She felt the language needed to be more specific, and suggested Staff investigate what would be a reasonable cost for undergrounding. She felt Council needed to decide what should be done to be consistent for Indiantown Road, and how to address the broader issues for other areas within the Town. Councilor Kuretski questioned the poles and lighting with undergrounding. Mr. Bartolotta indicated Staff would provide a report to Council including cost estimates and strategies for undergrounding.

REPORTS

TOWN ATTORNEY - Challenges to Town's Comprehensive Plan Amendment – Mr. Baird mentioned his 2/11/03 memo to Council informing Council the Department of Community Affairs (DCA) had received five petitions seeking an administrative hearing and that these petitions were all dismissed with leave to amend. Also, he indicated Ms. Anna Current had filed a petition for an administrative hearing which conformed to DCA's rules and highlighted possible scenarios. He recommended Council consider requesting an expedited process which would require the hearing to be conducted within 30 days.

T/C MINUTES – PAGE 9
March 4, 2003

REGULAR AGENDA

REPORTS

TOWN ATTORNEY - Challenges to Town's Comprehensive Plan Amendment – Councilor Daniels asked about the cost to the Town for the hearing. Mr. Baird explained the Town's last hearing on Longshore Drive cost \$55,000 in attorney's fees and \$20,000 for expert witness fees. Mayor Golonka asked for Council to receive a

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Pages: 32

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Sender: Michael Wm. Morell

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copy of the petition from Ms. Current.

Consensus of Council agreed to authorize Mr. Baird to request the expedited process, if appropriate.

Vice-Mayor Henderson asked when the Town's current litigation cases would be resolved. Mr. Baird explained the Town was a defendant; had completed everything necessary; and that the plaintiff typically controls litigation.

TOWN MANAGER - None

TOWN COUNCIL- LIAISONS REPORT

- Metropolitan Planning Organization Community Transit Study - Councilor Kuretski mentioned the study and how he lobbied to have the Town of Jupiter added to the scope. He indicated a presentation would be scheduled for the Town Council and would enable the Town to get involved in a Mass Transit Master Plan. Mr. Bartolotta mentioned the presentation was scheduled for April 1, 2003.

- I-95 Truck Lanes - Councilor Kuretski presented the request from Palm Beach County Commissioner Aronson to ask municipalities to discuss their position on municipalities' enforcement of I-95. He recommended the Palm Beach County Sheriff handle this enforcement since it is an appropriate use of the funds the Town's residents already provide the County. Consensus of Council agreed the Palm Beach County Sheriff's Office should patrol I-95.

- Traffic Performance Standards - Councilor Daniels reported at the Palm Beach County League of Cities meeting last Wednesday, the League decided to support the 1% level of significance, which was in opposition to the Palm Beach County graduating scale. He mentioned Jupiter, Juno, and North Palm Beach voted No and all other cities present voted Yes.

TOWN COUNCIL COMMENTS

COUNCILOR KURETSKI

- Parks and Recreation Summer Program - suggested if the program was opened to non-residents there would be a gap of one to two weeks between when residents and non-residents can sign up. Mr. Bartolotta explained this year a lottery system would be used to avoid people camping out.

T/C MINUTES - PAGE 10

March 4, 2003

REGULAR AGENDA

TOWN COUNCIL COMMENTS

COUNCILOR KURETSKI

- Abacoa Affordable Housing Calculations - asked for the taxes calculations to be more realistic.

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From: Michael Wm. Morell [mailto:m.morell@pbcah.com] Sent: 11/12/2003 1:39 PM To: BOAH CLERK Ann Cole**Date:** 11/12/2003 **Time:** 1:43:10 PM**Page** 25 of 32

- Rental Property Costs – mentioned he was astounded with the \$1100/month fee for a two bedroom, two bath in St. Lucie West.

- CIP Process – felt strongly the Council should set the budget and that the figures should not be increased. He mentioned on item 9 – there was \$340,000 gap for the electrical, utilities and the shared parking.

COUNCILOR DANIELS

- Lighting – mentioned concerns related to bright lighting in the Town and how it was destroying the beachfront/turtles. Specific locations were Jupiter Ocean Racquet Club, Ocean Cay Park and Bluffs Square. He suggested staff investigate and determine what is necessary. Councilor Kuretski agreed and mentioned a code change may be needed.

VICE-MAYOR HENDERSON

- Asked Assistant Town Manager Andy Lukasik if he had received a report from Code Enforcement. Mr. Lukasik explained he would provide the list of citations from the parking garage in Abacoa. Vice-Mayor Henderson mentioned problems in the stairwell regarding lighting, safety and cleanliness.

MAYOR GOLONKA

- Mentioned the letter from an attorney related to the request for water from Palm Beach Country Estates. She recommended the Town's response indicate this is an issue the Council would be deciding in the upcoming months during the discussions on priorities. Consensus of Council agreed.

ADJOURNMENT: 9:45 P.M.

Sally M. Boylan, Town Clerk

Karen J. Golonka, Mayor

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David Kemp

From: David Kemp
Sent: Wednesday, January 22, 2003 2:58 PM
To: Sam Shannon
Cc: John Slicker
Subject: Comprehensive Plan Amendment Challenging "Good Faith" section

100

Sam,

To partly answer your question about who must incur costs associated with a challenge to an adopted Comprehensive Plan Amendment, Section 163.3164(12), F.S., states the following:

(12) GOOD FAITH FILING. The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive reasons, or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the administrative law judge, upon motion or his or her own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

I will let you know what else I find out through conversations with DCA.

Thanks,

Dave

Received Event (Event Succeeded)

Date: 11/12/03

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Remote CSID: Michael Wm. Morell
From: Michael Wm. Morell (561)366-0000 FAX DOAH CLERK Ann Cole

Time: 1:39 PM

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Date: 11/12/2003 Time: 1:43:10 PM

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Michael Wm. Morell
Attorney at Law
P.O. Box 18649
West Palm Beach, Florida 33416-8649
(561)832-0530 Office
(561)366-0000 Fax
e-mail: morellmw@bellsouth.net

Via Fax 561-625-0610 and U.S. Mail

October 1, 2003

Thomas J. Baird, Esquire
Thomas J. Baird, P.A.
11891 U.S. Highway One, Suite 105
North Palm Beach, Florida 33408

Re: Anna R. Current v. Town of Jupiter and Department of Community Affairs
DOAH Case No. 03-0718GM

Dear Tom:

This is to confirm the details of our telephone conversation this afternoon during which I communicated to you the following:

In the Town of Jupiter's Proposed Recommended Order (PRO) filed in the above-referenced case on September 8, 2003, the Town recommended that Administrative Law Judge J. Lawrence Johnston "reserve jurisdiction to determine the entitlement to an award of attorney's fees and costs and to award reasonable attorney's fees and costs should it deem appropriate."

Although my client's petition in this case was originally filed on March 28, 2003, I find it unusual that the Town's reference to an entitlement to an award of attorney's fees and costs would be raised for the first time in its PRO filed almost six (6) months after the case began. I use the word "unusual" because a review of the pre-hearing pleadings in this case indicates that the Town did not file any of the following pleadings in which it could have raised the attorney's fees and costs issue in the case: (1) an answer; (2) a motion to strike and/or dismiss the petition; and/or (3) a motion for attorney's fees and costs.

My review of the minutes of the Town Council meetings held after the case was initiated by my client did not reveal that the Town Council has ever instructed you to pursue fees and costs from my client for exercising her rights "to participate to the fullest extent possible" under Florida's Growth Management Act. Such public participation rights under the Growth Management Act include, but are not limited to, my client's right to petition for formal administrative proceedings as she has done in this case.

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Thomas J. Baird, Esquire

Thomas J. Baird, P.A.

October 1, 2003

Page Two

Via Fax 561-625-0610 and U.S. Mail

Furthermore, my review of the Town Council's minutes also failed to reveal that any closed "attorney-client session" has been scheduled or held "out-of-the-sunshine" in this case at which the Town Council might have instructed you to pursue fees and costs from my client. Therefore, until you inform me of facts to the contrary, I shall in good faith assume that the decision to include the reference to the Town's entitlement to fees and costs in its PRO was made solely and entirely by you as counsel for the Town who prepared and signed the PRO.

In previous growth management cases before the Division of Administrative Hearings, the Town has been unsuccessful in efforts to claim fees and costs on facts which are identical or similar to the facts in my client's case. In Restigouche, Inc. v. Town of Jupiter, DOAH Case No. 91-3827 GM, Administrative Law Judge Stuart M. Lerner expressly rejected the Town's claim for attorney's fees and costs ruling:

In [its] proposed final order...the Town contend[s] that, in pursuing the instant administrative challenge...[Restigouche] has acted in contravention of the requirements of [Section 163.3213(8)] and that [Restigouche] should therefore be ordered to pay the Town's attorney's fees and costs. The record evidence, however, does not support this contention. It does not reveal any bad faith or "improper purpose" on [Restigouche's] part. Absent such evidence, the Hearing Officer is without authority, under Section 163.3213(8), Florida Statutes, to impose sanctions against [Restigouche] as requested by the Town...

Final Order, Conclusion of Law ¶128 (Emphasis supplied.)

The record evidence in the instant case, like the record evidence in the Restigouche, Inc. case, does not reveal any evidence which supports bad faith or "improper" purpose on my client's part. This view of the record evidence is bolstered by the fact that in the Town's PRO you did not propose any findings of fact or conclusions of law regarding bad faith or improper purpose.

Having raised and lost the attorney's fees and costs issue on identical or similar facts in the Restigouche, Inc. case, I believe that the decision made for the Town to raise the same issue again against my client in the Town's PRO filed in the instant case (especially after Judge Lerner had properly instructed the Town about this area of administrative law in the Restigouche, Inc. case), may constitute a bad faith and/or an improper purpose filing which is prohibited by Section 163.3184(12), Florida Statutes. If indeed the filing of the PRO without evidence to support its unsupportable claim for fees and costs constitutes a bad faith and/or an improper purpose filing, in addition to being actionable against the Town and its counsel under the cited statute, the Town and its counsel may also face potential liability under Section 768.295, Florida Statutes, and 42 U.S.C. §1983.

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Thomas J. Baird, Esquire

Thomas J. Baird, P.A.

October 1, 2003

Page Three

Via Fax 561-625-0610 and U.S. Mail

Based on the foregoing, I propose the following fair, low cost, efficient and speedy solution to the problem presented by the Town's filing. The Town should immediately file an Agreed Upon Motion to Amend the Town's PRO to remove the objectionable language which requests Judge Johnston to "reserve jurisdiction to determine the entitlement to an award of attorney's fees and costs and to award reasonable attorney's fees and costs should it deem appropriate." The motion should be styled an "Agreed Upon Motion" and the Town is authorized to represent the following in the motion: "Counsel for the Town has consulted counsel for the Petitioner and has been authorized by said counsel to represent that the Petitioner joins in and supports the agreed upon motion."

Upon the immediate filing of such a motion, Judge Johnson would then be relieved of any responsibility to respond to the Town's request. In turn, my client will not need to consider further whether she should exercise any and/or all of the remedies available to her under law to address the situation if it remains unremedied by the Town in the agreed upon motion.

At the end of our conversation you stated that you would sleep on my proposal and get back in touch with me. Since time is of the essence in this matter, I assume I shall be hearing from you as soon as possible.

Sincerely,



Michael Wm. Morell

MWM:mm

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Date: 11/12/03

Pages: 32

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From: Michael Wm. Morell <303-0000111> DOAH CLERK Ann Cole

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THOMAS J BAIRD PA

PAGE 02

LAW OFFICES

THOMAS J. BAIRD, P.A.

11801 U.S. HIGHWAY ONE, SUITE 100
NORTH PALM BEACH, FL 33408

THOMAS J. BAIRD
Board Certified
City, County & Local Government Law

TELEPHONE (888) 625-4400
FACSIMILE (888) 625-0810
E-MAIL: thjb@thjbpa.com

October 2, 2003

Via Facsimile 303-0000
Michael Wm. Morell, Esquire
P.O. Box 18849
West Palm Beach, FL 33418

Re: Anna Current v. Town of Jupiter and
Department of Community Affairs
DOAH Case No.: 03-0718 GM

Dear Mike:

I have considered the request you made of me yesterday during your telephone conversation with me, and your letter received by my office at 5:02 p.m. Wednesday. Rather than call you and be subjected to what I view as further threats, I am responding by letter. I may discuss your request with my client. However, because I do not anticipate being able to do so this week (I am in mediation today, and have previous plans to be out of the office Friday), I will have to respond to you next week.

Sincerely,

Thomas J. Baird
Thomas J. Baird

TJB/sp
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Remote CSID: Michael Wm. Morell
From: Michael Morell 11/12/2003 1:43 PM DOAH CLERK Ann Cole

Time: 1:39 PM

Sender: Michael Wm. Morell

Date: 11/12/2003 Time: 1:43:10 PM

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Michael Wm. Morell
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Via Fax 561-625-0610 and U.S. Mail

October 3, 2003

Thomas J. Baird, Esquire
Thomas J. Baird, P.A.
11891 U.S Highway One, Suite 105
North Palm Beach, Florida 33408

Re: Anna R. Current v. Town of Jupiter and Department of Community Affairs,
DOAH Case No. 03-0718GM

Dear Tom:

The statement made in your letter of October 2, 2003 regarding "threats" is as unfounded as the Town's claim for attorney's fees and costs from my client which was included in the Town's Proposed Recommended Order without any record evidentiary support. Our conversation of October 1, 2003 was as factual as my confirmation letter faxed to you immediately thereafter.

The statement made in your letter that you "may discuss" my request with your client and "will have to respond next week" is unacceptable. Either tell me you intend to consult your client or not; I cannot agree to open-ended discretion.

As I explained in both our conversation and my letter, time is of the essence in this matter. There are remedies available to my client that may expire after Judge Johnston enters his recommended order and jurisdiction of the case is relinquished either to the Administration Commission or DCA.

Your letter in response to my letter did not inform me of any facts which refute my client's and my good faith and reasonable belief that you acted solely and entirely on your own as counsel for the Town who prepared and signed the PRO. Therefore, you and I as counsel for the parties should be able to end this dispute over the Town's unfounded claim for fees and costs using the fair, low cost, efficient and speedy manner I suggested in my letter which would allow the public participation/notice issue to be resolved expeditiously on its merits.

It is neither my client's nor my intention to unreasonably delay the resolution of the public participation/notice issue on its merits. However, it is acceptable for you to have the time you requested to consult your client, if you will stipulate today that you definitely intend to consult your client and further agree to the filing of a motion requesting that Judge Johnston refrain from entering his recommended order until the matter of the Town's claim for fees and costs is resolved either by the parties themselves, or the Judge by ruling on my client's motion.

Received Event (Event Succeeded)

Date: 11/12/03

Pages: 32

Time: 1:39 PM

Sender: Michael Wm. Morell

Remote CSID: Michael Wm. Morell
From: Michael Wm. Morell 303-344-0000 FAX CLERK Ann Cole

Date: 11/12/2003 Time: 1:43:10 PM

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Thomas J. Baird, Esquire

Thomas J. Baird, P.A.

October 3, 2003

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Via Fax 561 625 0610 and U.S. Mail

Upon receipt of your stipulation to definitely consult your client and join in the motion, I will then prepare an Agreed Upon Motion requesting that Judge Johnston refrain from entering his recommended order until the matter of the Town's claim for fees and costs is resolved either through agreement of the parties or motion. An agreed upon motion is the way for your client to have the benefit of your counsel without my client having to waive her remedial rights.

I will expect your answer by the end of business today as to your position on the stipulation to definitely consult your client and to join in the Agreed to Motion to be filed with Judge Johnston. If you do not immediately respond to my second suggestion as to how we should reasonably proceed which I have made in this second letter after you failed to respond to my first suggestion made in my letter dated October 1st, please be advised that I intend to counsel my client in a manner which preserves any and all remedies available to her.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Sincerely,



Michael Wm. Morell

MWM:mmm

cc: Timothy E. Dennis, Assistant General Counsel, Department of Community Affairs
(via fax with copies of correspondence from counsel for petitioner to counsel for Town dated October 1, 2003 and letter from counsel for Town to counsel for petitioner dated October 2, 2003)

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