IN THE FIFTH DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA
(Filed pursuant to Fla. R. App. P. 9.100(f)(2))

CITY OF BROOKSVILLE,
a Florida municipality,
Petitioner,

vs.

Appellate Case No.: _____

HERNANDO COUNTY, a
political subdivision of the
State of Florida,
Respondent.
_____/

PETITION FOR WRIT OF CERTIORARI

From the 1st Tier Review by the Circuit Court of the Fifth Judicial Circuit In and For Hernando County, Florida of five Voluntary Annexations by the City
Case No. 09-016015 CI-021
Before the Honorable Donald E. Scaglione

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Petitioner, City of Brooksville (hereinafter "the City"), a Florida municipality, by and through its undersigned attorneys and pursuant to Fla. R. App. P. 9.100(f)(2), files this its Petition for Writ of Certiorari against Respondent, Hernando County (hereinafter "the County"), a political subdivision of the State of Florida, and as grounds therefore, states:

I. BASIS FOR INVOKING JURISDICTION OF THE COURT AND STANDARD OF REVIEW (Second-tier Review)

The District Court is restricted to those errors where the circuit court did not afford procedural due process, or applied the incorrect law or, stated differently, whether the circuit court departed from the essential requirements of law resulting in a miscarriage of justice. The restriction should not be so narrowly construed so as to apply only to violations which effectively deny appellate review or which

pertain to the regularity of procedure. [*See Nader v. Fla. Dept. of Highway Safety and Motor Vehicles*, 87 So. 3d 712 (Fla. 2012); *County of Volusia v. City of Deltona*, 925 So. 2d 340, 343 (Fla. 5th DCA 2006); *Haines City Cmty. Dev. v. Heggs*, 658 So.2d at 523, 530 (Fla. 1995)]

The first-tier review by the Circuit Court related to the passage of Annexation Ordinances Nos. 854, 855, 857 and 859 as adopted by the Brooksville City Council on December 7, 2015 and Annexation Ordinance # 862 adopted by the City on December 21, 2015. [*See* Pet. COB # 8-12 pp. 50-319][1] This Circuit Court review resulted in an Order on March 22, 2017 of which the City seeks a second-tier certiorari review. [*See* Petitioner COB # 1 pp. 1-10] The City contends that the March 22, 2017 Order did not afford the City due process and departed from the essential requirements of the law which resulted in a miscarriage of justice. Further, prior to the March 22, 2017 Order, the Circuit Court denied the City's Motion to Dismiss the County's Amended Petition for the failure of the County to adhere to the appellate requirements under section 171.081, *Florida Statutes*. [*See* Petitioner COB # 2 pp. 11-19] The denial of the City's Motion to Dismiss was also a departure from the essential requirements of the law which resulted in a miscarriage of justice. [*See* Petitioner COB # 3 pp. 20-21]

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[1] Minutes of the City Meetings and transcripts of those pertinent portions of the City Meetings which reflect the consideration and passage of the annexation ordinances are found within Petitioner COB # 14- 16 and # 18-20.

II. FACTS UPON WHICH PETITIONER RELIES

The City, from time to time, has been approached by landowners living outside the corporate limits of the City who have desired water and/or sewer services, and the City has desired to provide those services in return for the landowner entering into a Utility Service Agreement (hereinafter referred to as a "USA"). These USA agreements typically include a provision wherein the landowner appoints the City, as its attorney-in-fact, to petition for voluntary annexation at a later time. These agreements are then recorded in the Official Public Records of Hernando County, Florida. The City used its appointment as attorney-in-fact to annex the contested properties by having its City Manager sign as attorney-in-fact for the landowner. On December 2, 2015, a second and final reading was held for nine annexation ordinances and on December 21, 2015, a second and final reading was held for one annexation ordinance, resulting in passage of all ten annexation ordinances. *All of the voluntary annexed properties were done by petitions signed by the City Manager acting as the appointed agent of the landowner.* However, the County filed its challenge to only five of the ten annexed properties.

In the County's challenge to the voluntary annexations by the City, the County chose not to follow the procedures set out in section 171.081, *Florida Statutes*. A challenge to an annexation by a governmental entity is required to be initiated by

invoking the dispute resolution procedure within thirty days of the passage of the challenged annexations. The relevant section of this statute reads as follows:

> **171.081 Appeal on annexation or contraction. —**
> **(1) 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. The action may be initiated at the party's option within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in subsection (2). In any action instituted pursuant to this subsection, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees.**
> **(2) If the affected party is a governmental entity, no later than 30 days following the passage of an annexation or contraction ordinance, the governmental entity *must* initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164, the governmental entity that initiated the conflict resolution procedures may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any legal action instituted pursuant to this subsection, the prevailing party is entitled to reasonable costs and attorney's fees.**

The County chose to file a petition for certiorari before the Circuit Court on the 30th day following passage of the voluntary annexation ordinances [*See* Petitioner COB # 34 pp.560-567] and did not initiate the dispute resolution process until much later. [*See* Petitioner COB # 14 pp. 322-342] The County amended its original petition to include arguments that the annexations should fail due to alleged

past racial discrimination practices, the use of powers of attorney in a voluntary annexation process, and some of the traditional challenges outlined in case law and Florida Statutes, such as allegations of a lack of a contiguous nature of the annexed property, the creation of an enclave or the exacerbation of an enclave and the creation of a finger. [*See* Petitioner COB # 35 pp. 568-606]

The City challenged the petition and the amended petition by its Motion to Dismiss for a failure to follow the annexation challenge process outlined in section 171.081, *Florida Statutes.* [See Petitioner COB pp. 11-19] After the Circuit Court denied the City's Motion to Dismiss [2] and after the Court entered an order compelling the City to attend a dispute resolution meeting regarding the issues raised in the amended petition for certiorari, the City sought a rehearing challenging the County's ability to raise ancient and historical racial discrimination allegations as its justification for a challenge to the annexations by the City in its Emergency Motion for Rehearing and/or Clarification. [See Petitioner COB # 4 pp. 22-30][3] The use of the alleged racial discrimination allegations was a blatant attempt to intimidate, annoy and harass the City while having no justification in law or fact. The Circuit

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[2] The Motion focused on the obligation of the County to invoke the dispute resolution process 30 days after the passage of the challenged annexations.

[3] The parties and the Court did limit the dispute resolution process to be restricted to the issues of compactness and contiguity. [See Petitioner COB # 32 p. 501] However the discussion within the dispute resolution process touched on the racial under-bounding issues.

Court denied the City's Motion to Dismiss or give any relief from having to defend against the spurious racial discrimination claims.

After the case was fully briefed and an oral argument was had [*See* Petitioner COB # 31 pp.459-497], the Circuit Court ruled that the use of a power-of-attorney acting as an agent of the landowner, was in degradation of the specific language in section 171.044, *Florida Statues*. This statutory section reads as follows:

> **171.044 Voluntary annexation. —**
> **(1)** ***The owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body*** **of said municipality that said property be annexed to the municipality.**
> **(2)** ***Upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed,*** **the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property. Said ordinance shall be passed after notice of the annexation has been published at least once each week for 2 consecutive weeks in some newspaper in such city or town or, if no newspaper is published in said city or town, then in a newspaper published in the same county; and if no newspaper is published in said county, then at least three printed copies of said notice shall be posted for 4 consecutive weeks at some conspicuous place in said city or town. The notice shall give the ordinance number and a brief, general description of the area proposed to be annexed. The description shall include a map clearly showing the area and a statement that the complete legal description by metes and bounds and the ordinance can be obtained from the office of the city clerk. (Emphasis added)**

III. THE NATURE OF THE RELIEF SOUGHT

The City seeks this Court's discretionary jurisdiction to quash the order of the Circuit Court for the County's failure to adhere to the correct certiorari review initiation process of an annexation challenge by a governmental entity. Additionally, because of the nature of the alleged and improper racial discrimination allegations raised by the County and the denial of the use of a power-of-attorney in a voluntary annexation process, if not addressed by this Court, will likely continue to occur in any future attempts by the City to annex property. Further, it has been a customary use by not only the City of Brooksville, but many other Florida municipalities, to use a USA and a power-of-attorney appointing the City to act on behalf of the landowner. The City and Florida municipalities throughout the State will incur great harm if this Circuit Court Order is allowed to stand.

IV. ARGUMENTS

I. THE USE OF A POWER-OF-ATTORNEY THAT SPECIFICALLY REFLECTS THE INTENT OF THE LANDOWNER TO APPOINT A CITY, THAT PROVIDES WATER AND SEWER SERVICE, THE AUTHORITY TO FILE A PETITION FOR VOLUNTARY ANNEXATION COMPLIES WITH VOLUNTARY ANNEXATION PROCEDURES OF SECTION 171.044, FLORIDA STATUTES.

The Circuit Court at the first-tier review level misapplied the law in adopting the argument of the County that the Florida Attorney General Opinion (AGO 87-54)

applied to the challenged annexations. [4] This attorney general opinion opined that for a condominium annexation all property owners would have to sign for consent to be annexed. This opinion is not relevant to the case reviewed by the Circuit Court. Obviously, all property owners of a condominium would have to sign a petition for annexation since all owners have a legal proprietary interest in the property. Additionally, the opinion does not opine that a power-of-attorney signed by all unit owners could not be used in a voluntary annexation. The Circuit Court also incorrectly refers to its decision as being based in case law. There is no Florida case law on point. The Circuit Court also placed an emphasis on the definition of owner. However, the plain reading of Black's Law Dictionary for the term "owner" is not helpful nor relevant to the issue. The owner of real property in Florida has an absolute right to appoint an agent to act according to a specific grant of power-of-attorney or as agent. [*Dingle v. Prikhdina*, 59 So.3d 326, 328 (Fla. 5th DCA 2011] The Circuit Court never addressed why a power-of-attorney appointing another to act on behalf of the property owner was insufficient in light of the right of a property owner to convey such a specific power. The Circuit Court focused only on the literal reading of section 171.044(1) & (2), *Florida Statutes* requiring a petition for voluntary annexation "*to be signed*" by the property owner. There is no statutory or

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[4] The reviewing trial Court incorrectly cited to the AGO opinion as 1987 Op. Atty. Gen. Fla. 143 (1987). The correct cite above was the cite given by the County and is attached to the City's appendix as Petitioner COB # 22 pp. 414-417.

rule requirement as to the form that a voluntary annexation petition has to follow. In the five challenged voluntary annexation cases, all five owners initiated the voluntary annexation process by granting its property right to a third party, in this case, the City. In the five challenged annexation cases, the property owner negotiated with the City to receive water and/or sewer service in exchange for the City being authorized to annex the property. This contract is supported by the quid pro quo that each party received. In applying the logic of the decision of Circuit Court, the intent of the property owner and the consideration given by the City may never be realized in the event that subsequent to a USA agreement, the property owner becomes bankrupt, insolvent, or lacks the capacity to execute a petition for voluntary annexation.

This District Court has said in a second-tier certiorari review that the reviewing District Court has the power to add to the statutory language as long as said language is consistent with the legislative intent. [*See Dept. of Highway Safety and Motor Vehicles v. Patrick*, 895 So.2d 1131, 1135 (Fla. 5th DCA 20050)] The *Patrick* Court warned that Courts should avoid an interpretation of a statute that would lead to an unreasonable, absurd or ridiculous result, provided the language of the statute is susceptible to an alternative interpretation. The City urges this Court to find that the use of a power-of-attorney or an appointment of an agent to initiate

a voluntary annexation is the equivalent to the property owner signing the actual petition for voluntary annexation.

None of the five challenged properties involve a condominium. Three properties were owned by private, not-for-profit corporations operating as churches. Each signature for the corporation had the legal authority to bind the landowner. One property is owned by the Hernando County Housing Authority which is a quasi-governmental authority established under Florida Chapters 421 and 423. The authorized signors for these entities signed their respective USA agreements under seal with a notary public. The fifth challenged property was owned by a married couple, Mr. & Mrs. Griffin, who both signed a power-of-attorney with the specific intent of appointing the City to act as their agent. A condominium association is made up of a collection of individual property owners, which is not true for private, not for profit church corporations or a Housing Authority. Each church member does not have a property right nor does each resident of the Housing Authority have the proprietary right to sign a voluntary petition for annexation as an owner.

This District Court has determined that when the language of the power-of-attorney is examined to discern intent, the omission of a particular power is one of the most persuasive indicators that the omission was not intended. Conversely, a power-of-attorney should be strictly construed and the power-of-attorney will be applied only to those powers which are specified. [*See Dingle at 328*) and *HIM v.*

Firstbank Florida, 89 So. 3d 1126, 1127 (Fla. 5th DCA 2012)] Even where a power-of-attorney did not authorize a gift, but included a power to convey real property, it did not preclude the application of the power-of-attorney for gift purposes related to estate planning and in light of the circumstances surrounding the execution of the power and the guarantor's intent. [*See De Bueno v. Castro*, 543 So. 2d 393 (Fla. 4th DCA 1989)] Language of an agreement creating a power-of-attorney must be construed in such a manner as to carry out the intent of the principle. [*See Johnson v. Fraccacreta*, 347 So. 2d 570 (Fla. 4th DCA 1977)]

Even when an abuse of the specified power is contested as in a ward's health care surrogate, a trial court could not revoke the designation in incapacity proceedings, where the wife had the authority to transfer the ward and the ward was moved several times because several of the facilities in which the ward was placed were not providing adequate care. [*See Martinez v. Guardianship of Smith*, 159 So. 3d 394 (Fla. 4th DCA 2015)] Certainly, a Florida landowner who has contracted away a property right to an agent, that agent should be able to carry out the intent of the landowner and give confidence to a party to a contract that its consideration for the contract will be honored, much in the same way that there is much discretion granted to a guardian over a ward.

The language in the Griffin power-of-attorney and in the USA agreements (see annexation elements) for the Grace World, St. Anthony's Catholic Church and

the Hernando County Housing Authority granted to the City the following specific language to annex:

<u>Griffin Property (Ord. # 857)</u> [*See* Petitioner COB # 10 p. 165]

> **We do hereby give and grant to the City of Brooksville this our irrevocable *power-of-attorney to do a voluntary annexation* by the City of the above-described property at such time as the City of Brooksville shall in its sole discretion petition to annex the above-described property into the City of Brooksville. By this act we do *irrevocably consent to said annexation* and do further ratify and confirm all the acts that our attorney shall do or cause to be done in accord with this grant of authority.**
> **That this power-of-attorney shall remain in force and effect for a period of forty-nine (49) years, from the date hereof and is binding on the undersigned, its heirs, assigns and successors in interest.**

<u>Grace World (Ord. # 854)</u> [*See* Petitioner COB # 8 p. 96]
<u>& St. Anthony's Catholic Church (Ord. # 855)</u> [*See* Petitioner COB # 9 p. 149]

> **The Church hereby agrees to appoint the City or its duly authorized representative as *its irrevocable attorney in fact with absolute and specific authority to execute and file any and all such petitions for voluntarily annexation* of the development into the City of Brooksville. The church on behalf of itself, its heirs, assigns and successors in interest *does hereby irrevocably consent to said annexation*. This agreement shall remain in full force from date of execution for a period not to exceed 50 years.**
>
> ***For the full USA Agreements, See Petitioner COB # 8 pp. 84-98 and Petitioner COB # 9 pp. 132-151.***

<u>Brooksville Christian Church (Ord. # 862)</u> [See Petitioner COB # 12 p. 288]

> **The Owner hereby agrees to appoint the City or its duly authorized representative as its irrevocable attorney in fact with absolute and *specific authority to execute and file any and all such petitions for voluntarily annexation of the development* into the City of**

Brooksville. The Owner on behalf of itself, its heirs, assigns and successors in interest does hereby *irrevocably consent to said annexation*. This agreement shall remain in full force from date of execution for a period not to exceed 50 years.

For the full USA Agreement See Petitioner COB # 12 pp. 275-291.

<u>The Brooksville Housing Authority (Ord. # 859)</u> [See Petitioner COB # 11 p. 200]

The DEVELOPER hereby appoints the CITY, or its duly authorized representative, as its irrevocable attorney-in-fact with absolute and specific authority to execute and file any and all petitions for voluntary annexation of the DEVELOPMENT into the CITY whenever such annexation is in conformance with the laws of the State of Florida; provided, however, that any such annexation is subject to, in condition upon, the satisfaction of state and federal statutory and regulatory requirements applicable to the operation of the DEVELOPMENT by the DEVELOPERS or the Hernando County Housing Authority within the city limits. The OWNER on behalf of itself, its heirs, assigns and successors-in-interest does hereby irrevocably consent to any such annexation. Notwithstanding the foregoing, nothing in this AGREEMENT shall be deemed to appoint the CITY as the agent or attorney-in-fact for the DEVELOPER for any other matter not expressly addressed herein. This AGREEMENT shall remain in full force and effect from the date of execution for a period not to exceed fifty (50) years.

For the full USA Agreement See Petitioner COB # 11 pp. 188-206.

While there is no Florida case on point regarding the use of a power-of-attorney appointing someone other than the property owner to petition for annexation, there is a case from Wisconsin that is directly on point and analogous to Florida's law of voluntary and involuntary annexations. That case is attached for reference as part of Petitioner's Appendix. [See Petitioner COB # 30 pp.441-458] This case involved

a dispute between the town of Medary and the City of La Crosse. One of the parcels of land to be annexed was owned by two individuals. One part-owner signed a special power-of-attorney to the other owner for annexation purposes. On the petition for annexation, the designee of the special power-of-attorney signed for himself as well as for the other owner who had designated him as his agent for annexation. The Wisconsin statute required that a petition for annexation had to be signed personally by the owner. The trial court found that a property owner who signs a petition for annexation is exercising a property right, and the signature by the special power-of-attorney was valid. [*See Town of Medary v. City of La Crosse*, 88 Wis.2d 101, 107 (1979)]

The *Medary* Court also made a distinction between Wisconsin's voluntary and involuntary annexation statutes related to the use of a power-of-attorney which is analogous to Florida's voluntary and involuntary annexation process. In both states the voluntary annexations are initiated by the property owner. In both states, the involuntary annexation involves an election or a referendum process where the residents of the proposed annexed property participate. While the *Medary* Court found that a power-of-attorney from the property owner to another could be used in signing a petition for voluntary annexation, the use of a power-of-attorney in an involuntary annexation could not be used. The difference was that a vote was a

personal right that could not be designated to another, while a property right of ownership could be transferred.

II. THE COUNTY WAIVED ITS RIGHT TO SEEK A CERTIORARI REVIEW BY THE CIRCUIT COURT BY NOT PASSING A RESOLUTION TO INVOKE THE DISPUTE RESOLUTION PROCESS *[SECTION 171.081, FLORIDA STATUTES]* BETWEEN THE CITY AND COUNTY WITHIN THIRTY (30) DAYS OF PASSAGE OF CONTESTED ANNEXATIONS.

The Petitioner filed its petition for certiorari review on January 6, 2016 against the City of Brooksville for its adoption of Annexation Ordinances #'s 854, 855, 857, 859 and 862 (hereinafter, the "City Annexation Ordinances"). The lawsuit by the County was filed on the 30th day following the adoption of the first four of the aforementioned City Annexation Ordinances. Prior to the passage at the second readings of City Annexation Ordinances 854, 855, 857 and 859, the County was given notice and information from the City of its intention to annex the subject properties. The only response from the County to the aforementioned City Annexation Ordinances was a "no comment." [5]

Annexation ordinances are required to be twice published and have two public hearings. [*See* section 171.044(6), *Florida Statutes*]. For City Annexation Ordinance #'s 854, 855, 857 and 859 the first publication was on November 27, 2015 The second publication was on December 4, 2015. For these four annexations the first

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[5] The "no comment" remark by the representative from the County was acknowledged by the County in its December 17, 2015 letter. [*See* Petitioner COB # 13 p. 320]

reading and approval was on November 16, 2015 and the second and final approval was held on December 7, 2015. [*See* Petitioner COB # 8 pp. 80-83; Petitioner COB # 9 pp. 128-131; Petitioner COB # 10 pp. 168-171; and Petitioner COB # 11 pp. 207-210, respectively] The last challenged annexation was Ordinance # 862 (Brooksville Christian Church). This ordinance was first published on December 11, 2105 and then on December 18, 2015. It's first reading and approval was on December 7, 2015 followed by its second reading and final passage on December 21, 2015. [*See* Petitioner COB # 12 pp. 295-298]

On December 17, 2015 the City received an objection to the annexations contained and described in City Annexation Ordinances 854, 855, 857, 859 and 862. [*See* Petitioner COB # 13 pp. 320-321] However, four of the five challenged ordinances had already passed. It is important to note that the December 17, 2015 objection letter only raised traditional issues normally raised in an annexation challenge such as whether the annexed property is compact, may not be contiguous, may not create an enclave, may not create a finger, may not be located outside of the City's First Right to Serve water/and or sewer service. [6] The issues of whether (1) the use of a power-of-attorney for the attorney-in-fact or agent to sign the petition for voluntary annexation and (2) whether there was racial under-bounding which

[6] The first right to serve is a non-exclusive boundary area where the City and County have areas of first right to serve for water and/or sewer services. [*See* Petitioner COB # 6 pp. 33-39]

would prevent the annexation of the properties were later asserted in the County's petition and amended petition.

The governing body of a governmental entity ***must*** initiate the conflict resolution procedure by passing a resolution by its members no later than thirty days after passage of an annexation ordinance. (*Emphasis added*) [*See* section 171.081(2), *Florida Statutes*] However, the governing body of the County initiated the dispute resolution process on January 26, 2016, thirty-six (36) days after the last City Annexation Ordinance was passed and fifty (50) days past the passage of four of the challenged annexation ordinances. [*See* Petitioner COB # 14, pp. 322-323] Pursuant to section 171. 081(2), *Florida Statutes*, the County should have begun the dispute resolution process no later than January 6, 2016 for City Annexation Ordinances 854, 855, 857 and 859 and no later than January 20, 2016 for City Ordinance # 862, it did not, thereby violating the time provisions of the aforementioned statute. The record is clear that the County had many opportunities to initiate the dispute resolution process but chose to improperly and prematurely file for a certiorari review first. This choice by the County violates not only the spirit of section 171.081(2), *Florida Statutes*, but it also makes the time requirement meaningless.

Legislative intent is the polestar that guides statutory interpretation. [*See Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003)] To understand legislative intent, courts first look to the language of the statute because legislative intent is

determined primarily from the statute's text. [*See Anderson v. State*, 87 So. 3d 744, 777 (Fla. 2012)] If the statutory language is "clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." [*See Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)] Section 171.081(2), *Florida Statutes* needs no interpretation. The direction of the Florida Legislature is clear and unambiguous that a governmental entity that desires to challenge an annexation must initiate the dispute resolution process first before filing an appeal by certiorari petition.

When the legislature uses the word "must" instead of "shall," it does so to remove all possible judicial construction interpreting the word to mean "may." [*See Kelder v. Act Corporation*, 650 So. 2d 647, 649 (Fla. 5th DCA 1995)] Even where the statutory language includes may and must, the must controls.[7]

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[7] A former husband belatedly attempted to assert a homestead exemption and argued that the warning notice in section 77.041, *Florida Statutes* permitted a late request for the exemption. The warning in the statute states, "However, you ***may*** be able to keep or recover your wages, money, or property. Read this notice carefully." The statutory notice went on to warn that in order to receive an exemption you ***must*** complete a form to claim an exemption and request a hearing within 20 days after the date you receive this notice or you may lose important rights. (Emphasis added) The argument of the former husband was that the use of the word may should lead to a statutory interpretation that the word "must" does not mean its ordinary meaning. The Second DCA in reaching its decision found that to interpret the word "must" otherwise would render the time requirement meaningless. [*See Zivitz v. Zivitz*, 16 So. 3d 841, 847 (Fla. 2nd DCA 2009) and *Winn-Dixie Stores, Inc. v. Reddick*, 954 So. 2d 723, 728 (Fla. 1st DCA 2007)]

To allow the County to ignore section 171.081(2), *Florida Statutes* and proceed to litigation even with requesting the reviewing court to abate the action during the pendency of dispute resolution ignores the legislative intent of encouraging resolution prior to litigation. This type of bullying by jumping to litigation before initiating the dispute resolution process, is exactly what the legislature was attempting to avoid. Rewarding the County for its deliberate circumvention of this statute undermines the entire process that the legislature was attempting to avoid. [*See Fleeman v. City of St. Augustine Beach*, 728 So. 2d 1178, 1179 & 1180 (Fla. 5th DCA 1999), *Haines City Community Dev. V. Heggs*, 658 So. 2d 523, 526 (Fla. 1995) and *Martin County v. Yesem*, 690 So. 2d 1288 (Fla. 1997)] Annexation and its method of review is exclusively set out by the Florida Legislature to be by certiorari review pursuant to section 171.081, *Florida Statutes*.

III. THE FIRST-TIER REVIEWING COURT IN AN ANNEXATION CHALLENGE LACKS JURISDICTION OVER THE PARTIES IN A DISPUTE RESOLUTION PROCESS THAT IS REQUIRED TO BE INITIATED AND COMPLETED BEFORE THE COMMENCEMENT OF A CERTIORARI CHALLENGE.

It is clear that the Florida Legislature never intended a Circuit Court to have jurisdiction over disputing parties in the dispute resolution process during a certiorari review. A certiorari review is limited to a review of what was before the legislative body of the City Council for Brooksville. Further, the first-tier review

was designed by the Florida Legislature to occur only after 30 days of an unsuccessful dispute resolution process. While section 164.1041(1), *Florida Statutes* requires a Court to abate any litigation between two or more governmental entities, this statutory provision was not meant to circumvent the specific provision of how an annexation is to be challenged. Although one of the enumerated areas set out in the scope of the dispute resolution process includes annexation, the scope[8] involves many other areas that governmental entities may entangle themselves. Chapter 164, *Florida Statutes* is to be used generally when governmental entities have disputes. However, when an annexation is passed and another governmental desires to challenge that annexation, there is a specific process laid out by the Florida Legislature that **must** be followed.

While section 164.1041(1), *Florida Statutes* and section 171.081(2), *Florida Statutes* may seem to be in opposition to each other, the two statutory provisions can co-exist. When possible, 'we must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." [*See Clines v. State*, 912 So.2d 550, 557 (Fla.2005)]

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[8] Section 164.1051, *Florida Statutes*.

IV. SANCTIONS SHOULD BE APPLIED FOR INJECTING ERRONEOUS RACIAL DISCRIMINATION ALLEGATIONS INTO ANNEXATION CHALLENGES.

Section 171.081, Florida Statutes, establishes that a petition for certiorari review is the sole and exclusive method for challenging an annexation decision. *City of Tallahassee v. Kovach*, 733 So. 2d 576, 579 (Fla. 1st DCA 1999); *City of Lake Mary v. Seminole County*, 419 So. 2d 737 (Fla. 5th DCA 1982); *City of Ctr. Hill v. McBryde*, 952 So. 2d 599 (Fla. 5th DCA 2007); *County of Volusia v. City of Deltona*, 925 So. 2d 340 (Fla. 5th DCA 2006); and *SCA Services of Florida, Inc. v. City of Tallahassee*, 418 So. 2d 1148 (Fla. 1st DCA 1982). Where a party is entitled as a matter of statutory right to seek review in the circuit court from administrative action, the circuit court determines (1) whether procedural due process was afforded the parties, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment are supported by substantial competent evidence. *City of Ctr. Hill at* 601; *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982); *County of Volusia at* 340. In a certiorari proceeding to review an annexation action, the circuit court's review is limited "strictly and solely to the record of proceedings before" the City. *City of Miami Beach v. E. Coastline Dev. Ltd.*, 819 So. 2d 898, 900 (Fla. 3d DCA 2002); and "the court may not reweigh the evidence or substitute its judgement" for that of the City. *County of Volusia at 3*40;

Haines City Cmty. Dev. at 529 (citing *Educ. Dev. Ctr., Inc. v. City of W. Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108–109 (Fla. 1989)).

Given that the court may only consider the record before the City Council, the allegations asserted by the County in its Amended Petition based on information that was not part of the record before the City at the time of its annexation actions are irrelevant and improper for the court to consider. Therefore, not only should the court disregard any information submitted by the County that is not part of the records before the City Council, but the County should also be sanctioned for asserting matters that have no basis in law before any certiorari review under section 57.105, Florida Statutes. It has been held that the use of newspaper articles as evidence where it is not related to relevant issues and is used chiefly to embarrass and intimidate, is not only frowned upon but may become a bar disciplinary matter. *The Florida Bar v. Sayler*, 721 So. 2d 1152, 1154 (Fla. 1998) Further, the introduction of newspaper articles as evidence is fraught with ethical dilemmas for an attorney. *Dailey v. State*, 965 So.2d 38, 47 (Fla. 2007)

The Second District Court of Appeal in *Koch v. Koch*, 47 So.3d 320, 324 (Fla. 2d DCA 2010), held that there is no 21-day safe harbor notice requirement where fees are imposed on the court's own initiative as a sanction pursuant to section 57.105(1). According to Koch "[n]othing in section 57.105(1) states that a court cannot impose sanctions for the same reasons set forth in a party's failed motion for

sanctions." [*See HFC Collection Center, Inc. v. Alexander*, 190 So.3d 1114 (Fla. 5th DCA 2016)]

In support of the County's arguments for racial under-bounding, the County provided no specific facts found in the record before the City when it considered and adopted its challenged annexations. Instead, the County attached newspaper articles, a 1925 plat and a dismissed federal lawsuit in support of its position. The newspaper articles referred to a history of racial violence and past discrimination from the 1800's into the early twentieth century. [*See* Petitioner COB # 27 pp. 432-436 and # 28 pp. 437-439] Other newspaper articles written by the same writer concerned infrastructure deficiencies in an area of South Brooksville which do not relate to the challenged annexations. The Plat of Bell Terrace filed by the County in support of its argument for racial under-bounding was a 1925 plat with racial restrictions placed by the property owner on the plat. Plats of this nature were unfortunately found across the county during said time period. However, the existence of such history and/or a recorded plat, does not invalidate annexations made by a present day City. There are judicial and governmental venues for remedies for discrimination. However, that venue does not include a certiorari review of an annexation under Chapter 171, Florida Statute.

When the County was pressed for an explanation of why it pursued the racial under-bounding, County legal counsel replied that there had been no dialogue

between the County and City about planning and that the allegations of racial under-bounding at least got the attention of a lot of people. [See Petitioner COB #32 p. 507] In an attempt to further clarify its position, County legal staff then expressed that the easiest way for the racial under-bounding allegations to disappear would be for the County and City to reach an agreement in one big package. [See Petitioner COB #32 p. 509] However, no explanation was given from the County as to how racial under-bounding was related to the annexations that were being contested by the County. In a second dispute resolution meeting between the County and City after the respective legal counsels had an opportunity to speak with their board and council, the racial under-bounding was discussed again. Again, it was announced by County legal counsel that the allegations would remain even though no explanation was given how it related to an annexation challenge under Chapter 171, Florida Statutes. [See Petitioner COB # 33 pp. 544 & 545]

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REQUEST FOR ORAL ARGUMENT

Given the nature of the record and the public policy ramifications of the issues raised in Petitioner's Brief for Writ of Certiorari, the City of Brooksville respectfully requests oral argument on this matter.

Respectfully submitted this
13th day of April, 2017.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the forgoing document, ***PETITIONER'S BRIEF FOR WRIT OF CERTIORARI,*** complies with the font and general requirements of Fla. R. App. P. 9.100.

/s/Clifford A. Taylor----
Clifford A. Taylor, Esq.
For the Hogan Law Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of April 2017, the foregoing, ***PETITIONER'S BRIEF FOR WRIT OF CERTIORARI***, and the Appendix thereto, was served this day via the State of Florida E-Filing portal to: Jon A. Jouben, Esq. at jjouben@co.hernando.fl.us, and to Randall Bruce Griffiths, Esq. at Rgriffiths@co.hernando.fl.us, Alt. emails to cao@co.hernando.fl.us and phare@co.hernando.fl.us, counsel for the Respondent.

/s/Clifford A. Taylor----
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