

**RESOLUTION 2008-09**

**A RESOLUTION OF THE CITY OF ST. PETE BEACH,  
APPROVING THE SETTLEMENT OF A LAWSUIT**

**WHEREAS**, the citizens of St. Pete Beach, pursuant to Sections 7.02 and 7.04 of the City Charter, circulated six petitions and gathered signatures to require that certain ordinances be presented to the voters; and

**WHEREAS**, the signatures on the petitions were verified by the Pinellas County Supervisor of Elections, and it was determined that a sufficient number of qualified electors executed each petition to require that the ordinances be presented to the voters; and

**WHEREAS**, the City Commission of St. Pete Beach questioned whether the petitions conflicted with state law and did either adopt the proposed ordinances or put them to a vote of the electors within 90 days as provided by the City Charter; and

**WHEREAS**, in subsequent legal action between the petitioning entity and the City of St. Pete Beach, the Circuit Court for the Sixth Judicial Circuit of the State of Florida determined that the petitions did not facially conflict with state law and that the City of St. Pete Beach is required to hold an election on the ordinances to which the petitions pertain; and

**WHEREAS**, the City of St. Pete Beach and petitioning entity agreed to resolve the legal dispute in a manner that addresses the concerns of both parties and serves the public interest of the citizens of the City of St. Pete Beach; and

**WHEREAS**, the City Commission of the City of St. Pete Beach convened at noticed meetings on March 18, 2008, and March 25, 2008 and authorized settlement negotiations and terms thereof, and

**WHEREAS**, on March 31, 2008, the City Commission of the City of St. Pete Beach noticed a meeting open to the public to discuss and take public comment on the proposed settlement and subsequently determine whether to approve the settlement pursuant and subject to any motions made at the hearing.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF ST. PETE BEACH:**

Section 1. The City Commission of the City of St. Pete Beach, Florida, hereby approves the Settlement Agreement attached hereto as Exhibit A, with such changes as may have been identified and directed by motion during the public hearing.

Section 2. The Mayor of the City of St Pete Beach is authorized and directed to execute the Settlement Agreement on behalf of the City.

Passed and adopted by the City of St. Pete Beach, this 31st day of March 2008.

Mike Finnerty  
Mayor Michael Finnerty

ATTEST:

Theresa McMaske  
City Clerk

RESOLUTION 2008-09  
EXHIBIT "A"

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by, between, and among Lorraine Huhn, Beverly Garnett, Michael Seimetz, John H. Penny, D.D.S. and Paul E. Pfister (collectively the "Individual Plaintiffs"); Save Our Little Village, Inc.; St. Pete Beach City Commissioners Linda Chaney, Harry Metz, Michael Finnerty, Allan Halpern, and Christopher Leonard (collectively the "Individual Defendants"); and the City of St. Pete Beach (the "City").

1. **Introduction.** The Individual Plaintiffs and Save Our Little Village, Inc., (collectively "Plaintiffs") sued the Individual Defendants<sup>1</sup> and City (collectively "Defendants") in a case styled Save Our Little Village, Inc., et al. v. Commissioner Linda Chaney et al., Case No. 08-002408-CI-8, in the Sixth Judicial Circuit Court in and for Pinellas County, Florida (the "Lawsuit"). The Lawsuit seeks a vote of the people on St. Pete Beach on six proposed municipal ordinances (the "Proposed Ordinances"). Plaintiffs and Defendants (collectively the "Parties") now wish to compromise and settle the Lawsuit.

2. **Initial First Reading of Proposed Ordinances 2008-09 (Countywide Plan Amendment) and 2008-14 (CRA Plan) by the City Commission.** Defendants agree to notice Ordinances 2008-09 and 2008-14, attached hereto, and approve them on first reading and transmit them to the Pinellas Planning Council ("PPC") and Countywide Planning Authority ("CPA") for review upon first reading after any required notice and hearings at the next available regularly scheduled City Commission meeting but in any event, no later than April 22, 2008. If such enactment occurs on or prior to April 22, 2008, Plaintiffs consent to the withdrawal of both the ballot initiatives for those Ordinances, and the Individual Plaintiffs shall file a request for

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<sup>1</sup> When the Lawsuit was originally filed, Allan Halpern and Christopher Leonard were not members of the City Commission. They took office on or about March 18, 2008, and as a result were automatically substituted in their official capacities for Defendants Ed Ruttencutter and Ward Friszolowski, previously named in the official capacities. See Fla. R. Civ. P. 1.260(d).

withdrawal of proposed Ordinances 2008-09 and 2008-14 with the City Clerk in accordance with Section 7.04(e)(3) of the City Charter. Should the City fail to adopt the Ordinances by that date, the City and Individual Defendants agree to take all actions necessary to place the Ordinances associated with those petitions to a vote of the electors at a special election to be held on or before June 3, 2008 or as soon thereafter as possible as determined by the Supervisor of Elections ("Special Election")

3. **Second Reading and Final Adoption of Ordinance 2008-09 (Countywide Amendment).** If Ordinance 2008-10 is approved by the majority of voters in the Special Election, to be held on June 3, 2008, then the Defendants agree to properly notice and conduct a second public hearing, reading and adoption of Ordinance 2008-09 on the same agenda as Ordinance 2008-15 in accordance with Section 6 below. In the event Ordinance 2008-10 is not approved by a majority of voters in the Special Election, no further action is required by the City Commission on Ordinance 2008-09 and City Staff will be authorized hereunder to take the necessary steps to withdraw the Countywide amendment from further review and consideration by the PPC and CPA.

4. **Second Reading and Final Adoption of Ordinance 2008-14 (CRA Plan).** If Ordinance 2008-10 is approved by the majority of voters in the Special Election to be held on June 3, 2008, then the Defendants agree to continue the review, negotiation and approval process of the CRA Plan and associated Redevelopment Trust Fund; and further agree to reserve ballot space on the November 8, 2008 general election ballot for voter referendum on Ordinance 2008-14 in accordance with Section 3.16 of the City Charter. In addition, Defendants shall properly notice and conduct a second public hearing, reading and adoption of Ordinance 2008-14 at the next regularly scheduled City Commission thereafter, In the event Ordinance 2008-10 is not approved by a majority of voters in the Special Election, no further action is required by the City Commission on

Ordinance 2008-14 and City Staff will be authorized hereunder to take the necessary steps to withdraw the CRA Plan from further review and consideration by the Board of County Commissioners.

5. **Resolutions to be adopted by Defendants.** On or before April 1, 2008, the City Commission shall adopt the attached Resolutions 2008-10, 2008-11, 2008-12, 2008-13 and 2008-14, which are incorporated by reference into this Agreement and which shall be binding on all parties and enforceable as part of this Agreement. The procedures established in these Resolutions represent compromise and agreement between the Parties regarding procedures and hearings to be conducted in order to comply with the requirements of state law, the Countywide Rules, the City Charter, and relevant provisions of the City Code, as may be applicable to particular Ordinances, and the Defendants' good faith compliance with the terms of the Resolutions is an integral and enforceable component of this Agreement. The individual resolutions include:

- a. Resolution 2008-10, setting the Ordinances 2008-10, 2008-11, 2008-12, and 2008-13, as proposed in the citizens' initiative petitions, to a vote of the electors of the City on June 3, 2008;
- b. Resolution 2008-11, setting forth procedures and activities associated with Ordinance 2008-09, for transmittal, review and approval of an Amendment to the Countywide Plan by the Board of County Commissions sitting as the Countywide Planning Authority;
- c. Resolution 2008-12, setting forth procedures and activities to be undertaken by the City and its staff and advisory boards before and after the election on June 3, 2008, with respect to the adoption and implementation of Ordinance 2008-10, which provides for an amendment to the City's comprehensive plan;
- d. Resolution 2008-13 setting forth procedures and activities to be undertaken by the City and its staff and advisory boards before and after the election on June 3, 2008, with respect to the adoption and implementation of Ordinances 2008-11, 2008-

12, and 2008-13, each of which provide for amendments to the City's Land Development Code; and

- e. Resolution 2008-14, setting forth procedures and activities to be undertaken by the City and its staff and advisory boards before and after the election on June 3, 2008, with respect to the adoption and implementation of Ordinance 2008-14, which provides for the transmittal, negotiation with Pinellas County, and final approval by the County, and thereafter providing for a voter referendum to be held at the November 2008 general election in accordance with Section 3.16 of the City Charter and subsequent final adoption by the City Commission acting in their capacity as the Community Redevelopment Agency, of the Community Redevelopment Plan governed by Chapter 163, Part III.

6. **Transmittal and Adoption of Ordinance 2008-15 (City Comprehensive Plan)**

**subsequent to voter approval of Ordinance 2008-10.** If the voters of the City approve Ordinance 2008-10 at the Special Election, the City Commission shall notice and conduct a first reading of Ordinance 2008-15 in accordance with the requirements of §163.32465(6), Florida Statutes and City of St. Pete Beach Ordinance 88-36, within 2 weeks. The City Commission shall approve Ordinance 2008-15 on first reading and transmit the comprehensive plan amendment so attached to reviewing agencies in compliance with §163.32465(4), Florida Statutes.

The City shall thereafter schedule and notice a final adoption hearing meeting the requirements of §163.32465(5), Florida Statutes, to be held within 30 and 60 days of the transmittal hearing, but in no event: 1) later than fifteen (15) days after official receipt by the City of the Department of Community Affairs' Objections, Responses and Comments Report; or 2) the first regularly scheduled City Commission hearing after the expiration of the thirty (30) day time period prescribed by statute within which the Department is required to provide comment; whichever comes first.

During the public hearing considering the second reading and final adoption of Ordinance 2008-15, the City Commission may (1) adopt the Ordinance and approve the comprehensive plan amendment as proposed; (2) may deny Ordinance; or (3) may, consistent with the severability clause of Ordinances 2008-10 and 2008-15, adopt changes excepting specific provisions of the comprehensive plan amendment that the Department of Community Affairs identifies as inconsistent with state law or regulations, after consultation with SOLV, subject to the following:

- a. If the City Commission approves and **adopts unchanged** Ordinance 2008-15, the comprehensive plan amendment shall go into effect 31 days after adoption by the City Commission, or after the resolution of any timely administrative challenge to the plan amendment at the State Department of Community Affairs, whichever comes first.
- b. If the City Commission **denies** Ordinance 2008-15, the plaintiffs or any other citizens of St. Pete Beach shall have 31 days in which to establish a citizens' petition committee and commence a new initiative pursuant to Section 7.02 of the City Charter to require the City Commission to adopt the Ordinance or place it before the voters for approval or rejection;
- c. If the City Commission **approves** Ordinance 2008-15 with **changes or exceptions** to address specific provisions that the Department of Community Affairs has identified as inconsistent with state law or regulations, the City Commission shall place any proposed alternative provisions, goals, objectives, or policies before the voters at the November 2008 general election prior to adoption.

7. **Notice to Plaintiffs.** With regard to the Resolutions, the Proposed Ordinances, or any other municipal ordinances, resolutions, or plan amendments arising from or relating to the Resolutions or Proposed Ordinances (collectively the “Legislation”), Defendants shall provide to the attorney for Plaintiffs whose signature appears below (or to such other attorneys as Plaintiffs may designate in writing):

(a) timely notice of, and the opportunity to participate in, public meetings, hearings, and any legal challenges;

(b) copies of all legal advertisements prior to publication for review for compliance with notice and advertising requirements;

(c) copies of all reports and correspondences prepared by the Department of Community Affairs relating to the statutory review and approval process of the comprehensive plan amendment which is the subject of Ordinances 2008-10 and Ordinance 2008-15;

(d) copies of all reports and correspondences prepared by Pinellas Planning Council Staff relating to the review and approval process governed by the Countywide Rules of the countywide plan amendment which is the subject of Ordinance 2008-09, including their review of Ordinances 2008-10, 2008-11, 2008-12 and 2008-13 as required by the Countywide Rules; and

(e) copies of all reports and correspondences prepared by the County Staff relating to the review, negotiation, approval and adoption of the CRA Plan which is the subject of Ordinance 2008-14.

Whenever possible, such notices, advertisements, reports, correspondences and other documents shall be provided in electronic format and sent via email, unless otherwise required by rule or law.

8. **Defense of the Ordinances, Resolutions and Agreement.** Under the police power authority of the City Commission without waiving the right to mediate or settle, Defendants shall

defend the Ordinances, Resolutions and this Agreement against any appeal, lawsuit, administrative proceeding, or other litigation challenging or seeking to invalidate the Ordinances, Resolutions or this Agreement or any part thereof. In particular, Defendants shall defend any litigation seeking to: 1) prevent a vote of the people on any of the Proposed Ordinances; 2) invalidate any of the Proposed Ordinances prior to the election; 3) invalidate any Ordinance approved by the voters after the election; 3) invalidate or challenge in any way all Ordinances finally adopted by the County and the City, as applicable; or 4) challenge any aspect of the Legislation as inconsistent with Chapter 163 of the Florida Statutes or any other provision of law after final adoption of the comprehensive plan amendment in cases or hearings in which Plaintiffs file a motion to intervene or motion to seek party status and Defendants will not object to Plaintiffs' motion to intervene or motion seeking party status in any such action filed by any other party.

9. **Approval of Comprehensive Plan Amendment by Other Agencies.** Insofar as Countywide and Comprehensive Plan Amendments contemplated by the Proposed Ordinances are adopted by the City Commission or approved or supported by a majority of the voters, Defendants shall make every effort to work in good faith with Pinellas County and any other reviewing agency to ensure that such amendments receive any necessary reviews and approvals. In addition, if as a result of such reviews and approvals a second vote of the people is required prior to final adoption of any amendment, Defendants agree to make every effort to place such changes on the November 2008 ballot, including but not limited to reserving appropriate ballot space on the November ballot on or before August 15, 2008, or any such deadline established by the Pinellas County Supervisor of Elections, as well as all other deadlines relating to the submittal of ballot text, as may be necessary and required.

10. Independence of the Proposed Ordinances. If the voters approve the Comprehensive Plan Amendment contemplated by Proposed Ordinance 2008-10, Defendants shall not submit or request any amendment to the Countywide Plan that is inconsistent with, or that alters, the Countywide Plan Amendment contemplated by Proposed Ordinance 2008-09 until after the proposed Comprehensive Plan Amendment is finally denied or adopted with changes by the City Commission, and , if denied, 31 days have passed and no citizens have filed a new initiative petition pursuant to Section 7.02 of the City Charter with the City Clerk to initiate an ordinance to adopt the comprehensive plan amendment. Otherwise, the Proposed Ordinances are independent of one another and severable, such that voter disapproval of one or more of the Proposed Ordinances shall have no effect on the validity or effectiveness of the other Proposed Ordinances.

11. Dismissal of Action. If this Agreement is approved by the parties at a Special City Commission Meeting called for the purposes of considering this Agreement and its related Ordinances and Resolutions on March 31, 2008, the parties agree to:

a) effectuate the execution of this Agreement in full within one (1) business day following the hearing;

b) authorize their respective counsel to jointly notify the Court immediately the following day that a Settlement between the parties has been reached and a stipulated dismissal will be forthcoming;

c) within one (1) business day after execution of this Agreement by Defendants, Plaintiffs' counsel will file with the Court a notice of voluntary dismissal of the Lawsuit with prejudice subject to this Agreement,

d) Plaintiff shall dismiss any and all claims for attorney's fees as sanctions against Defendants and Defendant's counsel and

e) Plaintiffs and Defendants shall pay their own costs and fees incurred in this action as set forth in Section 15 of this Agreement.

12. Integration. This Agreement contains the entire agreement among the Parties with respect to the settlement described herein. There are no other understandings, representations, or agreements, oral or otherwise, between or among the Parties. No Party has relied upon any statements or representations of the facts or law by any other Party or any other Party's employees, agents, representatives, or attorneys.

13. No Admission. The Parties are entering into this Agreement in order to resolve disputed legal and factual issues, and this Agreement is a compromise of disputed claims. None of the statements in this Agreement are, or are to be construed as, admissions by any Party.

14. Warranties. By signing this Agreement, each Party represents and warrants that this Agreement is authorized, that the Agreement has been read and understood by that Party, and that the Agreement is being entered into by that Party's own free will. Each Party also waives any claim that any Party did not understand, duly approve, or authorize this Agreement.

15. Attorneys' Fees and Costs. Plaintiffs agree not to seek payment by Defendants (including the City of St Pete Beach, individual Defendants and substituted Defendants) of their attorneys' fees and costs incurred prior to April 1, 2008, in connection with this Lawsuit. Defendants agree not to seek payment by Plaintiffs of their attorneys' fees and costs incurred prior to April 1, 2008, in defense of this Lawsuit. The Parties reserve any rights they may have to seek payment of their attorneys' fees and costs by anyone other than Plaintiffs or Defendants.

16. No Amendment. This Agreement cannot be amended or changed except by a written agreement executed by the Parties.

17. Severability. If any part of this Agreement is deemed to be invalid in any court of law, the remaining provisions shall remain in full force and effect and may be enforced in accordance with the provisions hereof.

18. Joint Drafting. This Agreement was jointly negotiated and drafted by the Parties and their respective counsel, and shall not be construed against any Party as the drafter hereof.

19. Binding. This Agreement shall bind and inure to the benefit of each Party, its successors, heirs, executors, assigns, parents, affiliates, stockholders, agents, directors, officers, attorneys, insurers, employees and agents.

20. No Waiver. No failure or delay by any Party in exercising any rights under this Agreement shall result in a waiver of this Agreement or of any rights under this Agreement. Moreover, no single or partial exercise or waiver of any rights under this Agreement shall preclude any other or further exercise of any other rights, powers or privileges under this Agreement.

21. Independent Counsel. Each Party has performed its own independent investigation of the facts of this case and executes this Agreement after the opportunity to consult with counsel.

22. Counterparts. This Agreement may be executed in counterparts, all of which, taken together, shall constitute one agreement binding on all the Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

23. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.

24. Enforcement. If any Party fails to comply with this Agreement or the Resolutions made part of this Agreement, any other Party may immediately and without notice file an action to enforce this Agreement (an "Enforcement Action"). With regard to any Enforcement Action, the Parties:

- (a) agree that the Circuit Court in and for Pinellas County, Florida, shall have jurisdiction over the subject matter and the parties;
- (b) consent to the assignment of the Enforcement Action to Judge David Demers;
- (c) agree to accept service of process by fax, e-mail, U.S. mail, overnight delivery service, or hand delivery to the attorneys whose signatures appear below (or such other attorneys as the parties may designate in writing) in lieu of service by process server;
- (d) agree that their attorneys will serve one another during the Enforcement Action via fax, e-mail, or hand delivery;
- (e) agree to expedited consideration;
- (f) waive the customary 20 days to respond to a Complaint, and instead agree that the defendant (or defendants) in the Enforcement Action shall respond to the Complaint within five business days of service of the Complaint;
- (g) agree that the monetary value of the rights recognized in this Agreement would be difficult to quantify, and that the harm arising from a breach would be irreparable, so injunctive relief shall be available and appropriate;
- (h) waive any right the Parties might otherwise have to a jury trial.

The Parties have executed this Agreement as of the dates indicated below.

SAVE OUR LITTLE VILLAGE, INC.

CITY OF ST. PETE BEACH, FLORIDA

BY: Lorraine Huhn  
Lorraine Huhn, President

BY: Michael Finneerty  
Michael Finneerty, Mayor

Date: April 1, 2008

Date: 4/1/08

APPROVED AS TO FORM:

ATTEST:

Robert Lincoln  
Robert Lincoln, Attorney for Plaintiffs

Theresa McMaster  
CITY CLERK

APPROVED AS TO FORM:

Ralf Brookes  
Ralf Brookes, Attorney  
City Attorney for St Pete Beach, Florida

LORRAINE HUHN, PLAINTIFF

Lorraine Huhn

Date: April 1, 2008

MICHAEL SEIMETZ, PLAINTIFF

[Signature]

Date: 4/1/08

PAUL E. PFISTER, PLAINTIFF

Paul E. Pfister

Date: 4/1/08

BEVERLY GARNETT, PLAINTIFF

Beverly Garnett

Date: 4/1/08

JOHN H. PENNY, D.D.S. PLAINTIFF

[Signature]

Date: 4/1/08