

Kisha Locke - Walton County Planning Department - Investigation

From: Shawn Heath <shawn.heath@nelsonmullins.com>
To: Kisha Locke <KLocke@sa01.org>
Date: 6/24/2015 3:35 PM
Subject: Walton County Planning Department - Investigation
Attachments: Letter from G. Anchors 05-06-13(376064v.1).pdf; Letter to Greg Anchors 04-15-13 (371779v.1).pdf; Jay Odom sentencing.pdf; WC memo to FDEM Aprtil 2010 for \$.pdf; Magazine Article hi lt- Jay Odom.pdf; Pages 80 - 86 Larry Jones depo.pdf; Intrawest payments to WC Ex 426.pdf; Harris Press Release.pdf

Ms. Locke...Please forward this email to Mr. Eddins and Greg Anchors.
Thank you.

Dear Mr. Eddins and Mr. Anchors

We represent homeowners in Driftwood Estates at Sandestin. We are aware of your office's investigation of
 The Walton County Planning Department.

As you may recall, our clients have pending lawsuits against Walton County. At the core of those lawsuits is misconduct by Walton County officials and those in the planning department with the developers/home builders etc. who were interested in the development of Driftwood's interior acreage. Before the interior of Driftwood was developed beginning in about 2005, it was prime real estate; it was 200 acres of mature thick trees in Sandestin on a peninsula extending into the Choctawhatchee Bay. But, almost all of that acreage was designated by law as Open/Green Space and/or federal or state wetlands and therefore no development of it was authorized by law absent an extensive public hearing process.

No public notices or public hearings occurred to lawfully authorize the development of Driftwood's interior and, incredibly, the developer (Rick Olson) was able to obtain development authorization for a 463 single family home development from Walton County in *less than 3 months*. Olson was able to obtain that authorization without following the public process because key people inside and outside the county government facilitated it.

There seems to be a pattern of which planning department personnel rendered favorable treatment to local development insiders in a variety of forms. See, for example, attached articles regarding the conviction of prominent local developer Jay Odom for straw donor political contributions to Mike Huckabee. The same practice was/is apparently common to local politicians which makes sense because local politicians have far more influence

on issues that directly concern land developers' significant financial interests. Indeed, Lynn Hoshihara, the former County attorney until spring 2012, testified that she was bribed by Lloyd Blue and was aware of a culture of developer influence within the planning department in prior years. See attached pages 149-150 from her deposition.

Similarly, former Commissioner Larry Jones testified that the developer of Driftwood's interior, Rick Olson, called Jones to offer Jones a campaign contribution just before a Commission meeting on which the Board of County Commissioners was to vote whether development in Driftwood could continue or whether more Olson needed more flood control measures. (See attached pages 80-86 from Jones deposition.)

Many of those insider favors occurred throughout the years regarding Driftwood which has caused tens of millions of dollars of lost property values to the homeowners in Driftwood and effectively will require Walton County's taxpayers to pay millions of dollars just to eliminate life safety risks in Driftwood. (The County's own deputy public works director characterized Driftwood's flooding that frequently severs its sole ingress/egress as a serious life safety concern. See attached.) Moreover, the County also suffers in lost tax revenue while the developers reaped millions and left the adverse consequences to the taxpayers to pay to clean up. The County's internal reports demonstrate that key people within the County knew that Driftwood had been unlawfully developed but suppressed that information for years to protect the financial and political interests of favored insiders.

The county's "approval" of the interior development in Driftwood fits that pattern of insider cronyism for many reasons akin your present investigation of the planning departments' failure to collect hundreds of thousands of dollars in development impact fees from select local developers. Indeed, a few weeks ago Walton County's accounting personnel testified that Walton County could find records (including by electronic word search of its accounting system) to indicate that in the 13 years that Intrawest owned Sandestin it paid a total of **only \$3,150.00** to Walton County even though it did hundreds of millions of dollars of development. (See attached.)

Further, it appears that the developer of Driftwood (Rick Olson) apparently did not pay more than about \$20,000 to the county in development fees for the development of 150 acres in Sandestin (Driftwood's interior) into 463 single family homes. Moreover, the County failed to require him to furnish a letter of credit for the first 2 phases of the

development and then allowed the letter of credit for the 3rd phase to expire thereby eliminating any financial security in favor of the County to ensure that the development was appropriately constructed. As it turns out the roads in the interior are cracking too severely for the County to accept them.

Attached are some of our prior correspondence on this case. It seems that if the state attorney will spend significant amounts of its resources to investigate and then publish a

two page press release explain its legal analysis for something as trivial as whether Ms. Suzanne Harris was lawfully a resident of Florida, then a circumstance that concerns hundreds of millions of dollars of losses and acknowledged life safety risks to over 700 families also warrants investigation. (See attached press release concerning Harris' case.)

Consider that Driftwood is the largest habitable peninsula in north Florida and is the largest neighborhood in Sandestin which is the largest Development of Regional Impact in north Florida. The financial losses are certain (the County's own tax assessment information proves the losses.) It is rational to believe that losses of that magnitude—which unquestionably are attributable to specific humans' decisions who had their own personal interests at stake—warrants serious law enforcement inquiry at least to the extent of the investigation of where Ms. Harris resides. The economic losses to the residents on Driftwood's exterior/waterfront are fundamentally no different than if a thief broke into all their hundreds of homes and stole \$500,000 to \$2 million dollars in cash from each home. Surely, that type of theft would garner some law enforcement inquiry.

(Contrast Ms. Harris' case to this one: No physical or financial harm was alleged to even be threatened by the issue that your office investigated. Further, suppose Ms. Harris was found to have voted in Florida as an Alabama resident, it would have had no actual detrimental impact on anyone because no election was decided by one vote.) We do realize that the complaint that spurred the investigation against Ms. Harris was lodged by a former elected official which may account for the attention to it.)

The narrative of Driftwood is complex and has taken our clients' and their lawyers and experts *tens of thousands* of hours and dollars to investigate. I cannot possibly set forth the story in this email to the level of detail that your office has previously requested in order to investigate it.

Further, given the initial indifference to our concerns, we have no desire to distract our attention at errands for which there will be no interest, so we have no desire to go-through-the-motions meeting. Accordingly, please let me know if your office has significant bona-fide interest in understanding the misconduct of Walton County officials' and others.

Respectfully

Nelson Mullins

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Re: Driftwood Estates at Sandestin

Dear Mr. Anchors:

This letter responds to your letter of November 8, 2012. As you know, we represent homeowners in Driftwood Estates in Sandestin and the Greater Driftwood Homeowner's Association, Inc.

I have attached a copy of our Motion for Punitive Damages against Intrawest. That document lays out much of the basic story and problems that form the basis of my client's grievances concerning their neighborhood.

Your letter states that Mr. Osborne's comments "did include the commissions (sic) failure to follow their own ordinances on the development plan for Driftwood Estates but he never alleged that to be a criminal act." Your letter then states "We will be open to look at any alleged violation of the law but it must be with specific facts to support the alleged law violation and the complaint should be sworn to."

That is a peculiar response of law enforcement and prosecution in my experience. I was a prosecutor in the United States Army and also served as a Special Assistant United States Attorney prosecuting federal offenses on the military installation. I never considered it to be the victim's job to identify the law that had been broken. Rather, it was my job to oversee an investigation of the alleged facts and then—as the person trained in the application of the law to the facts yielded by that investigation—to determine if any law had been violated sufficient to file charges. Your letter suggests a different practice in Walton County, *i.e.* the victim must investigate all of the alleged criminal conduct and determine which law(s) it violates before you will consider it. Do you require this of other victims?

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It is a dodge to ignore the basic facts of this story that has been known by law enforcement for years and are set out in our motion. The essence of it is this: SOMEHOW Walton County approved a 463 lot neighborhood to be constructed on land not designated for that use without ANY public notice or public hearings in gross violation of its own Comprehensive Plan and Land Development Code. (Walton County's own Development of Regional Coordinator, Renee Bradley, testified to this fact.) That basic fact suggests either colossal ineptitude by Walton County or something more nefarious. There seems to be no other rational explanation.

No one can explain how the project came to be approved: Not Walton County, or even its former employees. Not Intrawest. Not Olson. Not Adams Homes. None of them can explain how this approval came to be. I understand that your office and other organizations have a history of repeatedly accepting Walton County's version and explanation of many aspects of this case. It is logical to believe that you and others did that because you believe that Walton County's personnel are not inept. If that premise is true, then it leaves only one other plausible explanation here: misconduct.

Consider who was to gain from the neighborhood. We estimate that Adams Homes probably made \$20 million to \$30 million from the homes it sold in Driftwood. It employed a sitting commission, Larry Jones, in April 2003 at the time that the development order was approved. The developer, Rick Olson, was represented by George Ralph Miller who just weeks before had represented Walton County concerning Intrawest's 2002 proposed and approved changes within the Sandestin DRI. Are not those facts highly suggestive of rationale reasons how the neighborhood became approved by Walton County without any of the adjacent neighbors getting notice, *i.e.* persons of influence who had much to gain from the neighborhood being built clandestinely "facilitated" its approval. Purposefulness to hide the approval is buttressed by the fact that Intrawest knew that it had problems with Driftwood and the Sandestin DRI as described in the motion. Is it not a fair question to ask: If what was sought to be approved was legitimate then why did those involved not simply follow the lawful process?

Similarly, is it not at least peculiar that after this issue emerged, Walton County quickly accepted only \$60,000 each from both Adams Homes and Olson and gave them both complete releases from any wrongdoing, even though Walton County knew that substantial drainage problems existed in the neighborhood and also knew that it would cost several millions of dollars to fix them. Can it rationally be assumed that local

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government simply worsens its original folly by greater ineptitude at tremendous cost to the public treasury?

These are not only fair questions for those in the neighborhood to ask but also for law enforcement. But, if law enforcement and the prosecution require the citizens and victims to investigate and gift-wrap the evidence before the prosecution will consider it, then few crimes indeed will ever be prosecuted. And certainly none as complex as this problem will be prosecuted because, by its nature, the actors here intended to conceal their actions. My experience is that criminals rarely paint their trail. Moreover, our lawsuits do not give us access to all of the witnesses, documents and resources that, you as a representative of the government, can utilize to investigate.

Since I have become involved in this case, I have had many people who are not associated at all with Driftwood or Sandestin tell me that we can never win and law enforcement will never do anything about it. They have said that Walton and Okaloosa Counties are "good ole boy" political systems that will protect their own from any material harm. I like to believe that such is not true. (We have retained the former secretary of the Department of Community of Affairs, Steve Seibert, who is amazed at the perpetual poor decisions and absence of any effort by Walton County to seek to resolve the problems.) I like to believe that law enforcement makes no distinction among persons wealth or influence in enforcement of the law.

Still, it would seem too important for you to at least know, that it appears that there is a popular perception among your citizenry that those in positions of power and decision authority conveniently "look the other way" about the potentially criminal activities of certain wealthy persons in Walton County while disparately prosecuting the poor for their offenses. Those are not the makings of a sustainable harmonious society.

I also know that any investigation is as only as good as the person(s) who perform it. It is easy enough for government to seemingly "investigate" an episode without putting much real heart or effort into it and then announce that the "investigation" concluded that no misconduct had occurred. If no stones or only the wrong ones are turned over, then that will always be the result. Moreover, if law enforcement is slothful and waits long enough to inquire then the statute of limitations will have expired for most, if not all, of the offenses. We also know that State Attorneys are immune from their discretionary acts; if you take no action then no harm can come to you.

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Your letter is also peculiar in that it suggests that your office need not take any action because of the existence of the civil lawsuit and civil remedies that may exist for our clients. As you know—the existence of such civil remedies is simply irrelevant to whether the conduct is also criminal. Moreover, if Walton County's position is accepted, then Walton County CANNOT be sued for any the acts or omissions of its employees regarding Driftwood because it is immune. The existence of that civil immunity is, of course, not dispositive of whether criminal offenses may have occurred. Indeed, the fact that immunity prevents any with Walton County from being held accountable to anyone in Driftwood for their folly or purposeful conduct emphasizes all the more the need for the government to hold people accountable. Moreover, because Florida caps punitive damages in most instances, the extent of the harm could still greatly exceed the damages that could be awarded in the civil case. (It is estimated that the costs to restore the open space by buying and demolishing the homes and replanting the pines etc. will exceed \$120,000 million.)

Former Commissioner Scott Brannon's conduct also oddly intersects with Driftwood. These facts are not disputed: Commission Brannon voted 22 times against stopping development in Driftwood and was the most outspoken Commission against the cessation of construction in Driftwood. At the time of many of those votes he was also business partners with C. Wayne Jones who had purchased 77 lots in Driftwood for \$7.3 million. (The ethics commission only interviewed the two people with the most to lose from an adverse result: Brannon and Jones—who, not surprisingly, denied that Commissioner Brannon knew that Jones owned those lots at the time of Brannon's votes.) Mr. Osborne previously offered to provide documents demonstrating these issues, but you refused to take them from him. We will provide these to you if you will look at them as well as evidence that Commissioner Brannon knew that Jones owned those lots at the time that he voted to allow construction to continue.

Further, C. Wayne Jones and Commissioner Brannon had also made over \$600,000 each in less than 2 months in 2002 on the sale of some Walton County property (Windermere). Walton County is a "small" county; it is fairly implausible to believe that Commissioner Brannon did not know of Jones' ownership at the time of those votes. Moreover, are they not fair questions of how do Commissioner Brannon and George Ralph Miller find themselves together on a Friday night signing documents whereby Walton County buys the Chat Holley property? And how does Commission Brannon have his lawyer (who is also simultaneously retained by Walton County) to write an ethics complaint against Commissioner Larry Jones for Jones' influence as a

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Commissioner while Jones is also an employee of Waste Management who has a very lucrative contract with Walton County? (I understand now that Walton County has lost yet another County Administrator and that Larry Jones has been hired by Walton County as a "special projects" coordinator.)

We believe that the irrationality of these events and their enormous financial impact to Walton County and the people who live in Driftwood warrants a criminal investigation, but we do not believe that the Walton County Sheriff's office should perform it. Sheriff Adkinson has demonstrated hostility towards Mr. Osborne and likely associates Mr. Osborne with everyone in Driftwood. (For example, Sheriff Adkinson spent public dollars to hire a lawyer to investigate a defamation lawsuit against Mr. Osborne (an inquiry concerning that should also be made) and his organization failed to meaningfully investigate the criminal activity that Mr. Osborne reported. Moreover, Sheriff's Adkinson's office appears to protect his relatives from criminal investigation. (We can provide documents on all of these issues if you will look at them.) Under those circumstances, Sheriff Adkinson's personal acrimony for Mr. Osborne may cloud his judgment, exert command influence over the investigation or at least there will always be the appearance of such. Accordingly, to have credibility, these events should be investigated by someone outside of the sphere of influence of Sheriff Adkinson.

As demonstrated by the quotations from Intrawest's own documents in our Motion for Punitive Damages against Intrawest, people at that company knew that they were violating the law. They also knew that their actions would have millions of dollars' worth of consequences—positively to them and negatively to others. Relatively speaking, these crimes in your community are substantially more egregious than thefts from Wal-Mart. Given the enormous adverse financial impacts, are they not worth some modicum of inquiry? Intrawest objects to me providing the documents to you, so you will need to subpoena them from their lawyers.

Finally, I have heard that many believe (none want their name mentioned) that there may be impropriety regarding some arrangement with Walton County and Regional Utilities. If this information is coming to me, then it must also be coming to you.

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Please let me know how you will proceed.

Respectfully,



Shawn M. Heath

SMH/vr

Enclosure

cc: Via email (without encl.)
Mark Davis
Sid Ansbacher