
STETSON LAW REVIEW

VOLUME 38

SPRING 2009

NUMBER 3

ARTICLES

HOMETOWN DEMOCRACY—THE ST. PETE BEACH EXPERIENCE*

Michael S. Davis**

Nicole C. Armstrong***

I. INTRODUCTION

A. Local “Hometown Democracy” in Florida

The words “hometown”¹ and “democracy”² each carry their own connotations. In the State of Florida, the phrase “Hometown Democracy” uniquely connotes direct citizen control over major land use and growth decisions, bypassing elected officials.³ Hometown Democracy first appeared in Florida as an initiative proposing a constitutional amendment,⁴ centering on the assumption

* © 2009, Michael S. Davis and Nicole C. Armstrong. All rights reserved.

** City Attorney, City of St. Pete Beach, Florida. B.A., J.D., Stetson University, 1967. This Article does not represent the official position of the City of St. Pete Beach.

*** B.A., University of Central Florida, 2006; J.D. Candidate, Stetson University College of Law, 2009.

1. “[T]he city or town where one was born or grew up.” *Merriam-Webster’s Collegiate Dictionary* 595 (11th ed., Merriam-Webster 2003).

2. “[G]overnment by the people; . . . a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation [usually] involving periodically held free elections.” *Id.* at 331.

3. Howard Troxler, *Hometown Democracy Means War Is Coming*, St. Pete. Times 1B (June 25, 2006).

4. *Advisory Op. to the Atty. Gen. re Referenda Required for Adoption and Advisory Op. to the Atty. Gen. re Referenda for Adoption and Amend. of Loc. Govt. Comprehensive Land Use Plans*, 938 So. 2d 763, 763–764 (Fla. 2005).

that Florida's growth-management controls were both ill-conceived and detrimental.⁵ Supporters of the constitutional amendment emphasized its ability to place the power to amend and approve the state-mandated local comprehensive plans with the voters.⁶ Challengers of the amendment remained apprehensive, even more so than with foregoing pregnant-pig or high-speed-rail amendments.⁷ When the constitutional amendment failed to receive enough signatures to be placed on the 2007 ballot,⁸ local initiatives ensued, placing similar measures in local charters.⁹

B. Scope of This Article

Local Hometown Democracy initiatives transfer more "power to the people" and promote continuity and sustainability.¹⁰ These initiatives may prove to be more difficult to accomplish, at least at a cost the local government can afford, than merely amending a local city or county charter. Using St. Pete Beach, Florida as a

5. Lesley Blackner, *Take Land Use Back to Voters to Decelerate Growth Machine* ¶¶ 2–3, <http://florida.sierraclub.org/Northeast/issues/articles/HometownDemocracyJune10.html> (Sept. 21, 2006) (originally printed in the *Fla. Voice*, June 2006). The full text of the amendment can be viewed at *Re Referenda Required for Adoption and Amend. of Loc. Govt. Comprehensive Land Use Plans*, 938 So. 2d 501, 502 (Fla. 2006).

6. Julie Parker, *Stop the Madness: Say Yes to Hometown Democracy* ¶ 1, http://florida.sierraclub.org/Northeast/issues/articles/folio_editorial.html (Oct. 16, 2007) (originally published in *Folio Weekly*).

7. Troxler, *supra* n. 3, at 1B.

8. Fla. Assn. Realtors, *Hometown Democracy Fails to Make It onto November Ballot* ¶ 1, <http://www.floridarealtors.org/NewsAndEvents/n1-020408.cfm> (Feb. 4, 2008).

9. This was still a rather controversial effort. After the failure of the initiative for a Hometown Democracy constitutional amendment, opponents of the amendment speculated that many of the proponents infiltrated local communities to introduce Hometown Democracy into chartered cities and counties. See Patrick Slevin, *CON: Florida Hometown Democracy's Citizen Initiative* ¶¶ 2–3, <http://www.tcpalm.com/news/2007/jul/24/con-florida-hometown-democracys-citizen-initiative/> (July 24, 2007) (stating that Hometown advocates are spreading their campaigns across the state); see also Patrick Slevin, *Florida Hometown Democracy: Defeating Hometown, Inc. in Its Own Backyard* 2–3, <http://www.slevingroup.com/documents/DefeatingHometownInc.pdf> (Jan. 2, 2007) (stating that "Florida Hometown Democracy clearly possesses a political model that is recruiting activists, establishing favorable case law, mobilizing disenchanting voters, hijacking local governments, and polarizing communities").

10. Loraine Margeson, *RE: Florida Hometown Democracy Amendment Effort*, "Power to the People!," <http://www.itsyourtimes.com/?q=node/1417> (posted July 15, 2006); Orlando Regl. Chamber Com., *What Will "Hometown Democracy" Really Mean?* 3 EveryMonday 33 (Aug. 27, 2007) (available at http://www.imakenews.com/orcc/e_article000890910.cfm?x=b11,0,w).

case study, this Article focuses on how Hometown Democracy can be best implemented with less risk of litigation and on what the State legislature might do to facilitate the process. The experience in St. Pete Beach to date suggests that legislation may reduce exposure to litigation.¹¹

The City of St. Pete Beach recently became the first community in the State to place a version of Hometown Democracy in its charter. The measure subjects comprehensive plans or amendments, certain types of land development regulations, and redevelopment plans to referendum approval.¹² Part II of this Article examines both the specific amendments to St. Pete Beach's City Charter, which implemented Hometown Democracy, and how development and growth were traditionally governed before the advent of local Hometown Democracy. Part III examines the St. Pete Beach experience since the adoption of Hometown Democracy, including discussion of ongoing litigation. Part IV focuses on the legal and practical challenges of implementing a local version of Hometown Democracy. The final Part investigates partial legislative solutions to these challenges.

II. HOMETOWN DEMOCRACY IN ST. PETE BEACH

A. St. Pete Beach Charter Amendments

In 2006, voters in the City of St. Pete Beach amended the city charter, by initiative, to add three Sections; these Sections comprise St. Pete Beach's version of Hometown Democracy.¹³ The three Sections read as follows:

11. Other proposed "solutions" such as the "Smarter Growth Initiative" to amend Article II, Section 7 of the Florida Constitution have been drafted in response to local Hometown Democracy initiatives to amend the Constitution. *Advisory Op. to the Atty. Gen. Re: Fla. Growth Mgt. Initiative Giving Citizens the Right to Decide Loc. Growth Mgt. Plan Changes*, 33 Fla. L. Weekly S966, S967–S968 (Fla., Dec. 19, 2008). However, this purported solution is not a panacea and explicitly does not preempt current local general law as implemented in city charters. *Id.* at S968. Rather, the amendment would operate in addition to the local general law and would therefore be ineffective in alleviating the challenges of local Hometown Democracy as presented to St. Pete Beach.

12. Jennifer Liberto, *Businesses Cringe at Entrusting Land to Voters*, St. Pete. Times 1A (July 17, 2007). Other cities with similar measures include Sarasota, Sanibel, and Yankeetown.

13. These charter amendments were authorized to appear on the ballot by the court in *Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144, 1151 (Fla. 2d Dist. App. 2006).

Section 3.15: Voter approval required for approval of comprehensive land use plan or comprehensive land use plan amendment.

A comprehensive plan ("Plan") or comprehensive plan amendment ("Plan Amendment") (both as defined in Florida Statutes Chapter 163) shall not be adopted by the City Commission until such proposed Plan or Plan Amendment is approved by the electors in a referendum as provided by Florida Statute Section 166.031 or by the City Charter or as otherwise provided by law. Elector approval shall not be required for any Plan or Plan Amendment that affects five or fewer parcels of land or as otherwise prohibited by Florida Statutes including but not limited to Florida Statutes Section 163.3167.¹⁴

Section 3.16: Voter approval required for approval of or effectiveness of community redevelopment plan.

A community redevelopment plan as defined in Florida Statutes Section 163 shall not be adopted by the City Commission until such proposed community redevelopment plan is submitted to a vote of the electors by referendum as provided by Florida Statute Section 166.031 or by the City Charter.¹⁵

Section 3.18: Voter approval required for increase in allowable height of structure.

No amendment to the City's Land Development Code providing for an increase in the allowable height (as defined by the Land Development Code) of any structure (as defined by the Land Development Code) shall be adopted by the City Commission until such amendment is submitted to a vote of the electors by referendum as provided by Florida Statutes Section 166.031 or by the City Charter.¹⁶

14. St. Pete Beach Code Ordin. (Fla.) § 3.15 (2006).

15. *Id.* at § 3.16.

16. *Id.* at § 3.18.

The wording of the amendments presents problems in implementation. First, the titles of all three Sections state that voter approval is required; however, the text of only Section 3.15 requires such approval.¹⁷ Sections 3.16 and 3.18 require merely that the measures be *submitted* to the voters.¹⁸ A plain reading of the text suggests that the voters might vote against an initiative, and yet the City Commission could nonetheless approve it because it had been *submitted* to the voters in accordance with the city charter.¹⁹ Indeed, while confirming the validity of these amendments in accordance with the Florida Statutes and the Florida Constitution, the court in *Citizens for Responsible Growth v. City of St. Pete Beach*²⁰ noted that

Although we do not address the wisdom of the proposed amendments, we note that [Section 3.16] and [Section 3.18] appear to provide merely for an advisory opinion by the electorate, unlike [Section 3.15], which requires that the electorate must approve the question before the City Commission may finally adopt the land use plan or any amendment to it.²¹

Second, while it is clearly anticipated that an increase in the allowable height of a structure would be submitted to the voters, the City Commission retains the authority to interpret and define “height of a structure” for purposes of Section 3.18, both because

17. *Id.* at § 3.15.

18. *Id.* at §§ 3.15, 3.16.

19. A non-literal reading may be mandated by principles of statutory construction, such as the principle that a statute or ordinance must not be construed to reach an absurd result. *Foley v. State ex rel. Gordon*, 50 So. 2d 179, 184 (Fla. 1951); *City of St. Petersburg v. Siebold*, 48 So. 2d 291, 294 (Fla. 1950) (holding that “[t]he courts will not ascribe to the Legislature an intent to create absurd or harsh consequences, and so an interpretation avoiding absurdity is always preferred”); *State ex rel. Register v. Safer*, 368 So. 2d 620, 624 (Fla. 1st Dist. App. 1979) (holding that where a literal interpretation of a statute leads to an absurd result, the strict letter of the law should yield to the obvious intent of the legislature and that an interpretation of a statute avoiding absurdity is always preferred). But would interpreting the code ordinance to allow the City Commission to approve an initiative that the citizens vote against reach an absurd result? The more logical conclusion is that the voters have a say in a non-binding referendum; otherwise, why would the language in Section 3.15 vary from that in Sections 3.16 and 3.18? *St. Pete Beach Code Ordin.* at §§ 3.15–3.18 (mandating citizen approval in Section 3.15 and only citizen voting in Sections 3.16 and 3.18).

20. 940 So. 2d 1144 (Fla. 2d Dist. App. 2006).

21. *Id.* at 1149 n. 2.

the referendum requirement for increase in structure height is non-binding²² and in accordance with the broad home-rule power granted to the City by the Florida Constitution²³ and the Municipal Home Rule Powers Act.²⁴

B. Traditional Governance of Growth by Local Governments

Article VIII, Section 2 of the Florida Constitution secures to municipalities “governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services,” and provides that municipalities “may exercise any power for municipal purposes, except as otherwise provided by law.”²⁵ The Florida Legislature subsequently adopted the Municipal Home Rule Powers Act in order to implement the constitutional grant of home-rule power fully.²⁶ The Legislature granted the broadest home-rule power constitutionally possible by providing that “[m]unicipal purpose’ means any activity or power [that] may be exercised by the state or its political subdivisions.”²⁷

By 1984, the Legislature had mandated a statewide comprehensive plan as well as comprehensive regional policy plans.²⁸ Soon after it adopted the state comprehensive plan, the Legislature expressly recognized the importance of local involvement in the goals articulated by the state comprehensive plan by enacting

22. As discussed in the preceding paragraph.

23. Fla. Const. art. VIII, § 2(b).

24. Fla. Stat. §§ 166.011–166.411 (2008). Moreover, the power of the City Commission to interpret provisions of the charter is consistent with Florida caselaw. See *Roper v. City of Clearwater*, 796 So. 2d 1159, 1162 (Fla. 2001) (observing that looking to legislative acts to interpret certain provisions of the charter was within the City’s general powers and, in this case, not under its bond-issuing authority).

25. Fla. Const. art. VIII, § 2(b).

26. Fla. Stat. § 166.021(1).

27. *Id.* at § 166.021(2). The Municipal Home Rule Powers Act specifically provides that The provisions of this [S]ection shall be so construed as to secure for the municipalities the broad exercise of home rule powers granted by the [C]onstitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the [C]onstitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those expressly prohibited.

Id. at § 166.021(4).

28. Fla. Stat. § 163.3167. The State Comprehensive Plan is codified in Florida Statutes Sections 187.101–187.201 (2008).

the Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (Growth Management Act).²⁹ The Growth Management Act requires that every local government prepare a local comprehensive plan, consistent with the statewide comprehensive plan, to guide future development and growth at the most localized level.³⁰ It also requires that any local comprehensive plan be composed of several elements, including the following: a capital-improvements element,³¹ a future land use plan element, a traffic circulation element, general sanitary and sewer elements, a conservation element for the protection of natural resources, a recreation element, a housing element, a coastal-management element, an intergovernmental element,³² and a public-school-facilities element.³³

The Growth Management Act provides for a local government entity's involvement in and responsibility for developing the local comprehensive plan and its elements.³⁴ For example, the stated intent of the Growth Management Act is "to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development."³⁵ Further, the Growth Management Act grants municipalities and counties the power and responsibility to plan for their future development and growth, adopt and amend comprehensive plans, adopt and amend land-development regulations, and establish administrative instruments and procedures to carry out such

29. See Fla. Stat. § 163.3161 (substantially amending the Local Planning Act that was passed in 1975 and establishing the current law governing local comprehensive planning).

30. *Id.* at § 163.3167.

31. *Id.* at § 163.3177(3)(a).

32. *Id.* at § 163.3177(6)(a)–(h).

33. *Id.* at § 163.3177(12). The Growth Management Act also allows for several optional elements to be included. See *id.* at § 163.3177(7) (permitting a mass-transit element, plan element for port and aviation facilities, plan element for the circulation of recreational traffic, plan element for development of off-street parking facilities, public buildings element, community design element, general area redevelopment element, safety element for the protection of residents and property, historic and scenic preservation element, economic element establishing guidelines for commercial and industrial development, and other necessary elements particular to the area to be included in the local comprehensive plan).

34. See *id.* at § 163.3161 (stating that it is the role of local governments to guide and control future use and development and to address related problems within their jurisdictions).

35. *Id.* at § 163.3167(2).

responsibilities.³⁶ The Growth Management Act contains many procedural safeguards that contemplate public participation in the development and amendment of the local comprehensive plan.³⁷

The statutes governing development and amendment of a local comprehensive plan provide for numerous points of entry for the public to be involved in the planning process, while ultimate accountability and responsibility continue to rest with elected officials.³⁸ Traditionally, when an amendment to the local comprehensive plan is initially proposed, it is first sent to the appointed Local Planning Agency (LPA)³⁹ for review.⁴⁰ The LPA must give proper notice⁴¹ and hold a public hearing, offering members of the public an opportunity to provide spoken or written comments on the proposal.⁴² After reviewing the amendment and holding the public hearing, the LPA issues recommendations on the amendment to the local governing body.⁴³ The local governing body must then hold a properly and publicly noticed “transmittal hearing”

36. *Id.* at § 163.3167(1); *see also* Fla. Const. art. VIII, § 2(b) (declaring that “[m]unicipalities shall have governmental, corporate[,] and proprietary powers to enable them to conduct municipal government [and] perform municipal functions . . . [and they] may exercise any power for municipal purposes except as otherwise provided by law”).

37. *See e.g.* Fla. Stat. § 163.3167(1) (conferring on incorporated municipalities and counties the authority and responsibility to establish and amend comprehensive plans and to establish procedures to implement such plans); Fla. Stat. § 163.3167(11) (encouraging local governments to articulate a community vision through collaborative public participation).

38. *Id.* at § 163.3184. The type of public involvement discussed in this Subpart refers to public hearings, in which any member of the public may participate. Further, the process of amending the comprehensive plan is treated differently if it is considered a small-scale amendment. Generally, in order to qualify as a small-scale amendment, an amendment must relate to a parcel of ten or fewer acres, must not involve a textual change to the local comprehensive plan, and may not be an amendment to the future land use map. *See id.* at § 163.3187(1)(c) (stating that a small-scale amendment may be adopted only where the proposed amendment does not involve use of more than ten acres and does not involve a text change regarding the comprehensive plan’s goals, policies, and objectives).

39. *Id.* at § 163.3174(1) (requiring that “[t]he governing body of each local government . . . designate[s] and by ordinance establish[es] a ‘local planning agency,’ unless the agency is otherwise established by law”). For the specific duties of a local planning agency, *see* Florida Statute Section 163.3174(4).

40. *Id.* at § 163.3174(1).

41. *Id.* at § 166.041(1)(c)(2). If the local body is a municipality, it must comply with either Florida Statute Section 163.3184(15)(c) or Florida Statute Section 166.041(3)(c)2.b. However, if the local body is a county, it must comply with Florida Statute Section 125.66(4)(b)2.

42. *Id.* at § 163.3174(1).

43. *Id.*

where there is another opportunity for members of the public to provide verbal or written comments on the proposal directly to the local governing body.⁴⁴ The local body may then decide whether to pursue the amendment further by transmitting the complete proposed amendment to the state land-planning agency, the Department of Community Affairs (DCA).⁴⁵ It may also make changes to the amendment, which, if substantial, would have to be returned to the LPA for recommendations.⁴⁶

Upon transmittal of the amendment to the DCA and other appropriate entities,⁴⁷ the local governing body Regional Planning Council,⁴⁸ or an affected person, may submit a written request that the DCA review the plan amendment within thirty days of transmittal.⁴⁹ The DCA may also review a proposed plan amendment, even if no request is made, if it gives notice of its intent to conduct the review within thirty-five days of receipt.⁵⁰ Upon reviewing the proposed amendment, the DCA must issue an Objections, Recommendations, and Comments (ORC) report to the local governing body.⁵¹ The local governing body then has as long as 120 days⁵² to review the ORC report and hold another properly

44. *See id.* at § 163.3184(15) (stating that the local government must first hold an advertised public hearing at the transmittal stage and then a second advertised public hearing at the adoption stage).

45. *Id.* at § 163.3184(3)(a).

46. *Id.* The governing body may make changes after the amendment is transmitted as well, but if they are substantial enough, it may have to retransmit to the DCA. *Id.* While this Subpart has focused on the traditional plan amendment process outlined in Section 163.3184 of the Florida Statutes, the Legislature has provided for an expedited process in pilot program communities—one of which is St. Pete Beach. *See Fla. Stat.* § 163.32465(2). The City was subject to the expedited process for adoption and review of its comprehensive plan amendments that are the subject of this Article. *See id.* at § 163.32465(3)(b)–(e). Like the traditional process, the pilot program emphasizes public involvement through two public hearings, one held prior to transmittal of the amendment and one held prior to adoption. *Id.* at § 163.32465(4)–(5). The pilot program, however, differs in that there is less direct oversight by the DCA, which does not issue an ORC report, but, instead, may challenge plan amendments through an administrative process after they are adopted in pilot communities. *Id.* at § 163.32465(6).

47. *Id.* at § 163.3184(3).

48. *Id.* at § 163.3184(4). For more on the responsibilities of Regional Planning Councils, see Florida Statute Section 186.504.

49. *Id.* at § 163.3184(6)(a). For the definition of what constitutes “affected person,” see Florida Statute Section 163.3184(1)(a). For a discussion on standing, consult *infra* note 115.

50. *Id.* at § 163.3184(6)(b).

51. Fla. Stat. at § 163.3184(6)(c).

52. *Id.* at § 163.3184(7)(a). Except for a plan amendment under Florida Statutes Sec-

and publicly noticed public hearing, known as an “Adoption Hearing.”⁵³ Even if there are no recommendations from the DCA, the local governing body will still hold an Adoption Hearing.⁵⁴ It may then either adopt the amendment as is, adopt it with changes pursuant to the ORC report or public comment, or determine that it will not adopt the amendment.⁵⁵ By authorizing the local government to make additional changes to the amendment at the adoption stage (without requiring re-submittal of the changes to the LPA or the review agency for additional *review*), the Growth Management Act recognizes the responsibility of the local governing body to finalize the comprehensive plan amendment process.⁵⁶ The local governing body assumes the risk of defending a challenge to previously unreviewed terms.⁵⁷

Once adopted, the ability of an affected person⁵⁸ to challenge the plan amendment’s compliance presents a final point of entry for public involvement. Both the traditional review process as well as the pilot program provide such an opportunity.⁵⁹ Under the traditional review process, after the plan amendment process is complete, a final copy of the amendment is transmitted to the DCA for compliance review.⁶⁰ The Department’s review culminates in a finding of “in compliance” or “not in compliance” with the Growth Management Act.⁶¹ An administrative challenge may be brought by such an affected person within 21 days of the DCA’s compliance determination.⁶² Similarly, under the pilot program of Section 163.32465 of the Florida Statutes,⁶³ any affected person⁶⁴ may file a petition with the Division of Administrative Hearings

tion 163.3191. *Id.*

53. *See id.* (providing that “[t]he local government shall review the written comments submitted to it by the state land planning agency, and any other person, agency, or government”).

54. *Id.*

55. *Id.* This must be completed within sixty days, unless the plan amendment has been proposed pursuant to Section 163.3191 of the Florida Statutes.

56. *See id.* at § 163.3184(7) (illustrating the local governing body’s ultimate authority with respect to adoption and amendment of the comprehensive plans).

57. *Id.* at § 163.3184(7)(a).

58. *See supra* n. 49.

59. Fla. Stat. § 163.3184(9)–(10); Fla. Stat. § 163.32465.

60. Fla. Stat. § 163.3184(8).

61. *Id.*

62. *Id.* at § 163.3184(9)–(10).

63. *See supra* n. 46.

64. As defined in Fla. Stat. § 163.3184(1)(a); *see also supra* n. 49.

2009] *Hometown Democracy—The St. Pete Beach Experience* 501

(DOAH)⁶⁵ within 30 days after the local government adopts the amendment to request a formal hearing and challenge whether the amendments are in compliance.⁶⁶

III. DEFENDING HOMETOWN DEMOCRACY IN ST. PETE BEACH

The implementation of the Hometown Democracy charter amendments has given rise to extensive litigation in St. Pete Beach. This Part will give an overview of that litigation.

A. Pre-Referendum Litigation

In 2007, a political-action committee, Save Our Little Village, Inc. (SOLV), submitted six ordinances by initiative, including the following: one to amend the local comprehensive plan, one to amend the countywide land use plan, one to approve the creation of a redevelopment plan for parts of the city, and three to amend the Land Development Regulations in the Land Development Code.⁶⁷ In early 2008, SOLV brought an action against the City of St. Pete Beach to compel the measures to be submitted to the voters pursuant to Section 7.04 of the City Charter.⁶⁸ A settlement agreement (Settlement Agreement or Agreement) was reached after negotiation between the parties.⁶⁹ The Settlement Agreement governed how the measures would be submitted to the voters, including the requisite ballot titles and summaries. The Agreement also governed how a process (which included review of

65. Pursuant to Fla. Stat. §§ 120.569 and 120.57.

66. The term “in compliance” is used as defined in Florida Statutes Section 163.3184(1)(b). See Fla. Stat. § 163.32465.

67. Four of the ordinances fall under the Hometown Democracy Sections to the City Charter requiring submission to the voters—those amending the local comprehensive plan and those amending the Land Development Code. See St. Pete Beach Code Ordin. at § 7.04.

68. *SOLV, Inc. v. City of St. Pete Beach*, No. 08-002408-CI-8 (Fla. 6th Cir. Feb. 2008); See also St. Pete Beach Code Ordin. at § 7.04(e)(2) (requiring that a vote of the City be held thirty to ninety days from the date that the initiative petition is determined sufficient, even if a special election is needed to accomplish this).

69. *Settlement Agreement between Loraine Huhn, Beverly Garnett, Michael Seimetz, John H. Penny, D.D.S., and Paul E. Pfister* (collectively, “the plaintiffs”); *Save Our Little Village, Inc., St. Pete Beach City Commissioners Linda Chaney, Harry Metz, Michael Finerty, Allan Halpern, and Christopher Leonard* (collectively, “the defendants”); and *the City of St. Pete Beach* (Apr. 4, 2008) (hereinafter *Settlement Agreement*) (copy on file with *Stetson Law Review*).

the plan amendments and Land Development Regulations by the LPA, Pinellas Planning Council,⁷⁰ and the DCA) would fully implement the measures.⁷¹ The Supervisor of Elections scheduled a special election for June 3, 2008 (June 3 Election).

Two months after SOLV and the City of St. Pete Beach entered into the Settlement Agreement, a local resident sued the City in *Pyle v. City of St. Pete Beach (Pyle I)*.⁷² The plaintiff alleged that the ballot summaries and titles of four of the ordinances on the June 3 Election ballot were false, misleading, and deceptive, and failed to disclose material information to the voters.⁷³ The plaintiff sought a writ of mandamus for the City to remove these measures from the ballot and for the court to instruct the defendants to draft new summaries.⁷⁴ However, the Sixth Circuit Court ruled that because the election was already “scheduled, set, and ready to go” and “[a]bsentee ballots have even been sent and returned” this would be impractical and would likely cause more harm than any alleged problems with the ballot language.⁷⁵ The court appropriately held that

To stop this election at this point would create confusion and disorder. It would probably generate uncertainty and distrust among voters far greater than any problems with the ballot. It potentially would also undermine two referenda that are not even a part of this litigation.⁷⁶

The court left it to the voters either to approve or reject the referenda measures.⁷⁷ If in fact the ballot summaries were unclear, the

70. The Pinellas Planning Council is the Regional Planning Agency for municipalities within Pinellas County. See St. Pete Beach Code Ordin. at § 134–47.

71. The details of the Settlement Agreement are discussed *infra* part III(c). While the Settlement Agreement outlined the anticipated process for implementation, it did not impair the City’s ability to deviate from that process because neither the Settlement Agreement nor the resolutions implementing it were made part of the organic law of the City.

72. No. 08-006817CI-08 (Fla. 6th Cir. May 28, 2008) [hereinafter *Pyle I*].

73. Pl.’s Compl. at 37–38, *Pyle v. City of St. Pete Beach*, No. 08-006817CI-08 (Fla. 6th Cir. May 9, 2008). In a footnote, the plaintiff also challenged the Settlement Agreement’s restriction on the City’s ability to make changes to the ordinances proposed, even if in response to public comment at a procedural hearing. *Id.* at 5, n. 4.

74. *Id.* at 39.

75. *Pyle I*, No. 08-006817CI-08 at 1–2.

76. *Id.* at 2.

77. *Id.*

2009] *Hometown Democracy—The St. Pete Beach Experience* 503

court trusted that the voters would potentially reject the proposals on that ground alone.⁷⁸ Specifically, the court stated,

Given the opportunity, the voters may resolve this entire matter. In fact, if the voters believe the summaries are unclear they may reject the proposals for that reason alone or they may simply reject them because they think they are a bad idea. If that happens this matter is at a close without any further action by the Court.⁷⁹

The court further opined that a writ of mandamus was not appropriate, writing, in part, “[t]here is a tremendous amount of discretion in the wording of the [ballot] summaries—it is not merely ministerial.”⁸⁰ Sixth Circuit Court Judge David Demers also stated that “[i]t might well happen that the Plaintiff is unhappy with the next set of summaries and returns to Court for approval. That could go on *ad infinitum*.”⁸¹ Despite this ruling, the same plaintiff filed another lawsuit against the City of St. Pete Beach on June 2, 2008, seeking a declaratory judgment on the exact same grounds.⁸²

B. Post-Referendum Litigation

The election was held on June 3, 2008, pursuant to the court’s ruling in *Pyle v. City of St. Pete Beach*.⁸³ The voters approved all four ordinances in controversy and established them as part of the organic and governing law of the City.⁸⁴ Thereafter, on June 11, 2008, the City was named in a third lawsuit,⁸⁵ the first of the

78. *Id.*

79. *Id.*

80. *Id.* at 3.

81. *Id.*

82. *Pyle v. City of St. Pete Beach*, No. 08–8129CI–19, slip op. at 7 (Fla. 6th Cir. June 2, 2008) [hereinafter *Pyle II*]. The plaintiff challenged the language of the settlement agreement as being false, deceptive, and misleading and not fairly advising the voters of ordinance’s chief purpose. *Id.* Plaintiffs also challenged that such ballot summaries violate Section 101.161(1), and, thus, should be stricken and determined to have no force or effect. *Id.*

83. *Pyle I*, No. 08-006817CI-08.

84. See Pinellas Co. Supervisor of Elections, *St. Pete Beach Special Referendum Election: Official Results*, <http://enr2.clarityelections.com/Default.aspx?page=S&C=pinellas&eid=370> (updated June 5, 2008).

85. Pl.’s Compl., *Pyle v. City of St. Pete Beach*, No. 08–8642C1–1 (Fla. 6th Cir. June 11, 2008) (hereinafter *Pyle III*).

post-referendum suits, alleging that the ballot summaries submitted to the voters and that the June 3 Election violated Section 101.161(1), Florida Statutes.⁸⁶ At the time of the drafting of this Article, all but the first of the ballot-summary cases are still pending before the circuit court.⁸⁷

On July 23, 2008, a fourth lawsuit was filed against the City alleging that the three Land Development Regulation ordinances privy to the Settlement Agreement are inconsistent with the City's current comprehensive plan.⁸⁸ Additionally, a fifth lawsuit was filed,⁸⁹ challenging the City's authority to enter into the Settlement Agreement and seeking declaratory judgment that the Agreement was "an ultra vires⁹⁰ attempt to contract away the police powers of the City . . . [and as such] the [p]roposed [o]rdinances are null and void *ab initio*."⁹¹⁹² On September 25, 2008, the City was served with an administrative challenge to the local comprehensive plan under Section 163.32465, Florida Statutes.⁹³ This suit brings the total number of lawsuits to six, with

86. Fla. Stat. Ann. § 101.161(1) (West 2008). This statute governs ballot language requirements for referenda. *Id.* For more on these requirements, see *infra* part III(a). Plaintiff again alleged that the Settlement Agreement's ordinances were "false, deceptive, and misleading and [do] not fairly advise the voters of the chief purpose of the [o]rdinances at issue and that such ballot summaries violate[d] [S]ection 101.161(1) . . . and that as such . . . should be stricken, and should be determined to have no force or effect." Pl.'s Compl. at 38, *Pyle* III. Other challenge options exist under Section 102.168 of the Florida Statutes, Contest of Elections, to set aside the results of the referendum based upon misconduct or fraud of an election official or member of the Canvassing Board. Such complaints must be filed within ten days after certification of the election results. Fla. Stat. § 102.168(2). The City Code contains a parallel provision allowing for protest of election returns by presenting a complaint in circuit court within five days of the election, or prior to adjournment of the canvassing board, whichever is later. See St. Pete Beach Code Ordin. (Fla.) § 38.15(e). Presumably, the Plaintiff did not proceed under either of these provisions because the burden to prove fraud or misconduct is much higher than proof of misleading language in a ballot summary. Further, such allegations seek to hold election officials and candidates responsible, rather than the City Commission or petition committee, which are the targets of this challenge.

87. For a discussion of these cases, review *supra* notes 73–85 and accompanying text.

88. *Kadoura v. City of St. Pete Beach*, No. 08-10818CI-19 (Fla. 6th Cir. July 23, 2008).

89. Pl.'s Amended Compl., *Kadoura v. City of St. Pete Beach*, No. 08-12498-CI-19 (Fla. 6th Cir. served Sept. 25, 2008).

90. "[B]eyond the scope of power allowed or granted . . . by law." *Black's Law Dictionary* 1559 (Bryan A. Garner ed., 8th ed., West 2004).

91. "From the beginning." *Id.* at 5.

92. Pl.'s Amended Compl. at 10–11, *Kadoura*, No. 08-12498-CI-19.

93. *Pyle v. City of St. Pete Beach*, No. 08-4772GM (Fla. Div. Admin. Hrgs. Sept. 24, 2008). For an example of the community response and coverage of this challenge, see Estrada, *Judge Ponders Challenge to St. Pete Beach Plan*, <http://www.tampabay.com/news/>

multiple amended complaints and several instances of threatened litigation.⁹⁴

The burden of this stagnant and litigious environment has become significant for the small city of St. Pete Beach with its limited resources.⁹⁵ The unresolved lawsuits have impaired implementation of the ordinances.⁹⁶ Further, in May 2009, City Commissioners voiced their growing concern over the City's legal budget.⁹⁷ By that time, the City had already spent 99.78% of its annual legal budget for litigation with five months remaining in the fiscal year and several lawsuits pending.⁹⁸ Local residents have also expressed concern over tax-payer funded legal battles and the pending lawsuits.⁹⁹

C. The Settlement in St. Pete Beach

In St. Pete Beach, the Settlement Agreement elegantly addressed how to mesh the Growth Management Act adoption process with the local Hometown Democracy referendum requirement and provided a detailed and lawful method to do so.¹⁰⁰ This Article next discusses the portions of the Agreement that address the interplay between the Growth Management Act and the charter amendment process for approving comprehensive plan amendments.

The Agreement provided that if the voters approved Ordinance 2008–10, specifying new comprehensive plan amendments, then the City shall give notice and adopt on first reading a separate ordinance (Ordinance 2008–15), thereby, adopting the same comprehensive plan amendment that had been approved by the

localgovernment/article975863.ece?comments=legacy (Feb. 15, 2009).

94. See *supra* nn. 67–79, 82–85, 88 and accompanying text (discussing the lawsuits brought against the City of St. Pete Beach). Five lawsuits are currently pending at the time of this Article's publication.

95. *Lawsuits Drain Legal Funds to Less than \$500*, St. Pete. Times (Neighborhood Times) (May 3, 2009).

96. See e.g. Peter Roos, Editorial, *Florida Must Defeat "Hometown Democracy" or Suffer the Fate of St. Pete Beach*, <http://florida2010.org/media2.php?id=98&t=2> (May 24, 2009) (originally published in *ParadiseNEWS*).

97. *Id.*

98. *Id.*

99. Roos, *supra* n. 96.

100. *Settlement Agreement*, *supra* n. 69.

voters and transmitting it to the appropriate review agencies.¹⁰¹ The Agreement reflects the Florida Supreme Court's decision regarding whether amendments to land-development regulations would first have to be referred to the LPA under the terms of the Growth Management Act before they can be placed on the ballot for approval by the electorate.¹⁰² The Court has held that they did not have to be referred to the LPA because they were not adopted by ordinance but rather were adopted by referendum.¹⁰³

The adoption process outlined in the Settlement Agreement follows this reasoning in the treatment of the comprehensive plan amendment contained in Ordinance 2008–10.¹⁰⁴ The Agreement provided for the processing of the comprehensive plan amendment in Ordinance 2008–15, after approval by referendum of the same plan via Ordinance 2008–10.¹⁰⁵ Once the voters approved Ordinance 2008–10, the City Commission was required to initiate the comprehensive plan amendment and adoption process in the Growth Management Act by transmitting Ordinance 2008–15 as a ministerial duty of the City.¹⁰⁶ The City's ability to amend the plan that the voters adopted in Ordinance 2008–10 was logically restricted to be consistent with Ordinance 2008–10, pursuant to Section 3.15 of the City's charter, which only authorizes adoption of comprehensive plan amendments, which have been approved by referendum.¹⁰⁷ A city cannot act in a manner that is inconsis-

101. *Id.* at 4. The amendment would be reviewed by the appropriate agencies pursuant to Florida Statutes Section 163.32465(4). Fla. Stat. § 163.32465(4).

102. See generally *City of Cocoa Beach v. Vacation Beach, Inc.*, 852 So. 2d 358 (Fla. 5th Dist. App. 2003) (addressing the issue of whether the charter amendments to the land use regulations comply with the provisions of the Growth Management Act); see also Jason M. Bard, *Land-Use Planning and Zoning: Comprehensive Plan—In Compliance*, City of Cocoa Beach v. Vacation Beach, Inc., 33 Stetson L. Rev. 778 (2004) (explaining the Fifth District's conclusion with respect to Florida's Growth Management Act that a charter amendment, which repeals a "land development regulation" should be treated as such a regulation, and that an amendment adoption by popular vote is not an action by a "governing body").

103. *City of Cocoa Beach*, 852 So. 2d at 360. "Ordinance" is defined as "legislative action of the governing body." *Id.* at 360–361 (emphasis in original).

104. *Settlement Agreement*, *supra* n. 69, at 4.

105. *Id.*

106. *Id.* This is consistent with Florida caselaw. See *City of Cocoa Beach*, 852 So. 2d at 360–361 (holding in part that once the voters had approved the referendum, it was a ministerial duty of the city to carry out its provisions).

107. Charter of the City of St. Pete Beach, Florida art. III, § 3.15. "A comprehensive plan or comprehensive plan amendment . . . shall not be adopted by the City Commission. Until such proposed plan or plan amendment is approved by the electors in a referendum as provided by Florida Statutes Section 166.031 . . . elector approval shall not be required."

2009] *Hometown Democracy—The St. Pete Beach Experience* 507

tent with its charter or, in the case of St. Pete Beach, inconsistent with a voter-approved process.¹⁰⁸

The Agreement also required that a final Adoption Hearing, meeting the requirements of Florida Statutes Section 163.32465(a), be held thirty to sixty days after receipt of the DCA ORC report or at the first regularly scheduled City Commission hearing after the expiration of the thirty-day time period prescribed by statute, whichever came first.¹⁰⁹ The Agreement carefully preserved the power of the City Commission to reject the Ordinance,¹¹⁰ adopt the Ordinance unchanged, or adopt the Ordinance with changes or exceptions addressing provisions that the DCA identified as inconsistent with state law or regulations.¹¹¹ Any alternative provisions, goals, objectives, or policies would again be placed before the voters.¹¹²

Id.

108. See *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 803 (Fla. 1972) (stating that “the paramount law of a municipality is its charter, (just as the State Constitution is the charter of the State of Florida,) [sic] and [the charter] gives the municipality all the powers it possesses, unless other statutes are applicable thereto”); *Clark v. North Bay Village*, 54 So. 2d 240, 242 (Fla. 1951) (describing a municipal charter in terms of a constitution that enumerates all the municipality’s powers); *Meeks v. Fink*, 89 So. 542, 544 (Fla. 1921) (noting that municipalities “have and can exercise only such power as is conferred by express or implied charter provisions”); *Gontz v. Cooper City*, 228 So. 2d 913, 914 (Fla. 4th Dist. App. 1969) (explaining that “the paramount law of a municipal corporation is its charter, which resembles the constitution of a state and gives the municipality all the powers it possesses, unless other statutes are applicable [sic] to it”).

109. *Settlement Agreement* (from *Save Our Little Village, Inc. v. Commissioner Linda Chaney*, No. 08-002408-CI-8 (Fla. 6th Cir. 2008)), *supra* n. 69, at 4 § 6. A second public hearing concerning whether or not to adopt one or more comprehensive plan amendments is required by statute. Fla. Stat. § 163.32465(5)(a). This second hearing would come after receiving any DCA objections, recommendations, or comments, which must be issued within sixty days of the DCA’s receipt of a proposed amendment. *Id.* at § 163.3184(6)(c). The regional-planning agency must transmit the proposed amendment to the local government and the state-land-planning agency (DCA) for written comment at least ninety days before the adoption of a comprehensive plan or element or portion thereof. *Id.* at § 163.3167(3).

110. *Settlement Agreement*, *supra* n. 69, at 5 § 6. The Agreement specifically states that the City Commission may deny the Ordinance and outlines the procedure for doing so. *Id.* at 5 § 6(b). If the City Commission denies the Ordinance, the citizens would have a time period within which to establish a new initiative committee and require the City Commission to either adopt the Ordinance or place it before the voters for approval or rejection. *Id.*

111. *Id.* at 5 § 6(a), (c). The procedure through which the state-land-planning agency reviews proposed plan amendments is outlined in Florida Statutes Section 163.3184(6). While Ordinance 2008–10 expressly provided for modification, and Ordinance 2008–15 did not, Ordinance 2008–10 was neither repealed nor superseded by Ordinance 2008–15 and continued to provide the City with that authority.

112. *Id.* at 5 § 6(c).

The Settlement Agreement was therefore drafted carefully to preserve the integrity of the referendum process and direct democracy, while avoiding an improper or unlawful contracting away of the police power and assuring consistency with the City Charter.¹¹³ It was also structured carefully to conform to the provisions of the Growth Management Act.¹¹⁴

IV. POTENTIAL LEGAL CHALLENGES TO LOCAL HOMETOWN DEMOCRACY

The experience in St. Pete Beach suggests that ballot summary requirements, the restrictions contained in the Growth Management Act, and the legal status of local comprehensive plan amendments, once approved by the voters, all present significant opportunities for legal challenges, which may result in extensive and lengthy litigation.¹¹⁵

A. Ballot Summary and Growth Management Act Requirements

Florida Statutes Section 101.161 requires that each ballot measure be composed of both a ballot title and a ballot summary.¹¹⁶ The ballot title can be no more than fifteen words, and

113. Nonetheless, as discussed *supra* part III(b), it has now been challenged in court on precisely these grounds. Amend. Compl. for Declaratory Judm. at 12 Count I, *Kadoura*, No. 08-12498-CI-19. The amended complaint in *Kadoura* alleges that the Settlement Agreement constitutes an ultra vires act on the part of the City. *Id.*

114. At some points, the Settlement Agreement explicitly references and satisfies the requirements of the Growth Management Act. See e.g. *Settlement Agreement*, *supra* n. 69, at 4 § 6 (stating that if the Ordinance is approved, the City Commission shall notice and conduct a first reading of the Ordinance in accordance with Florida Statutes Section 163.32465(6); this Section also states that the notice and scheduling of a final adoption hearing meeting shall conform to Section 163.32465(5)). *Id.*

115. Local Hometown Democracy does not alter the statutory requirements for standing to challenge the actions of the City Commission. In order to have standing to challenge a comprehensive plan amendment, one must be considered to be an “affected person.” See e.g. Fla. Stat. § 163.3187(3)(a) (permitting any affected person to file a petition with the Division of Administrative Hearings to challenge the compliance of certain small scale development amendments). An “affected person” under the Growth Management Act is someone who owns property, resides, or owns or operates a business within the boundaries of the local government that adopted the plan or plan amendment. Fla. Stat. § 163.3184(1)(a). To have his or her views considered, and to establish standing to challenge later actions, an “affected person” must submit “oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendments and ending with the adoption of the plan or plan amendment.” *Id.*

116. Fla. Stat. § 101.161(1).

the ballot summary can be no more than seventy-five words.¹¹⁷ Additionally, the ballot summary must set forth the chief purpose of the measure.¹¹⁸ The Florida Supreme Court has held that stating the chief purpose is meant to facilitate an intelligent and informed voting class¹¹⁹ and to prohibit the drafting of ballot summaries where the stated purpose objectively mischaracterizes the effect of the ballot measure.¹²⁰ The Court has termed this “hiding the ball.”¹²¹ At the same time, the provision does not require either the impossible task of setting out a laundry list of every element in the measure or of stating every possible effect of the measure.¹²² The challenge when drafting a ballot summary is

117. *Id.*

118. *Id.* In 2002, the Florida Supreme Court declared the requirement for a fiscal impact statement that is also contained in this Section unconstitutional. *Smith v. Coalition to Reduce Class Size*, 827 So. 2d 959, 960 (Fla. 2002). Therefore, this requirement is not included in this discussion.

119. *Advisory Op. to the Atty. Gen. re Right to Treatment and Rehabilitation*, 818 So. 2d 491, 497 (Fla. 2002) (quoting *Advisory Opinion to the Atty. Gen. re Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994) and noting that the ballot title and summary are to provide the voter with notice of the issue in an amendment and not mislead him, such that the voter can cast an intelligent and informed ballot); *Advisory Op. to the Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (quoting *Advisory Op. to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998), *Advisory Op. to Atty. Gen. re Fee on Everglades Sugar Production*, 681 So. 2d 1124, 1127 (Fla. 1996) and stating that the ballot title and summary requirement are meant “to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot”); *accord City of Miami v. Staats*, 919 So. 2d 485, 487 (Fla. 3d Dist. App. 2006) (holding that the purpose requiring the substance of the amendment to be printed clearly and unambiguously on the ballot is “to provide the voter with fair notice of the content of the proposed measure so that he or she will not be misled as to its purpose and may intelligently cast his or her vote”).

120. *Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000). The Court here dealt with an amendment that purported to “preserve” the death penalty but would have the main effect of nullifying the Cruel and Unusual Punishment Clause. *Id.* The Court held that when a court evaluates an amendment’s chief purpose, “a court must look not to subjective criteria espoused by the amendment’s sponsor but to objective criteria inherent in the amendment itself . . .” *Id.*

121. *Id.*

122. *Advisory Op. to the Atty. Gen. re Indep. Nonpartisan Commn. to Apportion Legis. and Cong. Dists. which Replaces Apportionment by Legis.*, 926 So. 2d 1218, 1228 (Fla. 2006) (citing to *Carroll*, 497 So. 2d at 1206); *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986) (holding that the ballot summary need not “explain every ramification of a proposed amendment, only the chief purpose”); *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (noting that people do not wait until the last minute to decide how to vote); *Florida Hometown Democracy, Inc. v. Cobb*, 953 So. 2d 666, 673 (Fla. 1st Dist. App. 2007) (holding that all possible effects of proposed legislation need not be listed in the ballot summary); *see Miami Heat LP v. Leahy*, 682 So. 2d 198, 203 (Fla. 3d Dist. App. 1996) (recognizing that a ballot summary concerning the effect of an ordinance on the expansion and opera-

striking the balance between fully informing the voting class and enumerating a complete list, particularly with respect to a complex proposal such as one containing extensive amendments to a local comprehensive plan.¹²³ In such circumstances, it may be impossible to achieve both objectives perfectly. The law does not require such perfection.¹²⁴

Florida Statutes Section 166.031 allows ten percent of the registered voters at the last municipal election to place a charter amendment on the ballot.¹²⁵ Section 7.04 of the St. Pete Beach City Charter extends this ten-percent rule to initiative and referendum petitions.¹²⁶ Therefore, once sufficient signatures have been obtained, the measure *must* go on the ballot.¹²⁷ Moreover,

tion of a maritime project need not “set forth the ordinance verbatim nor explain its complete terms at great and undue length” because to do so “would hamper instead of aiding the intelligent exercise of the privilege of voting”; *see also* Fla. Atty. Gen. Op. 076-189 (Sept. 14, 1976) (stating that only the substance of a proposed constitutional amendment, not the entire text thereof, should appear on the ballot).

123. *See Advisory Op. to the Atty. Gen. re Protect People, especially Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1194 (Fla. 2006) (discussing an amendment to institute a comprehensive statewide tobacco education/prevention program, and acknowledging that with such a complex program, the ballot summary need only clearly and unambiguously state the chief purpose of the proposed amendment, not set forth every component of the program).

124. *See Hill*, 72 So. 2d at 798 (noting that the law requires a ballot to be fair and advise the voter sufficiently to permit intelligent voting, but the law does not require that every proposition on a ballot “appear at great and undue length”).

125. Fla. Stat. § 166.031(1). Similarly, Section 8.02 of the St. Pete Beach City Charter contains the same requirement. Charter of the City of St. Pete Beach, Florida art. VIII § 8.02. According to the Pinellas County Supervisor of Elections, as of July 2008, there were 7,757 registered voters in St. Pete Beach; therefore, 775 signatures are required in order for a charter amendment to go on the ballot. Deborah Clark, Supervisor of Elections, *December Number of Voters by City/Wards*, available at http://www.votepinellas.com/ew_pages/files/Month%20End/2008/2008_12_31/votersbycitywards.pdf (accessed July 24, 2009).

126. Charter of the City of St. Pete Beach, Florida art. VII § 7.04(b)(1).

127. Fla. Stat. § 166.031 (requiring that the governing body of a municipality place a proposed charter amendment to a vote of the electors once submitted by petition signed by 10% of registered electors); Charter of the City of St. Pete Beach, Florida art. VII § 7.04(e)(2) (requiring that a sufficient initiative or referendum petition—i.e. having 10% of the registered electors’ signatures and having been timely submitted—must be submitted to the city’s voters thirty to ninety days from the date the petition was deemed sufficient if the commission fails to adopt a proposed initiative or fails or repeal the referred ordinance). A Florida Statute indicates that provisions concerning the power of initiative be construed so as to secure for municipalities the broad exercise of their home-rule powers. Fla. Stat. § 166.021(4). However, it should be noted that the City Charter cannot violate some other law. *See State v. City of St. Petersburg*, 144 So. 313, 315 (Fla. 1932) (holding that “when the Legislature passes a municipal charter act, and in such act . . . continues the existence of all outstanding municipal ordinances, . . . in order to authorize the

these measures are often not drafted or reviewed by City officials; they are typically drafted by the citizens' group or political-action committee proposing the initiative.¹²⁸ The City is nevertheless *required* to present the measures to the voters.¹²⁹

There is authority to suggest that challenges to ballot language may be cured by voter approval.¹³⁰ However, this rule does not stop legal challenges from being brought.¹³¹ Further, there is currently no expressed statute of limitations for a legal challenge specific to the ballot language. Therefore, given the sequence of a comprehensive plan amendment process, the potential theoretically exists for voters to approve a comprehensive plan amendment, transmit the plan amendment through the appropriate channels, pursuant to the Growth Management Act, and yet have the plan still be ripe for a legal cause of action for the language used in ballot titles or summaries. Although laches and other eq-

municipality to depart from the limitations imposed by the ordinances . . . , specific and express language must be set forth in such new charter act clearly showing an intention on the part of the Legislature to nullify and supersede the terms of the [ordinances] which were [valuable to certain people]").

128. See e.g. *Citizens for Responsible Growth*, 940 So. 2d at 1146 (Fla. 2d Dist. App. 2006) (concerning petitions for referenda to amend the City of St. Pete Beach's charter that were brought forth by Citizens for Responsible Growth, a political action committee); *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So. 2d 637, 640 (Fla. 2d Dist. App. 2007) (considering a challenged amendment sponsored by the Sarasota Alliance for Fair Elections, a political action committee).

129. Fla. Stat. § 166.031(1); Charter of the City of St. Pete Beach, Florida art. VII § 7.04(e)(2). These sections discuss the ten-percent requirement, explained using St. Pete Beach as an example, *supra* n. 110.

130. *Sylvester v. Tindall*, 18 So. 2d 892, 895 (Fla. 1944) (holding that if an amendment is put before the people without a prior question having been raised as to the method by which it came before them, a favorable vote by the people cures the defect in the form of its submission).

131. See generally *Sylvester*, 18 So. 2d at 896 (noting that while in this decision the Court considered the defect to be cured by adoption of the amendment by the voters, the defect in the proposed amendment at issue "was not a serious one," suggesting that the outcome may have been different were the defect more "serious"); *State v. Thompson*, 163 So. 270, 277 (Fla. 1935) (recognizing that citizens of the State have the right to have constitutional formalities observed as they are designed to inure to the benefit of all citizens as a matter of vested legal right and that citizens are entitled to have the state constitution "remain sacrosanct, unaltered, and untampered with"). The Alabama Supreme Court, in a four-to-three decision, has taken a different stance with respect to voters' ability to cure a defect. *Johnson v. Craft*, 87 So. 375, 387 (Ala. 1921) (holding that, in Alabama, any "theory that a favorable vote by the electorate, however unanimous, on a proposal to amend a Constitution, may cure, render innocuous, all or any antecedent failures to observe commands of that Constitution in respect of the formulation or submission of proposed amendments thereto, does not prevail").

uitable principles would likely support an earlier time limit, these principles do not provide an adequate degree of certainty to the local operating governmental entity.

The Growth Management Act limits the number of comprehensive plan amendments that can occur in one year to two.¹³² However, there is no corollary provision limiting the number of citizens' initiatives that can be submitted. Once a citizen initiative has complied with the ten-percent-signature rule governing petitions, the measure must go on the ballot.¹³³ The City's obligation to place a valid initiative on the ballot is ministerial rather than discretionary.¹³⁴ While not an issue in St. Pete Beach, local Hometown Democracy may require city resources to be used to hold a referendum for a plan amendment¹³⁵ that cannot legally be effectuated under the Growth Management Act. It may also limit the ability of the local governing body to propose its own plan amendment after initiatives, which are obligatorily placed on the ballot, have already consumed the maximum of two amendments allowed by the Growth Management Act.¹³⁶

In 1995, the Legislature restricted when a local comprehensive plan amendment may be subject to a referendum or proposed by initiative under the Growth Management Act.¹³⁷ Specifically, "[a]n initiative or referendum process in regard to . . . any local comprehensive plan amendment or map amendment that affects

132. *Id.* at § 163.3187(1). While there are several exceptions, such as for minor amendments (as discussed in the following paragraph), a comprehensive plan is, by its very nature, widespread and therefore the majority of amendments to such plans would not be "minor." There is no exception for initiative proposals; it is the property owners' rights that hang in the balance.

133. St. Pete Beach Code Ordin. at § 7.04.

134. See Michael S. Davis & Mirella Murphy James, *A Participatory Democracy with Archaic Rules: Initiative, Referendum, and Recall at the Municipal Level*, 22 *Stetson L. Rev.* 715, 717–719 (1993) (explaining that the right to petition the government at the municipal level is guaranteed, and the governing body must present a valid initiative to the electorate for a vote).

135. While state economists are currently computing the actual costs of these elections, the Florida Supreme Court has contended that such expenses may not be as drastic as the economists are speculating. See *Advisory Op. to the Atty. Gen. re Referenda Required for Adoption and Amendment of Loc. Govt. Comprehensive Land Use Plans*, SC06-521 (Sept. 25, 2008) (reviewing the financial impact statement of the proposed amendment). However, this is merely one type of cost that can be incurred in local communities operating under local Hometown Democracy charter initiatives.

136. *Id.*

137. Fla. Stat. § 163.3167(12).

five or fewer parcels of land is prohibited.”¹³⁸ The St. Pete Beach City Charter also contains this limitation.¹³⁹ However, it is uncertain how the term “affects” might be interpreted by the courts. Florida caselaw dictates that the limitation to five or fewer parcels implies the allowance of referendums for community development plans or city land use plans or amendments which affect six or more parcels.¹⁴⁰ However, the Florida Supreme Court has not given guidance as to how “affects” is to be defined or interpreted. A comprehensive plan is, by its plain meaning and construction, comprehensive. Virtually any change to a plan that is designed to be comprehensive would be wide-ranging and all-inclusive—likely *affecting* more than five parcels of land.

B. Legal Status of a Voter-Approved Comprehensive Plan Prior to Completion of the Adoption Process

An additional legal issue is the legal status of a voter-approved comprehensive plan amendment prior to approval by the state-land-planning agency and during the review process. Such a comprehensive plan amendment would be considered part of the organic law of the City¹⁴¹ but not yet a fully effectuated comprehensive plan amendment for purposes of the Growth Management Act. Each city official would be governed by such “law of the city” and would be obligated to take all requisite steps of the voter-approved amendment, including providing legal defense.¹⁴²

The inconsistency between the Growth Management Act’s requirements for additional participation in the comprehensive plan amendment process and the Hometown Democracy charter provisions results in a procedural conundrum for the local governing body. In the St. Pete Beach experience, the Settlement Agreement resolved the issue nicely by preserving the vote of the citizens, in

138. *Id.*

139. St. Pete Beach Code Ordin. at § 3.15.

140. *See Citizens for Responsible Growth*, 940 So. 2d at 1150 (concluding that the legislature inferentially permitted initiatives and referendums for such amendments or plans that affect six or more parcels of land).

141. *See* St. Pete Beach Code Ordin. at § 7.04 (illustrating the initiative and referendum petition procedure and the effect and results of elections).

142. The Settlement Agreement also provides for precisely that eventuality and requires such a defense. *Settlement Agreement*, *supra* n. 69, at § 8; *Save Our Little Village, Inc. v. Commissioner Linda Chaney*, 08-002408-CI-8 (Fla. 6th Cir. 2008).

approving the comprehensive plan amendment proposed by Ordinance 2008–10. The local governing body’s ultimate responsibility was to finalize the comprehensive plan amendment process through the conclusion of Ordinance 2008–15.¹⁴³ Under the Agreement, the City moved the citizens’ initiative forward through the state comprehensive plan review process while preserving the City’s right to disapprove the amendments at the conclusion of the process.¹⁴⁴ However, as discussed *infra*, the Settlement Agreement is not a permanent solution to the inherent inconsistency between the Growth Management Act requirements and local Hometown Democracy.

C. Practical Considerations of Local Hometown Democracy

The concerns of citizens pertaining to accountability, answerability, and the possible abuse of government power by a majority are not unique to the twenty-first century. The founders of our nation’s government possessed these same concerns and dealt with them by establishing a government rooted in the principles of “republicanism,” as opposed to pure democracy.¹⁴⁵ James Madison, the central author of the United States Constitution, wrote in favor of the concept of a “republic” and opposed the idea of a pure democracy.¹⁴⁶ His desire was a government accountable and answerable to the people through their representatives.¹⁴⁷ He argued for a lasting system that would not descend into chaos and tyranny.¹⁴⁸ Essential to Madison’s philosophy was the idea that a

143. *Settlement Agreement*, *supra* n. 69, at §§ 2–4.

144. *Id.*

145. Gordon S. Wood, *The Creation of the American Republic, 1776–1787*, 46–90, 222–226 (U.N.C. Press 1969).

146. James Madison, *The Federalist Papers* No. 10, 76–79 (Clinton Rossiter, ed., New Am. Lib. 1961).

147. *Id.* at 71–79.

148. *Id.* As James Madison stated,

From this view of the subject it may be concluded that a pure [direct] democracy . . . can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have errone-

government be able to operate efficiently.¹⁴⁹ He recognized that there was simply no plausible way for the government to operate in a manner that would please every individual.¹⁵⁰ The efficiency envisioned by our nation's founders may be impaired by the litigious environment of the twenty-first century.

Additionally, by drawing comparisons from communities with similar Hometown Democracy measures in San Francisco and Ohio, some land planners have raised concerns that Hometown Democracy will produce a “consistent negative impact on housing construction.”¹⁵¹ These concerns expressed, in part, a fear that “[f]ewer homes being built translates into higher housing costs for everyone,” including developers of affordable housing.¹⁵²

V. WHAT CAN BE DONE?

While the Settlement Agreement addressed certain concerns for St. Pete Beach, it is not a situation that is easily reproduced in other jurisdictions. It is a carefully drafted agreement that provides for the implementation of this *particular* plan amendment in a manner that satisfies the requirements of both Florida Statutes and local Hometown Democracy charter provisions.¹⁵³ However, it has no legal authority otherwise. Subsequent litigation has been brought challenging the City's ability to enter into the Agreement itself.¹⁵⁴ Such litigation indicates that something more must be done—something that clarifies the legal status of Home-

ously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking.

Id. at 76.

149. *Id.* at 71–79.

150. *Id.*

151. Leonard Gilroy, *Hometown Democracy Amendment Threatens Economy, Property Rights, Affordable Housing* (The James Madison Inst. 2007), <http://www.jamesmadison.org/article/php/575.html>.

152. *Id.*

153. *Settlement Agreement*, *supra* n. 69, at § 6; *Save Our Little Village, Inc. v. Commissioner Linda Chaney*, 08-002408-CI-8 (Fla. 6th Cir. 2008).

154. In *Kadoura*, plaintiffs brought an action against the City of St. Pete Beach challenging the validity of a contract in which a municipality attempts to contract away its authority. *Kadoura*, 08-12498CI-19.

town Democracy under Florida Law. Since the City lacks the power to restrict a voter's ability to propose charter amendments,¹⁵⁵ the solution might be for the Legislature to make the objectives of Hometown Democracy more easily attainable, at a cost that a municipality can afford. The legislature might address, for example, such areas as ballot-summary requirements and the interplay between the Growth Management Act and local citizen initiatives.¹⁵⁶

Indeed, the frequency of comprehensive plan amendments is limited by law but not restricted by the initiative process. Although the Settlement Agreement adequately addresses the process and provides St. Pete Beach with an appropriate and lawful means for the adoption and implementation of the measures adopted by referendum, the Legislature should consider an amendment to the Growth Management Act that would assure an orderly process for future amendments or for other communities. The amendment might specifically govern review of comprehensive plan amendments when adopted by local initiative and where mandated by a local version of Hometown Democracy. Such an amendment would reduce the risk of litigation and enable city officials to act with certainty in performing their civic duties. Additionally, such legislation would eliminate needless litigation over the interplay between local initiatives and the procedures of the state and local comprehensive-development acts while providing property owners with certainty as to their rights.

The Legislature might also consider an amendment to the general elections law to provide a specific statute of limitations for ballot referendum challenges of comprehensive plan amendments. While equitable principles may insulate local governments from tardy challenges, equitable principles are creatures of the judiciary and subject to discretion.¹⁵⁷ Therefore, they will not fore-

155. See *Holzendorf v. Bell*, 606 So. 2d 645, 648–649 (Fla. 1st Dist. App. 1992) (stating that the Constitution provides only the Legislature with the authority to grant the right of referendum).

156. Such a conclusion is even supported by Department of Community Affairs Secretary, Tom Pelham. See Craig Pittman, *For Floridians, Enough May Finally Be Enough Growth*, St. Pete. Times (Feb. 10, 2008) (discussing Pelham's opinions and proposals regarding growth plans and amendments).

157. See *In Re Clarification of Florida Rules of Practice and Procedure*, 281 So. 2d 204 (Fla. 1973) (stating that even though the Florida Supreme Court may adopt a statute as a rule, this adoption does not grant the Legislature any power to amend the rule indirectly

close a delayed challenge until it is already the subject of litigation with ensuing cost to the defending entity. A statute of limitations specific to comprehensive plan amendment referenda would preclude such challenges and avoid the costs to defend.

VI. CONCLUSION

Ultimately, direct democracy works best when the challenges are simple and all of the stakeholders participate. A town meeting may be the most effective way to involve all citizens in the governance of a small community unencumbered by complex legal and practical demands such as those faced by St. Pete Beach and Florida's hundreds of other municipalities. Hometown Democracy is the proverbial town meeting, writ large. Unfortunately, local Hometown Democracy leaves very complex and important decisions to the vagaries of the referendum process and may do so without all stakeholders at the table.

The specter of Hometown Democracy at the local level should give pause to those who care about the state land-planning process as well as those who would seek to encourage more participation in the local political process. It must concern all who share responsibility for meeting local needs in today's climate of declining revenues. This Article has focused on the experience to date in St. Pete Beach and has suggested some means of reducing legal risks resulting from the St. Pete Beach version of local Hometown Democracy, including legislative action. However, the larger policy question is whether this sort of experiment is worth the litigation risk and resulting uncertainty.

In this time of shrinking budgets and grave environmental concerns, it is time to end the war over Hometown Democracy and focus instead on practical solutions to local problems. The promise of direct democracy by referendum is a chimera at best and may, in fact, be a wolf in sheep's clothing. We would all be well served to remember the admonition of Madison in the Federalist Papers that

A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is noth-

by amending the statute).

ing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.¹⁵⁸

158. Madison, *supra* n. 146, at 76.