

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY  
APPELLATE DIVISION    CASE NO. 08-\_\_\_\_\_**

**TIERRA VERDE COMMUNITY  
ASSOCIATION, INC., a Florida  
Non-Profit Corporation,**

**Petitioner,**

**vs.**

**CITY OF ST. PETERSBURG, FLORIDA,  
a Florida municipal corporation,**

**Respondent.**

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner, TIERRA VERDE COMMUNITY ASSOCIATION, a Florida Non-Profit Corporation, files this its Petition for Writ of Certiorari pursuant to Florida Statutes, §171.081, and in support thereof would show:

**INTRODUCTION**

Petitioner, TIERRA VERDE COMMUNITY ASSOCIATION, will be referred to herein as the “ASSOCIATION” or as “Petitioner.”

Respondent, CITY OF ST. PETERSBURG, FLORIDA, a Florida municipal corporation, will be referred to herein as the “CITY.”

PINELLAS COUNTY, a political subdivision of the State of Florida, will be referred to herein as “COUNTY.”

TIERRA VERDE MARINA HOLDINGS, LLC, a Florida limited liability company, the owner of one of the parcels purportedly annexed pursuant to Ordinance No. 867-G, will be referred to herein as “MARINA HOLDINGS.”

A&S TIERRA VERDE VENTURES, LLC, a Florida limited liability company, the owner of another parcel purportedly annexed pursuant to Ordinance No. 867-G, will be referred to herein as “A&S.”

A reference herein to “A” followed by a number and page will refer to the appropriate document (and page thereof) of the Appendix accompanying this Petition.

### **STANDARD OF REVIEW**

The standard of review applicable to this proceeding is a “first tier” certiorari review. Under this standard, the Court must determine whether (1) procedural due process was accorded, (2) the essential requirements of law have been observed, and (3) whether the final decision is supported by competent substantial evidence. *Broward County v. G.B.V. International, Ltd.*, 787 So.2d 838 (Fla. 2001).

Petitioner does not assert a procedural due process challenge. Accordingly, that is not an issue in this proceeding.

However, Petitioner would respectfully submit that, in this case, the CITY departed from the essential requirements of law in the adoption of Ordinance No. 867-G (A-1) which purported to annex the area in question. Moreover, there is no competent substantial evidence to support the CITY's purported annexation of the area in question.

### **STATEMENT OF THE FACTS AND OF THE CASE**

At the request of MARINA HOLDINGS and A&S, the CITY, in or around November, 2007, initiated proceedings to annex certain properties on the north end of Tierra Verde. Included in the area proposed for annexation was the dock/marina area of the A&S property. The CITY subsequently discontinued its efforts to annex this property. People were (and still are) living on their boats which are docked there (A-2; A-3). (These people will be referred to hereafter as the "live-aboards.") The CITY subsequently discontinued its efforts to annex this property.

A&S eventually forced the live-aboards to change their voting addresses from the A&S property (200 Madonna Boulevard) to other addresses. The Pinellas County Supervisor of Elections subsequently referred this matter to the United States Department of Justice for an investigation. That investigation remains pending (A-2).

In or around April, 2008, the CITY again initiated proceedings to annex land on the north end of Tierra Verde. This time, the dock/marina area of the A&S

property was excluded from the annexation area. The CITY apparently took the position that, since the live-aboards had changed their voting addresses, there were no registered voters living in the area proposed to be annexed, as a result of which no referendum election was required. The CITY seemingly further took the position that since the dock/marina area of the A&S property had been excluded from the annexation, the live-aboards were not living in the area to be annexed. The CITY thereafter again ceased efforts to annex this land.

Later in 2008, the CITY initiated the process to adopt Ordinance No. 867-G, which purported to annex the same property which was the subject of the second annexation attempt. As pointed out above, this excluded the dock/marina area of the A&S property where the live-aboards' boats are docked (A-6; A-8). The following documents depict the area in question, including the area to be annexed (A-7; A- ):

{{INSERT PICTURES}}

The CITY once again took the position that since there were no registered voters living in the area to be annexed, no referendum election was required. Although the CITY did give the statutorily required pre-annexation notices to the owners of the properties to be annexed, it did not provide such notices to the live-aboards (A-4).

Ordinance No. 867-G purported to annex approximately 10.07 acres of submerged lands owned by the State of Florida, including a large portion of submerged lands lying between the existing City boundary and Tierra Verde. It also purported to annex the MARINA HOLDINGS property, the A&S property (which includes a separate vacant commercial lot), five (5) vacant residential lots, and four (4) developed commercial properties, including a 7-Eleven (A-5; A-6)<sup>1</sup>.

The State of Florida, as owner of the submerged lands, and the owner of the 7-Eleven property did not consent to the annexation (A-6).

The current CITY boundary line, created by the state legislature in the 1950's before TIERRA VERDE even existed, essentially runs along the centerline of the Main Channel of the Intracoastal Waterway between CITY and Tierra Verde. That portion of the boundary line alleged by the CITY to be the point of contiguity is already physically separated by an enormous distance from the closest non-

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<sup>1</sup> Parcel No. 7, which is the A&S dock/marina area, is no longer included in the annexation area.

submerged land located within the CITY. In point of fact, the Intracoastal Waterway at this location is close to five thousand (5,000) feet wide. The area to be annexed is, at its closest point, three thousand four hundred fifty (3,450) feet across open water, and approximately five thousand two hundred (5,200) feet via the Pinellas Bayway South, from Isla Del Sol, the nearest non-submerged developed property within the CITY (A-7). The only connection between the property purportedly annexed and the closest upland property in the CITY is a narrow causeway and a two (2) lane drawbridge totaling approximately one mile in length (A-7).

Curiously, the CITY excluded Madonna Boulevard from the annexation. Madonna Boulevard is a County road which runs between the MARINA HOLDINGS and A&S properties. Thus, there is now a County road (for which the Pinellas County Sheriff's Office has law enforcement responsibilities and Pinellas County has the maintenance obligation) located between two (2) large tracts of property located in the CITY (A-6; A-7; A-8).

The CITY advertised public hearing notices for Ordinance No. 867-G, one for a hearing on November 6, 2008, and the other for a November 17, 2008 hearing (A-16). The ASSOCIATION appeared through its legal counsel and its President at the November 6, 2008, public hearing and objected to the annexation. CITY Council voted to approve Ordinance No. 867-G on the first reading at this meeting.

The ASSOCIATION also appeared through its legal counsel and its President at the November 17, 2008, public hearing and objected to the annexation (A-26, pgs. 26-37, 51-54). Numerous residents likewise objected. The ASSOCIATION's legal counsel also sent a letter to the CITY on that date, objecting to the subject annexation (A-8). An Assistant City Attorney responded to legal counsel on the same date (A-9).

MACK COPE, a certified land planner and judicially accepted expert witness in issues related to annexation (*see County of Volusia v. City of Deltona*, 925 So.2d 340 (Fla. 5<sup>th</sup> DCA 2006) ), also spoke at the public hearing. He submitted an Affidavit and Reports into the record. He opined that the proposed annexation did not meet the requirements of Florida Statutes, chapter 171, for numerous reasons (A-7).

PINELLAS COUNTY also attended the meeting (through the County Attorney's Office and the County Planning Department) and objected to this annexation (A-26, pgs. 38-51). The CITY did not present any expert testimony or reports. As such, there is no evidence whatsoever in the record that the chapter 171 requirements for contiguity or reasonable compactness, or the various other statutory mandates for annexation, were met. The COUNTY submitted various documents into the record.

On November 19, 2008, the Pinellas Planning Council ("PPC") considered an "Ability to Serve Report" submitted by the CITY as required by Section 5(12) of Chapter 73-594, Laws of Florida, as amended. The ASSOCIATION's legal counsel

submitted letters and appeared before the PPC to challenge the “Ability to Serve Report” (A-10). The PPC voted 8 to 3 to recommend that the CITY did not have the ability to serve the annexed area (A-11).

On November 20, 2008, the CITY still had not submitted notice of the proposed annexation to the Pinellas County Property Appraiser for “review and comparison and comments,” as required by Objective LU 15, Policy 15.6 of Section 3.2 of Chapter Three, Future Land Use Element of the City of St. Petersburg Comprehensive Plan (A-12). Legal counsel notified the City of this deficiency by letter dated November 20, 2008 (A-13). Recognizing its legal duty, the CITY notified the Property Appraiser’s Office at 5:00 p.m. on the same day (A-14; A-15, pg.10). Thus, the Pinellas County Property Appraiser was not given anywhere close to a reasonable time for “review and comparison and comments” regarding the proposed annexation. The Property Appraiser did not respond to the CITY prior to final adoption of Ordinance No. 867-G by CITY Council.

On November 21, 2008, CITY Council again considered Ordinance No. 867-G at a meeting but with no public hearing (A-15). The CITY had not previously published a notice as required by §166.041, *Fla. Stat.*, that Ordinance No. 867-G would be considered or voted upon at this meeting (A-16). CITY staff announced at the meeting that after the public hearing on November 17, 2008 had been closed, MARINA HOLDINGS had submitted a proposed Annexation Agreement (A-17).

A&S had previously submitted a separate proposed Annexation Agreement (A-17). Both of the proposed Annexation Agreements purported to provide the necessary consent to the annexation. However, both such documents expressly provided that they did not become effective until they were fully executed by all of the parties thereto and they were not signed by the CITY at the time of the November 21, 2008, vote.

CITY Council, after discussion, voted 5 to 2 to adopt Ordinance No. 867-G (A-15, pgs.57-58).

CITY Council later during that meeting adopted Resolution No. 2008-591 which approved and adopted the A&S Annexation Agreement, and adopted Resolution No. 2008-592 which approved the MARINA HOLDINGS Annexation Agreement (A-15, pgs.58-60; A-17). Consequently, these Annexation Agreements, including the statutorily required consents to annexation of the therein-described properties, did not become effective until after the CITY's final adoption of Ordinance No. 867-G.

The ASSOCIATION has now timely filed this Petition for Writ of Certiorari pursuant to §171.08, *Fla. Stat.*, challenging the purported annexation allegedly effected through the adoption of Ordinance No. 867-G.

## LEGAL ARGUMENT

### **I. DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW:**

#### **A. The CITY Departed From the Essential Requirements of Law in that it Did Not Establish a Necessity for Annexation:**

It is a well-established principle of law in Florida that, before a municipality may annex unincorporated territory, it must establish that such annexation is necessary or desirable to provide additional and better governmental services to the annexed area. *Ervin v. City of Oakland Park*, 42 So.2d 270 (Fla. 1949).

This instant annexation has nothing to do with the provision of governmental services. All municipal services are available and provided efficiently now. In fact, the CITY's admitted reason for going forward with the annexation is to allow two property owners to develop their respective properties at much higher levels of density and intensity than they can if the property remains in the unincorporated area. The residents of Tierra Verde are extremely concerned and overwhelmingly oppose the annexation<sup>2</sup> because the CITY's land development regulations will allow development which is grossly inconsistent with the character of the Tierra Verde at the entrance to the community.

At the behest of Tierra Verde residents, Pinellas County has adopted land development regulations which are consistent with the nature and character of the island and would protect it against urban sprawl. . The proposed annexation is being used as a vehicle to profit the property owners at the expense of all of the residents of Tierra Verde, not for any valid purpose recognized under chapter 171, *Fla. Stat.*

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<sup>2</sup> As evidenced by the annexation vote tallies (A-19).

The CITY cannot furnish additional or better governmental services to Tierra Verde. All necessary governmental services are currently efficiently provided to Tierra Verde, including the area purportedly annexed. Urban services (as that term is defined in Florida Statutes, §171.031(9)) are currently being provided to the area in question by the following providers:

POTABLE WATER - Pinellas County  
RECLAIMED WATER - Pinellas County  
SANITARY SEWER - Tierra Verde Utilities, Inc.  
SOLID WASTE / SANITATION - By contract providers.  
FIRE PROTECTION - Tierra Verde Fire District (A Pinellas County Special District)  
POLICE / LAW ENFORCEMENT - Pinellas County  
EMERGENCY RESPONSE - First Responder Agreement  
EMERGENCY MANAGEMENT - First Responder Agreement  
LOCAL ROADS - Pinellas County  
STORMWATER MANAGEMENT / DRAINAGE - Pinellas County  
RECREATION -Pinellas County  
LIBRARIES - Pinellas County  
DEVELOPMENT SERVICES - Pinellas County  
ELECTRICITY - Progress Energy  
CABLE COMMUNICATIONS - Brighthouse  
TELEPHONE COMMUNICATIONS - BellSouth, Comcast, Embarq and Verizon (A-7)

After annexation, potable water and reclaimed water services will continue to be provided by Pinellas County. Sanitary sewer collection services will continue to be provided by Utilities, Inc., a certificated utility provider. Fire protection services will still be provided to the remainder of the island by the Tierra Verde Fire District. Emergency medical services will continue to be provided on a “first responder” basis. Electricity, cable, and communications services will continue through the current service providers. Residents will continue to have access to both CITY and County libraries and parks. As pointed out above, solid waste collection is currently performed by private providers. These providers will continue to

perform such service in accordance with the requirements of Florida Statutes, §171.062(5).

Thus, the existing providers will continue to provide potable and reclaimed water, sanitary sewer collection, fire protection, emergency medical, electricity, cable, communications and solid waste collection services. Consequently, the CITY is supplying no additional or better services in any of these areas.

Moreover, even though the CITY will upon annexation undertake maintenance of the local public streets and stormwater/drainage facilities, and the land development permitting function, it is not providing additional services. Rather, it will only be providing the exact same services which are already being provided by Pinellas County. Nor is there anything in the record which establishes that these governmental services, when provided by the CITY, will be “better.” It simply amounts to changing one provider for another for identical services.

The CITY will also upon annexation presumably undertake the obligation for law enforcement services. The Pinellas County Sheriff’s Office presently supplies these services within Tierra Verde. Accordingly, the CITY will not be providing any additional governmental service with respect to law enforcement activities.

Furthermore, the record woefully fails to establish that the CITY can provide “better” law enforcement services than what are currently being rendered. In the first instance, there is extreme concern about the lack of sufficient manpower in the CITY’s Police Department to provide these services. The Management Evaluation of the Police Department dated June 25, 2007, prepared by matrix consulting group, and the *St. Petersburg Times* newspaper article of May 30, 2008,

entitled “St. Petersburg Council Grills Police Chief on Crime Numbers,” show that there is serious doubt as to whether the CITY’s Police Department has sufficient manpower to cover this additional territory (A-20).

Moreover, the Pinellas County Sheriff’s Office currently provides law enforcement services to all of Tierra Verde on a twenty-four (24) hour, seven (7) day a week basis (A-21). Law enforcement coverage on this basis is of the utmost importance because of the problems relating to access to the island. The Drawbridge Malfunction Report For Structures C (St. Pete Beach Bridge) and E (Tierra Verde Bridge), prepared from publicly available information clearly shows that if there is a problem with the Tierra Verde Bridge, it would be impossible for the CITY’s Police Department to timely access Tierra Verde (A-22). Moreover, even once the bridge problem has been corrected, the attendant traffic congestion would substantially delay the CITY’s Police Department response time.

The Pinellas County Sheriff’s Office has eliminated these problems by stationing patrol deputies on Tierra Verde on a round-the-clock basis. The CITY has not stated that it has the willingness or ability to station police officers on Tierra Verde on this same basis. The CITY cannot provide adequate law enforcement services unless it does so. In short, the CITY has not established that it will provide any additional, or that it can provide any better, law enforcement services to the area in question.

Furthermore, the annexation in actuality defeats the statutory intent of annexation as set forth in §171.021, *Fla. Stat.* The net effect of this annexation is the unnecessary duplication of urban services. As such, urban services will be provided less efficiently and at greater cost to the public.

For example, there will now be two (2) separate law enforcement agencies responsible for service on Tierra Verde. Likewise there will be two (2) separate governmental agencies responsible for the local roads, and storm water, drainage, and development services. Both agencies will have manpower, equipment, and administrative expenses to perform these services. The CITY totally failed to establish that the costs to the COUNTY to provide these services would be reduced in proportion to the increased cost to the CITY. In point of fact, the CITY intends to add a ten percent (10%) surcharge on bills for potable water service within the annexed area. This means that the water consumers will be paying ten percent (10%) more for the exact same water service they are now receiving without any additional benefit.

By way of another example, as stated above, the annexation will result in fewer properties on Tierra Verde being taxed to pay for services provided by the Tierra Verde Fire District. The net effect thereof is that Tierra Verde property owners outside of the annexation area will have to pay greater taxes to receive the same services they are now receiving.

The annexation will also adversely impact the efficiency of delivery of governmental services. As an example, since Madonna Boulevard is not being annexed, the law enforcement obligation therefor remains with the Pinellas County Sheriff's Office. This results in the Sheriff's Office having to respond to service calls for a narrow roadway surrounded by property within the CITY. Obviously, this will cause confusion as to which agency has the responsibility to respond to calls. The delay in response while everyone is trying to figure out who should cover the call could have catastrophic consequences. Rather than efficiency being increased, it is

decreased. The splitting off of the dock / marina area from the rest of the A&S property also causes the same problem. If an incident were to occur in the dock / marina area, the Sheriff's Office would have to travel through the abutting part of what is in essence the same parcel of property to get there. This again would cause confusion as to which agency should respond to a call for service on the A&S property. Efficiency in the provision of essential governmental services is not thereby served.

Accordingly, the purported annexation is invalid.

**B. The CITY Departed From the Essential Requirements of Law By Failing to Meet the Requirements of Florida Statutes, Chapter 171, For Annexation:**

The CITY departed from the essential requirements of law by failing to comply with the following requirements of Florida Statutes, chapter 171, for annexation of the area in question:

**(1) Compactness / Contiguity; Developed for Urban Purposes:**

Florida Statutes, §171.043, reads as follows:

**“...Character of the area to be annexed.--**A municipal governing body may propose to annex an area only if it meets the general standards of subsection (1) and the requirements of either subsection (2) or subsection (3).

(1) The total area to be annexed must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun and reasonably compact, and no part of the area shall be included within the boundary of another incorporated municipality.

(2) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(a) It has a total resident population equal to at least two persons for each acre of land included within its boundaries;

(b) It has a total resident population equal to at least one person for each acre of land included within its boundaries and is subdivided into lots and tracts so that at least 60 percent of the total number of lots and tracts are 1 acre or less in size; or

(c) It is so developed that at least 60 percent of the total number of lots and tracts in the area at the time of annexation are used for urban purposes, and it is subdivided into lots and tracts so that at least 60 percent of the total acreage, not counting the acreage used at the time of annexation for nonresidential urban purposes, consists of lots and tracts 5 acres or less in size.

(3) In addition to the area developed for urban purposes, a municipal governing body may include in the area to be annexed any area which does not meet the requirements of subsection (2) if such area either:

(a) Lies between the municipal boundary and an area developed for urban purposes, so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services or water or sewer lines through such sparsely developed area; or

(b) Is adjacent, on at least 60 percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (2).

The purpose of this subsection is to permit municipal governing bodies to extend corporate limits to include all nearby areas developed for urban purposes and, where necessary, to include areas which at the time of annexation are not yet developed for urban purposes whose future probable use is urban and which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes...”.

Thus, under §171.043(1), an area to be annexed must be, *inter alia*, (i) contiguous<sup>3</sup> to the annexing municipality’s boundaries, and

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<sup>3</sup> “Contiguous” is defined in Florida Statutes, §171.031(11), in pertinent part, as follows:

(ii) reasonably compact.<sup>4</sup> The area purportedly annexed by Ordinance No. 867-G is neither contiguous nor reasonably compact.

As pointed out above, both MACK COPE, a certified land planner, and BRIAN SMITH, the Pinellas County Planning Director, spoke in opposition to the annexation and submitted reports (A-7; A-26, pgs.38-47) wherein they opined that the area purportedly annexed is neither contiguous nor reasonably compact. GORDON BEARDSLEE with the Pinellas County Planning Department also testified that the annexation area fails to meet the statutory requirements for contiguity or reasonable compactness (A-26, pgs.38-47).<sup>5</sup>

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“...‘Contiguous’ means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. The separation of the territory sought to be annexed from the annexing municipality by a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically... (emphasis added).”

<sup>4</sup> “Compactness” is defined in Florida Statutes, §171.031(12), in pertinent part, as follows:

“...‘Compactness’ means concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area will be reasonably compact...” (emphasis added).

<sup>5</sup> As pointed out above, the CITY did not present any expert witness testimony or reports to the effect that the annexation area is contiguous or

The COPE and SMITH Reports provided detailed analyses of the subject area and specific factual explanations as to why the contiguity and reasonable compactness standards were not met. On the other hand, the CITY's Annexation Report stated in vague and conclusory terms, without factual analysis or explanation, that the requirements of chapter 171 for annexation had been met (A-23). An Assistant City Attorney also verified at the public hearing that three (3) other annexations in Pinellas County (not involving the CITY) had crossed bodies of water (A-26, pgs. 187-189).<sup>6</sup> This Court may consider precedent as provided by Florida law, that is limited to appellate decisions and to a more limited extent the decisions of other trial courts, but should not consider unrelated, unchallenged annexations.

The current CITY boundary line, created by the state legislature in the 1950's before TIERRA VERDE even existed,

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reasonably compact. The CITY simply made this allegation in conclusory fashion. Thus, the only competent substantial evidence in the record establishes without question that the annexation area is neither contiguous nor reasonably compact.

<sup>6</sup> No explanation was given as to the factual circumstances of these other annexations or with respect to whether there were any litigation related challenges thereto. Thus, if these prior annexations did not comply with applicable statutory requirements, the fact that they may have occurred is not *ipso facto* a sufficient legal basis to legitimize this annexation. *See City of Oldsmar v. Monnier*, 561 So.2d 526 (Fla. 1951) (municipality not estopped to challenge validity of unauthorized compromise of taxes although it had indulged in same tax compromise policy for approximately twenty years); *Laube v. City of Stuart*, 107 So.2d 756 (Fla. 2<sup>nd</sup> DCA 1958) (fact that city had erroneously collected taxes on land which had been dedicated to the city and had denied that city owned the property did not estop city from subsequently claiming an interest in that property).

essentially runs along the centerline of the Main Channel of the Intracoastal Waterway. That portion of the boundary line alleged by the CITY to be the point of contiguity is already physically separated by an enormous distance from the closest non-submerged land located within the CITY. In point of fact, the Intracoastal Waterway at this location is close to five thousand (5,000) feet wide. The area to be annexed is at its closest point three thousand four hundred fifty (3,450) feet across open water, and approximately five thousand two hundred (5,200) feet via the Pinellas Bayway South, from Isla Del Sol, the nearest non-submerged property within the CITY (A-7).

In this case, Tierra Verde is not separated from the CITY by a minor geographical feature. Rather, it is separated by a major body of water nearly a mile wide. The Intracoastal Waterway is vastly dissimilar to a river or other watercourse which runs parallel with and between two areas, thereby creating a narrow or minor separation between them. It is instead a huge water body which extends in all directions around both areas. In a similar situation, the Florida Supreme Court approved the ouster of municipal jurisdiction over a parcel of land which was separated from the municipality by the Lake Worth Inlet. *Town of Boyton v. State ex rel Davis*, 103 Fla. 1113, 138 So. 639 (1932).

Tierra Verde and the CITY cannot become a unified whole.<sup>7</sup> The net result of the proposed annexation would be the creation

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<sup>7</sup> Florida Statutes, §171.031(1), defines “annexation” as follows: “...(1) ‘Annexation’ means the adding of real property to the boundaries of an incorporated municipality, such addition

of an isolated municipal area, separated by the Intracoastal Waterway and submerged lands from all other dry land portions of the CITY. This is the classic example of the prohibited establishment of an incorporated pocket. In short, the area to be annexed does not meet the statutory definition of “contiguous.”

Nor is the annexed area reasonably compact. The proposed annexation would create a finger area in a serpentine pattern. The length of the proposed annexation area that abuts the existing CITY boundary in the Intracoastal Waterway represents only a small percentage of the total perimeter of the annexation area. This fact in and of itself creates a municipal finger intruding into unincorporated Tierra Verde. Moreover, the fact that the only connection between the property to be annexed and the closest upland property in the CITY is a narrow causeway and two lane drawbridge totaling approximately one mile in length makes the establishment of a finger area in serpentine fashion even more apparent (A-5; A-7).

Additionally, the area proposed for annexation is not concentrated in a “single area.” Madonna Boulevard is intentionally excluded from the area to be annexed, and this separates the annexed area into two (2) parts.<sup>8</sup> As a result, land within two separate and

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making such real property in every way a part of the municipality...” (emphasis added).

<sup>8</sup> There is no logical reason to exclude Madonna Boulevard from the annexation other than to prevent the creation of an enclave which is defined in Florida Statutes, §171.031(13) as follows:

distinct areas is proposed for annexation. Thus, the CITY is in reality attempting to annex two separate and distinct areas (A-5; A-7).

Furthermore, the area purportedly annexed does not comply with the requirements of either subsections (2) or (3) of §171.043, *Fla. Stat.*

The area is not “developed for urban purposes” as required by subsection (2). The CITY alleges that there are no residents living in the annexation area. Thus, sub-paragraphs (2)(a) and (b) do not apply. Moreover, there are fifteen (15) total parcels of land within the annexation area (A-5) (*See Footnote 1*). Eight (8) of these parcels are used for “urban purposes”<sup>9</sup> and seven (7) are not used for “urban

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“... ‘Enclave’ means:

(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or

(b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality...”.

If Madonna Boulevard were included, the unincorporated area lying west of the annexation area would be an enclave. The CITY has obviously excluded Madonna Boulevard to attempt to make the annexation area “compact.” However, this creates a substantial problem for the provision of law enforcement services. The Pinellas County Sheriff’s Office would be required to provide law enforcement within the narrow Madonna Boulevard right-of-way, while the CITY’s Police Department would be responsible for law enforcement within the surrounding area. This will obviously cause confusion as to which law enforcement agency has jurisdiction and is required to respond to particular situations. Clearly, this is contrary to the intent of Florida Statutes, §171.

<sup>9</sup> This term is defined in Florida Statutes, §171.031(10), as follows: “...‘Urban purposes’ means that land is used intensively for residential, commercial, industrial, institutional, and govern-

purposes.”<sup>10</sup> Accordingly, the annexation area is developed such that fewer than sixty percent (60%) of the parcels therein are used for “urban purposes.”

Nor do the submerged lands lying between the CITY’s existing municipal boundary and Tierra Verde meet the requirements of §171.043(3), *Fla. Stat.* As pointed out above, these submerged lands lie beneath the Intracoastal Waterway. The CITY cannot (and to its credit did not even attempt to) establish that the future probable use of these submerged lands is urban. Frankly, such use would seem to require technologies which are not even on the radar screen at this point.

Since the purported annexation area does not comply with the requirements of §171.043, *Fla. Stat.*, Ordinance No. 867-G is invalid.

(2) **Splitting of Single Parcel Without Owner’s Consent:**

Florida Statutes, §171.0413(3) provides as follows:

“... Any parcel of land which is owned by one individual, corporation, or legal entity, or owned collectively by one or more individuals, corporations, or legal entities, proposed to be annexed under the provisions of this act shall not be severed, separated, divided, or partitioned by the provisions of said ordinance, but shall, if intended to be annexed, or if annexed, under the provisions of this act, be annexed in its entirety and as a whole. However, nothing

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mental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas...”.

<sup>10</sup> Parcel Nos. 0 and 1 consist of submerged lands beneath the Intracoastal Waterway. Parcel Nos. 11 through 15 are vacant residential lots; and Parcel No. 6 is a vacant commercial lot (A-5).

herein contained shall be construed as affecting the validity or enforceability of any ordinance declaring an intention to annex land under the existing law that has been enacted by a municipality prior to July 1, 1975. The owner of such property may waive the requirements of this subsection if such owner does not desire all of the tract or parcel included in said annexation...”.

The CITY has purported to annex submerged lands owned by the State of Florida. A portion of those submerged lands (that portion closest to the CITY’s existing municipal boundary prior to the purported annexation) is not a separate and distinct parcel of record.<sup>11</sup> Rather, it is only a portion of a huge expanse of coastal submerged lands owned by the State of Florida (A-7).

The State of Florida did not consent to the annexation (A-5). Consequently, the purported annexation splits a parcel of land which is owned by a legal entity, to-wit, the State of Florida, without the consent of that entity. The purported annexation is therefore invalid.

(3) **Requirement for Election / Notice to Residents:**

Florida Statutes, §171.0413(2), requires that a municipality wishing to annex unincorporated land must submit the proposed annexation ordinance to the registered electors of the area proposed to be annexed.

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<sup>11</sup> There are additional submerged lands included in the annexation which are subject to a submerged lands lease with the State. As such, they may or may not qualify as a separate parcel. However, the portion in question is not subject to any such lease and thus without question is not a separate parcel.

As pointed out previously, the CITY is aware that there are people living aboard their boats in the marina at the A&S property.<sup>12</sup> The CITY is further aware that the owners of this property required the “live-aboards” to change their voting addresses from the A&S property (200 Madonna Boulevard). The Pinellas County Supervisor of Elections referred this matter to the United States Department of Justice for an investigation which remains pending (A-2).

The CITY nonetheless asserts that since there are no registered voters within the area to be annexed, no referendum election is required by Florida Statutes, § 171.0413(2). However, the only reason there are no registered voters there is because the property owners who want their property to be annexed forced the “live-aboards” to change their addresses for voting purposes. But for such action, there would still be registered voters there. The CITY should not condone what is obviously a violation of at least the spirit, if not the letter, of chapter 171, *Fla. Stat.* The “live-aboards” reside there on a permanent basis. The CITY knows that. The “live-aboards” were made to change their voting addresses. The CITY knows that. The CITY also knows that the “live-aboards” are lawfully entitled to vote in a referendum election and should not be disenfranchised.

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<sup>12</sup> As pointed out above, the CITY previously proposed to annex the A&S property, including the dock / marina area. However, for this annexation, the A&S dock / marina area was excluded. The ASSOCIATION would submit that this was done solely for the purpose of attempting to avoid the requirement for an election.

The Florida courts have long recognized the general equitable principle that a party should not be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own inequity, or profit by his own crime. *Ashwood v. Patterson*, 49 So.2d 848 (Fla. 1951). In this instance, neither the CITY, nor MARINA HOLDINGS nor A&S, should be permitted to profit from their own wrongful conduct. The “live-aboards” have a right to vote in a referendum, and should not be disenfranchised for any reason, particularly not for the purpose of providing economic benefit to the CITY and the owners of the annexed property.

Furthermore, even if no referendum were required, the CITY was at the very least required to give written notice of the proposed annexation to the “live-aboards.” Florida Statutes, §171.042(3), provides as follows:

“... The governing body of the municipality shall, not less than 10 days prior to the date set for the first public hearing required by s.171.0413(1), mail a written notice to each person who resides or owns property within the area proposed to be annexed. The notice must describe the annexation proposal, the time and place for each public hearing to be held regarding the annexation, and the place or places within the municipality where the proposed ordinance may be inspected by the public. A copy of the notice must be kept available for public inspection during the regular business hours of the office of the clerk of the governing body...”.

However, the CITY did not provide any such written notice to them. The CITY thereby violated this statutory requirement. It is axiomatic in Florida that statutory notice requirements relating to the adoption of ordinances must be strictly observed and that if they are not,

the ordinance is null and void. *Webb v. Town Council of the Town of Hilliard*, 766 So.2d 1241 (Fla. 1<sup>st</sup> DCA 2000); *Coleman v. City of Key West*, 807 So.2d 84 (Fla. 3<sup>rd</sup> DCA 2001). Thus, since the CITY failed to give this statutorily required notice, the purported adoption of Ordinance 867-G is invalid.

(4) **Violation of Florida Statutes, Chapter 171, Part II:**

On July 1, 2008, PINELLAS COUNTY adopted Resolution No. 08-110 (A-24) pursuant to Part II of chapter 171, Florida Statutes (the Interlocal Service Boundary Agreement Act), an “initiating resolution”<sup>13</sup> as defined by Florida Statutes, §171.202(7). The map attached thereto showed Tierra Verde as remaining within the unincorporated area.)

On September 4, 2008, the CITY adopted Resolution No. 2008-442 (A-25), a “responding resolution” within the meaning of Florida Statutes, §171.202(15).<sup>14</sup> The responding resolution designated additional issues for negotiation. The map attached thereto likewise identified Tierra Verde as remaining within the unincorporated area.

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<sup>13</sup> §171.202(7), *Fla. Stat.*, defines this term as “... a resolution adopted by a county, municipality, or independent special district which commences the process for negotiating an interlocal service boundary agreement and which identifies the unincorporated area and other issues for discussion...”.

<sup>14</sup> §171.202(15), *Fla. Stat.*, defines this term as “... the resolution adopted by the county or an invited municipality which responds to the initiating resolution and which may identify an additional unincorporated area or another issue for discussion, or both, and may designate an additional invited municipality or independent special district...”.

By the adoption of the responding resolution, the CITY has agreed to negotiate with the COUNTY, other municipalities and independent special districts on multiple issues. Such issues include the establishment of municipal service areas where annexation would be allowed and the creation of unincorporated service areas that would not be eligible for annexation.

Florida Statutes, §171.203, provides, in pertinent part, as follows:

\* \* \* \* \*

“... (13) No earlier than 6 months after the commencement of negotiations, either of the initiating local governments or both, the county, or the invited municipality may declare an impasse in the negotiations and seek a resolution of the issues under ss.164.1053-164.1057. If the local governments fail to agree at the conclusion of the process under chapter 164, the local governments shall hold a joint public hearing on the issues raised in the negotiations.

\* \* \* \* \*

(16) This part does not authorize one local government to require another local government to enter into an interlocal service boundary agreement. However, when the process for negotiating an interlocal service boundary agreement is initiated, the local governments shall negotiate in good faith to the conclusion of the process established in this section.

\* \* \* \* \*

(18) Elected local government officials are encouraged to participate actively and directly in the negotiation process for developing an interlocal service boundary agreement...”.

The CITY’s attempt to annex the area in question is clearly violative of the above-quoted statutory requirements. Not only has the CITY failed to wait the requisite amount of time to declare an impasse, it has failed to even begin good faith negotiations with PINELLAS

COUNTY before initiating this annexation. The CITY should not be permitted to openly flaunt the foregoing statutory requirements.

**(5) Lack of Notice of November 21, 2008, Meeting:**

Florida Statutes, §171.0413(1), provides, in pertinent part, as follows:

**“... 171.0413 Annexation procedures.** – Any municipality may annex contiguous, compact, unincorporated territory in the following manner:

(1) An ordinance proposing to annex an area of contiguous, compact, unincorporated territory shall be adopted by the governing body of the annexing municipality pursuant to the procedure for the adoption of a non-emergency ordinance established by s.166.041. Prior to the adoption of the ordinance of annexation, the local governing body shall hold at least two advertised public hearings...”.

Florida Statutes, §166.041(3)(a), states:

“... Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance...”.

As pointed out previously, CITY Council purported to adopt Ordinance No. 867-G at a meeting on November 21, 2008. However, the CITY failed to give the statutorily required notice of that Meeting.<sup>15</sup>

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<sup>15</sup> See copies of *all* notices advertised by the CITY relating to the adoption of Ordinance No. 867-G (A-16).

Moreover, CITY Council did not hold a public hearing on Ordinance No. 867-G at the November 21, 2008, meeting. Consequently, the public was not given an opportunity to be heard with the respect to the adoption of Ordinance No. 867-G at the time it was actually adopted. In addition, the CITY Council relied upon at least one additional document (an Annexation Agreement between the CITY and MARINA HOLDINGS) (A-17) which did not even come into existence until after the public hearing on November 17, 2008. Clearly, the public had no opportunity to be heard upon this Annexation Agreement or its impact upon the annexation prior to Ordinance No. 867-G purportedly being adopted. Accordingly, the purported adoption of Ordinance No. 867-G at that meeting is invalid as a matter of law. *Webb, supra; Coleman, supra.*

(6) **Failure to Obtain Consent Prior to Final Adoption of Ordinance No. 867-G:**

Florida Statutes, §171.0413(5) and (6), read as follows:

“... (5) If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, such area shall not be annexed unless the owners of more than 50 percent of the land in such area consent to such annexation. Such consent shall be obtained by the parties proposing the annexation prior to the referendum to be held on the annexation.

(6) Notwithstanding subsections (1) and (2), if the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. In addition to the requirements of subsection (5), the area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing

body does not choose to hold a referendum of the annexing municipality pursuant to subsection (2), then the property owner consents required pursuant to subsection (5) shall be obtained by the parties proposing the annexation prior to the final adoption of the ordinance, and the annexation ordinance shall be effective upon becoming a law or as otherwise provided in the ordinance..." (emphasis added).

Clearly, the CITY has chosen not to hold a referendum election by the voters of the CITY. According to the CITY, there are no registered voters in the area to be annexed. Consequently, the CITY was required to obtain the consent of the owners of more than fifty percent (50%) of the land to be annexed before the final adoption of Ordinance No. 867-G.

Paragraph 7. of both the MARINA HOLDINGS Annexation Agreement and the A&S Annexation Agreement expressly provide that they shall not become effective until the same are fully executed by all of the parties thereto. Since neither such Agreement was approved by CITY Council prior to the adoption of Ordinance No. 867-G, neither consent became effective prior to such adoption. *SAC Construction Company, Inc. v. Eagle National Bank of Miami*, 449 So.2d 301 (Fla. 3<sup>rd</sup> DCA 1984) (it is axiomatic that a contract is to be construed in accordance with the intention of the parties as ascertained from the language of the contract).

The obvious failure to comply with the consent requirements of §171.0413(6) is fatal to the CITY's purported annexation. Ordinance No. 867-G is therefore a nullity. *Webb, supra; Coleman, supra.*

**C. The CITY Departed From the Essential Requirements of Law By Failing to Prepare a Legally Sufficient Annexation Report:**

Florida Statutes, §171.042, provides, in pertinent part, as follows:

“... (1) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall prepare a report setting forth the plans to provide urban services to any area to be annexed, and the report shall include the following:

\* \* \* \* \*

(c) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

\* \* \* \* \*

4. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed...”

Pursuant to the foregoing statutory requirement, the CITY prepared the North Tierra Verde Annexation Report dated October 10, 2008 (A-23) (the “Annexation Report”), and submitted the same to both the Pinellas County Board of County Commissioners and the Pinellas Planning Council.

In the first instance, the Annexation Report does not answer the important question as to whether or how the CITY will make up the shortfall in tax revenues raised by the County to fund the Tierra Verde Fire District to ensure that fire protection service to Tierra Verde is not compromised.

As noted previously, the fire station and fire protection service in the Tierra Verde Fire District are fully funded through ad valorem taxes levied within the unincorporated Tierra Verde community and through the COUNTY's share of the Penny for Pinellas sales tax revenue. If the subject properties become part of the CITY OF ST. PETERSBURG, they will no longer be subject to ad valorem taxes

levied by PINELLAS COUNTY. The tax revenue raised by the COUNTY to fund the Tierra Verde Fire District, would therefore be reduced by almost \$42,000. Not only PINELLAS COUNTY and the Tierra Verde community, but also the Pinellas Planning Council when evaluating the CITY's ability to provide urban services, had asked the CITY to state whether or how the CITY will make up this difference in order to ensure that fire protection service to Tierra Verde is not compromised.

Moreover, the Annexation Report does not state (except in the most conclusory terms) the method by which the CITY plans to finance the extension of urban services into the annexation area. By way of example, the Annexation Report states that the CITY will fund law enforcement services to this area from the General Fund. This does not constitute a “financing plan” since there is no estimate of what the cost of this service will be or whether adequate funds have been budgeted to cover this cost. The same deficiency is likewise applicable to the other urban services which the CITY must provide post-annexation.

The clear intent of §171.042, *Fla. Stat.*, is to require a municipality to set forth an explanation with sufficient particularity to verify that it has taken all actions necessary to provide urban services, including showing how it will fund the extension of services to the annexed area. In this instance, the CITY has done nothing more than state that it will pay for them out of its General Fund. There is no estimate of the cost thereof or any evidence that the CITY has even budgeted for them. There is further no explanation as to how the CITY intends to get the money to put in its General Fund.<sup>16</sup> In short, the North Tierra Verde Annexation Report is legally

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<sup>16</sup> MR. COPE’s Report identifies further specific deficiencies in the North Tierra Verde Annexation Report (A-7).

insufficient. As a result, the CITY failed to comply with a statutory prerequisite, as found by the PPC (A-11). The purported annexation is therefore void. *Webb, supra*; *Coleman supra*.

**D. The CITY Departed From the Essential Requirements of Law By Failing to Comply With Its Own Comprehensive Plan Provision Requiring Notification to the Property Appraiser:**

Pursuant to Objective LU 15, Policy 15.6 of Section 3.2 of Chapter Three, Future Land Use Element of the City of St. Petersburg Comprehensive Plan (A-12), the CITY was obligated to forward Notice of Annexation Requests prior to final approval by CITY Council to the Pinellas County Property Appraiser's Office for "review and comparison and comments."

Final CITY Council action on Ordinance No. 867-G was scheduled for November 21, 2008, at 8:30 a.m. However, as of November 20, 2008, the CITY had still not forwarded the required documentation to the Property Appraiser. On the afternoon of November 20, 2008, legal counsel for the ASSOCIATION sent a letter to the CITY pointing out this deficiency (A-13).

In response, at approximately 5:00 p.m. on that same afternoon, the CITY transmitted the required Notice to the Property Appraiser's Office (A-14; A-15, pg.10). Obviously, this did not give the Property Appraiser sufficient time for "review and comparison and comment" prior to 8:30 a.m. the very next morning.

Ordinances are construed in the same manner as statutes. *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552 (Fla. 1973). This, of course, includes the basic tenet that an ordinance should not be construed in a manner which would lead to a ridiculous or absurd result. *State v. Atkinson*, 831 So.2d 172 (Fla.

2002); *Green v. Department of Highway Safety and Motor Vehicles*, 905 So.2d 922 (Fla. 1<sup>st</sup> DCA 2005). Thus, an ordinance should be construed to give effect to its evident legislative intent, even if such construction seems contradictory to rules of construction and the strict letter of the ordinance; the spirit of the law controls over the letter. *Garner v. Ward*, 251 So.2d 252 (Fla. .1971).

In this instance, the CITY technically gave notice to the Property Appraiser prior to final action on Ordinance No. 867-G. However, the obvious legislative intent of the Comprehensive Land Use Plan is to give the Property Appraiser an opportunity for reasonable review, analysis, and comment upon proposed annexations. Notifying the Property Appraiser at 5:00 p.m. on the day before the 8:30 a.m. meeting certainly does not meet the CITY's obvious legislative intent as reflected in its Comprehensive Land Use Plan.

For this reason, the purported annexation pursuant to Ordinance No. 867-G is invalid. *Webb, supra; Coleman, supra*.

## **II. LACK OF COMPETENT SUBSTANTIAL EVIDENCE:**

For the same reasons discussed in Section II above, there is no competent substantial evidence to support the purported annexation by the CITY pursuant to Ordinance No. 867-G.

Accordingly, Ordinance No. 867-G must be quashed.

## **III. THE ASSOCIATION HAS STANDING TO BRING THIS ACTION:**

Florida Statutes, §171.081(1), provides, in pertinent part:

"... Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing

body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari.” (emphasis added.)

Thus, in order to have standing to pursue review by certiorari pursuant to §171.081, *Fla. Stat.*, an entity must (1) be a “party affected,” and (2) establish that it will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in chapter 171, *Fla. Stat.*, or to meet the requirements established for annexation as they apply to its property. *SCA Services of Florida, Inc. v. City of Tallahassee*, 418 So.2d 1148 (Fla. 1<sup>st</sup> DCA 1982), *rev. den.* 427 So.2d 737 (Fla. 1983). The ASSOCIATION meets both such requirements.

The term “parties affected” is defined in Florida Statutes, §171.031(5), as:

“... any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area...”.

For the reasons hereinafter discussed, the ASSOCIATION is a “party affected.”

The ASSOCIATION owns and holds easements over and across the five (5) vacant residential lots purportedly annexed by the CITY. The Amended and Restated Declaration of Restrictions and Covenants of TIERRA VERDE COMMUNITY ASSOCIATION, INC. (hereinafter called the “Amended Declaration”) (A-18), as recorded in Official Records Book 8781, pages 536-550, Public Records of Pinellas County, Florida, provides, in pertinent part, as follows:

“...3.019 EASEMENTS. An easement of five (5) feet in width, over, parallel to, along side of, and immediately within the side and rear boundary line of each lot ) except the rear (waterside) boundary line of waterfront lots) hereby is reserved to the Association, in addition to those easements previously platted or in use. All of said easements shall be for the placement,

construction, installation, maintenance, removal, servicing, repair, alteration and operation of or for mains, utilities, drainage and other systems, devices, facilities, services and appurtenances, and the Association shall have the rights of ingress, egress and use in, into, over, under and of said easement, for the purposes designated and further, the right of assignment of such easement or any part thereof to one or more private, public, or quasi public utility company, in addition to all other rights, remedies and privileges. The Association may release in writing to the Grantee of any lot any easement or part thereof reserved to the Association, and the remaining easements herein reserved shall remain and continue in full force and effect. No person, firm, organization, corporation (including assignees of the Association) are permitted to use said easements, or any part thereof, without prior written permission of the Association. Grantee may plant, fence or seed over such easement, subject to the rights of the Association in and to that easement. In addition, an easement hereby is reserved to the Association over the vacant Lots so that it can exercise such rights to maintain the lots as are provided in Section 3.015..." (A-8; A-18).

An easement is an interest in land. *H&F Land, Inc. v. Panama City - Bay County Airport and Industrial District*, 736 So.2d 1167 (Fla. 1999); *Dupont v. Whiteside*, 721 So.2d 1259 (Fla. 5<sup>th</sup> DCA 1998). As such, an easement constitutes a valuable property right. *G.F. Glesner v. Duval County*, 203 So.2d 330 (Fla. 1<sup>st</sup> DCA 1967).

Additionally, Paragraph 5.02 of the Amended Declaration provides that:

"... 5.02 ASSESSMENTS AND CHARGES. Each Grantee covenants that each and every parcel of Property within the Tierra Verde Property or improvement erected by or for Grantee, shall be subject to an annual charge annually determined by the Association based on the Pinellas County net assessed valuation of the property for the current year in such amount as will be necessary to provide for maintenance, servicing, operation and repair of public improvements and services and administration of the Restrictions. Each Grantee covenants to pay said charges in quarterly installments, or at such other times as the Association may permit, due on the first day of January, April, July and October in each and every year and further covenants that said charge shall on said dates in each year become a lien on the land and improvements of the Grantee and shall continue to be such a lien until fully paid. Such charges and assessments shall be devoted to the administration, maintenance, operation, servicing and repair of public improvements and services in Tierra Verde,

administration of the Restrictions and such other public purposes as shall from time to time be determined by the Association. The charges and assessments herein provided for shall be payable to the Association. The Association is authorized to take all actions necessary or appropriate to file and otherwise perfect such lien(s) and to collect such charges and assessments. Each Grantee by acceptance of conveyance or ownership from any person hereby expressly vests in the Association the right and power to bring all actions against the Grantee thereof for the collection of such charge and to enforce and foreclose the aforesaid lien therefor...” (A-8; A-18).

Pursuant to this Paragraph, the ASSOCIATION is authorized to collect, and has been collecting, assessments from the owner of the five vacant residential lots. This entitlement is likewise a valuable property right.

Property ownership for purposes of determining whether a person or entity is a “party affected” is not limited to the fee simple ownership of real property. Thus, an entity holding a non fee simple ownership property right in an unincorporated area purported to be annexed is a “party affected” within the meaning of §171.031(5), *Fla. Stat. SCA Services, supra* (exclusive franchise in an annexed area is a property right which qualifies the holder thereof as a “party affected”). The ASSOCIATION’s ownership of the easements and entitlement to collect assessments are sufficient property interests to qualify it as a “party affected.”

Furthermore, the ASSOCIATION will suffer material injury by reason of the CITY’s failure to meet the statutory requirements established for the annexation of the area in question. Paragraph 6.01 of the Amended Declaration provides that:

“... 6.01 COVENANT RUNNING WITH THE LAND. The Restrictions shall run with the land and shall be construed as a covenant running with the land for such period of time with extensions thereof as provided in Section 6.05 herein, or until such time as the property described herein has been included within a municipality which has assumed the responsibility and is in fact furnishing and discharging the public services herein described, whichever event first occurs. Should only a part of the

lands described herein be included in a municipality, this covenant shall terminate only as to said included lands and shall remain in force and effect as to lands not so included. The Restrictions apply to the use of any of the Tierra Verde Property and thus any person occupying or using such property (*e.g.* any lessee, guest, invitee, agent, representative or other person occupying or using such property), whether or not a Grantee or Owner, shall be governed by the Restrictions insofar as such use is concerned...” (emphasis added) (A-8; A-18).

Pursuant to this provision, upon the CITY’s annexation of the subject area, the ASSOCIATION will not only lose ownership of the easements, its authority to collect assessments will be eliminated. Thus, its property is materially adversely affected by the purported annexation. *SCA Services, supra; City of Sunrise v. Broward County*, 473 So.2d 1387 (Fla. 4<sup>th</sup> DCA 1985).

Due to its ownership of the easements, as well as the right to levy and collect assessments, the ASSOCIATION is a “party affected.” Additionally, the ASSOCIATION will, by reason of its loss of ownership of easements and its entitlement to collect assessments, suffer material injury as the result of the CITY’s failure to comply with the applicable requirements under Florida Statutes, chapter 171, for annexation. As such, the ASSOCIATION has standing to obtain certiorari review pursuant to §171.081, *Fla. Stat. SCA Services, supra; City of Sunrise, supra.*

### **CONCLUSION**

Based upon the foregoing facts and authorities, Petitioner would respectfully submit that the CITY has failed to comply with the legal requirements for annexation. Accordingly, Ordinance No. 867-G should be quashed.

**REQUEST FOR ATTORNEY'S FEES**

Petitioner has retained undersigned counsel to represent it in this action, and is obligated to pay counsel a reasonable fee for their services.

Petitioner is entitled to recover its reasonable attorney's fees incurred herein pursuant to Florida Statutes, §171.081(1).

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ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to:

MAYOR RICK BAKER  
CITY OF ST. PETERSBURG  
P. O. Box 2842  
St. Petersburg, FL 33731

JOHN C. WOLFE, ESQ., City Attorney  
CITY OF ST. PETERSBURG  
P. O. Box 2842  
St. Petersburg, FL 33731

by U. S. Mail, this \_\_\_\_\_ day of December, 2008.

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THOMAS E. REYNOLDS

**CERTIFICATE OF COMPLIANCE**

\_\_\_\_\_ **I HEREBY CERTIFY** that this document uses Times New Roman 14-Point font and complies with the requirements of Florida Rules of Appellate Procedure 9.210(a).

**\_\_\_\_\_  
THOMAS E. REYNOLDS, ESQ.**