SPECIAL COMMISSION MEETING

AGENDA

MEETING DATE: FRIDAY, JANUARY 29, 2016 AT 8:00 PM COMMISSION CHAMBERS, 500 SW 109 AVENUE

1. ROLL CALL.

2. PLEDGE OF ALLEGIANCE.

3. INVOCATION.

4. PUBLIC COMMENTS.

5. CONSIDERATION OF MAYOR'S VETO OF RESOLUTION NO. 4141, *A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, RETROACTIVELY APPROVING THE ENGAGEMENT OF WEISS SEROTA HELFMAN COLE & BIERMAN (WEISS SEROTA) AS SPECIAL COUNSEL FOR THE CITY IN A CERTAIN APPELLATE MATTER.*

6. CONSIDERATION OF MAYOR'S VETO OF RESOLUTION NO. 4144, *A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, DIRECTING SPECIAL COUNSEL FOR THE CITY, GENOVESE JOBLOVE & BATTISTA, P.A., TO FILE SUIT IN A COURT OF COMPETENT JURISDICTION TO RESOLVE THE ISSUES IN DISPUTE BETWEEN THE CITY COMMISSION AND THE MAYOR; AND PROVIDING AN EFFECTIVE DATE.*

7. ADJOURNMENT.

This meeting was called at the request of Commissioner Llanio with the concurrence of Commissioners Barreto, Bergouignan, Diaz and Suarez.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. PERSONS WHO NEED AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS MEETING SHOULD CONTACT CITY CLERK MARIE SCHMIDT AT 221-0411 BY NOON ON THE DAY BEFORE THE MEETING IN ORDER TO REQUEST SUCH ASSISTANCE.

OFFICE OF THE MAYOR
CITY OF SWEETWATER

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**VETO AND VETO MESSAGE**
**ORDINANCE / RESOLUTION NO. 4141**

| | |
|---|---|
| To: | Commission President Jose M. Diaz and Members of the City of Sweetwater Commission |
| From: | Mayor Orlando Lopez |
| Re: | Ordinance / Resolution No. 4141 |
| Date Adopted | January 4, 2016 |
| Date Presented | January 14, 2016 |
| Date Vetoed | January 24, 2016 |

## VETO

Pursuant to the authority vested in me under the provisions of Section 4.09 of the City Charter, I hereby veto the above-referenced item, more particularly described as:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, RETROACTIVELY APPROVING THE ENGAGEMENT OF WEISS, SEROTA HELFMAN COLE & SHERMAN (WEISS SEROTA) AS SPECIAL COUNSEL FOR THE CITY IN A CERTAIN MATTER.**

## VETO MESSAGE

On the above-referenced date, the City Commission ("Commission") passed Resolution No. 4141 which purports to retroactively retain the services of a law firm. For the following reasons, I hereby veto said resolution.

### History

This matter concerns an ongoing issue Commissioner Jose M. Diaz has had with a certain construction project on his home. In May Mr. Diaz[1] applied for a variance with the Planning & Zoning Board. The variance was strenuously opposed by Mr. Diaz' neighbor, Lucy Castro. After argument, the P&Z Board denied the variance.

Subsequently thereto, Mr. Diaz appealed to the City Commission which unsurprisingly reversed the P&Z Board's decision and granted their colleague's request. Thereafter, Ms. Castro filed a petition for a writ of certiorari with the Eleventh Circuit seeking to overturn the Commission's decision.

Concurrently with all the foregoing, Ralph Ventura, PA resigned as City Attorney on June 1, 2015 and was replaced by Weiss Serota et al. later that same night. Thereafter, Weiss Serota resigned as City Attorney after less than one month in office and were subsequently replaced by Guillermo Cuadra, PA. on July 6, 2015.

In August, Weiss Serota notified Mr. Cuadra that the City was required to file a response to Ms. Castro's Petition for Writ of Certiorari. Thereafter, in late September or early October, Mr. Cuadra purported to retain Weiss Serota to represent the City in the Castro matter. Five months passed before Mr. Cuadra deigned to formally notify the City Commission[2] of his decision to retain outside counsel and even then only after I set the matter for discussion and consideration on the January agenda. By then, Weiss Serota's bill for services rendered exceeded $16,000.

During this meeting, Commissioner Bergoignan attempted to take Mr. Cuadra's item for retroactive approval out of turn and prior to my item for discussion in an obvious attempt to stifle any debate on this issue, sweep it under the rug and thereby ensure competent counsel in the matter involving their colleague's appellate matter.

The whole matter is unseemly at the very least, and quite possibly much more.

**Legal Duties of City Attorney**

First and foremost, this is an unwise use of public funds. Cases such as Ms. Castro's matter are exactly the type of litigation that falls under the purview of the City Attorney. Section 2-145 of the City Code states as follows:

> When required to do so by resolution of the city commission, **the city attorney shall prosecute and defend on behalf of the city all**

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1 As Jose M. Diaz was acting in his personal capacity at all times material, he shall be referred to as Mr. Diaz.

2 There is some question as to whether he notified individual commissioners and received guidance from them outside of a public forum. This matter is addressed elsewhere in the Veto Message.

> **complaints, suits and controversies to which the city is a party,** . . . . [emphasis supplied.]

Mr. Cuadra is presumed to be aware of the City Code as it is a body of general law. Thus, Mr. Cuadra was charged with "defending" this "controversy" and to bring said matter to the attention of the City Commission at his earliest opportunity. By not officially bringing this matter to the Commission for over five months, Mr. Cuadra has been grossly derelict in his duties and has denied this Commission and the City's residents open and fair debate on this matter.

Moreover, there is absolutely no reason why the City must pay outside counsel to do the work that Mr. Cuadra is contractually bound to perform. It bears mentioning that the Castro matter constitutes very basic litigation. This is not some abstract, esoteric body of law. It does not involve taxation or patent litigation, for example. It does not involve months-long jury trials. This is very basic litigation based on the City Code of Ordinances and well within the competence expected of a City Attorney. The sole reason to obtain outside counsel in this case is if Mr. Cuadra believed he is not competent to perform his duties. If this is the case, the City should look to retain a new City Attorney.

**Purchasing Code**

Moreover, the City Attorney had absolutely no authority to engage any outside firm or commit public funds under any set of circumstance. Section 2-228 of the City Code states:

> All expenditures for supplies, material, equipment, goods or contractual services, except for professional services or those services governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act that involve an expenditure by the city in excess of $1,000.00, shall be made on the basis of competitive sealed bids or requests for proposal. **Expenditures for legal services rendered to the city involving special legal projects that are unrelated to the handling of the city's day-to-day legal work shall require the approval of the city commission.** [emphasis supplied.]

The applicability of the foregoing is self-evident. As seen below, the response is just not credible.

**Retroactive Approval**

In Mr. Cuadra's email of October 2, 2015, he states that "nothing precludes retroactive approval" by the City Commission. This statement is positively bizarre. Taking this statement at face value, one must presume that Mr. Cuadra ascribes to himself the power to retain counsel for any and all purposes, let matters linger as long as possible, commit public funds without prior approval, and then present the City Commission with an invoice for services rendered months after the fact. This misuse of public funds finds no

support in the City Code. I am shocked that the Commission has approved such a usurpation of political and fiscal power by Mr. Cuadra.

**Violation of Sunshine**

Moreover, in the same email, Mr. Cuadra states that he "informed thecommission (sic) of (the litigation) and told them to expect an item in the near future." In my humble opinion, under no set of circumstances can the "near future" be considered five months after the fact. Further, if Mr. Cuadra actually obtained the approval of a majority of the Commissioners to retain Weiss Serota, commit public funds and delay presentment of this item to the Commission, as he implies in his email, then he acted as a conduit for transfer of information and violated Sunshine. This alone is grounds for veto.

**Title Omits Mention of the "Appellate Case"**

Finally, Florida statute §166.041 requires that the "subject (of a resolution) shall be clearly stated in the title." The title of the resolution in question states in full:

> A resolution of the city commission of the city of Sweetwater, Florida, retroactively approving the engagement of Weiss, Serota Helfman Cole & Sherman (Weiss Serota) as special counsel for the city in a certain matter.

Although the text of the resolution identifies the P&Z Board case number as 2015-05-01, the title mentions only a "certain appellate matter" and omits any identifying reference to either the P&Z case number, the Eleventh Circuit case number or even the style of the case. The omission of any identifying information clearly violates §166.041 and thus renders the entire resolution objectionable.

**RESOLUTION NO. 15 – 4141**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, RETROACTIVELY APPROVING THE ENGAGEMENT OF WEISS SEROTA HELFMAN COLE & BIERMAN (WEISS SEROTA) AS SPECIAL COUNSEL FOR THE CITY IN A CERTAIN APPELLATE MATTER.**

**WHEREAS**, Hearing 2015-05-01 held on May 27, 2015 by the City of Sweetwater Planning and Zoning Board resulted in a tied vote thus denying Jose M. Diaz' Residential Application for Non-Use Variance and Application for Site Plan Review Application; and

**WHEREAS,** in accordance with Section 09.08.02 of the City's Land Development Code, Jose M. Diaz filed an official Notice of Appeal of the entire Residential Application for Non-Use Variance and Application for Site Plan Review Application before the City Commission; and

**WHEREAS** on July 6, 2015, the City Commission passed Resolution 15-4054 approving Jose M. Diaz' appeal; and

**WHEREAS,** Lucy Castro sought certiorari review in the Circuit Court in and for Miami-Dade County; and

**WHEREAS,** Weiss Serota for many years has served as the City's Zoning Consultant; and

**WHEREAS**, Weiss Serota served as City Attorney on July 6, 2015, when the City Commission considered and approved Jose M. Diaz' appeal ; and

**WHEREAS,** Weiss Serota was succeeded as City Attorney by Guillermo Cuadra, P.A.; and

**WHEREAS,** as evidenced in Exhibit A, the new City Attorney engaged Weiss Serota as Special Counsel to represent the City in the matter of Lucy Castro's Petition for Writ of Certiorari;

**WHEREAS,** as evidenced in Exhibit A, indicates that said engagement requires the approval of the City Commission; and

**WHEREAS,** Weiss Serota filed the City's Response to Petition for Writ of Certioari on November 10, 2015 (see Exhibit C); and

**WHEREAS,** the City Attorney did not bring approval of the engagement of Weiss Serota timely due to more pressing matters impacting the City; and

**WHEREAS,** the City Attorney believes that it was in the best interest of the City to have Weiss Serota, as the previous City Attorney, who handled the appeal at the City Commission level and serves as its Zoning Consultant.

**BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, AS FOLLOWS:**

**Section 1.** The recitals above and exhibits attached hereto are incorporated herein.

**Section 2.** The City Commission retroactively approves Weiss Serota as special outside counsel on behalf of the City with respect to the aforementioned Petition for Writ of Certioari.

**Section 3.** The City Commission authorizes the payment of invoices from Weiss Serota from: Professional Fees, Miscellaneous Legal - # 001.513.602.541331.

**Section 4.** **Effective Date.** This Resolution shall become effective upon its adoption by the City Commission and approval by the Mayor or if vetoed, upon its re-

enactment by the City Commission as provided by the Charter of the City of Sweetwater.

PASSED and ADOPTED this 4th day of January, 2016.

Signed in absentia 1/15/16

ORLANDO LOPEZ, Mayor

JOSE M. DIAZ, Commission President and Vice Mayor

ATTEST:

MARIE O. SCHMIDT, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

GUILLERMO CUADRA, CITY ATTORNEY

**VOTE UPON ADOPTION:**

| | |
|---|---|
| JOSE M. DIAZ, COMMISSION PRESIDENT | Absent |
| JOSE W. BERGOUIGNAN, JR., COMMISSION VICE PRESIDENT | yes |
| PRISCA BARRETO, COMMISSIONER | yes |
| MANUEL DUASSO, COMMISSIONER | yes |
| IDANIA LLANIO, COMMISSIONER | yes |
| ISOLINA MAROÑO, COMMISSIONER | no |
| EDUARDO M. SUAREZ, COMMISSIONER | yes |

EXHIBIT A

## Guillermo Cuadra

**From:** Guillermo Cuadra
**Sent:** Thursday, August 27, 2015 2:06 PM
**To:** Gilberto Pastoriza
**Subject:** FW: SERVICE OF COURT DOCUMENT - CASE NO. (NEW CASE). EMAIL 2 of 2
**Attachments:** (Filed) Appendix to Petition for Writ of Certiorari.pdf; 1. City of Sweetwater Memorandum from Sergio Purriños LCAM MURP to Planning and Zoning, dated March 9, 2015.pdf; 2. Bob Norman (December 10, 2014); Sweetwater Mayor Jose Diaz Says He Will Try to "Cure" Violations; Local 10 News.pdf; 3. Amended Letter of Intent - Residential Application for Non-Use Variance and Site Plan Review, dated April 8, 2015.pdf; 4. City of Sweetwater Planning and Zoning Board Notice of Public Hearing.pdf; 5. City of Sweetwater Planning and Zoning Board Decision.pdf; 6. Applicant's Notice of Appeal to City Commission dated June 1, 2015.pdf; 7. Applicant's Expert Witness Notification dated June 17, 2015.pdf; 8. Transcript of City Commission Proceedings of June 6, 2015.PDF; 9. City of Sweetwater City Commission Resolution No. 15-4054.pdf; 10. City of Sweetwater Code of Ordinances Article IX – Administration and Enforcement.pdf; 11. Dougherty v. City of Miami, 13 Fla. L. Weekly Supp. 959a (Fla. 11th Cir. July 14, 2006).pdf

Per our discussion earlier, attached please find the information regarding the Lucy Castro appeal. As discussed, given that you serve as our Zoning consultant and handled this matter before the City Commission as city Attorney please engage as outside counsel to handle this matter for the city of Sweetwater. I will inform you as to when this issue comes before the City Commission. I will follow up with you between today and tomorrow to deal with additional details.

Best regards,

Guillermo

---

**From:** Gilberto Pastoriza [mailto:GPastoriza@wsh-law.com]
**Sent:** Monday, August 10, 2015 9:42 AM
**To:** Guillermo Cuadra <GCuadra@cityofsweetwater.fl.gov>; Commissioner Eduardo Suarez <ESuarez@cityofsweetwater.fl.gov>; Commissioner Idania Llanio <ILlanio@cityofsweetwater.fl.gov>; Commissioner Isolina Maroño <imarono@cityofsweetwater.fl.gov>; Commissioner Jose A. Bergouignan <jbergouignan@cityofsweetwater.fl.gov>; Commissioner Jose M. Diaz <jdiaz@cityofsweetwater.fl.gov>; Commissioner Manuel Duasso <mduasso@cityofsweetwater.fl.gov>; Commissioner Prisca Barreto <pbarreto@cityofsweetwater.fl.gov>
**Cc:** Mayor Orlando Lopez <olopez@cityofsweetwater.fl.gov>
**Subject:** FW: SERVICE OF COURT DOCUMENT - CASE NO. (NEW CASE). EMAIL 2 of 2

Additional information on the appeal. Please let me know asap if the City wishes for us to handle the appeal.

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**From:** jorge@savagelegal.com [mailto:jorge@savagelegal.com]
**Sent:** Thursday, August 06, 2015 5:16 PM
**To:** Gilberto Pastoriza; juan.mayol@hklaw.com
**Cc:** paul@savagelegal.com
**Subject:** SERVICE OF COURT DOCUMENT - CASE NO. (NEW CASE). EMAIL 2 of 2



Cos # 4141

| | |
|---|---|
| Jurisdiction: | In the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida<br><br>Appellate Division |
| Case No.: | |
| Parties: | Lucy Castro v. City of Sweetwater, Florida, and Jose M. Diaz |
| Document(s) being served: | 1. Appendix to Petition for Writ of Certiorari |
| Sender: | Paul C. Savage / Tel. (305) 444-7188 |
| Date of Service: | August 6, 2015 |

**Jorge Weinstein**
OFFICE MANAGER
SAVAGE ∞ LEGAL
**100 Almeria Avenue, Suite 220**
**Coral Gables, Florida 33134**
**Tel. 305-444-7188**
**Fax. 305-444-7186**
**Email: jorge@savagelegal.com**

www.savagelegal.com

Gilberto Pastoriza

Chair, Private Land Use and Zoning Department

WEISS SEROTA HELFMAN
COLE & BIERMAN

2525 Ponce de Leon Blvd., Suite 700 | Coral Gables, FL 33134
P: (305) 854-0800 F: (305) 854-2323 wsh-law.com | vCard

EXHIBIT A

## Guillermo Cuadra

**From:** Guillermo Cuadra
**Sent:** Friday, October 2, 2015 9:39 AM
**To:** Ralph Ventura
**Cc:** John J. Quick; Marie Schmidt; Mayor Orlando Lopez; Gilberto Pastoriza
**Subject:** Re: Lucy Castro lawsuit - documents requested

Gentlemen,

I wish to set the record straight. Yes, I engaged Weiss Serota through my firm because of the factors I mentioned to you Ralph, namely Mr. Pastoriza's current engagement as our zoning consultant as the application went to the Zoning Board, and the fact that he was the sitting City Attorney when the application was before the City Commission. Moreover, I also explained to you that I informed thecommission of that fact and told them to expect an item in the near future. You stated your opinion that I do not have that authority, at no point did I agree with that assessment. You may recall that I said that nothing precludes retroactive approval. You disagreed. What I acknowledged is that absent Commission approval I'm responsible. As it stands now, the Commission has not approved the engagement simply because it has not been before them so my firm would be responsible for the fees.

Regards,

GC

Sent from my iPhone

On Oct 1, 2015, at 11:16 AM, Ralph Ventura <rventura@cityofsweetwater.fl.gov> wrote:

Yes, thank you, John.

Ralph Ventura, JD
Chief of Staff
Mayor's Office
City of Sweetwater

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**From:** John J. Quick [mailto:JQuick@wsh-law.com]
**Sent:** Thursday, October 01, 2015 11:11 AM
**To:** Ralph Ventura; Marie Schmidt
**Cc:** Mayor Orlando Lopez; Marie Schmidt; gc@cuadralaw.net; Gilberto Pastoriza
**Subject:** RE: Lucy Castro lawsuit - documents requested

Thank you, Ralph. I will look into this issue. Since I was not privy to your conversation with Guillermo, we will speak with him to ensure a full understanding of the issues.

As I mentioned, and you agreed, our primary goal is to make sure that the City is represented in defense of a matter in which it has been named as a respondent.

Regards,
John

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**From:** Ralph Ventura [mailto:rventura@cityofsweetwater.fl.gov]
**Sent:** Thursday, October 01, 2015 10:59 AM
**To:** Marie Schmidt; John J. Quick
**Cc:** Mayor Orlando Lopez; Marie Schmidt; gc@cuadralaw.net
**Subject:** RE: Lucy Castro lawsuit - documents requested

John,

As we just discussed, Weiss Serrota is under the impression that it has been retained by the City. Please understand such is not the case. In my conversation with Guillermo and last week, he agreed he lacks the authority to retain counsel on behalf of the City and stated to me verbally via telephone conversation that he had retained WS as co-counsel through his firm. If this is the case, Guillermo is wholly responsible for WS's legal fees. Please see the quote below:

Sec. 2-228. - Bids or requests for proposals required.

All expenditures for supplies, material, equipment, goods or contractual services, except for professional services or those services governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act that involve an expenditure by the city in excess of $3,500.00, shall be made on the basis of competitive sealed bids or requests for proposal. **Expenditures for legal services rendered to the city involving special legal projects that are unrelated to the handling of the city's day-to-day legal work shall require the approval of the city commission.**

(Code 1976, § 2-13(b))

Ralph Ventura, JD
Chief of Staff
Mayor's Office
City of Sweetwater

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**From:** Marie Schmidt
**Sent:** Thursday, October 01, 2015 10:48 AM
**To:** Ralph Ventura
**Subject:** FW: Lucy Castro lawsuit - documents requested

Here you go.

Marie O. "Val" Schmidt, MMC
City Clerk/ Dir. of Administration

mschmidt@cityofsweetwater.fl.gov
City Hall: (305) 221-0411
Direct: (305) 455-6604
Fax: (305) 221-2541
500 S.W. 109 Avenue
Sweetwater, FL 33174



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**From:** John J. Quick [mailto:JQuick@wsh-law.com]
**Sent:** Wednesday, September 30, 2015 11:58 AM
**To:** Marie Schmidt; Carmen Garcia
**Cc:** Guillermo Cuadra; Laura K. Wendell
**Subject:** Lucy Castro lawsuit - documents requested

Val or Carmen,

Can we get a copy of the agenda and minutes from the May 27, 2015 meeting of the Planning & Zoning Board? We are working on a response to a petition for writ of certiorari filed by Ms. Lucy Castro and cannot seem to locate that information in our file.

Thank you.

Regards,
John

John Quick
Partner

2525 Ponce de Leon Blvd., Suite 700 | Coral Gables, FL 33134
P: (305) 854-0800 F: (305) 854-2323 wsh-law.com | vCard

John Quick

Partner

2525 Ponce de Leon Blvd., Suite 700 | Coral Gables, FL 33134
P: (305) 854-0800 F: (305) 854-2323 wsh-law.com | vCard

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EXHIBIT C

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. 2015-000258-AP-01
LOWER COURT CASE NO. 15-4054

LUCY CASTRO,

Petitioner,

v.

CITY OF SWEETWATER, FLORIDA, a Political subdivision of the State of Florida, and JOSE M. DIAZ,

Respondents.
_____/

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

Respondent, City of Sweetwater ("City"), hereby responds to the Petition for Writ of Certiorari filed by Lucy Castro ("Castro") and states:

## I. INTRODUCTION

The Court should deny the Petition. Castro asks the Court to quash City's Resolution No. 19-4054 ("Resolution") (A. 23)[1] reflecting the City Commission's decision to approve non-use variances for property owned by Castro's neighbor,

[1] The City references the appendix of co-respondent Jose M. Diaz ("Diaz") and utilizes the same abbreviations throughout.



Ros #4141

Diaz, on purely technical grounds. Castro raises no substantive objection to the non-use variances, but seizes upon what she contends are two procedural errors: that the "notice of appeal" was purportedly defective and that the City Commission improperly conducted a de novo review.

Castro misreads the City Code. It does not mandate rigid adherence to the form of a "notice of appeal," and as is the case in many municipalities, the City Code uses the term "appeal" to mean, merely, application to the City Commission as a higher authority. Even if this were not the case, the Court should deny the Petition because Castro does not, and cannot, demonstrate that the technical errors of which she complains (if errors at all) prejudiced her in any way. To the contrary, Castro appeared at the Commission hearing with counsel, was afforded a full and fair opportunity to present her position and, in fact, herself presented new evidence.

## II. STATEMENT OF FACTS

The City adopts and incorporates the statement of facts set forth by Diaz in his response to the Petition.

## III. STANDARD OF REVIEW

The Court reviews the quasi-judicial decision of the Commission according to the three-prong certiorari standard of review: "(1) whether procedural due

process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).[2] Castro argues that the Commission "departed from the essential requirements of law" by failing to follow what she contends are procedural requirements of the Code.[3][4] *See* Petition, p. 9.

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2 *See also, e.g., Broward Cnty v. G.B.V. Int'l Ltd.*, 787 So. 2d 838, 345 (Fla. 2001); *Florida Power & Light Co. v. City of Dania Beach*, 761 So. 2d 1089, 1092 (Fla. 2000); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *Bd. of Cnty. Comm'rs of Brevard Cnty v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993).

3 Although couched as a challenge predicated on a "departure from the essential requirements of law," the Petition raises a procedural due process challenge with respect to its criticism of the notice of appeal. Indeed, in contending that the Commission "departed from the essential requirements of law," Castro cites to *Gulf & Eastern Dev. Corp. v. City of Ft. Lauderdale*, 354 So. 2d 57 (Fla. 1978). There, the Court quashed an ordinance rezoning property on the grounds that, in failing to adhere to notice requirements, the city failed to afford an affected landowner procedural due process.

4 Castro does not address the evidentiary prong of *Vaillant* other than her cryptic comment conflating the second and third prongs of the test, that if "the Court finds that the City departed from the essential requirements of law, it is axiomatic that there is no competent substantial evidence in the record to support the decision made by the City Commission." Petition, p. 9. To be clear, the Court (separately) reviews the record for any competent substantial evidence *in support* of the decision appealed. *See, e.g., Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs*, 794 So. 2d 1270, 1276 (Fla. 2001) ("for the reviewing court above all cannot reweigh the 'pros and cons' of conflicting evidence .... As long as the record contains competent

## IV. ARGUMENT

### A. Castro Fails To Demonstrate Grounds To Quash The Resolution On The Basis Of Her Interpretation Of Section 9.08.03.

Castro fails to demonstrate grounds to quash the Resolution on the basis of her own interpretation of the meaning of Section 9.08.03. She argues that the City Commission erred in accepting Diaz's notice of appeal because it did not contain "the specific error alleged as the grounds for the appeal." Petition, pp. 10-13. She urges the Court to conclude, first, that because Section 9.08.03 uses the term "shall," inclusion of a statement of "the specific error alleged" in a notice of appeal is mandatory. Petition, p. 12. Castro then urges the Court to conclude (without any legal support) that because the City accepted Diaz's purportedly defective notice of appeal, the Resolution "flowing from the unauthorized Notice of Appeal must be quashed." Petition, p. 13.

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substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is done.") Although Castro does not raise a bona fide evidentiary challenge, as warrants emphasis, the City staff recommendation in support of the application (A. 2; T. 5ff.) is competent substantial evidence in support of the Resolution. *See, e.g., Village of Palmetto Bay v. Palmer Trinity Private School, Inc.*, 128 So. 3d 19, 27 (Fla. 3d DCA 2012) (staff recommendations of testimony of staff at hearing is competent substantial evidence in support of the city's decision); *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 205 (Fla. 3d DCA 2003) (testimony of professional staff constitutes competent substantial evidence in support of decision).

For the reasons stated by Diaz in his response to the Petition, the City does not believe that the "notice of appeal" is deficient, even under Castro's rigid view of what Section 9.08.03 requires.[5] Nevertheless, the City urges the Court to reject Castro's position on what the Code requires, under well-settled Florida law.

**1. Section 9.08.03 is "directory."**

First, contrary to Castro's assertion -- that the word "shall" is always mandatory -- Florida rules of statutory construction recognize that "shall" may be mandatory or directory, depending on the context.

> Generally, "shall" is interpreted to be mandatory where it refers to some action preceding the possible deprivation of a substantive right and directory where it relates to some immaterial matter in which compliance is a matter of convenience.

*Shands Teaching Hosp. and Clinics, Inc. v. Sidksy*, 936 So. 2d 715, 721-22 (Fla. 4th DCA 2006); *see also De Gregoria v. Balkwill*, 853 So. 2d 371, 374 (Fla. 2003) ("where the statute's directions are given merely with a view to the proper, orderly and prompt conduct of business," the word "shall" is construed as directory).

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[5] As the record reflects, Diaz identified in his "notice of appeal" the irregularity that occurred at the PZB hearing. (A. 11). Due to the recusal of several members of the PZB, only four members of the PZB voted and because the vote resulted in a tie, the application failed. The City believes that the "notice of appeal" is not deficient because it does in fact state the specific reason for the appeal to the Commission.

Section 9.08.03 does not touch upon the deprivation of any substantive right. *Cf. De Gregorio, supra* (holding that "shall" in forfeiture statute requiring seizing agency to file forfeiture complaint with 45 days was mandatory because it related to government action providing for the deprivation of a property right). To the contrary, Section 9.08.03 deals with "proper, orderly, and prompt conduct of business" in that, to state the obvious, *it gives directions* to a would be appellant; it does not concern an action by the City itself, much less an action that threatens to jeopardize a substantive property right. Accordingly, the Court should conclude that Section 9.08.03 is "directory."

**2. The Court should defer to the City's interpretation.**

The Court should defer to the City's interpretation of its own Code in this instance. *See, e.g., Las Olas Tower Co. v. City of Ft. Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA1999) ("Generally, a reviewing court should defer to the interpretation given a statute or ordinance by the agency responsible for its administration.") Case law recognizes that judicial deference is "not absolute," and where the interpretation is "unreasonable" or "clearly erroneous," judicial deference it not required. *Id.*; *see also Collier County Fire Control & Rescue Districts v. Florida Dep't of Fin. Services,* 869 So. 2d 1233, 1237 (Fla. 2d DCA 2004) ("This deferential standard of review requires that we uphold an agency's

statutory interpretation if it "is within the range of possible and reasonable interpretations," and not "implausible" and "unreasonable.")

Castro certainly does not show that the City's interpretation is "unreasonable," "implausible," or "clearly erroneous.[6] Indeed, the City's interpretation that "shall" in Section 9.08.03 is directory rather than mandatory, is by far the more plausible and reasonable interpretation. In fact, it is in keeping with the imminently reasonable approach taken by courts in the context of judicial appeals, that mere "technical defects" in a notice of appeal do not require dismissal.[7] As stated by the court in *Turnstall v. Folsom*, 616 So. 2d 1123, 1124 (Fla. 1st DCA 1993):

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[6] Castro's reliance on *Town of Longboat Key v. Islandside Property Owners Coalition*, LLC, 95 So. 3d 1037 (Fla. 2d DCA 2012) is misplaced. There, the court declined to defer to the town's interpretation because it deemed the plain language susceptible to one meaning only, rejecting the town's argument that the language was ambiguous and, therefore, construction was required. Such is not the case here, where case law enshrines the principle of statutory construction, that the word "shall" is susceptible of two meanings.

[7] *See, e.g., Bellizi v. Islamorada*, 161 So. 3d 486, 489 (Fla. 3d DCA 2014) (where the notice of appeal identified the final judgment sought to be appealed, omission of names of two of three appellants did not warrant dismissal of the appeal, in the absence of prejudice); *Y Duarte v. RMC South Florida, Inc.*, 973 So. 2d 495, 496 (Fla. 3d DCA 2008) ("[f]ailure to date a certificate of service to a timely filed notice of appeal is not a jurisdictional defect and will not support dismissal of an appeal absent a showing of prejudice").

> If the notice of appeal gives sufficient information from which it can be determined ... which order is being appealed, technical defects in the notice that neither affect jurisdiction nor mislead or prejudice the appellee do not require dismissal.

Here, the notice of appeal was crystal clear in its statement that Diaz invoked the Commission's jurisdiction to review the PZB result. *See* A. 11.

**3. Castro shows no prejudice.**

Finally, Castro shows no prejudice arising from the technical defect she perceives in the Commission's failure to embrace her rigid interpretation of Section 9.08.06. As the record reflects, Castro appeared at the PZB hearing and, so, was fully apprised as to what transpired there. Furthermore, she undisputedly had notice of the Commission hearing and was afforded a full and fair opportunity to be heard.[8] By contrast, had the Commission adopted Castro's interpretation and

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[8] Although Castro couches this point as a "departure from the essential requirements of law," the issue is properly framed under the first-prong of *Vaillant, supra*, whether the Commission accorded Castro procedural due process. Procedural due process requires both fair notice and a real opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Massey v. Charlotte County*, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). Yet, it is only where procedural defects so prejudice the complaining party as to render the hearing in question "a hollow right" that a party is deprived of procedural due process. *Metro. Dade County v. Caputi*, 477 So. 2d 1097, 1088 (Fla. 3d DCA 1985). Accordingly, a party that establishes a procedural defect, but fails to adduce evidence that the defect prejudiced it, fails to establish a procedural due process violation. *See also, e.g., Mattern v. Florida Parole Comm'n*, 707 So. 2d 806, 808 (Fla. 4th DCA 1988); *Gordon v. Savage*, 383 So. 2d 646, 649 (Fla. 5th DCA 1980). Furthermore,

dismissed Diaz' appeal from the dais (as Castro contends should have transpired) -- Diaz would clearly have been prejudiced. Having timely filed his notice of appeal, dismissal of the appeal would have divested Diaz of the right afforded him, as property owner, to challenge the PZB "tie" result.

Accordingly, even if the Court were to conclude that the "notice of appeal" was deficient along the lines claimed by Castro (and it should not), because Section 9.08.06 is merely directory, because the Commission's interpretation of its own Code is not "clearly erroneous," and because Castro shows no prejudice, the Court should reject Castro's argument.

**B. Castro Fails To Demonstrate Grounds To Quash The Resolution On The Basis Of Her Interpretation Of Section 9.08.06.**

Castro also fails to demonstrate grounds to quash the Resolution on the basis of her interpretation of Section 9.08.06. Castro argues that the Code "simply does not allow for a de novo proceeding on appeal from the PZB to the City Commission." Petition, p. 15. The Court should reject this argument.

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the dictates of procedural due process rights are diminished where, as here, the complaining party is merely a non-applicant objector, not the property owner or applicant. *See, e.g. Carillon Comm'ty Residential v. Seminole Cnty.*, 45 So. 3d 7, 10 (Fla. 5th DCA 2010) (petitioners who merely participated in hearing had lesser procedural due process rights than applicant because applicant had substantial interest in development of the property at issue).

**1. The term "appeal" is not dispositive.**

The term "appeal" in and of itself is not dispositive. As the Florida Supreme Court explained in *Young v. Dep't of Comm'ty Affairs*, 625 So. 2d 831, 833 (Fla. 1993), an "appeal" may well encompass a *de novo* hearing because the term "appeal" is subject to interpretation in its "broadest, non-technical sense ... to mean merely application to a higher authority." *Id.* at 833 (quoting *Transgulf Pipeline Co. v. Bd. of County Comm'rs*, 438 So. 2d 876, 878 (Fla. 1st DCA 1983)). As the *Young* court concluded (in the context of section 380.07, Florida Statutes, governing "appeals" to the Florida Land and Water Adjudicatory Commission), the term "appeal" was to be construed as "a proceeding for formulating agency action, which would then be subject to judicial review." *Id.*

Case law reflects that de novo "appeals" to higher local governing bodies are a regular feature of local government. *See Taxi USA of Palm Beach, LLC v. City of Boca Raton*, 162 So. 3d 119, 123-24 (Fla. 4th DCA 2014) (rejecting argument that "appeal" to city council from hearing officer should have been confined to the record); *see also, e.g., Dusseau,* 794 So. 2d at 1276 (on appeal to board of county commissioners from decision of zoning appeals board, "the County Commission heard testimony from both sides at a lengthy hearing"); *Metro. Dade County v. Reining Corp.*, 399 So. 2d 379, 380 (Fla. 3d DCA 1981) (appeal to board of county

commissioners where commissioners weighed "all of the evidence which was before [them]"); *Drage-Grothe, Ltd. v. Lake Jessamine Property Owners Ass'n*, 304 So. 2d 504, 506 (Fla. 4th DCA 1975) (appeal from decision of planning and zoning board required *de novo* hearing before county commission); *City of Apoka v. Orange County,* 299 So. 2d 657, 658 (Fla. 4th DCA 1974) (*de novo* hearing held on appeal to board of county commissioners).

Thus, contrary to the thrust of Castro's argument, in the context of local government the term "appeal" encompasses the de novo proceeding before the Commission which occurred in this case, as an "application to a higher authority," *Young, supra.*[9]

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[9] The salient point is that local governments often establish evidentiary boards whose decision, if appealed at the local level, next comes before the ultimate decision-maker, the local government council, whose review encompasses new evidence. The process is a practical one: it allows decisions of evidentiary boards to become final unless an interested, aggrieved party "appeals," conserving Commission resources for only those matters which have left interested parties dissatisfied. That such "appeals" are often evidentiary underscores the point; where parties are sufficiently aggrieved to bring an "appeal," the matter is considered to be of sufficient importance that the Commission takes responsibility to hear all evidence, to insure that their decision, the final one, is as well-informed as possible.

**2. Castro misinterprets Section 9.08.6.**

Castro invokes Section 9.08.06 as grounds for her contention that the Commission erred in conducting a de novo "appeal." She fails, however, to read the single sentence of Section 9.08.06 in its entirety or in its context.

Section 9.08.06 states: "The city commission on review shall have *full power* to affirm, reverse, or modify the action of the planning and zoning board." (Emphasis added). Castro overlooks the word "full." In context, Section 9.08.06 follows the lengthier Section 9.08.05 which describes the powers of the PZAB; as Castro notes, Section 9.08.05, confers broad powers upon the PZB, including the power to "receive new materials" when such are "pertinent." There is no reason to think that, in expressly conferring "full" power upon the Commission, pursuant to Section 9.08.06, the Code confers lesser powers upon the Commission.

Furthermore, Section 9.08.06 cannot be read in a vacuum. "All meetings of the city commission … shall be open to the public…." Section 2-44. And the Code contemplates broad participation by the public. "Any person desiring the address the City Commission" may do so, whether by "written communications," "oral communications," or by the "reading of protests [or] petitions," the latter specifically referencing matters relating "to *zoning*, sewer and street proceedings, hearings on protests, *appeals* and petitions, or similar matters…." Section 2-53.

Because persons are expressly invited to address the Commission in the very context of the appeal before the Court, namely, a "zoning" "appeal," the Court should reject that notion that appeals to the Commission pursuant to Section 9.08.06 cannot encompass the presentation of new material. By Code, they must.[10]

Hence, the Court should conclude that Castro, again, urges far too narrow a reading of the Code.[11] Read in its entirety and in context, the Code contemplates that an "appeal" to the Commission is de novo.[12]

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10 Castro's suggests at pages 4-5 of the Petition that the Commission could not properly have conducted a de novo hearing because the PZB notice of hearing advised that, if a person decides to appeal, he or she will need a record of the proceedings. As reflected in the PZB notice of hearing, such language is mandated by section 286.105, Florida Statutes, for all public hearings, including those before any "board, commission, or agency." Castro overlooks that a decision of the PZB ripens into final agency action, subject to *judicial appellate review*, in the event that a party disappointed by a PZB decision does not timely file a notice of appeal to the Commission within 15 days. *See* Section 9.08.02 (a party may appeal to the Commission "by filing a notice of appeal with the city clerk within 15 days of the decision"). Thus, inclusion of the statutorily mandated language in the PZB notice does not dictate the nature of review before the Commission, as Castro imagines. Simply, it serves to advise that judicial appellate review requires a transcript.

11 Castro's reliance on *Dougherty v. City of Miami*, 13 Fla. L. Weekly Supp. 959a (Fla. 11th Circuit, Appellate Division, Nov. 13, 2008) is misplaced. There, the court construed an entirely different provision in an entirely different code.

### 3. Castro shows no prejudice and failed to object below.

Finally, the Court should reject Castro's argument because Castro shows no prejudice, herself having introduced new evidence in the form of her own expert witness. *See* T. 43 ff. Moreover, as the record reflects, while Castro objected to the form of the notice of appeal, she did not object to the de novo nature of the proceedings. *See* T. 37, 38, 40. Where, as here, a party fails to object to an erroneous procedure utilized at a hearing and, in fact, utilizes those procedures for its own benefit, the error is harmless. *See, e.g., Dep't of Highway Safety & Motor Vehicle v. Fernandez*, 114 So. 3d 266, 271 (Fla. 3d DCA 2012) (any error by the hearing officer in conducting proceedings telephonically did not prejudice the complaining party, where the party did not object and availed itself of the procedure).[13]

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[12] Again, the Court should defer to the City's interpretation of the Code. Castro does not show that the City's interpretation is "clearly erroneous," *Las Olas, supra*, "unreasonable" or "implausible," *Collier, supra.*

[13] *See, e.g., Sunset Harbour Condominium Ass 'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) ("As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal. In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.") (internal citations omitted); *Castor v. State*, 365 So. 2d 701, 703 (Fla. 1978) ("As a general matter, a reviewing court will not consider points raised for the first time on appeal."); *Sayad v. Alley*, 508 So. 2d 485, 486 (Fla. 3d DCA 1987)

Accordingly, the Court should reject Castro's argument because the de novo proceeding before the Commission, a regular feature of local government, was entirely proper under the Code, Castro was not prejudiced by the de novo nature of the proceeding and waived her objection by failing to raise it below.

## V. CONCLUSION

On the basis of the record, the foregoing argument and authority, the Court should deny the Petition in all respects. Castro shows no prejudice whatsoever and misreads the City Code. The Code merely gives *direction* for the form of a "notice of appeal," and as is the case in many municipalities, the City Code uses the term "appeal" to mean, merely, application to the City Commission as a higher authority.

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(failure to preserve alleged error below constitutes waiver of issue for appellate purposes).

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via Electronic Mail to **Paul C. Savage, Esq.** (Paul@SavageLegal.com), The Law Offices of Paul C. Savage, P.A., *Attorneys for Petitioner,* 100 Almeria Avenue, Suite 220, Coral Gables, Florida, 33134; and, **Frances G. De La Guardia, Esq.** (frances.guasch@hklaw.com), Holland & Knight LLP, *Attorneys for Respondent, Castro,* 701 Brickell Avenue, Suite 3300, Miami, Florida, 33131, this 10th day of November , 2015.

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
*Attorneys for Petitioners*
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800

By: _____
LAURA K. WENDELL
Florida Bar No. 0053007
Primary: lwendell@wsh-law.com
Secondary: lmartinez@wsh-law.com
JOHN J. QUICK
Florida Bar No. 648418
Primary: jquick@wsh-law.com
Secondary: lmartinez@wsh-law.com

## CERTIFICATE OF COMPLIANCE

I hereby certify that this Response was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

By: _____
LAURA K. WENDELL

OFFICE OF THE MAYOR
CITY OF SWEETWATER

**VETO AND VETO MESSAGE**
**ORDINANCE / RESOLUTION NO. 4144**

24 12 23

| | |
|---|---|
| To: | Commission President Jose M. Diaz and Members of the City of Sweetwater Commission |
| From: | Mayor Orlando Lopez |
| Re: | Ordinance / Resolution No. 4144 |
| Date Adopted | January 4, 2016 |
| Date Presented | January 14, 2016 |
| Date Vetoed | January 24, 2016 |

## VETO

Pursuant to the authority vested in me under the provisions of Section 4.09 of the City Charter, I hereby veto the above-referenced item, more particularly described as:

> **A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA DIRECTING SPECIAL COUNSEL OF THE CITY, GENOVESE, JOBLOVE & BATTISTA, PA TO FILE SUIT IN A COURT OF COMPETENT JURISDICTION TO RESOLVE THE ISSUES IN DISPUTE BETWEEN THE CITY COMMISSION AND THE MAYOR; AND PROVIDING FOR AN EFFECTIVE DATE.**

## VETO MESSAGE

On the above-referenced date, the City Commission ("Commission") passed Resolution No. 4144 which purports to direct special counsel to file a civil action in order to resolve "certain matters in dispute" between the legislative and executive branches of government. After review of the resolution, I am of the opinion that it violates §166.041, Florida statutes, on the ground that the title fails to adequately describe the text of the resolution.

As I lectured this Commission in my veto of Resolution 4141, Florida statute §166.041 requires that the "subject (of a resolution) shall be clearly stated in the title." The title of the resolution in question states in full:

> A resolution of the city commission of the city of Sweetwater, Florida directing special counsel of the city, Genovese, Joblove & Battista, PA to file suit in a court of competent jurisdiction to resolve the issues in dispute between the city commission and the mayor; and providing for an effective date.

However, the text of the resolution purports to designate Jose M. Diaz as "Lead Plaintiff" notwithstanding that the above title clearly makes no mention of such designation. The omission of said designation clearly violates §166.041 and thus renders the entire resolution objectionable. Given the importance my colleagues place on rushing to litigate disputes rather than attempting to resolve them through good faith negotiations and the political process, I am certain all will appreciate the necessity of ensuring any civil action is properly authorized.

I look forward to the passage of a properly drafted resolution and to the airing of all issues in a court of competent jurisdiction.

**RESOLUTION NO. 16 – 4144**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, DIRECTING SPECIAL COUNSEL FOR THE CITY, GENOVESE JOBLOVE & BATTISTA, P.A., TO FILE SUIT IN A COURT OF COMPETENT JURISDICTION TO RESOLVE THE ISSUES IN DISPUTE BETWEEN THE CITY COMMISSION AND THE MAYOR; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, on November 24, 2015 the City Commission directed the City Attorney to seek outside special counsel to assist the City Commission with matters in dispute with the City Mayor; and

**WHEREAS**, the City Commission approved the engagement of Genovese Joblove & Battista, P.A. as special outside; and

**WHEREAS,** the City Commission wishes to seek declaratory relief in a court of competent jurisdiction with respect to matters in dispute with the Mayor including but not limited to budget matters, appointment of department heads, and unbudgeted positions.

**BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, AS FOLLOWS:**

**Section 1.** The recitals above are true and correct and incorporated herein.

**Section 2.** The City Commission directs Genovese Joblove & Battista, P.A., Special Outside Counsel for the City, to seek declaratory relief in a court of competent jurisdiction with respect to matters in dispute with the Mayor including but not limited to budget matters, appointment of department heads, and unbudgeted positions. Commission President Jose M. Diaz is hereby designated Lead Plaintiff. Said designation is made without exclusion or waiver of any rights by the City Commission or any individual Commissioner.

**Section 3.** This Resolution shall become effective upon its adoption by the City Commission and approval by the Mayor or if vetoed, upon its re-enactment by the City Commission as provided by the Charter of the City of Sweetwater.

PASSED and ADOPTED this 4th day of January, 2016.

Signed Inadvertently

ORLANDO LOPEZ, Mayor

JOSE M. DIAZ, Commission President and Vice Mayor

ATTEST:

MARIE O. SCHMIDT, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

GUILLERMO CUADRA, CITY ATTORNEY

**VOTE UPON ADOPTION:**

| | |
|---|---|
| JOSE M. DIAZ, COMMISSION PRESIDENT | yes |
| JOSE W. BERGOUIGNAN, JR., COMMISSION VICE PRESIDENT | yes |
| PRISCA BARRETO, COMMISSIONER | yes |
| MANUEL DUASSO, COMMISSIONER | yes |
| IDANIA LLANIO, COMMISSIONER | yes |
| ISOLINA MAROÑO, COMMISSIONER | yes |
| EDUARDO M. SUAREZ, COMMISSIONER | yes |

## Marie Schmidt

**From:** Commissioner Prisca Barreto
**Sent:** Monday, January 25, 2016 1:59 PM
**To:** Marie Schmidt

I,WILL BE ATTENDING

## Marie Schmidt

**From:** prisca103@comcast.net
**Sent:** Monday, January 25, 2016 2:06 PM
**To:** Marie Schmidt
**Subject:** Re: Special Commission Meeting

Yes,I AM AGREED WITH THE MEETING,Comm Barreto

---

**From:** "Marie Schmidt" <mschmidt@cityofsweetwater.fl.gov>
**To:** prisca103@comcast.net
**Sent:** Monday, January 25, 2016 2:01:06 PM
**Subject:** FW: Special Commission Meeting

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**From:** Marie Schmidt [mailto:mschmidt@cityofsweetwater.fl.gov]
**Sent:** Monday, January 25, 2016 11:49 AM
**To:** Commissioners; 'GC@CUADRALAW.NET'
**Subject:** Special Commission Meeting

Dear Commissioners,

Mayor Lopez has vetoed Resolutions 4141 (retroactive hiring of law firm of Weiss, Serota & Helfman to handle the appeal in Circuit Court of Lucy Castro from the Commission's approval of President Diaz zoning appeal) and 4144 directing the Genovese firm to file suit on behalf of the City Commission. Commissioner Llanio is asking for a special meeting of the City Commission on Friday, January 29th, at 8:00 PM to consider the vetoes. If you agree to this meeting, please return this email with your approval.

Thank you.

## Marie Schmidt

**From:** Jose Bergouignan
**Sent:** Monday, January 25, 2016 2:14 PM
**To:** MSCHMIDT@CITYOFSWEETWATER.FL.GOV; cgarcia@cityofsweetwater.fl.gov
**Subject:** meeting

Hello Val and Carmen as per our conversation. I concur with having a commission meeting on Fri . the29th, 2016.
Thank you
Jose Bergouignan

## Marie Schmidt

**From:** Commissioner Eduardo Suarez
**Sent:** Monday, January 25, 2016 2:49 PM
**To:** Marie Schmidt
**Cc:** Carmen Garcia
**Subject:** Re: Special Commission Meeting

I concur.

On Jan 25, 2016 11:49 AM, "Marie Schmidt" <mschmidt@cityofsweetwater.fl.gov> wrote:

Dear Commissioners,

Mayor Lopez has vetoed Resolutions 4141 (retroactive hiring of law firm of Weiss, Serota & Helfman to handle the appeal in Circuit Court of Lucy Castro from the Commission's approval of President Diaz zoning appeal) and 4144 directing the Genovese firm to file suit on behalf of the City Commission. Commissioner Llanio is asking for a special meeting of the City Commission on Friday, January 29th, at 8:00 PM to consider the vetoes. If you agree to this meeting, please return this email with your approval.

Thank you.