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James F. Littman (1923-2012)

Virginia P. Sherlock

Howard K. Heims

July 1, 2013

The Hon. Sarah Heard
Chair, Board of County Commissioners
Martin County, Florida
By Electronic and Hand Delivery

Re: Request for Waiver of Sanctions for 1000 Friends of Florida, Martin County
Conservation Alliance, and Everglades Law Center (Valliere/SUSD Challenges)

Dear Sarah:

I have been provided with a copy of a June 11, 2013, letter from Michael DiTerlizzi, President of the Palm City Chamber of Commerce, advising that the Chamber is "adamantly opposed" to my request that the Commission consider waiving sanctions authorized by the First District Court of Appeals against 1000 Friends of Florida, the Martin County Conservation Alliance, and the Everglades Law Center in connection with an unsuccessful challenge to the Valliere Amendment and Secondary Urban Services District Amendment to our Comprehensive Plan.

There are a number of factual misstatements in Mr. DiTerlizzi's letter. I am aware that he was notified of the inaccuracies, and I had hoped he would attempt to correct the errors. But since he apparently does not intend to do so, please consider this response.

Neither I nor my law firm received payment of attorneys' fees from Martin County in connection with the Sunshine lawsuit against the Business Development Board. Mr. DiTerlizzi's statement that the "Board of County Commissioners [demanded] that the Business Development Board pay Ms. Sherlock \$50,699 in legal fees" is absolutely untrue.

Apparently determined not to let the facts interfere with an opportunity to criticize those who do not share his views, Mr. DiTerlizzi goes on to ask: "If Ms. Sherlock can collect her fees from Martin County, shouldn't Martin County be able to collect its costs from the Conservation Alliance, 1000 Friends of Florida and their associated counsels?"

If the answer to that question is "yes", then Mr. DiTerlizzi should be satisfied that since I collected no fees from Martin County, a waiver of sanctions against the Conservation Alliance, 1000 Friends of Florida and their associated counsels is entirely appropriate.

Even if the prior Commission agreed to pay attorneys' fees to me and my law firm – which it did not – there is no comparison between the BDB case and the case that resulted in the 1000 Friends and MCCA sanctions order.

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The BDB's contract with Martin County includes an indemnification provision requiring the BDB to reimburse Martin County for any damages – including attorneys' fees – suffered by the County as a result of BDB misconduct. Martin County taxpayers provide nearly 90% of the BDB's funding, yet the BDB refused to allow the public to see how their money was being spent. By choosing to flout the Sunshine laws, the BDB made it necessary to litigate the issue to serve the public interest. The indemnification provision of the contract with the County was triggered by the BDB's misconduct, for which the BDB contractually assumed responsibility.

In the case of 1000 Friends and MCCA, sanctions imposed by the First District appellate panel majority were neither contractually nor statutorily imposed. In his dissent, Judge Van Nortwick "strongly disagree[d] with the majority" and concluded that "this case is not close to providing a basis to impose sanctions." He found that the majority decision "conflicts with our case law" and warned that "the sanction order creates a precedent that will severely chill appellate advocacy, especially for non-profit environmental organizations like [1000 Friends and MCCA]."

Judge Van Nortwick not only disagreed with the majority's sanctions order but concluded that "based on my additional research and consideration undertaken in addressing the issues raised by the sanction order, I have become concerned that the dismissal of this appeal for lack of standing was erroneous."

Mr. DiTerlizzi incorrectly attributes to the majority decision a reference to "Martin County Conservation Alliance's track record in previous lawsuits." However, the majority decision contains no such reference. The majority stated only that "Appellants and their counsel . . . have experience in this area of the law." This statement was made in support of the argument that the organizations and their counsel knew that there are different tests for determining standing under the Growth Management Act and the Administrative Procedures Act.

With the exception of Commissioner Scott, I realize that Commissioners, like Mr. DiTerlizzi, are not attorneys. Although I previously provided a copy of the decision to you, I understand that it is sometimes difficult to read and interpret a lengthy appellate court decision, especially when there are separate majority and dissenting opinions. This may explain Mr. DiTerlizzi's confusion about the different opinions and his misunderstanding of Judge Van Nortwick's (not the majority's) reference to prior appeals filed by 1000 Friends and MCCA.

Judge Van Nortwick cited two prior appeals involving 1000 Friends and MCCA and their counsel and noted that while both cases were dismissed for lack of standing, both offered "substantially less evidence to support standing than was introduced in the case before us." Sanctions were not imposed in either of the previous cases.

Judge Van Nortwick also noted: "It is significant to me that counsel for the Department of Community Affairs, one of the appellees, has asserted that appellants should not be sanctioned."

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In addition to misstating the contents of the sanctions order, Mr. DiTerlizzi asserts that the "Conservation Alliance and other similar groups have sued the citizens of Martin County nine times over the last nine years" and that "Martin County prevailed in every one of the lawsuits but had to spend approximately \$1 million of the taxpayers' money to defend itself." Mr. DiTerlizzi does not disclose the source of these highly questionable assertions.

Records compiled by County staff a few years ago, when this issue was raised by a decidedly citizen-unfriendly Commission, show that eight challenges to comp plan amendments or LDRs adopted since 2001 cost the County a total of \$289,625.05 (which included \$55,040.19 in costs, \$84,824.90 in outside counsel fees, and \$149,759.96 in staff time). I have enclosed a printout of the information compiled by the County in 2009. I believe that two cases were subsequently filed, including the AgTEC amendment challenge and the challenge to some of the Future Group chapter re-writes.

While Martin County "won" some of the challenges on the administrative level, most were settled when agreement was reached to revise or withdraw the challenged amendments or when corrective measures were adopted. In those cases, residents of Martin County "won" major victories as a direct result of challenges filed by 1000 Friends and MCCA.

For instance, the Mixed Use Amendment produced a settlement that resulted in a significant reduction in maximum allowable density.

Challenges to the EORB and Camayen Cattle Amendments resulted in withdrawal of these environmentally and economically unsound measures. (If the EORB Amendment had not been challenged and subsequently withdrawn because of the challenge, the Extreme Sports Water Park may have been approved despite widespread community opposition.)

Revisions were made to the AgTEC Amendment to clarify and restore the four-story height limit provision and to ensure that the new land use designation was site-specific. Martin County citizens clearly benefitted from revisions to the amendment that were made to correct "glitches" that surfaced as a result of the "unsuccessful" challenge.

The Palm City Chamber is certainly entitled to express an opinion regarding the request I made on behalf of these dedicated and highly effective citizen advocacy organizations and their counsel (Mr. Grosso, you may recall, is the lawyer who successfully argued the Pinecrest Lakes case that established a critical land use doctrine recognized throughout the state: developers and County officials may not ignore the requirements of the comprehensive plan).

But it is obvious from Mr. DiTerlizzi's letter that the Palm City Chamber is not truly concerned about saving taxpayer dollars. After all, more than \$31,000.00 in Martin County taxpayer dollars have been doled out to the Chamber in the last five years, mostly in the form of "contributions" from district discretionary funds. I have enclosed a list of checks paid to the Chamber.

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Mr. DiTerlizzi's real complaint is not that taxpayer dollars have been spent defending bad comprehensive plan amendments and development orders but rather that citizens have dared to challenge such decisions.

In urging the Commission to "stop the frivolous lawsuits [and] collect the justified rewards of prevailing in a frivolous lawsuit", the Palm City Chamber asks you to ensure that citizens will not in the future attempt to protect and preserve our comprehensive plan and quality of life by filing further challenges regardless of the ultimate benefit to the community.

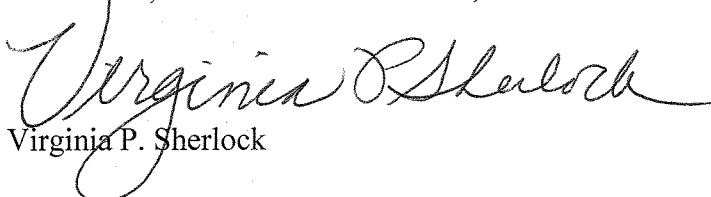
As 1000 Friends of Florida, the Martin County Conservation Alliance, and Everglades Law Center have pointed out in their letter supporting the request for waiver of sanctions, these non-profit organizations and citizens they represent do not advocate for financial gain but rather act out of dedication and commitment to keeping Martin County special. The Palm City Chamber hopes to further strain the already limited resources of these non-profit organizations by seeking to impose financial sanctions which could severely restrict their operations and effectiveness.

Martin County has long been a paradigm of citizen participation in local government. Despite past efforts to silence residents or to punish them for standing up for the Martin County difference, citizens have remained involved in the process.

Our elected officials should honor and respect citizen participation, not seek to punish those who engage in the process to protect our comprehensive plan and our urban boundaries – even when that means going to court.

Sincerely,

LITTMAN, SHERLOCK & HEIMS, P.A.



Virginia P. Sherlock

VPS/nol

cc: The Hon. Ed Fielding
The Hon. Doug Smith
The Hon. John Haddox
The Hon. Ann Scott
Michael D. Durham, County Attorney
David A. Acton, Assistant County Attorney
Taryn Kryzda, County Administrator

Martin County Payments to Palm City Chamber of Commerce

<u>Date</u>	<u>Check Number</u>	<u>Payee</u>	<u>Amount</u>
04/15/09	B0462881	Palm City Chamber of Commerce	\$ 15.00
05/13/09	B0464250	Palm City Chamber of Commerce	\$ 20.00
06/10/09	B0465387	Palm City Chamber of Commerce	\$ 15.00
08/05/09	B0468015	Palm City Chamber of Commerce	\$ 15.00
08/26/09	B0469190	Palm City Chamber of Commerce	\$ 1,500.00
10/07/09	B0471047	Palm City Chamber of Commerce	\$ 15.00
11/10/09	B0472612	Palm City Chamber of Commerce	\$ 15.00
11/24/09	B0473239	Palm City Chamber of Commerce	\$ 90.00
11/24/09	B0473240	Palm City Chamber of Commerce	\$ 90.00
11/24/09	B0473241	Palm City Chamber of Commerce	\$ 20.00
12/16/09	B0474072	Palm City Chamber of Commerce	\$ 15.00
12/16/09	B0474072	Palm City Chamber of Commerce	\$ 180.00
01/27/10	B0475714	Palm City Chamber of Commerce	\$ 20.00
04/07/10	B0478938	Palm City Chamber of Commerce	\$ 15.00
05/12/10	B0480626	Palm City Chamber of Commerce	\$ 15.00
05/26/10	B0481295	Palm City Chamber of Commerce	\$ 20.00
06/09/10	B0481818	Palm City Chamber of Commerce	\$ 15.00
08/04/10	B0484395	Palm City Chamber of Commerce	\$ 2,500.00
08/11/10	B0484743	Palm City Chamber of Commerce	\$ 15.00
09/15/10	B0486381	Palm City Chamber of Commerce	\$ 180.00
10/13/10	B0487745	Palm City Chamber of Commerce	\$ 15.00
10/20/10	B0488128	Palm City Chamber of Commerce	\$ 20.00
12/15/10	B0490572	Palm City Chamber of Commerce	\$ 15.00
02/09/11	B0492919	Palm City Chamber of Commerce	\$ 90.00
02/16/11	B0493234	Palm City Chamber of Commerce	\$ 300.00
03/09/11	B0494137	Palm City Chamber of Commerce	\$ 15.00
03/30/11	B0495148	Palm City Chamber of Commerce	\$ 20.00
05/11/11	B0497048	Palm City Chamber of Commerce	\$ 20.00
07/20/11	B0500081	Palm City Chamber of Commerce	\$ 15.00
09/14/11	B0502572	Palm City Chamber of Commerce	\$ 2,500.00
09/27/11	B0503182	Palm City Chamber of Commerce	\$ 40.00
10/12/11	B0503832	Palm City Chamber of Commerce	\$ 75.00
10/12/11	B0503833	Palm City Chamber of Commerce	\$ 15.00
11/02/11	B0504853	Palm City Chamber of Commerce	\$ 180.00
11/09/11	B0505129	Palm City Chamber of Commerce	\$ 15.00
11/30/11	B0505998	Palm City Chamber of Commerce	\$ 20.00
12/07/11	B0506259	Palm City Chamber of Commerce	\$ 15.00
12/28/11	B0507190	Palm City Chamber of Commerce	\$ 15.00
02/08/12	B0509077	Palm City Chamber of Commerce	\$ 15.00
02/29/12	B0510050	Palm City Chamber of Commerce	\$ 5,000.00
03/21/12	B0510985	Palm City Chamber of Commerce	\$ 15.00

07/25/12	B0516485	Palm City Chamber of Commerce	\$ 15.00
07/25/12	B0516485	Palm City Chamber of Commerce	\$ 15.00
08/08/12	B0517218	Palm City Chamber of Commerce	\$ 15.00
09/12/12	B0518624	Palm City Chamber of Commerce	\$ 15.00
09/25/12	B0519226	Palm City Chamber of Commerce	\$ 7,500.00
11/07/12	B0521131	Palm City Chamber of Commerce	\$ 248.00
12/12/12	B0522450	Palm City Chamber of Commerce	\$ 10,000.00
02/27/13	B0525423	Palm City Chamber of Commerce	\$ 25.00

ECONOMIC ELEMENT

Case No. 01-4826

861.75 staff hours

Total staff: \$47,420.79

Outside counsel: None

Costs: \$21,594.00 (expert)

Outcome: County prevailed

MIXED USE/SCHOOL SITING/PUBLIC FACILITIES

Case Nos. 02-1014 & 02-1015

1,150.85 staff hours

Total staff: \$64,599.70

Outside counsel: \$84,824.90

Costs: \$26,666.47

Outcome: County prevailed on School Siting/PF

Settlement on Mixed Use resulted in reduced maximum density

ARTICLE 3

(Verified Complaint)

1.8 staff hours

Total staff: \$97.20

Outside counsel: None

Costs: None

Outcome: County revised challenged LDR

STEEN v. MARTIN COUNTY

(Verified Complaint)

132.75 staff hours to 4/21/09

Total staff: \$7,406.19

Outside counsel: None

Costs: \$837.20

Outcome: Challenge was dropped by Steen/MCCA

CAMAYEN CATTLE

Case No. 06-4760

41.25 staff hours to 4/21/09

Total staff: \$3,226.50

Outside counsel: None

Costs: None

Outcome: County/Applicant withdrew proposed amendment

EORB

Case No. 07-1286

96.3 staff hours to 4/21/09

Total staff: \$7,262.94

Outside counsel: None

Costs: \$258.15

Outcome: County/Applicant withdrew proposed amendment

SUSD

Case No. 08-1144

52.65 staff hours to 4/21/09

Total staff: \$3,774.58

Outside counsel: None

Costs: \$5,684.37 (includes Valliere Amendment costs)

Outcome: County prevailed

VALLIERE AMENDMENT

Case No. 08-1465

240.6 staff hours to 4/21/09

Total staff: \$15,972.06

Outside counsel: None

Costs: (See above)

Outcome: County prevailed

SUBTOTALS:

2,578.15 total staff hours

Total staff: \$149,759.96

Outside counsel: \$84,824.90

Costs: \$55,040.19

TOTAL: \$289,625.05

FUTURE GROUP RE-WRITES

Case Nos. 10-1161, 10-1162, 10-1163, 10-1164,

BECKER GROVES CHALLENGE - Case No. 10-913

Outcome: All but two amendments "in compliance"; revisions made

AgTEC

Case No. 10-10007

Outcome: County prevailed; "glitch" amendment adopted to correct errors

Wetlands LDR

(In progress)