

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

PROTECT ST. PETE BEACH ADVOCACY
GROUP, et al.,

Plaintiffs,

v.

CITY OF ST. PETE BEACH, et al.

CASE NO.: 24-000041-CI

Defendants;

and

CP ST. PETE, LLC

Intervenor;

INTERVENOR'S NOTICE OF FILING

COMES NOW, CP ST. PETE, LLC, hereby files its Proposed Final Order for Summary Judgment in Favor of Defendant and Intervenor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of the forgoing has been sent via Electronic Mail to Samuel J. Salario, Jr., Esquire, samuel@lawsonhuckgonzalez.com, leah@lawsonhuckgonzalez.com, michelle@lawsonhuckgonzalez.com, caroline@lawsonhuckgonzalez.com, michelle@lawsonhuckgonzalez.com, stephanie@lawsonhuckgonzalez.com, Lawson Huck Gonzalez, PLLC, 1700 South MacDill Avenue, Suite 300, Tampa, Florida 33629, Andy Bardos, Esquire, andy.bardos@gray-robinson.com, Vanessa.Reichel@gray-robinson.com, leonard.collins@gray-robinson.com, stephen.varnell@gray-robinson.com, dawn.wilkinson@gray-robinson.com, ashley.lukis@gray-robinson.com, GrayRobinson, P.A., 301 South Bronough Street, Suite 600, Tallahassee, Florida 32031, Andrew Dickman, Esquire, andrew@dickmanlawfirm.org, matthew@dickmanlawfirm.org, service@dickmanlawfirm.org, ody@dickmanlawfirm.org, Dickman Law Firm, 809 Walkerbilt Road, Suite 7, Naples, FL 34110, Jane C. Graham, Esquire, jane@sunshinecitylaw.com, jane@jcgrahamlaw.com, jane@sunshinecitylaw.com, Sunshine City Law, 737 Main Street, Suite 100, Safety Harbor, FL 34695.

By: /s/ George M. Vinci, Jr.
GEORGE M. VINCI, JR., ESQ.
Florida Bar No. 817201
ANDREW J. DeFALCO, ESQ.
Admitted Pro Hac Vice
SPECTOR GADON ROSEN VINCI, LLP
360 Central Avenue, Suite 1550
St. Petersburg, FL 33733-0857
Telephone: (727) 896-4600
Facsimile: (727) 896-4604
Primary: gvinci@lawsgr.com
Secondary: adefalco@sgrvlaw.com/
tmayo@lawsgr.com

Tertiary: pleadings@lawsgr.com
Attorneys for CP St. Pete, LLC

Dated: May 30, 2024

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PROTECT ST. PETE BEACH ADVOCACY
GROUP, et al.,

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Case No. 24-000041-CI

v.

CITY OF ST. PETE BEACH, et al.

Section 20

Defendants;

and

CP ST. PETE, LLC

Intervenor;

**PROPOSED FINAL ORDER FOR SUMMARY JUDGMENT IN FAVOR OF
DEFENDANTS AND INTERVENOR**

This case comes before the Court on (1) Plaintiffs' Motion for Summary Judgment (Doc. 79), (2) Defendants' Motion for Summary Judgment on Liability (Doc. 81), and (3) and Intervenor CP St. Pete, LLC's Motion for Summary Judgment (Doc. 76). The Court has considered the motions, the parties opposing and reply memoranda (*see* Docs. 79-81, 83-88, 90), the evidence tendered by the parties and Intervenor, and the argument of counsel at a hearing on May 13, 2024.

INTRODUCTION

After CP St. Pete and another local resort sought development permits before the St. Pete Beach City Commission (the "Commission"), various members of the Commission decided to resign (for reasons unrelated to business before the Commission) at various times in December 2023. After counsel for the Commission conferred with the Supervisor of Elections, the Supervisor of Elections advised it would not hold a special election before the upcoming scheduled March 19, 2024 election for Districts 1 and 3 of the Commission, and the earliest it would hold a special election for Districts 2 and 4 would be in August 2024. After each

Commissioner for Districts 1 through 4 resigned, an interim Commissioner was appointed by the Commission in December 2023 and January 2024, to serve until the next election for that District could be held. In early March 2024, the Commission issued a Conditional Use Development Permit to CP St. Pete. On March 19, 2024, the interim appointed Commissioners for Districts 1 and 3 ran unopposed for their seats.

Plaintiffs' Amended Complaint seeks a writ of *quo warranto* "challenging the right of [the interim Commissioners] to hold the office of City Commissioner," and common law declaratory and other relief asking the Court to rule the interim appointments were not permitted under the law. All parties have filed motions for summary judgment, the motions have been fully briefed, and the Court held oral argument. The motions for summary judgment being ripe for disposition, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

THE PARTIES

1. Plaintiff Protect St. Pete Beach Advocacy Group ("PSPB") is a Florida Not-for Profit Corporation devoted to local environmental and conservation causes.
2. The individual Plaintiffs are residents of St. Pete Beach.
3. It is undisputed Plaintiffs have not sustained "special harm" as that term is used to make certain standing determinations [see Stipulation of Undisputed Facts (the "Stipulation,"), Intervenor MSJ, Ex. "1," ¶ 3], and Plaintiffs are neither the Attorney General nor any person asserting they are a rightful holder of a seat on the Commission.
4. St. Pete Beach is a municipality created through adoption of its Municipal Charter (the "Charter"), pursuant to the Municipal Home Rule Powers Act, Fla. Stat. Ann. § 166.021.
5. CP St. Pete owns and operates the Sirata Beach Resort in St. Pete Beach.

6. On June 16, 2023, CP St. Pete submitted an application for a Conditional Use Permit (“CUP”) for the development of 646 hotel rooms (inclusive of the existing 382 rooms for a net increase of 264 rooms) on its property.

THE CHARTER

7. The Charter establishes a City Commission “with all legislative powers of the city vested therein ... consisting of four (4) commissioners and a mayor-commissioner.” Charter, § 3.01.

8. The Charter provides there “shall be four (4) commissioners who shall be qualified electors of the city, shall reside in the district represented and shall be elected only by the district represented.” Charter, § 3.02 (b).

9. The Charter sets forth the procedure for elections of Commissioners as follows:

Election for the office of commissioner from Districts 1 and 3 shall be held in even-numbered years, and elections for the office of commissioner from Districts 2 and 4 shall be held in odd-numbered years, in the manner prescribed by this charter and general Florida Law and shall be for a two-year term. Charter, § 3.02 (c).¹

10. Thus, as of November 2023, the regular city election for Districts 1 and 3 was scheduled for March 2024, and the regular city election for Districts 2 and 4 was scheduled for March 2025. [Stipulation, ¶ 2]

11. The Mayor of St. Pete Beach, who also serves on the Commission, has a three (3) year term. Charter, § 3.03.

12. The Charter provides a procedure for filling vacancies on the Commission:

¹ Also, St. Pete Beach Code of Ordinances, Chapter 38 (Elections), Section 38-7, provides “The regular election for the city commission shall be held on the second Tuesday of March, unless the city commission determines, by ordinance, pursuant to F.S. § 100.3605(2), that it is appropriate to schedule that election for some other date in March.”

Sec. 3.06. - Vacancies; forfeiture of office; filling of vacancies.

(a) *Vacancies.* The office of a commissioner shall become vacant upon his death, resignation, or forfeiture of his office.

(b) *Forfeiture of office.* A commissioner shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by this charter or by law, or (2) violates any standard of conduct or code of ethics established by law for public officials. Such forfeiture shall require the affirmative vote of four (4) members of the commission.

(c) *Filling of vacancies.* A vacancy on the commission shall be filled in one of the following ways:

(1) If there is less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the commission, by a majority vote of the remaining members shall choose a successor to serve until the newly elected commissioner is qualified. If one year remains in the term of the vacated seat at the time of the next election, that seat shall be filled by election for the remaining term;

(2) If there are more than six (6) months remaining in the unexpired term and no regular city election is scheduled within six (6) months, the commission shall fill the vacancy on an interim basis as provided in subsection (1), and shall schedule a special election to be held not sooner than sixty (60) days, nor more than one (1) year following the occurrence of the vacancy.

(d) *Extraordinary vacancies.* In the event that all members of the commission are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that shall call a special election to fill all commission positions. Should two (2) or more vacancies occur simultaneously, on the commission, the remaining members shall, within fifteen (15) days, call a special election to fill the vacant commission positions; such election shall be held in the manner prescribed by the laws of the State of Florida. Charter, § 3.06.

13. Section 3.08 of the Charter states in relevant part that (1) “The commission ***shall determine its own rules of procedure,***” and (2) a “majority of the commission shall constitute a quorum ... No action of the commission except as otherwise provided ... in section 3.06 shall be valid or binding unless adopted by the affirmative vote of the majority of a quorum present.”

14. Section 3.09 of the Charter, for “Commission appointments,” states in relevant part:

Sec. 3.09. - Commission appointments.

The city commission shall appoint but not be limited to the following offices:

- (a) City clerk,
- (b) City manager,
- (c) City attorney,

and *such other officials that they deem necessary* ...

THE CITY COMMISSION, THE RESIGNATIONS AND THE INTERIM APPOINTMENTS

15. As of December 12, 2023, the members of the City Commission were:

- Mayor Adrian Petrilia (“Petrilia”);
- Commissioner Chris Graus (District 1) (“Graus”);
- Vice Mayor Commissioner Mark Grill (District 2) (“Grill”);
- Commissioner Ward Friszowlowski (District 3) (“Friszowlowski”), and
- Commissioner Chris Marone (District 4) (“Marone”). [Stipulation, ¶ 1]

16. In late 2023, the Florida Legislature enacted into law a bill known as “SB 774,” imposing heightened disclosure requirements for public officials such as Commission members.

17. At a December 12, 2023 Commission meeting, Commissioner Grill advised that due to the new disclosure requirements, he intended to submit a letter of resignation from the Commission “later this week,” which resignation would take effect December 31, 2023. [See December 12, 2023 Meeting Transcript (“12/12/23 Tr.”), Intervenor MSJ, Ex. “1-A-3,” p. 1]

18. Later in the meeting, Commissioner Marrone stated that unless he was advised of a way to avoid the new disclosure requirements (a “workaround”), he would resign by December 31, 2023. [12/12/23 Tr., pp. 12.1-5 and 13.19-14.9]

19. The Commission reconvened on December 18, 2023. [See Stipulation, ¶ 6]

20. At that time, the City Attorney, Andrew Dickman, Esquire, advised:

So, we also, from the Supervisor of Elections, we know that they will not hold the special election for us. That the next [available] election will be August, correct, Amber. They simply cannot just have an election for a special election for our municipality. [See December 18, 2023 Mtg. Tr. (“12/18/23 Tr.”), Intervenor MSJ, Ex. “1-B-3” p. 5.12-17]

21. It is undisputed that “prior to December 18, 2023, the Supervisor of Elections advised that it would not hold a special election if one was necessary.” [Stipulation, ¶ 4]

22. During the December 12 and December 18 meetings, all Commissioners except the Mayor stated they were strongly considering resignation and/or willing to resign, but none of the Commissioners left their offices during these meetings. [See 12/12/23 Tr. and 12/18/23 Tr.]

23. At a December 21, 2021 meeting of the Commission, Commissioner Marone (District 4) resigned and left his office. [See December 21, 2023 Mtg. Tr., (“12/21/23 Tr.”), Intervenor MSJ, Ex. “1-C-3,” p. 19.5-8]

24. Thereafter, on December 21, 2023, Richard Lorenzen was appointed by the remaining members of the Commission to serve as Commissioner for District 4. [See Stipulation, ¶ 14]

25. On December 26, 2023, Commissioner Graus (District 1) resigned and left office. [See December 26, 2023 Mtg. Tr. (“12/26/23 Tr.”), Intervenor MSJ, Ex. “1-D-3,” p. 6.1-8]

26. On the same date, Karen Marriott was then appointed by the remaining members of the Commission to serve as Commissioner for District 1. [See Stipulation, ¶ 15]

27. On December 27, 2023, Vice Mayor Commissioner Grill (District 2) resigned and left his office. [See December 27, 2023 Mtg. Tr., (“12/27/23 Tr.”), Intervenor MSJ, Ex. “1-E-3” p. 5.24-6.3]

28. On the same date, Nick Filtz was then appointed by the remaining Members of the Commission to serve as Commissioner for District 2. [See Stipulation, ¶ 16]

29. On December 28, 2023, Commissioner Friszowlowski (District 3) announced that his resignation would be effective on December 30, 2023. [See December 28, 2023 City Commission Meeting Transcript, (“12/28/23 Tr.”), Intervenor MSJ, Ex. “1-F-3,” p. 9.25-10.1]

30. Commissioner Friszowlowski resigned and left office on December 30, 2023.

31. Betty Rzewnicki was appointed as the Interim City Commissioner for District 3 on January 9, 2024. [See Stipulation, ¶ 17]

32. The election for Districts 1 (Karen Marriott) and 3 (Betty Rzewnicki) was scheduled for March 19, 2024. [See Stipulation, ¶ 2]

33. With respect to Marriott and Rzewnicki, the following facts are undisputed:

- On March 19, 2024, the Pinellas County Supervisor of Elections administered elections for municipal offices across Pinellas County. Those elections were to include elections of Commissioners for Districts 1 and 3 in the City.
- To stand for election for the office of City Commissioner, a candidate must qualify for office in the time and manner specified in the City’s Charter and Code of Ordinances. The qualifying period for the March 19, 2024 election for Commissioners for Districts 1 and 3 began on November 6, 2023 and ended on November 17, 2023.
- At the end of the qualifying period, two candidates had qualified to run for election for Commissioner for District 1 in the March 19, 2024 election. They were Karen Marriott and Lisa Reich. Ms. Reich withdrew her candidacy on January 16, 2024, which left Ms. Marriott as the sole candidate for election for Commissioner for District 1 in the March 19, 2024 election.
- At the end of the qualifying period, one candidate had qualified to run for election for Commissioner for District 3 in the March 19, 2024 election, Betty Rzewnicki. Ms. Rzewnicki was the sole candidate for election for Commissioner for District 3 in the March 19, 2024 election.
- Because there was only one candidate for each of Districts 1 and 3 in the March 19, 2024 election for those Districts, the election was cancelled. Ms. Marriott and Ms. Rzewnicki began terms of office as elected Commissioners on March 26, 2024. [Stipulation, ¶¶ 18-11]

34. As a result of the appointments, the Commission moved the election for District 2 and 4 Commissioners from the regularly scheduled March 2025 election [Stipulation of, ¶¶ 2], to a special election now scheduled for August 20, 2024. [Stipulation, ¶ 23]

35. That election will be administered by the Pinellas County Supervisor of Elections concurrent with primary elections for various state and county offices. [Stipulation, ¶ 23]

36. On February 27, 2024, the Commission voted 3-2 to approve the Sirata CUP referenced in the Amended Complaint, with conditions, and the City Commission issued a Conditional Use Permit Development Order officially recognizing that approval on March 5, 2024. [See City's Conditional Use Permit Development Order, Intervenor MSJ, Ex. "4"]

37. As to the Sirata CUP, the Commissioners who voted in its favor were Commissioner Marriott (District 1); Commissioner Rzewnicki (District 3), and Commissioner Lorenzen (District 4). [See February 27, 2024 Commission Transcript, p. 236, Ex. "1"]

38. Mayor Petrilia and Commissioner Filtz (District 2) voted against it.

39. On April 3, 2024, PSPB, the Plaintiff in this case, filed a Petition for Writ of Certiorari asking the Court to quash the CUP. [See Petition for Writ of Certiorari, Intervenor MSJ, Ex. "5"]

40. Plaintiffs initiated this lawsuit on January 3, 2024, and filed an Amended Complaint on February 3, 2024.

41. Because Counts I, II and V of the Amended Complaint sought an Order "declaring any action taken by the Commission with the vote of one or more unlawfully appointed commissioners is null and void and of no force and effect," which would declare the CUP issued to CP St. Pete null and void, CP St. Pete intervened in this action by stipulation on March 16, 2024.

CONCLUSIONS OF LAW

SUMMARY JUDGMENT STANDARD

42. In Rich v. Narog, 366 So. 3d 1111, 1117–19 (Fla. Dist. Ct. App. 2022), the Appeals Court explained:

In Florida it will no longer be plausible to maintain that the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the ‘slightest doubt’ is raised. Under the federal summary judgment standard that is now applicable in Florida’s state courts, where the nonmoving party bears the burden of proof on a dispositive issue at trial, the moving party need only demonstrate that there is an absence of evidence to support the nonmoving party’s case.

Under the new standard, once the moving party satisfies this initial burden, the burden then shifts to the nonmoving party to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. Specifically, it is incumbent upon the nonmoving party to come forward with evidentiary material demonstrating that a genuine issue of fact exists as to an element necessary for the non-movant to prevail at trial. Importantly, though, if the evidence presented by the nonmovant is merely colorable, or is not significantly probative, summary judgment may be granted.

The trial court, therefore, must determine – as is the case with a motion for a directed verdict – whether the nonmovant’s evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. That is to say, the nonmovant’s evidence must be of sufficient weight and quality that reasonable jurors could find by a preponderance of the evidence that the nonmovant is entitled to a verdict. Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. Id. (Internal citations, quotations and parentheticals omitted).

PLAINTIFFS LACK STANDING TO BRING A *QUO WARRANTO* CHALLENGE TO THE RIGHT OF THE NEW COMMISSIONERS TO HOLD OFFICE

43. As to *quo warranto* challenges to the authority to hold office, Fla. Stat. Ann. § 80.01 provides:

Any person claiming title to an office which is exercised by another has the right, on refusal by the Attorney General to commence an action in the name of the state

upon the claimant's relation, or on the Attorney General's refusal to file a petition setting forth the claimant's name as the person rightfully entitled to the office, to file an action in the name of the state against the person exercising the office, setting up his or her own claim. The court shall determine the right of the claimant to the office, if the claimant so desires. No person shall be adjudged entitled to hold an office except upon full proof of the person's title to the office in any action of this character. Fla. Stat. Ann. § 80.01.

44. Where a *quo warranto* claim seeks an adjudication of the right to an office held by the defendant, ordinary “taxpayer, residency, and voter standing” is insufficient. Hall v. Cooks, 346 So. 3d 183, 188–89 (Fla. Dist. Ct. App. 2022), reh'g denied (Sept. 2, 2022) (“[Plaintiffs] claimed to have ‘taxpayer, residency, and voter standing’ to pursue an ‘inquiry in the nature of a quo warranto proceeding’ to ensure the ordinance's requirements are met. The trial court correctly held, however, that **only** the Attorney General or a person claiming title to the office in question has standing to seek a writ of *quo warranto*”) (emphasis supplied).

45. While Plaintiffs seek a *quo warranto* adjudication of the right of the Defendant Commissioners to hold their offices by interim appointment [e.g., Amended Complaint, p. 18] (“*Quo warranto* challenging the right of Mariott, Filtz, Rzewnicki and Lorenzen to hold the office of the City Commissioner”), Plaintiffs are neither the Attorney General nor the (alleged) person rightfully entitled to the office.

46. Thus, Plaintiffs have no standing to bring their *quo warranto* claims in Counts III and IV of the Amended Complaint.

QUO WARRANTO CHALLENGES ARE DISCRETIONARY

47. Also, the issuance of a writ of *quo warranto* – an “extraordinary writ,” lies within the discretion of the Court, and is **never** an “absolute right.” Warren v. DeSantis, 365 So. 3d 1137, 1142 (Fla. 2023).

48. “Given the nature of an extraordinary writ, there may be circumstances in which a court denies relief for ‘reasons other than the actual merits of the claim.’” Id. For example, it is “one of the fundamentals of procedure in *quo warranto* that the writ will not be issued *where there is another ample and sufficient remedy provided by law for the relief sought.*” Fuller v. Mortgage Elec. Registration Sys., Inc., 888 F. Supp. 2d 1257, 1271–72 (M.D. Fla. 2012) .

49. Additionally, the issue of whether a commission complied with its own procedural rules is not an appropriate subject for a *quo warranto* proceeding. Boan v. Florida Fifth Dist. Court of Appeal Judicial Nominating Comm'n, 352 So. 3d 1249, 1253 (Fla. 2022).

50. Here, the stated aim of Plaintiffs’ *quo warranto* challenge, which impugns the procedure utilized by the Commission to appoint interim Commissioners, is to protect the environment by preventing, *inter alia*, CP St. Pete from exercising its development rights pursuant to the CUP granted by the Commission.

51. As Plaintiff PSPB filed a Petition for Writ of Certiorari (a more appropriate remedy), and the procedure utilized by the Commission is to be determined by the Commission itself, the Court will not exercise its discretion to hear Plaintiffs’ *quo warranto* challenges.

**AS TO THE NON-*QUO WARRANTO* CLAIMS,
PLAINTIFFS HAVE NO PRIVATE RIGHT OF ACTION**

52. As to Plaintiffs’ non-*quo warranto* claims (Counts I, II and V), “*there is no inherent power in the courts of this state to determine election contests and the right to hold legislative office.*” Norman v. Ambler, 46 So. 3d 178, 181 (Fla. Dist. Ct. App. 2010); Harden v. Garrett, 483 So. 2d 409, 411 (Fla. 1985).

53. Thus, there is no private right of action to challenge the failure to comply with election statutes; any such right of action must be explicitly set forth in a statute. See Greene v. Clemens, 98 So. 3d 791, 793 (Fla. Dist. Ct. App. 2012) (“Since there is no common law right to

contest elections, any statutory grant must necessarily be construed to grant only such rights as are explicitly set out.”).

54. The statutory right to contest elections, set forth in Fla. Stat. Ann. § 102.168, provides no private right to challenge an interim appointment to a municipal office, and no such common law right exists.

55. Thus, Florida law provides no right of action to Plaintiffs as to Counts I, II and V of the Amended Complaint.

PLAINTIFFS LACK STANDING TO BRING THE NON-QUO WARRANTO CLAIMS

56. “[T]he Florida Supreme Court has repeatedly held that citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries to other citizens and taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers.” Herbits v. City of Miami, 207 So. 3d 274, 281 (Fla. Dist. Ct. App. 2016) (citing Solares v. City of Miami, 166 So.3d 887, 888 (Fla. 3d DCA 2015) and Sch. Bd. of Volusia Cty. v. Clayton, 691 So.2d 1066, 1068 (Fla.1997)).

57. Because Plaintiffs admit they have sustained no special injury, Plaintiffs have no standing as to their non-*quo warranto* claims (Counts I, II and V).

THE DE FACTO OFFICER DOCTRINE APPLIES

58. “The public is entitled to rely upon the official acts of a person who is exercising the duties of an office and should not be required to inquire regarding an officer's qualifications. Consequently, the law validates the acts of *de facto* officers as to the public and third persons on the ground that, though not officers *de jure*, they are in fact officers whose acts public policy requires should be considered valid. In other words, a *de facto* officer's acts are as valid and

binding upon the public or upon third persons as those of an officer *de jure*.” The Florida Bar v. Sibley, 995 So. 2d 346, 351 (Fla. 2008).

59. When CP St. Pete sought the CUP before the Commission in, *inter alia*, February 2024, it had a clear right to rely upon the official acts of the Commission, and therefore, the Commission’s acts are binding upon CP St. Pete and the public.

60. As to Plaintiffs’ claims in Counts I, II and V, which seek to “declare any action taken by the Commission ... null and void and of no force and effect,” the *de facto* officer doctrine precludes this request.

61. Thus, the CUP received by CP St. Pete will not be declared null and void, and the other acts of the Commission will also not be declared null and void.

**THE FLORIDA CONSTITUTION DOES NOT PRECLUDE
INTERIM APPOINTMENTS OF COMMISSIONERS**

62. Although the Florida Constitution, Article VII, Section 2, states “each municipal legislative body shall be *elective*,” this does not prevent a municipality from making interim appointments.

63. For example, Article IV, Section 1 (f) of the Florida Constitution gives the Governor the right to fill vacancies by appointment, under certain circumstances, for both “elective” and “appointive” offices:

(f) When not otherwise provided for in this constitution, the governor shall ***fill by appointment*** any vacancy in state or county office for the remainder of the term of an appointive office, and for the ***remainder of the term of an elective office*** if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election. Fla. Const. art. IV, § 1 (f).

64. The rationale for this is “one appointed to fill an *ad interim* vacancy in an elective office does not become the holder of any part of a regular term of such office, for only the people

can grant the holder a regular term or any part thereof.” Gray v. Bryant, 125 So. 2d 846, 859 (Fla. 1960).

65. Reading all Constitutional provisions *in pari materia*, such that all Constitutional provisions are consistent, see Burnsed v. Seaboard Coastline R. Co., 290 So. 2d 13, 16 (Fla. 1974), it is clear that permitting a municipality to fill a vacant elective position on an interim basis does not render the elective position “appointive.”

66. This question was addressed by the Attorney General through an opinion cited at 1987 Fla. Op. Atty. Gen. 71 (1987), which considered Article VII, Section 2 of the Constitution, and opined “*the fact that an office is elective does not prevent the filling of a vacancy thereon by appointment*, absent some contrary provision of law.” (Emphasis supplied).

67. In Florida, “although an opinion of the Attorney General is not binding on a court, it is entitled to careful consideration and generally should be regarded as highly persuasive.” State v. Family Bank of Hallandale, 623 So. 2d 474, 478 (Fla. 1993) (internal citations omitted).

68. On the face of the Constitution and as reflected by applicable law, the fact that the Constitution designates municipal offices as “elective” does not prevent the filling of vacancies on an interim basis by appointment, and the appointment of interim Commissioners in this case is consistent with, and does not violate, Article VII, Section 2 of the Florida Constitution.

THE REFUSAL OF THE SUPERVISOR OF ELECTIONS TO HOLD A SPECIAL ELECTION

69. Fla. Stat. Ann. § 100.151 provides:

County commissioners or the governing authority of a municipality *shall not call any special election* until notice is given to the supervisor of elections and his or her consent obtained as to a date when the registration books can be available.

70. A “basic rule of statutory construction requires a court to avoid a literal interpretation that would result in an absurd or ridiculous conclusion.” M.D. v. State, 993 So. 2d 1061, 1063 (Fla. Dist. Ct. App. 2008).

71. Because it is undisputed that the Supervisor of Elections refused to hold a special election as to Districts 2 and 4 until August 2024, and no special election could have been held sooner under Fla. Stat. Ann. § 100.151, the Court holds that any reading of the Charter to prevent interim appointments, which would leave the City with a non-functioning government for several months, would be an absurd conclusion clearly not intended by the Charter.

**UNDER SECTION 3.06 OF THE CHARTER, A VACANCY DUE TO RESIGNATION
ARISES WHEN THE OFFICER PHYSICALLY LEAVES HIS OFFICE, NOT
WHEN THE OFFICER ANNOUNCES INTENT TO RESIGN IN THE FUTURE**

72. Section 3.06 of the Charter, which describes “vacancies,” states “[t]he office of a commissioner shall become vacant upon his death, resignation, or forfeiture of his office.”

73. In matters involving statutory interpretation, “courts must first look to the actual language of the statute and examine the statute's plain meaning.” See Bank of N.Y. Mellon v. Glenville, 252 So. 3d 1120, 1127 (Fla. 2018).

74. The plain meaning of the word “resignation” is “an act or instance of resigning something : **SURRENDER.**” Merriam-Webster Dictionary, Resignation.

75. The plain meaning of the phrase “shall become vacant upon ... resignation” is that the vacancy takes effect on the date the officer physically surrenders the office and the resignation becomes effective; a vacancy does not take effect when a resignation is announced to take effect on a different subsequent date. See In re Advisory Opinion to the Governor, 158 So. 441, 442 (Fla. 1934) (“[T]he Governor is authorized to grant a commission to fill a vacancy only when an office ‘shall become vacant.’ When an officer tenders his resignation to take effect

at a subsequent date, the office does not ‘become vacant’ until the date on which the resignation becomes effective ...”).

76. Furthermore, even if a “resignation” could be imputed on the date future resignations were announced, in this case, the statements by the Commissioners before they formally surrendered their offices in this case were not clear and unequivocal.

THERE WERE NO “SIMULTANEOUS VACANCIES” UNDER SECTION 3.06 (D) OF THE CHARTER, BECAUSE THE RESIGNATIONS DID NOT TAKE PLACE AT EXACTLY THE SAME TIME

77. Section 3.06 (d) of the Charter states in relevant part “Should two (2) or more vacancies occur simultaneously, on the commission, the remaining members shall, within fifteen (15) days, call a special election to fill the vacant commission positions; such election shall be held in the manner prescribed by the laws of the State of Florida.”

78. The plain meaning of the word “simultaneous” is “existing or occurring at the same time : *exactly coincident*.” See Merriam-Webster Dictionary, Simultaneous. See also Cambridge Dictionary, Simultaneous (“happening or being done at exactly the same time.”).

79. Although Plaintiffs argue the word “occur” in Section 3.06 (d) (“Should two (2) or more vacancies occur simultaneously”) means “exist,” this is not precisely correct. According to Merriam-Webster Dictionary, “occur” means in relevant part “to come into existence : **HAPPEN**.” Accordingly, for resignations to “occur” at the same time, they must happen (i.e., *come into* existence) at the same time.

80. Here, the Commission members resigned on the following dates:

- Commissioner Marone (District 4): December 21, 2023;
- Commissioner Graus (District 1): December 26, 2023;
- Vice Mayor Commissioner Grill (District 2): December 27, 2023;
- Commissioner Friszowlowski (District 3): December 30, 2023.

81. Thus, the resignations were not at exactly the same time, they were not “simultaneous,” and there was no “simultaneous vacancy” under Section 3.06 (d) of the Charter.

**UTILIZING ACCEPTED PRINCIPLES OF STATUTORY INTERPRETATION, EVEN
IF THERE WERE “SIMULTANEOUS VACANCIES,” IT WAS STILL APPROPRIATE
FOR THE COMMISSION TO APPOINT INTERIM COMMISSION MEMBERS**

82. Even if there were “simultaneous vacancies,” however, the Commission still appropriately appointed interim Commissioners.

83. In interpreting the Charter, the Court is guided by the following principles:

- “[I]t is a cardinal rule of statutory construction that the entire statute under consideration must be considered in determining legislative intent, and effect must be given to every part of the section and every part of the statute as a whole.” Smith v. Rodriguez, 269 So. 3d 645, 647 (Fla. Dist. Ct. App. 2019)
- “Another rule of statutory construction counsels against deeming any portion of a statute superfluous.” Todd v. Johnson, 965 So. 2d 255, 260 fn. 7 (Fla. Dist. Ct. App. 2007)
- “The principles of statutory construction require reconciliation among seemingly disparate provisions of law in order to give effect to all parts of the law.” Barr v. Dep't of Health, Bd. of Dentistry, 954 So. 2d 668, 669 (Fla. Dist. Ct. App. 2007).
- Number four: Another basic rule of statutory construction requires a court to avoid a literal interpretation that would result in an absurd or ridiculous conclusion.” M.D. v. State, 993 So. 2d 1061, 1063 (Fla. Dist. Ct. App. 2008).

84. Here, Section 3.06 (c) – (d) provides in relevant part:

(c) *Filling of vacancies.* A vacancy on the commission shall be filled in one of the following ways:

(1) If there is less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the commission, by a majority vote of the remaining members shall choose a successor to serve until the newly elected commissioner is qualified. If one year remains in the term of the vacated seat at the time of the next election, that seat shall be filled by election for the remaining term;

(2) If there are more than six (6) months remaining in the unexpired term and no regular city election is scheduled within six (6) months, the commission shall fill the vacancy on an interim basis as provided in subsection

(1), and shall schedule a special election to be held not sooner than sixty (60) days, nor more than one (1) year following the occurrence of the vacancy.

(d) *Extraordinary vacancies.* In the event that all members of the commission are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that shall call a special election to fill all commission positions. Should two (2) or more vacancies occur simultaneously, on the commission, the remaining members shall, within fifteen (15) days, call a special election to fill the vacant commission positions; such election shall be held in the manner prescribed by the laws of the State of Florida. Charter, § 3.06.

85. Section 3.06 (c) addresses *all* resignations by Commissioners;

- if the “less than six months” factors apply, under Section 3.06 (c) (1) the Commission will make an interim appointment and may be required to hold a special election;
- If the “more than six months” factors apply, under Section 3.06 (c) (1) the Commission will make an interim appointment and hold a special election that will be held between 60 days and one year from the resignation.

86. While Section 3.06 (d) states that in the event of a “simultaneous vacancy,” the requirements for holding a special election will be changed, the Court does *not* read Section 3.06 (d) as eliminating the right granted to the Commission in Section 3.06 (c) to make interim appointments.

87. This is because the Court must read all provisions of the Charter together, it must reconcile seemingly disparate provisions, and it cannot render any passage surplusage.

88. If, for example, one Commissioner resigns with less than six months in his term, Section 3.06 (c) (1) would apply. The fact that a different Commissioner resigns simultaneously would not make Section 3.06 (c) (1) inapplicable, it would merely impose a different requirement for holding a special election.

89. It would also be absurd to suggest that when one Commissioner resigns, an interim appointment may be made, but when simultaneous resignations are made, no interim appointment may be made. Any such reading could paralyze a local government for an extended

period of time, create havoc, and potentially leave the people without representation from a City Government and needed services.

90. In this case, the next scheduled election for Districts 1 and 3 was in March 2024, which is less than six (6) months from December 2023, when the Commissioners for Districts 1 and 3 resigned. Thus, it was appropriate under Section 3.06 (c) (1) for the Commission to appoint interim Commissioners for Districts 1 and 3, regardless of whether there were “simultaneous resignations” under Section 3.06 (d).

91. Likewise, the next scheduled election for Districts 2 and 4 was in March 2025, which is more than six (6) months from December 2023, when the Commissioners for Districts 2 and 4 resigned. Thus, it was appropriate under Section 3.06 (c) (2) for the Commission to appoint interim Commissioners for Districts 2 and 4, regardless of whether there were “simultaneous resignations” under Section 3.06 (d).

92. As to Districts 2 and 4, the March 2024 election was not a “regular city election,” because it was not a scheduled election as to Districts 2 and 4, and holding an election in March 2024, for those districts, would be a “*special election*,” and not a “*regular election*.” See Fla. Stat. Ann. § 97.021 (36) (defining “Special election” as “a special election called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office.”).

93. However, even if the next “*regular city election*” for *Districts 2 and 4* was in *March 2024* (when the election for Districts 1 and 3 was scheduled), the appointment of interim commissioners would *still* be appropriate, because reading Section 3.06 (c) as a whole, Section 3.06 (c) (1) would then apply (because it applies to cases where “there is less than six (6) months remaining in the unexpired term or if there are *less than six (6) months before the next regular city election*”).

94. In all cases, because Section 3.06 (c) applied to the resignations of individual members of the Commission, *the Commission was authorized to make interim appointments of Commissioners until the scheduled March 2024 election for Districts 1 and 3, and the special election in August 2024 for Districts 2 and 4, could be held.*

95. Thus, even if there were “simultaneous vacancies,” the Commission still appropriately made interim appointments of Commissioners.²

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

- A. Plaintiffs’ Motion for Summary Judgment (Doc. 79) is DENIED;
- B. Defendants’ Motion for Summary Judgment on Liability (Doc. 81) is GRANTED;
- C. Intervenor’s Motion for Summary Judgment (Doc. 76) is GRANTED; and
- D. Final judgment is rendered in favor of Defendants and Intervenor and against Plaintiffs. Plaintiffs shall take nothing by this action and go hence without day.

Michael F. Andrews
Circuit Court Judge

Copies to all counsel of record

² Additionally, even if Section 3.06 (d) applies, and Section 3.06 (c) does not, construing all provisions of the Charter together, the Commission has discretionary power to make interim appointments under Section 3.09 of the Charter, because the Commission is empowered to appoint non-administrative officials such as members of the Commission “as they deem necessary.”

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of the forgoing has been sent via Electronic Mail to Samuel J. Salario, Jr., Esquire, samuel@lawsonhuckgonzalez.com, leah@lawsonhuckgonzalez.com, michelle@lawsonhuckgonzalez.com, caroline@lawsonhuckgonzalez.com, michelle@lawsonhuckgonzalez.com, stephanie@lawsonhuckgonzalez.com, Lawson Huck Gonzalez, PLLC, 1700 South MacDill Avenue, Suite 300, Tampa, Florida 33629, Andy Bardos, Esquire, andy.bardos@gray-robinson.com, Vanessa.Reichel@gray-robinson.com, leonard.collins@gray-robinson.com, stephen.varnell@gray-robinson.com, dawn.wilkinson@gray-robinson.com, ashley.lukis@gray-robinson.com, GrayRobinson, P.A., 301 South Bronough Street, Suite 600, Tallahassee, Florida 32031, Andrew Dickman, Esquire, andrew@dickmanlawfirm.org, matthew@dickmanlawfirm.org, service@dickmanlawfirm.org, ody@dickmanlawfirm.org, Dickman Law Firm, 809 Walkerbilt Road, Suite 7, Naples, FL 34110, Jane C. Graham, Esquire, jane@sunshinecitylaw.com, jane@jcgrahamlaw.com, jane@sunshinecitylaw.com, Sunshine City Law, 737 Main Street, Suite 100, Safety Harbor, FL 34695.

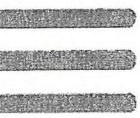
By: /s/ George M. Vinci, Jr.
GEORGE M. VINCI, JR., ESQ.
Florida Bar No. 817201
ANDREW J. DeFALCO, ESQ.
Admitted Pro Hac Vice
SPECTOR GADON ROSEN VINCI, LLP
360 Central Avenue, Suite 1550
St. Petersburg, FL 33733-0857
Telephone: (727) 896-4600
Facsimile: (727) 896-4604
Primary: gvinci@lawsgr.com
Secondary: adefalco@sgrvlaw.com/
tmayo@lawsgr.com

Tertiary: pleadings@lawsgr.com
Attorneys for CP St. Pete, LLC

Dated: May 30, 2024

EXHIBIT 1

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24 DATE: FEBRUARY 27, 2024

25 REPORTER: SHEILA JONES

401 EAST JACKSON STREET,
SUITE 2370
TAMPA, FL 33602

315 EAST ROBINSON STREET,
SUITE 510
ORLANDO, FLORIDA 32801
CORPORATE

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APPEARANCES

Adrian Petrila, Mayor
Rich Lorenzen, Vice Mayor, District 4 Commissioner
Karen Marriott, District 1 Commissioner
Nick Filtz, District 2 Commissioner
Betty Rzewnicki, District 3 Commissioner
Andrew Dickman, City Attorney
Matthew McConnell, Assistant City Attorney
Wayne Saunders, City Manager
Amber LaRowe, City Clerk
Brandon Berry, City Planner
James Stapleton, City Developer
Tom Rask, Unincorporated Pinellas County
JoLynn Lawson, Director of Protect St. Pete Beach
William Yung, Applicant
Jane Graham, Applicant Attorney
Scott Gilner, Kimley-Horn

PUBLIC COMMENTATORS:

JoLynn Lawson
Theresa Schefstad
Deborah Schechner
Julie Cozy
Tricia Brogan
Terri Grocott
Lisa Robinson
Ruta Hance
John Kurzman
Wendy Fruland
Dana Richardson



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1 approve the resolution with the amended conditions
2 as discussed tonight.

3 MR. LORENZEN: In the interest of getting this
4 going, I'll second.

5 MAYOR PETRILA: City Clerk?

6 THE CITY CLERK: Commissioner Rzewnicki?

7 MS. RZEWNICKI: Yes.

8 THE CITY CLERK: Commissioner Lorenzen?

9 MR. LORENZEN: Yes.

10 THE CITY CLERK: Commissioner Marriott?

11 MS. MARRIOTT: Yes.

12 THE CITY CLERK: Commissioner Filtz?

13 MR. FILTZ: No.

14 THE CITY CLERK: Mayor Petrila?

15 MAYOR PETRILA: No.

16 THE CITY CLERK: Motion carries 3-2.

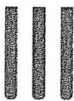
17 MS. MARRIOTT: We still have things on the
18 agenda, right?

19 MR. LORENZEN: Does everybody still have energy
20 to talk about Pass-a-Grille garbage collection or do
21 you want to put that off?

22 MAYOR PETRILA: Did you keep Mike around for
23 that?

24 MR. DICKMAN: Do you want to --

25 MR. LORENZEN: Wayne was going to --



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