

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH  
COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO. 50 2011CA017953XXXXMBAO

TOWN OF GULF STREAM, et al,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political  
subdivision of the State of Florida,

Defendant.

\_\_\_\_\_  
SHARON R. BOCK, in her Official Capacity  
as the Clerk and Comptroller of Palm Beach  
County, Florida,

Intervenor.  
\_\_\_\_\_

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MAR 26 2015

SHARON H. BOCK  
CLERK & COMPTROLLER  
PROBATE DIVISION

**MOTION FOR REHEARING**

Plaintiffs, the Municipalities, by and through undersigned counsel, pursuant to Fla. R. Civ.P. 1.530, hereby files this Motion for Rehearing of matters relative to the Court's March 12, 2015 Final Judgment, and in support states as follows:

1. The Municipalities dispute the findings of fact and the conclusions of law reached by the Court in this matter. Because many of the disputed issues were before the Court during the trial, the Municipalities acknowledge that those disputed issues will be addressed on appeal. The Court, however, reached conclusions of law on issues that were not addressed during the trial. Those disputed issues, which appear for the first time in the final judgment, require a hearing by the Court. Grounds for rehearing on those issues are as follows:

### **Certain Municipal Charters Prohibit Voters from Establishing Line Items in Municipal Budgets**

2. Paragraph 17 of the Final Judgment states:

Thus, each municipality's power to make a budget is not a purely discretionary function as its discretion may be modified or restricted by the electorate through its referendum powers. In this case, the approval by the voters of the referendum authorized the governing bodies to establish a line item in the budget to contribute to funding of the OIG. This eliminated any discretion that the municipalities may have had as to the funding.

3. The Court's statement assumes a "one size fits all" description of municipal referendum powers. The statement ignores that each municipal charter is unique. Not all municipal charters contain the same provisions or reserve the same powers to the people. The Florida Constitution and the Florida Statutes, in fact, authorize the people of each municipality to decide their own municipal charter powers and to provide either limited or expansive powers to the electorate. See Art. VIII, Sec. 2(a), Fla. Const., and Section 166.031, Fla. Stat.

4. A municipal charter is the people's document. The municipal charter represents the people's voice on how they want their elected representatives to govern and what powers, if any, are reserved to the people through the initiative and referendum process. *Id.*

5. Seven of the fourteen Plaintiff municipalities in this case have charters that expressly prohibit initiatives or referenda by the voters regarding budget or appropriation matters. They are:

City of Boca Raton  
City of Delray Beach  
Town of Jupiter  
Town of Manalapan  
City of Riviera Beach  
Village of Tequesta  
City of West Palm Beach

The City of Boca Raton Charter states in pertinent part:

**Section 6.01. – Initiative**

The qualified voters of the city shall have the power by petition to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriations of money, levy of taxes or salaries of city officers or employees.

and

**Section 6.02. – Referendum**

The qualified voters of the city shall have power by petition to require reconsideration by the council of any adopted ordinance or resolution, and if the council fails to repeal an ordinance or resolution so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget, the capital program, any emergency ordinance, or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

The City of Delray Beach Charter states in pertinent part:

**Section 6.01. – Initiative**

The electors of the City shall have the power to propose ordinances to the Commission. If the Commission fails to adopt an ordinance so proposed without any change in substance, the ordinance may be approved or rejected at a City election, if the provisions of this Article are met. However, no ordinance relating to or affecting the budget, capital program, appropriation of money, levy of taxes or salaries of City officers or employees shall be allowed to be brought forward as an initiative.

and

**Section 6.02. – Referendum**

The electors of the City shall have power to require reconsideration by the Commission of any adopted ordinance. If the Commission fails to repeal an ordinance brought forward for

reconsideration, the issue may be approved or rejected at a City election if the provisions of this Article are met. However, no issue shall be allowed to be brought forward for reconsideration that relates to or affects the budget, capital program, any emergency ordinance, or ordinance relating to appropriation of money, levy of taxes, or salaries of City officers or employees.

The Town of Jupiter Charter states in pertinent part:

#### ARTICLE IX – THE INITIATIVE

##### Section 1. – Ordinance submitted by petition.

Any proposed ordinance may be submitted to the town council by petition signed by qualified voters of the town, equal in number to the percentage hereinafter required. Provided, however, that such power shall not extend to ordinances pertaining to the rezoning of property, the adoption or amendment of the Comprehensive Plan, or to the budget or capital program or any ordinance relating to the appropriation of money, levy of taxes or salaries of elected or appointed Town officers or employees.

and

#### ARTICLE X – THE REFERENDUM

##### Section 1. – Submittal of ordinance to referendum

Unless otherwise provided therein, no ordinance passed by the council shall go into effect until ten (10) days after the time of its final passage, except ordinances making tax levy or appropriation, rezoning property, amending the adopted Comprehensive Plan, or in respect of a parking or paving district, and excepting also any ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency. Ordinances so excepted shall not be subject to referendum and shall go into effect upon adoption. If during said ten (10) days after adoption of an ordinance not so excepted a petition signed by ten (10) percent of the qualified voters at the time of the last general town election, be presented to the council protesting an ordinance, it shall be the duty of the council to reconsider such ordinance. If the same be not entirely repealed, the council shall submit the

ordinance, as is provided in article IX to a vote of the qualified voters of the town. The ordinance, so challenged, shall not go into effect unless a majority of the qualified voters voting shall vote in favor thereof. The procedure shall be the same as provided in article IX of this Charter, with such modification as the nature of the matter requires.

The Town of Manalapan Charter states in pertinent part:

**Sec. 7.01. Initiative**

The qualified Town electors shall have the power to propose ordinances to the Town Commission, and if the Town Commission fails to adopt an ordinance so proposed without material change in substance, to adopt or reject it at a regular Town election, provided that such power shall not extend to the budget or capital program or any ordinance or resolution relating to appropriation of money, levy of taxes or salaries of Town officers, employees or agents, professional or otherwise.

and

**Sec. 7.02. Referendum**

The qualified Town electors shall have the power to require reconsideration by the Town Commission of an adopted ordinance and, if the Town Commission fails to repeal an ordinance so reconsidered, to approve or reject it at a regular Town election, provided that such power shall not extend to the budget or capital program or any ordinance or resolution relating to appropriation of money, levy of taxes or salaries of Town officers, employees, or agents, professional or otherwise.

The City of Riviera Beach Charter states in pertinent part:

**ARTICLE IV – INITIATIVE, REFERENDUM**

**Section 1. – General authority.**

(a) *Initiative.* The qualified voters of the city shall have power to propose ordinances or initiative amendments to the city council and, if the council fails to adopt an ordinance or initiative amendment so proposed, the qualified voters of the city shall have a right to adopt or reject it at a city election, provided that such power shall not extend to the budget or capital program or any

ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

(b) *Referendum.* The qualified voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, the qualified voters of the city shall have a right to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program except on capital projects financed by tax revenue certificates for water and sewer systems, and shall not apply to any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

The Village of Tequesta Charter states in pertinent part:

Section 6.01. – Power of Initiative

The electors shall have power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. Any initiated ordinance may be submitted to the Village Council by a petition signed by registered voters of the Village, as certified by the Palm Beach County Supervisor of Election's office, equal in number to ten (10) percent of the registered voters of the Village of Tequesta.

and

Section 6.02. – Power of Referendum

The electors shall have power to approve or reject at the polls any ordinance passed by the Village Council, except an ordinance appropriating money or authorizing the levy of taxes, or submitted by the Village Council to a vote of the electors, such power being known as the referendum. Ordinances submitted to the Village Council by initiative petition and passed by the Village Council without change shall be subject to the referendum in the same manner as other ordinances. Within thirty (30) days after the enactment by the Village Council of any ordinance which is subject to a referendum, a petition signed by registered voters of the Village, as certified by the Palm Beach County Supervisor of Election's office, equal in number to ten (10) percent of the voters registered at the last Village election may be filed with the Village Clerk requesting that any such ordinance be either repealed or

submitted to a vote of the electors. Such an ordinance shall be termed the "referred ordinance."

The City of West Palm Beach Charter states in pertinent part:

**Sec. 6.01. - Power of initiative.**

The electors may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and may adopt or reject it at the polls. This power shall be known as the initiative. Any initiated ordinance may be submitted to the city commission by petition signed by at least five (5) percent of the city electors as shown by the current voter registration lists.

and

**Sec. 6.02. – Power of referendum.**

Except as otherwise provided by law for issuance of City bonds, the electors may approve or reject any ordinance or legislative resolution at the polls in the manner provided in this article, including ordinances brought before the City Commission by initiative petition and passed by it without change, regardless of whether the ordinance is submitted to vote of the electors by the City Commission on its own motion or pursuant to petition and may adopt or reject it at the polls. This power shall be exercised as provided in this article and shall be known as the referendum. Within thirty (30) days after the enactment of an ordinance, or within forty-five (45) days after the enactment of a legislative resolution, a petition signed by at least five (5) percent of the City electors as shown by the current voter registration lists may be filed with the City Clerk requesting that the ordinance or legislative resolution be either repealed or submitted to vote of the electors. Administrative resolutions are not subject to referendum.

Additionally, of the remaining twenty-four non-plaintiff municipalities located in Palm Beach County, twelve of these municipalities' charters contain similar prohibitions on the power of initiative or referendum as to budget or appropriation matters. Those municipalities are:

City of Belle Glade  
City of Greenacres  
Town of Juno Beach

Town of Jupiter Inlet Colony  
City of Lake Worth  
Town of Lantana  
Town of Loxahatchee Groves  
Village of North Palm Beach  
Village of Palm Springs  
Village of Royal Palm Beach  
Town of South Palm Beach  
Village of Wellington

Copies of the Charters of each of the Municipalities that restrict the electors' right to authorize funding are attached to this Motion as Composite Exhibit 1.

6. Finally, Palm Beach County's Charter contains an express prohibition on the power of county electors to initiate, change or modify county budgetary provisions. The Palm Beach County Charter states in pertinent part:

**Sec. 5.1. – Initiative**

The people of Palm Beach County shall have the right to initiate county ordinances by filing with the board of county commissioners a copy of the proposed ordinance and a petition containing the signatures and addresses of not less than seven (7) percent of the number of voters qualified to vote in the last general election. The initiative process shall be available to the people to establish new ordinances and amend or repeal existing ordinances. Within forty-five (45) days after the filing of the petition with the board, the supervisor of elections shall verify the signatures on said petition. Within forty-five (45) days after the petition is verified by the supervisor of elections, the board of county commissioners shall hold public hearings on the proposed ordinance according to law, and vote on it. If the board of county commissioners fails to adopt the proposed ordinance, they shall then place the ordinance for a referendum on the ballot at the next general election occurring at least thirty (30) days after the commission's vote for a referendum. If approved by a majority of those who voted, the ordinance shall become effective on the date specified in the ordinance; or if not specified in the ordinance, then it shall become effective January 1 following the election. None of the above provisions shall be available to the people for initiation, change, or modification of county budgetary provisions.



The Palm Beach County Charter is in evidence as Defendant's Exhibit No. 3.

7. The Trial Court relied on "the will of the people" in finding that voters could establish a line item in municipal budgets to fund the OIG. The Trial Court failed to recognize that the people in Palm Beach County and certain municipalities had already spoken on this issue and prohibited such action. A rehearing is needed to declare the rights of the Municipalities, given that certain charters restrict the right of voters to authorize such funding and the Court's Final Judgment impermissibly overrides those lawful restrictions.

**The Ballot Question Did Not Create a Contract Between Palm Beach County and the Municipalities Relating to the Funding of the OIG**

8. The majority of the voters who voted in the Municipalities approved the creation of a county-wide inspector general program. Significantly, at no time have the Municipalities challenged the creation of the inspector general program. All filings with this Court have made the Municipalities' position on the inspector general program clear in this regard. The defendant in this case is Palm Beach County, not the municipal voters who voted for the creation of the county-wide inspector general program.

9. Despite the Municipalities' clear position in this regard, Paragraph 25 of the Final Judgment states:

Consequently, because the citizens of a municipality through a referendum may repeal a contract, it follows that the citizens of a municipality may enter into a contract (or force the city officials to do so) by exercising their referendum power. In this case, the majority of voters from the thirty-eight municipalities who voted on the ordinance used their referendum power and voted that the OIG should apply to their respective municipalities and that the municipalities should contribute to the funding of the program. Therefore, the Municipalities may not invoke sovereign immunity to avoid the obligation. See American Home Assurance Company, 908 So. 2d at 476 (municipality may not use sovereign immunity to defeat its obligations under a contract.) The people are the municipalities and the officials who represent the people may not undermine the electorate process because they disagree with the vote of the people.

10. The Court erroneously concluded that the voters created a contract between the Municipalities and Palm Beach County through the referendum. This issue was not raised by the parties and appeared for the first time in the final judgment.

11. The Ballot Ordinance, Palm Beach County Ordinance No. 2010-019, is the only document on which any voter could rely to determine what that voter was approving.

12. The ballot question contained in the Ballot Ordinance provided:

**REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT  
ETHICS COMMISSION AND INDEPENDENT INSPECTOR  
GENERAL**

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to **Palm Beach County** and all **municipalities** approving this amendment: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all **other governmental entities** subject to the authority of the Inspector General?

(Emphasis supplied.)

13. The Ballot Ordinance identifies three governmental bodies referred to in the ordinance: 1) Palm Beach County; 2) the municipalities; and 3) all other governmental entities subject to the authority of the Inspector General.

14. Evidence presented at trial established that Palm Beach County entered into written contracts with "other governmental entities," the Solid Waste Authority and the Children's Services Council, which agreed by such contracts to be "subject to the authority of the Inspector General."

15. The actual proposed charter amendment language is contained in the Ballot Ordinance. The evidence presented at trial regarding written contracts with "other governmental entities," the Solid Waste Authority and the Children's Services Council, is consistent with the Ballot Ordinance's statement regarding the Commission on Ethics:

The Commission on Ethics shall be adequately funded by the County Commission and all other governmental entities that elect to be subject to the authority of the Commission on Ethics pursuant to interlocal agreement.

See Sec. 8.2 Commission on Ethics.

16. As the Court is well aware, the County is not sending an invoice to the municipalities for the county-wide Commission on Ethics program. Thus, in Sec. 8.2, municipalities are not included in the reference to "other governmental entities."

17. As to the Inspector General, the Ballot Ordinance again refers to "other governmental entities" when discussing a minimum funding amount:

The Office of Inspector General shall be funded at minimum in an amount equal to one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General (the "Funding Base") as determined by the Implementing Ordinance.

See Sec. 8.3 Inspector General.

18. Sec. 8.3 does not contain a statement as to how the Office of Inspector General will be funded similar to the statement in Sec. 8.2. Sec. 8.3 contains no reference to municipalities and, certainly, no statement that municipalities will be responsible for funding.

19. The Ballot Ordinance fails to define the term "other governmental entities." The ballot question does not inform the voter as to whether the phrase "other governmental entities" includes or excludes municipalities. If the voter refers to Sec. 8.2 of the Ballot Ordinance, the voter can fairly conclude that municipalities are excluded from any funding obligation. If the voter refers to Sec. 8.3, the voter can fairly conclude that municipalities are excluded from any funding obligation. No other proposed charter amendment language contained in the Ballot Ordinance informs the voter that the municipalities are included in the term "other governmental entities" or that the municipalities will be responsible for funding.

20. Florida law requires that a "ballot title and summary must state in clear and unambiguous language the chief purpose of the measure." See *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010) and Sec. 101.161(1), Fla. Stat. The ballot must "give the voter fair notice of the decision he or she must make." *Id.*

21. Here, there is no dispute that the voters were given fair notice that the chief purpose of the ballot question was to establish a county-wide inspector general program. As indicated above, the Municipalities do not and have not challenged the creation of the county-wide inspector general program by this referendum.

22. The ballot title, however, is silent as to funding. As indicated above, the ballot summary ambiguously refers to "municipalities" and "other governmental entities." The ballot title and ballot summary did not adequately or clearly inform municipal voters that approval of a county-wide inspector general program would obligate their municipality to fund the program in perpetuity. Significantly, the ballot title and ballot summary did not adequately or clearly inform municipal voters that their individual municipality would have no say in the amount charged to their municipality for the program.

23. The Court concluded that the voters entered into a contract through this referendum. There is no legal authority for forming a contract by referendum in this manner. The Court's reliance on *Brooks v. Watchtower Bible & Tract Society of Florida, Inc.*, 706 So.2d 80 (Fla. 4<sup>th</sup> DCA 1998) for this proposition is misplaced. In those instances where a contract is properly before the voters, well-established Florida law requires that voters be given notice of the material terms of the contract they are being asked to approve. See generally, *Let Miami Beach Decide v. City of Miami Beach*, 120 So.3d 1282,1292 (1<sup>st</sup> DCA 2013).

24. Neither the ballot title nor the ballot summary refers to approving a contract. Neither the ballot title nor the ballot summary contains material terms such as the cost of the program, the term of the contract (perpetual), the amount of contribution to be paid by the municipalities, or Palm Beach County's exclusive control over the amount of the contribution. See *Let Miami Beach Decide* at 1291. There can be no contract without a meeting of the minds on all material terms. *Id.* Here, the voters were not informed they were approving a contract, much less its material terms.

25. In summary, this Court reached a conclusion of law that "voters" could bind a municipal corporation to a contract in a referendum without informing the voters they were approving a contract and without stating its material terms. The Court concluded that an "ordinance" constitutes an executory contract. There is no authority for the Court's conclusions.

## **Conclusion**

26. The municipal and Palm Beach County charters that prohibit voters to initiate or refer budget or appropriation matters cannot be reconciled with the Court's conclusions that rely on giving all municipal voters such power.

27. The plain language of the Ballot Ordinance cannot be reconciled with the Court's conclusions that the voters approved anything more than a countywide inspector general program.

28. The fundamental laws governing executory contracts cannot be reconciled with the Court's conclusions that the voters created municipal contracts with Palm Beach County.

WHEREFORE, for all the reasons stated above, and without waiving any right to raise all disputed issues on appeal, the Municipalities move for rehearing on the matters raised in this Motion.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic mail, this ~~26<sup>th</sup>~~ day of March, 2015 according to Florida Court E-Filing Portal guidelines established by the Florida Bar to: [marty.alexander@hklaw.com](mailto:marty.alexander@hklaw.com), Martin Alexander, Esquire, Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, FL 33401 and [Nathan.adams@hklaw.com](mailto:Nathan.adams@hklaw.com), Nathan A. Adams, IV, Esquire, Holland & Knight, LLP, Post Office Drawer 810, Tallahassee, FL 32302, Counsel for the Palm Beach County Clerk & Comptroller Sharon R. Bock; [amcmahon@pbcgov.org](mailto:amcmahon@pbcgov.org), Andrew J. McMahon, Esquire, Chief Assistant County Attorney, Palm Beach County Attorney's Office, [pmugaver@pbcgov.org](mailto:pmugaver@pbcgov.org), Philip Mugavero, Esquire, Sr. Assistant County Attorney, Palm Beach County Attorney's Office, 300 N. Dixie Highway, Suite 359, West Palm Beach, FL 33401; and [hvzid@pbcgov.org](mailto:hvzid@pbcgov.org), Helene C. Hvizd, Esquire, Assistant County Attorney, Palm Beach County Attorney's Office, 300 N. Dixie Highway, Suite 359, West Palm Beach, FL 33401, Attorneys for Palm Beach County; and [hpeter@mypalmbeachclerk.com](mailto:hpeter@mypalmbeachclerk.com), Hampton C. Peterson, Esquire, General Counsel for Palm Beach County Clerk & Comptroller Sharon R. Bock, 301 N. Olive Ave., 9<sup>th</sup> Floor, West Palm Beach, FL 33401.

CITY OF WEST PALM BEACH  
P.O. Box 3366  
West Palm Beach, FL 33402  
(561) 822-1355  
(561) 822-1373 (facsimile)

By: /s/Douglas N. Yeargin  
Douglas N. Yeargin  
Chief Assistant City Attorney  
Florida Bar No. 777560  
[dyeargin@wpb.org](mailto:dyeargin@wpb.org)  
Attorney for Plaintiff City of West Palm Beach

And

/s/  
John C. Randolph, Esquire  
Florida Bar No. 12900  
Jones, Foster, Johnson & Stubbs, P.A.  
Flagler Center Tower  
505 South Flagler Drive, Suite 1100  
West Palm Beach, FL 33401  
Phone (561)659-3000/fax (561)832-1454  
[jrandolph@jonesfoster.com](mailto:jrandolph@jonesfoster.com)  
Attorney for Plaintiff Town of Gulf Stream

And

/s/

Keith W. Davis, Esquire  
Florida Bar No. 957577  
Corbett, White, Davis and Ashton, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462-4271  
Phone (561)586-7116/ fax (561)586-9611  
[keith@cwda-legal.com](mailto:keith@cwda-legal.com)  
Attorney for Plaintiffs Village of Tequesta,  
Town of Palm Beach Shores, and  
Town of Mangonia Park

And

/s/

Pamala Hanna Ryan, City Attorney  
Florida Bar No. 996432  
City of Riviera Beach Attorney's Office  
600 W. Blue Heron Boulevard  
Riviera Beach, Florida 33404-4311  
Phone (561)845-4069/fax (561)845-4017  
[pryan@rivierabch.com](mailto:pryan@rivierabch.com)  
Attorney for Plaintiff City of Riviera Beach

And

/s/

Thomas Jay Baird, Esquire  
Florida Bar No. 475114  
Jones, Foster, Johnson & Stubbs, P.A.  
4741 Military Trail, Suite 200  
Jupiter, Florida 33458  
Phone (561)650-8233/fax (561)746-6933  
[tbaird@jonesfoster.com](mailto:tbaird@jonesfoster.com)  
Attorney for Plaintiffs Town of Jupiter  
and Town of Lake Park

And

/s/  
\_\_\_\_\_  
Noel M. Pfeffer, City Attorney  
Florida Bar No. 252999  
City of Delray Beach  
200 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444-2768  
Phone (561)243-7091/fax (561)278-4755  
[pfeffer@mydelraybeach.com](mailto:pfeffer@mydelraybeach.com)  
Attorney for Plaintiff City of Delray Beach

And

/s/  
\_\_\_\_\_  
Trela J. White, Esquire  
Florida Bar No. 0323764  
Corbett, White, Davis and Ashton, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462-4271  
Phone(561) 586-7116/ fax (561)586-9611  
[trela@cwda-legal.com](mailto:trela@cwda-legal.com)  
Attorney for Plaintiff Town of Manalapan

And

/s/  
\_\_\_\_\_  
R. Max Lohman, Esquire  
Florida Bar No. 0715451  
Corbett, White, Davis and Ashton, P.A.  
1111 Hypoluxo Road, Suite 207  
Lantana, Florida 33462-4271  
Phone (561)586-7116/ fax (561)586-9611  
[max@cwda-legal.com](mailto:max@cwda-legal.com)  
Attorney for Plaintiff City of Palm Beach Gardens

And



/s/

Glen J. Torcivia, Esquire  
Florida Bar No. 343374  
Torcivia & Associates, P.A.  
Northpoint Corporate Center  
701 Northpoint Pkwy, Suite 209  
West Palm Beach, Florida 33407  
Phone (561)686-8700/ fax (561)686-8764  
[glen@torcivialaw.com](mailto:glen@torcivialaw.com)  
Attorney for Plaintiff Town of Highland Beach

And

/s/

Kenneth G. Spillias, Esquire  
Florida Bar No. 253480  
Lewis Longman & Walker  
515 N. Flagler Drive, Suite 1500  
West Palm Beach, Florida 33401-4327  
Phone (561)640-0820/ fax (561)640-8202  
[kspillias@llw-law.com](mailto:kspillias@llw-law.com)  
Attorney for Town of Ocean Ridge

And

/s/

Diana Grub Frieser, City Attorney  
Florida Bar No. 837921  
City of Boca Raton  
201 W. Palmetto Park Road  
Boca Raton, Florida 33432-3730  
Phone 561-393-7716 Fax 561-393-7780  
[dgfrieser@ci.boca-raton.fl.us](mailto:dgfrieser@ci.boca-raton.fl.us)  
Attorney for Plaintiff City of Boca Raton