


## MEMORANDUM

To: Mayor Roger Manning  
City Council Members

From: Pam E. Booker, Esq. 

Date: July 6, 2020

Regarding: Approval of Contract with Rick Jarolem, Esq.  
Sunshine Law Violation Allegations

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Please find an executed contract for utilization of the services of attorney Rick Jarolem regarding the SID/City's authority as it pertains to the drafting of Chapter 5, of the City's land development code and the requirements for bonds from developer's for development within the City of Westlake. Mr. Carter raised several concerns in his email dated June 22, 2020, regarding potential Sunshine law violations. I provided a response to the City Council on the evening of June 22, 2020, addressing the allegations raised. One of the concerns raised by Mr. Carter, was in regards to the lack of a public meeting to discuss the contract for Mr. Jarolem's services.

In addition to the email dated June 22, 2020, the City Manager and I received another email from him, on July 2, 2020, attaching a legal opinion from the law firm of Genovese, Joblove & Battista, regarding the Mayor's comments at the workshop meeting and the retention of Mr. Jarolem's services. I have reviewed the latest correspondence, the case law and the Attorney General opinions contained therein. After review of these materials, I disagree that there have been any Sunshine law violations. However, in an abundance of caution and for the most efficient use of City resources, I recommend that the retention of Mr. Jarolem be noticed and placed on the next available City Council agenda on July 13, 2020, for full discussion and authorization of the agreement for legal services from Mr. Jarolem. I note that as of this date, there has been no payments made to Mr. Jarolem.

As to the legal authority that was raised in Mr. Joblove's letter, I am not addressing every authority mentioned therein. In my legal opinion, many of the cases are inapplicable to the facts of what occurred in the City of Westlake. However, here are several points raised in Mr. Joblove's letter that I would like to refute. The suggestion that the City Council or I as the City Attorney were involved in any "closed door politics" or "evasive devices" is absolutely baseless. The request of the Mayor, as he stated publicly was simply an effort to resolve an ongoing issue in order to move forward with code drafting. Moreover, Mr. Jarolem was present at the workshop meeting and presented the full breadth of his work through a Power Point Presentation regarding the authority of SID and the City.

The Supreme Court of Florida in *Sarasota Citizens for Responsible Government v. City of Sarasota*, (S.Ct. 2010), in citing *Tolar v. School Board of Liberty County*, 398 So. 2d 427 (Fla. 1981), held that sunshine law violations can be cured by independent final action in the sunshine. The subsequent actions can-not be *mere* ceremonial acceptance or perfunctory ratification of secret actions and decisions. In *Sarasota*, emails were exchanged between board members and circulated with responding comments. However, there were multiple subsequent meetings in which the spring training topic was discussed and considered in a public meeting. These meetings were sufficient independent final action in the sunshine to cure any potential violations.

The Court in *Sarasota* addressed alleged sunshine violations based upon private staff briefings. The Court held that public officials may call upon staff members for factual information, informational briefings and advice without being subject to the Sunshine law requirements. The Court explained that “members of a collegial administrative body are not obliged to avoid their staff during the evaluation and consideration stages of their deliberations. Were this so, the value of staff expertise would be lost and the intelligent use of employees would be crippled.”

Another case cited in the legal opinion from Mr. Joblove is *Blackford v. School Board of Orange County*, where the school board was held to have violated the sunshine law by holding meetings with the superintendent, where the superintendent admitted attempts to avoid dysfunctional or disruptive stress and distress in the community regarding major redistricting options for the school board by holding various redistricting options secret from the public. The school board was required to provide all options to the public to be discussed in open public meetings. Again, the *Blackford* case provides a cure for any violations.

In our case, the Mayor requested a review by the Commission on Ethics regarding the alleged violations. In reviewing the Commission on Ethics jurisdiction and applications, the items raised in the email would not fall within the jurisdiction of the Commission on Ethics. The Palm Beach County Commission on Ethics applies to municipalities who have entered into an interlocal agreement with the Commission to provide oversight. The City of Westlake has not entered into an interlocal agreement with the Commission. The Commission on Ethics powers and duties pertain to the following items: 1) Countywide Code of Ethics; 2) County Post-Employment ordinances; and 3) County Lobbyist Registration Ordinance. Florida Statutes, chapter 112, governs ethics in government. Chapter 112, does not govern the alleged Sunshine law violations.

The allegations raised in Mr. Carter’s email do fall within the jurisdiction of the Palm Beach County Inspector General’s office. This matter has been voluntarily submitted to the Inspector General’s office with a copy of the email from Mr. Carter, seeking a complete review. I am awaiting a response from the Inspector General’s office. Additionally, the Inspector General has the authority to refer any matters to the State Attorney’s office for further review if they deem it appropriate. Any updates and responses received will be immediately provided to the Council.

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## Council Members

Roger Manning-Mayor  
Patric Paul -Seat 1  
Kara Crump-Seat 2  
John Paul O'Connor-Seat 3  
Katrina Long-Robinson-V. Mayor Seat 4



## City of Westlake

4001 Seminole Pratt Whitney Rd.  
Westlake, Florida 33470  
Phone: 561-530-5880  
Fax: 561-790-5466  
[www.westlakegov.com](http://www.westlakegov.com)

April 20, 2020

Richard A. Jarolem, Esquire  
Traub Lieberman Straus & Shrewsberry, LLP  
11770 U.S. Highway One  
Suite 402E  
Palm Beach Gardens, FL 33408

RE: ENGAGEMENT LETTER REGARDING THE AUTHORITY OF CITY OF WESTLAKE AND THAT OF THE SEMINOLE IMPROVEMENT DISTRICT WITH REGARDS TO BOND POSTING FOR REQUIRED INFRASTRUCTURE IMPROVEMENTS AND PLATTING

Dear Mr. Jarolem:

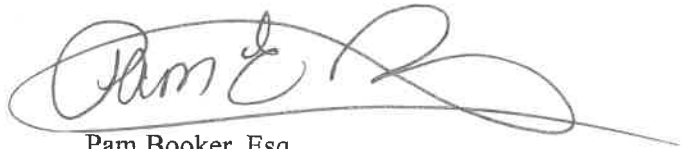
The City of Westlake ("Westlake" or the "City") would like to engage the services of your firm in the handling of the above- matter. We understand that your services will be billed at \$350.00 an hour. I am requesting a legal opinion to address several questions which have been raised: (1) whether the Seminole Improvement District has any authority over the bond requirements for the City of Westlake as it pertains to plats which are approved by the City Council; (2) whether the City is obligated to add the Seminole Improvement District as an additional obligee on the bonds provided; (3) whether the City's Charter and the enabling documents for the District prohibit the City from requiring bonds for required improvements.

The issue stems from dispute between the City and the Seminole Improvement District ("SID" or the "District") regarding the authority of the City to require the posting of a bond to secure infrastructure improvements prior to the City recording a plat in connection with lands within the City's boundaries and also within the jurisdictional boundaries of the District.

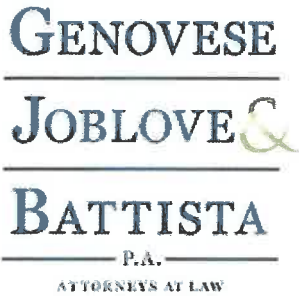
The City Attorney and Counsel for the District have provided differing legal opinions. The parties remain in disagreement as to the bonding requirements, the authority under the charter, Florida Statutes, chapter 177 and Palm Beach County's Uniform Land Development Code ("ULDC"). This outstanding issue is delaying the adoption of a specific code section and the recordation of a pending plat. Although no formal legal proceedings have been filed, that does not preclude the district for initiating litigation regarding these issues.

Should this matter proceed further, I am requesting that a copy of any/all pleadings and or any documents filed on behalf of the City be sent to: [pbookerjd@gmail.com](mailto:pbookerjd@gmail.com). If you have any questions and/or require any additional information, please feel free to contact me at 772-971-8676. Thank you for your attention to this matter.

Sincerely

A handwritten signature in black ink, appearing to read "Pam Booker", with a large, stylized flourish extending to the right.

Pam Booker, Esq.  
City Attorney



Michael D. Joblove  
Telephone: 305.349.2333  
Email: [mjoblove@gjb-law.com](mailto:mjoblove@gjb-law.com)

July 2, 2020

**Via email to [Jfcarter@mintousa.com](mailto:Jfcarter@mintousa.com)**

Mr. John Carter

Dear John:

You have asked me to provide a legal analysis, to be shared with the City of Westlake, regarding how the Sunshine Act applies to conversations city staff members had with individual Council members based on your concerns regarding the Mayor's opening statements at a May 20, 2020 workshop. Those statements were that the City Council had "authorized" Pam Booker to hire a second attorney for an opinion on the issues to be discussed at the workshop. The City Clerk advised, however, that there are no records reflecting action by the City Council at a public meeting to retain Mr. Jarolem. And, at the same meeting, Ms. Booker revealed that she already had spoken with each Council member individually on this very issue.

The Sunshine Act requires that all "official acts" be taken only at public meetings open to the public "at all times." Fla. Stat. §286.011.

As the Attorney General has made clear, the right of such private communications is limited, and they are impermissible where their purpose is to circulate thoughts of individual council members to the rest of the Council. Op. Att'y Gen. 75.59 (1975). The Attorney General has further made clear that the Sunshine Act precludes a city attorney from asking a commissioner his or her opinion on a matter to be considered by the Council in order to provide the information to other members of the Council. Op. Att'y Gen. 96-35 (1996).

More to the point, it is a Sunshine Act violation for an officer to speak with individual members to gain direction from the board as a whole, even when the officer never communicates what one member says to another. *See Blackford for Use and Benefit of Cherokee Jr. High School*, 375 So.2d 578 (Fla. 5th DCA 1979). In the *Blackford* case, the school superintendent wanted Board direction on a school redistricting issues, so met with the Board members individually to discuss various options, and formulated his plan as a result of those meetings. The superintendent took measures to ensure no two board members ever spoke with each other on the issue, and stated

he “was quite aware of the Sunshine law and very diligent in fulfilling (his) responsibility in meeting (its) requirements.” *Id.* at 579 (alterations in original). The superintendent testified he was:

[A]damant that he did not act as a go-between during these discussions and denies he told any one board member the opinions of the others. He insists that he only presented and discussed the various options with each member and generally obtained their feedback. He also denies the board members directed him to make any changes to, or indicated which way they would vote on, the proposals.

Nonetheless, the court found that “notwithstanding that the motives are as pure as driven snow,” those individual meetings counted as “de facto meetings,” even when the ultimate decision was made by the Board at a public meeting. The court found a violation, even though it was not a willful violation of the Sunshine law “so much as an attempt not to violate it, yet keep the various options secret.” *Id.* at 580 (capitalization in original). In other words, even if the “go-between” never reveals to board members what the other board members say, a Sunshine Law violation can occur when options are narrowed or direction is given. That is what apparently happened here at Westlake with the hiring of Mr. Jarolem.

The Attorney General has similarly advised:

You should also be aware that while the **Sunshine** Law generally requires two or more members of the same board discussing some issue that will foreseeably come before the board, there are circumstances in which the **Sunshine** Law may apply to a single individual or where two board members are not physically present. Certain factual situations have arisen where, in order to assure public access to the decision-making processes of public boards or commissions, it has been necessary to conclude that the presence of two individuals of the same board or commission is not necessary to trigger application of [section 286.011, Florida Statutes](#).

Advisory Inf. Op. Atty’y Gen. The Honorable Donald G. Pratt (2007).

At your request, I have reviewed and analyzed Ms. Booker’s June 22, 2020 letter addressing this Sunshine Act issue. Rather than address the central issue of whether the City Council’s decision to retain Mr. Jarolem was authorized by the Council at a public meeting, Ms. Booker’s letter focuses at length on whether she, as a city attorney, may have direct communications with each Council member in private. She may, and there is no dispute as to that legal principle, although it is limited to circumstances such as those in the cases Ms. Booker cites.

Ms. Booker’s analysis on that point is, however, an oversimplification and focuses on the wrong issue. The *Blackford* case and the advisory *Pratt* Attorney General opinion also make plain that Ms. Booker was not correct when she stated in her letter:

This ends the discussion per the case law and facts cited above. There was not 'meeting', of two or more decision makers thus there can be no 'violation.' The inquiry ends here. There was and is no violation.

That simply is not the state of the law. Here, there was never a meeting in the Sunshine of the hiring of Mr. Jarolem. In the *Blackford* case, the Board still at least voted on the action in the Sunshine. And that is what is most troubling - Ms. Booker's silence on the central issue: her failure to identify a public meeting at which Mr. Jarolem's retention was discussed and approved. Instead, Ms. Booker strains to justify Mr. Jarolem's illegitimate retention by referring to general language in her July 2016 engagement letter which, when explaining the services Ms. Booker offers, simply states, "Outside counsel may be required for more specialized services." The engagement letter does not contain any specific authorization for Ms. Booker to engage outside counsel without Board consent and is not indicative of the authorization of the present Council members to retain Mr. Jarolem for a legal opinion on the workshop issues involving the City and SID, which is the authorization mentioned by Mayor Manning at the May 22, 2020 workshop. Under the Charter, Ms. Booker is only authorized to hire "such assistants as may be required, when approved by the City council."

As Mayor Manning publicly stated, he asked for a second opinion on the platting issue with SID in a private meeting with the City Attorney. When the City Attorney takes direction at the request of an individual Councilperson and/or polls other Councilmembers if they support bringing in outside Counsel for a second opinion, the resulting action becomes an official act of the Council. The City Attorney then took steps to engage outside counsel based on direction given out of the Sunshine. As is the instant case with the hiring of Mr. Jarolem, a decision made outside of a duly noticed public meeting further frustrates the intent of the Sunshine Act. *See Blackford*, above. As Mr. Cassel indicated at the last Workshop, this action will require a budget adjustment. Moreover, the letter engaging Mr. Jarolem begins "The City of Westlake ('Westlake' or the 'City') would like to engage the services of your firm...." It is clear from these indicia that Mr. Jarolem's hiring was a City of Westlake act, taken after discussions out of the Sunshine. The City Attorney's engagement letter language stating that outside counsel may be required for areas outside her expertise is not a substitute for the requirements of the Sunshine Act that the City's authorization to retain Mr. Jarolem must be conducted at a public meeting and not be via private discussion.

Importantly, the Florida Supreme Court has made clear that "The Sunshine Law must be construed so as to frustrate all evasive devices, . . . and closed door politics." *Sarasota for Responsible Gov't v. City of Sarasota*, 48 So.3d 288, 298 (Fla. 2010). Mr. Jarolem's retention was clearly the result of "closed door" politics. The Sunshine Law functions "to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance," *City of St. Petersburg v. Wright*, 241 So.3d 903 (Fla. 2d DCA 2018) (further citations omitted), yet that is exactly what happened here. Ms. Booker met with the individual council members to get direction on hiring Mr. Jarolem, received that direction, hired Mr. Jarolem, and then relied on the public statement by Mayor Manning that he asked for a second opinion to cure the violation.

John Carter  
July 2, 2020  
Page 4

The statement in Ms. Booker's letter that even if a violation had occurred, such violation was cured by the public meeting is incorrect. In the first instance, the meeting was to discuss Mr. Jarolem's conclusions, not his hiring. The decision to hire him is the decision at interest here, and other than the Mayor Manning's perfunctory statement that the counsel had authorized Ms. Booker to hire him, no discussion of whether he should be hired took place. Second, a Sunshine Law violation can only be cured when the decision is made in the sunshine at a public meeting. Here, the actual "meeting" to discuss the subject of Mr. Jarolem's research was not in fact a regular meeting; it was advertised as a workshop and when the vice mayor asked whether she could make a motion, you correctly advised her that you "can't do it here," as is consistent with your past practices at workshops. So, the Council could not have taken the action necessary to cure the violation at the workshop where the cure supposedly happened.

Sincerely,



Michael D. Joblove



**TRAUB LIEBERMAN  
STRAUS & SHREWSBERRY LLP**

**Mid-Westchester Executive Park  
Seven Skyline Drive  
Hawthorne, New York 10532  
Telephone: (914) 347-2600**

**Tax ID# 22-3408933**

May 27, 2020

City of Westlake  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470

Invoice No.: 333105  
Our File No: 3348 .0056  
Billing through 4/30/2020

Attn: Pam E. Booker, Esquire

**City of Westlake v Seminole Improvement District  
PBCty Case No. TBD**

**PROFESSIONAL SERVICES**

4/21/2020	RAJ	Review PBC Uniform Land Development Code regarding improvement requirements prior to platting, 67 pages reviewed.	2.30	\$805.00
4/21/2020	RAJ	Review bonds issued.	0.80	\$280.00
4/21/2020	RAJ	Review Interlocal Agreement between Westlake and SID to understand authorities and priorities involving infrastructure 21 pages reviewed.	1.30	\$455.00
4/21/2020	RAJ	Review City Charter to ascertain powers given, reserved and waived, 15 pages reviewed.	0.60	\$210.00
4/22/2020	RAJ	Draft of analysis of relevant portions of Chapter 177 Fla Stat. Stat. for memorandum on issues, 1 pages drafted.	0.60	\$210.00
4/22/2020	RAJ	Draft of analysis of relevant portions of PBC ULDC for memorandum on issues, 1 pages drafted.	0.60	\$210.00
4/22/2020	RAJ	Draft Summary and conclusion of analysis for memorandum on issues, 3 pages drafted.	0.60	\$210.00
4/22/2020	RAJ	Draft of analysis of relevant portions of Charter for memorandum on issues, 3 pages drafted.	1.40	\$490.00
4/22/2020	RAJ	Draft of analysis of relevant portions of Interlocal Agreement for memorandum on issues, 6 pages drafted.	2.20	\$770.00
4/22/2020	RAJ	Draft of analysis of relevant portions of SID's Enabling Act for memorandum on issues, 2 pages drafted.	1.20	\$420.00
4/23/2020	RAJ	Review LLW letter with case cites and additional cites to ILA.	0.60	\$210.00
4/23/2020	RAJ	Pull cases and review LLW case cites from letter.	0.60	\$210.00
4/24/2020	RAJ	Revise Memorandum to address case law and ILA issues raised in LLW letter.	0.90	\$315.00

4/27/2020	RAJ	Revise and final form updated 4.22.2020 memorandum.	2.70	\$945.00
4/27/2020	RAJ	Call with client regarding providing information to Council.	0.40	\$140.00
4/27/2020	RAJ	Research PBC Charter, 21 pages reviewed.	0.70	\$245.00
4/27/2020	RAJ	Draft memo for council review and consumption as it relates to government, powers and land regulations, 8 pages drafted.	4.80	\$1,680.00
4/28/2020	RAJ	Revise memorandum to client and forward to client for input, 13 pages revised.	1.60	\$560.00
4/28/2020	RAJ	Call with client regarding segmenting information into smaller packets for dissemination to Council, discussion on developing power-point.	0.40	\$140.00
4/28/2020	RAJ	Draft smaller memo to distribute to Council and Manager, condensed information, 6 pages drafted.	1.70	\$595.00
4/28/2020	RAJ	Revise memorandum to council and forward to client for input, 13 pages revised.	1.90	\$665.00
4/29/2020	RAJ	Begin preparation of powerpoint to present to Council.	2.80	\$980.00
4/29/2020	RAJ	Final revisions of memos for council.	0.40	\$140.00
4/30/2020	RAJ	Revise conclusion of memo to better reflect bond obligee issue and discussion.	0.10	\$35.00
4/30/2020	RAJ	Call with client regarding final form of memo and power point.	0.40	\$140.00
4/30/2020	RAJ	Edit down powerpoint to 31 slides, final form draft and forward to client for review and approval.	1.30	\$455.00
4/30/2020	RAJ	Continue drafting powerpoint presentation 17 additional slides.	2.40	\$840.00
4/30/2020	RAJ	Continue drafting powerpoint presentation 21 additional slides.	2.40	\$840.00
<b>Total Fees</b>				<b>\$13,195.00</b>

**TIMEKEEPER SUMMARY**

		HOURS	RATE	AMOUNT
RAJ	Jarolem, Richard A	37.70	350.00	\$13,195.00

**INVOICE SUMMARY**

Total Fees	\$13,195.00
Total Expenses	\$0.00
<b>Total Amount of This Bill Before Split</b>	<b>\$13,195.00</b>
Current Charges for your 100.00% portion	\$13,195.00
Plus Net Balance Forward	\$0.00
<b>Your Portion Total Balance Due</b>	<b>\$13,195.00</b>

**TRAUB LIEBERMAN  
STRAUS & SHREWSBERRY LLP**

**Mid-Westchester Executive Park  
Seven Skyline Drive  
Hawthorne, New York 10532  
Telephone: (914) 347-2600**

**Tax ID# 22-3408933**

June 12, 2020

City of Westlake  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470

Invoice No.: 334217  
Our File No: 3348 .0056  
Billing through 5/31/2020

Attn: Pam E. Booker, Esquire

**City of Westlake v Seminole Improvement District  
PBCty Case No. TBD**

**PROFESSIONAL SERVICES**

5/1/2020	RAJ	Revise power-point and forward to client.	0.60	\$210.00
5/1/2020	RAJ	E-mails with client regarding revisions to power point.	0.20	\$70.00
5/5/2020	RAJ	Attend meeting with council member Patrick Paul and Ms. Booker regarding Planning and Platting.	1.00	\$350.00
5/5/2020	RAJ	Attend meeting with Mayor and Ms. Booker regarding Planning and Platting.	1.20	\$420.00
5/5/2020	RAJ	Attend meeting with vice Mayor and Ms. Booker regarding Planning and Platting.	1.00	\$350.00
5/5/2020	RAJ	Prepare for council webex meetings to discuss planning and platting.	0.80	\$280.00
5/6/2020	RAJ	Meet with councilperson regarding City and SID powers.	1.00	\$350.00
5/8/2020	RAJ	Prepare for meeting with Council person Kara Crump.	0.50	\$175.00
5/8/2020	RAJ	Attend meeting with Council person Kara Crump.	1.00	\$350.00
5/8/2020	RAJ	Conversation with City attorney and begin preparations for May 20th meeting.	0.40	\$140.00
5/19/2020	RAJ	Call with client regarding setting of workshop on May 20, 2020.	0.50	\$175.00
5/19/2020	RAJ	Rewrite e-mail to client identifying glaring deficiencies in Diffenderfer's arguments where he fails to even remotely address limitation of powers.	0.40	\$140.00
5/19/2020	RAJ	Review Diffenderfer's letter dated May 19, 2020, no significant differences documents and/or language, still differing opinion.	0.80	\$280.00
5/20/2020	RAJ	Prepare for virtual meeting regarding bond obligee issues.	1.80	\$630.00
5/20/2020	RAJ	Advised by client that meeting was not taking place virtually, but	0.20	\$70.00

was taking place at City, Attendance required.

5/20/2020	RAJ	Travel to live meeting regarding bond obligee issues.	0.80	\$280.00
5/20/2020	RAJ	Attend live Council meeting regarding bond obligee issues and return.	3.80	\$1,330.00
			<b>Total Fees</b>	<u>\$5,600.00</u>

**TIMEKEEPER SUMMARY**

		HOURS	RATE	AMOUNT
RAJ	Jarolem, Richard A	16.00	350.00	\$5,600.00

**INVOICE SUMMARY**

Total Fees	\$5,600.00
Total Expenses	\$0.00
<b>Total Amount of This Bill Before Split</b>	<u><b>\$5,600.00</b></u>
Current Charges for your 100.00% portion	\$5,600.00
Plus Net Balance Forward	\$13,195.00
<b>Your Portion Total Balance Due</b>	<u><b>\$18,795.00</b></u>