

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION (CIVIL)**

TIERRA VERDE NEXT, LLC

Petitioner,

vs.

Case No.:

CITY OF ST. PETERSBURG, FLORIDA;
TV INVESTMENT HOLDINGS LLC,

Respondents.

_____/

**PETITION FOR WRIT OF CERTIORARI
PURSUANT TO FLA. R. APP. P. 9.100(f)**

Petitioner, TIERRA VERDE NEXT, LLC (“Petitioner”), by and through undersigned counsel, petitions this Court for issuance of a writ of certiorari quashing the May 8, 2026 approval of a an application submitted by Respondent TV INVESTMENT HOLDINGS LLC (“TVIH” or “Applicant”) for a major modification to a previously approved Type 2 marina use at 100/128 Pinellas Bayway South, Tierra Verde, Florida by the Respondent, City of St. Petersburg (“City”) Development Review Commission (“DRC”) in Case No. 26-32000001. In support thereof, Petitioner states:

INTRODUCTION

Petitioner asks this Court to quash the approval of the Application for a proposed major modification to a development project located at 100/128 Pinellas Bayway S in the Tierra Verde community of St. Petersburg, Florida. (App. at 167-174). The City approved the Application on May 8, 2026 (App. at 6), following a quasi-judicial hearing on May 6, 2026. (App. 270). The project proposes, among other things, a pair of semi-enclosed, 72-foot tall boat storage structures for a property commonly known as the Tierra Verde Marina, which is subject to Pinellas County zoning district C-2. (App. 356-363). The C-2 zoning district limits construction to 50 feet (App. at 1108), yet the DRC granted the application without a variance after unilaterally invalidating and failing to apply § 138-746 of the Pinellas County Code. Instead, the DRC applied a 75-foot height limit that does not exist. (App. at 1027). Because the DRC applied the incorrect law to the Application, the City's approval departs from the essential requirements of the law and should be quashed.

The approval further departs from the essential requirements of the law because the DRC failed to consider and make required

findings relating to a parcel-specific 42-foot height limitation that has existed since 1989 and runs with the land.

Finally, even if the DRC had the authority to grant the Application without a variance (which it certainly lacked) its decision left key issues relating to hurricane safety, structural integrity, noise, and hours of operation unresolved, again departing from the essential requirements of the law. Moreover, Applicant failed to present competent, substantial evidence to support any of the decisions leading to the Application's approval. This Court should grant the Petition and quash the approval.

STATEMENT OF THE CASE AND FACTS

The Property and Prior Entitlement Framework

The subject property is located at 100/128 Pinellas Bayway S (Parcel IDs 17-32-16-90828-000-0040 and 17-32-16-90- 828-023-0010)(collectively, the "Property"), consisting of 7.04 acres in the City of St. Petersburg, Florida. The Property is currently developed as Tierra Verde Marina, shopping center, and gas station. Located on the Intracoastal Waterway just east of the Pass-a-Grille channel, the Property sits on the northern edge of the Tierra Verde community,

just west of the southern end of the Tierra Verde bridge. Greeting southbound travelers enroute to Tierra Verde or Fort Desoto, it features 64 wet slips, fuel docks, and, most prominently, an approximately 40-foot tall, fully-enclosed “boat barn” with 260 spaces for high-and-dry storage of boats. (App. at 356). At all times relevant, the Property has been and remains subject to Pinellas County land use regulations and is zoned as C-2, General Commercial and Services District.

In 1989, the Pinellas County Board of Adjustment granted a special exception to a prior owner of the Property that permitted the marina development but imposed a parcel-specific condition limiting building height to 42 feet. (App. at. 10). This condition was never modified and runs with the land. In 1990, the Property was approved by Pinellas County for a marina use, including the high-and-dry storage building. It was later developed as the Tierra Verde Marina and has remained in continuous operation as such to the present.

The Property is also subject to the special planning and land use restrictions of the Tierra Verde Overlay (the “Overlay”), which was adopted in March 2008 as part of the Pinellas County Comprehensive

Plan (County Ord. No. 08-19). The Overlay recognizes Tierra Verde as a cohesive community and acts as a protective framework to keep the area from over-development and to preserve its island-residential identity.

In November 2008, the Property was annexed into the City of St. Petersburg along with approximately 11 additional acres of mostly waterfront commercial property in unincorporated parts of Tierra Verde. Under § 171.062(2), Fla. Stat., the annexed properties would remain subject to Pinellas County land use regulations and the county's comprehensive plan until the annexing municipality (here, the City) amends its own comprehensive plan to include the properties. *Id.* Because the City's post-annexation amendments have not reclassified the Property, the Property has been subject to a hybrid land use regime under which the City applies Pinellas County's land development regulations and the Overlay for compatibility reviews of development applications. Unless and until an amendment to the City's comprehensive plan reclassifies the annexed parcels, the Property remains subject to Pinellas County land use regulations and zoning—which only Pinellas County can

change. The role of the City's DRC is to ensuring compliance with the Pinellas County Code. See City of St. Petersburg, Municipal Code § 16.80.020.01(A) (the DRC's role is to safeguard compliance with the applicable comprehensive plan, zoning ordinances and other appropriate regulations).

The Major Modification Application

On January 6, 2026, Respondent TV Investment Holdings, LLC ("TVIH" or "Applicant") applied for a major modification of the previously approved Type 2 marina use (the "Application"). (App. at 167). The single-phase proposal includes the construction of two new 72-foot-tall, partially enclosed boat-rack storage structures; a public restaurant/bar with rooftop bar and club pool; 1,200 square feet of additional retail; 2,400 square feet of office space; and expanded marina operations. (App. at 356, 1859, 1875). The Application was processed under Pinellas County Code § 138-82 as a Type 2 major modification because it altered site circulation and increased intensity by more than 10 percent.

Importantly, § 138-746 of the Pinellas County Code limits height in C-2 to 50 feet, yet TVIH's Application did not request a

height variance and no variance from the Pinellas County Code was granted as part of the City's approval.

The 2025 C-2 Height Adjustment and SB 180

On January 29, 2025, the Pinellas County Commission passed Ordinance 25-3. (App. at 1027). Ordinance 25-3 amended Pinellas County Code § 138 in numerous ways, at least two of which are significant here: First, Ordinance 25-3 modified § 138-746 to limit building height in the C-2 district from the previously authorized 75 feet to 50 feet (the "2025 Height Adjustment"). The proposed pair of 72-foot boat rack structures in the approved Application exceeds this limit by 22 feet, but is beneath the previous C-2 75-foot height restriction. The ordinance also established the Pinellas County Development Review Committee, which, much like the City's DRC, is tasked with review and analysis of "certain development proposals in order to assist the applicant and ensure compliance with this Code and the Comprehensive Plan." (App. at 1028).

Several months after Ordinance 25-3 was passed, the Florida Legislature passed SB 180, which Governor DeSantis thereafter

signed into law. This bill became Ch. 2025-190, Laws of Florida, effective on July 1, 2025.

Section 18 of SB 180 was codified as § 252.422, Florida Statutes, which imposes restrictions on “impacted local governments.” Chapter 2025-190, § 18. An “impacted local government” is defined as a county, or municipality within such counties, which are “listed in a federal disaster declaration located entirely or partially within 100 miles of the track of a storm declared to be a hurricane by the National Hurricane Center while the storm was categorized as a hurricane.” Id. An impacted local government **may not** propose or adopt: i) moratoriums on construction, reconstruction, or redevelopment; ii) **more burdensome comprehensive plan or land development regulation amendments**; or iii) **heightened procedures** for site plans, development permits, or orders, for one-year post-landfall. See Id. (emphasis supplied). Section 18 is enforced through private lawsuits for declaratory and injunctive relief: with provisions for preliminary injunctions, attorneys’ fees for prevailing plaintiffs.

Section 28 of SB 180 is a standalone, uncodified provision applicable to local governments “listed in the Federal Disaster Declaration for Hurricane Debby (DR-4806), Hurricane Helene (DR-4828), or Hurricane Milton (DR-4834).” Chapter 2025-190, § 28. Similar to the restrictions imposed by Section 18, these local governments “**may not** propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by such hurricanes; **propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations**; or **propose or adopt more restrictive or burdensome procedures** concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s.163.3164, Fla. Stat., before October 1, 2027[.]” *Id.* (emphasis supplied).¹

Further, Section 28 of SB 180 provides “any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab

¹ Colloquially, this new state law is known as “SB 180,” and Petitioner will refer to it as such. References to “Section 18” or “Section 28” shall mean those sections of SB 180.

initio.” *Id.* Section 28 “applies retroactively to August 1, 2024.” *Id.* Like Section 18, Section 28 is enforced through private lawsuits for declaratory and injunctive relief: with provisions for preliminary injunctions, attorneys’ fees for prevailing plaintiffs.

Both Pinellas County and the City of St. Petersburg are subject to Sections 18 and 28 of SB 180 due to the federal disaster declarations connected to Hurricanes Helene and Milton in 2024. In fact, given the statewide impacts of the 2024 hurricane season virtually—perhaps actually—every county and municipality in Florida meets this definition.

Beyond the inclusion of virtually every local government in the state, very little is clear about how SB 180 should apply. The inherent vagaries of SB 180 and its downstream effects on local land development regulations are among the numerous reasons dozens of counties, municipal governments, and various interest groups have pending suits against the State of Florida arguing the law is unconstitutional. Among the various arguments raised by those litigants are two issues of critical importance here: (1) SB 180 fails to define “more restrictive or burdensome” or articulate a standard to

make that determination, and (2) fails make clear who has the authority to make that decision.

The Florida Department of Commerce thinks they do. In one (and possibly the only) notable instance since SB 180's enactment, the Department of Commerce informed Orange County that the State considered its adopted ordinance requiring future changes to the Orange County comprehensive plan be approved by a "majority-plus-one" vote of the entire Board of County Commissioners to be void *ab initio* based on the agency's interpretation of SB 180. It remains unclear what effect the agency's action will have, and the issue will likely be resolved by the courts, which the Florida Constitution vests with the judicial power to review state law. See Fla. Const. art. V, § 1. Questions of whether a state statute preempts a local ordinance fall squarely within the exclusive purview of the state judiciary. See, e.g., City of Hollywood v. Mulligan, 934 So. 2d 1238 (Fla. 2006) (resolving as a question of great public importance whether a state law preempts a municipality from using its home rule powers to enact a potentially conflicting ordinance).

As written, SB 180 provides for exceptionally broad standing provisions, allowing “any person” to sue to invalidate a plan amendment, regulation or development order without needing to show that they are impacted by it in any way, and are entitled to a preliminary injunction, summary proceedings, and reasonable attorney’s fees and costs if successful. State courts are thus well-positioned to interpret SB 180’s ambiguities in response to private lawsuits. However, as of the date of this petition no court—not even a trial court—has done so.²

Under SB 180, upon receipt of a pre-suit notice local governments have only 14 days to revoke or declare the challenged action void before they become potentially subject to attorneys’ fees. While Petitioner is unaware of any local government proactively repealing or declaring one of its own land development regulations or procedures violates SB 180, such action would be legislative, not quasi-judicial. See Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder,

² Petitioner is aware of only one case brought by a private party challenging local government action as a violation of SB 180., *Lake Pickett North LCC, et al v. Orange County*, 2025-CA-007326-O (Fla. 9th Cir. Ct.), filed July 31, 2025. That case, which relates to the same “majority-plus-one” ordinance in Orange County, remains pending and no judicial orders or statements interpreting SB 180 are in effect.

627 So. 2d 469, 474 (Fla. 1993). (stating “legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy”).

There is nothing in the record indicating that Applicant has ever approached Pinellas County to seek the revocation or modification of Ordinance 25-3. Instead, it proceeded straight to the DRC with its Application, ostensibly hoping to capitalize on the ambiguity (and threat of litigation and attorneys’ fees) created by SB 180 and the Property’s County-City hybrid enforcement scheme, traveling under the theory that Ordinance 25-3 is “more restrictive or burdensome” than previously existed and void *ab initio* under Section 28 of SB 180 (despite the fact the Property was already under a 42-foot height restriction). The Application thus attempted to bypass the current C-2 height restriction codified under § 138-746 and rely instead on a phantom 75-foot height limitation on the Property that doesn’t exist anywhere in the Pinellas County Code. Shockingly, the DRC did not meaningfully challenge the Applicant on this, applied anon-existent provision of the Pinellas County Code to the Application, and approved the project without a variance.

Unfortunately for the Applicant City of St. Petersburg's Development Review Commission lacks the authority to selectively enforce the Pinellas County Code, modify the City's comprehensive plan, or interpret whether an adopted and codified amendment to a Pinellas County Code violates the "more restrictive and burdensome" clause of SB 180. The DRC lacked the authority to declare any portion of an adopted Pinellas County Ordinance void *ab initio* and should have instead applied the actual code provision that limits C-2 construction to 50 feet.

The DRC's quasi-judicial authority derives from the City's municipal authority, and is well established by § 16.80.020.01 of the St. Petersburg Code of Ordinances, which provides that it shall "evaluate and act on the development proposals within the City in order to ensure compliance with the Comprehensive Plan, zoning ordinance and other appropriate City regulations" and "have such other duties and responsibilities as are delegated to it under this chapter." City of St. Petersburg, Municipal Code §§ 16.80.020.01(A),(C) (2026). Seen through a post-annexation lens as relates to the Property on Tierra Verde, the DRC's duties are to ensure

compliance with the Pinellas County Comprehensive Plan (“PLANPinellas”), the Overlay, zoning ordinances and other appropriate Pinellas County regulations.

Unless and until Pinellas County revokes the 2025 Height Adjustment or declares the passage of Ordinance 25-3 void, the essential requirements of the law mandate the DRC to enforce the C-2 height restrictions as they read in the Pinellas County Code.

The City Staff’s Report and Recommendation

City staff reviewed the Application against the six Type 2 criteria in Pinellas County Code § 138-82 and issued a written staff report recommending approval subject to standard conditions and two additional safeguards (a post-approval “thorough noise study” and certain operating-hour restrictions). (App. at 1145). Staff concluded the project was consistent with PLANPinellas and the Tierra Verde Overlay, would not create excessive traffic or drainage problems, and met all code requirements. The staff report failed to address the 1989 42-foot height condition, and completely ignored the 2025 Height Adjustment or Ordinance 25-3. (App. at 1865, “Staff finds that all

provisions and requirements of applicable county code are met and there are no variances being requested.”).

The Applicant’s Presentation

On the critical height issue, the Applicant took the position at the May 6, 2026 hearing that SB 180 voided Ordinance 25-3 *ab initio* and that the pre-2025 C-2 zoning requirements applied, which allowed 75 feet by right (or 100 feet with a bonus). The Applicant made no request for a variance, presented no evidence that the project would satisfy the more stringent requirements for variance requests, and no variance was granted by the DRC.

Instead, the Applicant also walked through the six Type 2 review criteria under § 138-82, asserting consistency with PLANPinellas, adequate separation and buffering (emphasizing the significant distance to the nearest residences), compliant parking and circulation, a net decrease in peak-hour traffic, improved drainage with 70% more stormwater retention, and full compliance with all code provisions. (App. at 1877-80). Compatibility was addressed by comparing the proposed racks to taller nearby structures (an 85-foot hotel and four- to five-story condominiums) and highlighting

enhanced landscaping. (App. at 1879). Regarding hurricane safety, the marina manager briefly described existing procedures—moving boats to lower racks or the ground and requiring owners to secure loose items—and noted that the new structures had not yet undergone final Florida Building Code review. (App. at 1882-83). The Applicant offered no independent structural or wind-load analysis addressing internal pressurization, vortex shedding, or wind-tunnel channeling between the facing open racks. Questions on noise, traffic methodology, and 24/7 pilot-boat operations³ received only high-level responses. (App. at 1884-85).

Petitioner's Opposition & Public Comments

Through its agent, Todd Pressman, Petitioner appeared as the registered formal opponent and submitted extensive pre-hearing materials. Residents filled the hearing room to overflow capacity, largely testifying that the project constitutes a “fundamental revolutionary and transformative change” in height, scale, exterior

³ Previously based on Egmont Key, past storms have forced the Tampa Bay Pilots Association to relocate its operations to Tierra Verde Marina, and these operations are expected to continue under the proposed project. Despite any stated limitations on hours of public operation, boats would be coming and going from the marina at all hours of the night for the foreseeable future.

activity, noise, traffic, and hurricane safety, rendering it incompatible with the Tierra Verde Overlay and the residential island character. (App. at 1891-93). Much of this testimony was unrebutted.

The Commission's Deliberation and Decision

After nearly six hours of testimony, the DRC deliberated and voted 4-3 to approve the major modification. The written Approval Letter added only two safeguards: (1) a post-approval “thorough noise study,” and (2) restrictions on marina/pool operating hours. (App. at 6-9). The letter contains no findings addressing the 1989 42-foot height condition, Ordinance 25-3, the Tierra Verde Overlay compatibility requirements, the unrebutted structural/hurricane-safety evidence, or the existing 24/7 pilot-boat operations. The decision was rendered without requiring a variance or independent structural review. (App. at 6-9; 1935-40).

Jurisdiction, Timeliness and Standing

This Court has jurisdiction pursuant to Fla. R. App. P. 9.030(c)(3) and § 26.012(2)(d), Fla. Stat. to review quasi-judicial decisions of municipal boards by writ of certiorari. The DRC's final decision was rendered on May 8, 2026. This Petition is timely.

Petitioner is a registered neighborhood organization whose membership comprises property owners and residents of Tierra Verde island. (App. at 158). Petitioner had standing to appear as a formal opponent in DRC proceedings pursuant to City Code Section 16.70.040.1, participated fully in the administrative proceeding as the registered formal opponent through its agent, Todd Pressman. (App. at 1890). Its members submitted extensive pre-hearing written opposition materials, including detailed expert reports and legal analyses addressing height restrictions, compatibility, noise, traffic, and structural safety. (*See, e.g.*, App. at 12-78, 123-165).

At the May 6, 2026 DRC hearing, Petitioner's agent appeared and presented extensive testimony on behalf of the organization and more than 1,000 of its members and registered supporters. (App. at 1891-93).

The DRC's approval of the 72-foot boat-rack structures directly and adversely affects the substantial interests of Petitioner and its members. The project will increase height, scale, massing, noise, traffic, and hurricane-related risks in a manner that is incompatible with the low-intensity residential character of Tierra Verde and the

Tierra Verde Community Overlay. As an organization whose members own and reside in homes immediately adjacent to and impacted by the subject property.

In Florida, standing requires a plaintiff to demonstrate a sufficient interest in the outcome of the litigation, which requires (1) an injury in fact that is concrete, distinct, palpable, and actual or imminent; (2) a causal connection between the injury and the conduct at issue; and (3) a substantial likelihood that the requested relief will remedy the alleged injury. See Citizens for Responsible Dev., Inc. v. City of Dania Beach, 358 So. 3d 1, 5 (Fla. Dist. Ct. App. 2023). More specifically, standing to challenge a land use decision of a zoning authority, such as the approval of a development order that may be inconsistent with the local comprehensive plan or implementing regulations like the Town's Appearance Review standards, requires a party to demonstrate that they have a legally cognizable interest that is or will be impacted by the zoning authority's action. See Renard v. Dade Cnty., 261 So. 2d 832, 837 (Fla. 1972). Petitioner is an aggrieved party with standing to seek

certiorari review. See City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982)

This Petition is timely filed within thirty (30) days.

SUMMARY OF THE ARGUMENT

The approval of the Application should be quashed because the City's DRC failed to apply § 138-746 of the Pinellas County Code, which limits building height in the C-2 district to 50 feet and instead applied a nonexistent code provision that limits height to 75 feet on the Property, allowing it to approve the Application's 72-foot structures without a variance. The City justified this decision by invoking SB 180 and applying it to County Ordinance 25-3, which it unilaterally deemed void *ab initio*. In so doing, the DRC impermissibly extended its powers and duties beyond their lawful reach, and both departed from the essential requirements of the law and without competent substantial evidence supporting its decision. The decision is further irrational because the Property was already subject to a 42-foot height restriction, and thus under no circumstances was a 50-foot height limitation "more restrictive or burdensome" than what preexisted on the Property. This decision was both a departure from

the essential requirements of the law and was unsupported by competent substantial evidence.

Moreover, regardless of whether the correct zoning maximum was 50 or 75 feet, the DRC cannot dispose of the prior entitlement framework or overlook Overlay policies without making specific findings. Here, the DRC failed to consider or make required findings as to the 1989 parcel-specific 42-foot height limitation or how the project satisfied (or could lawfully depart from) the required compatibility analysis, which is a departure from the essential requirements of the law and was unsupported by competent substantial evidence.

Third, the DRC made no findings on critical hurricane safety or structural analysis issues and added no conditions requiring independent structural review or modifications to the design, abdicating this responsibility to permitting or other City departments. These issues should have been resolved prior to approval and the DRC's failure constitutes a departure from the essential requirements of law and renders the decision unsupported by competent substantial evidence.

Finally, the DRC's approval added only two safeguards: (1) a requirement for the Applicant to conduct "a thorough noise study," and (2) restrictions on operating hours. Both are inadequate and demonstrate that the DRC departed from the essential requirements of the law.

STANDARD OF REVIEW

A circuit court's "first-tier" certiorari review is governed by a three-part standard. The circuit court is limited to a determination of: (1) whether procedural due process was accorded; (2) whether the essential requirements of law were observed; and (3) whether the administrative findings and judgment were supported by competent substantial evidence. Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000).

Failure to follow requirements of a local government's Code constitutes a departure from the essential requirements of the law. O'Connor v. Dade Cnty., 410 So. 2d 605, 606 (Fla. 3d DCA1982); *Hialeah Citizens Alliance v. City of Hialeah*, 2 Fla. L. Weekly Supp. 44a (Fla. 11th Cir. Dec. 10, 1993).

The circuit court's task in reviewing the record for competent, substantial evidence is to review the record for evidence that

supports the agency's decision, not that which rebuts it. Broward Cnty. v. G.B.V. Int'l, Ltd., 787 So. 2d 838 (Fla. 2001). "While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful, and the court's job is ended." Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs, 794 So. 2d 1270, 1276 (Fla. 2001). Likewise, the absence of competent, substantial evidence mandates that the order be quashed.

ARGUMENT

I. The Approval Should be Quashed Because the DRC Decision Departed from the Essential Requirements of Law by Applying Incorrect Law, Exceeding its Lawful Authority, and, Misapplying the Impact of SB 180 on the Subject Property

A. The DRC Departed from the Essential Requirements of the Law by Applying the Incorrect Law and Approving the Application Without a Variance.

The City DRC is tasked with enforcing the Pinellas County land development regulations over annexed lands like the Property, and it is undisputed the Property is within the Pinellas County C-2 zoning district. Pinellas County passed Ordinance 25-3 in January 2025 and

since then § 138-746 of the Pinellas County Code limits building height in the C-2 district from the previously authorized 75 feet to 50 feet. See § 138-746.1 (C-2 Development Parameters Table). Yet despite its clear mandate and the existing black-letter law, the DRC proceeded as if County Ordinance 25-3 was void *ab initio*, failed to apply the county's existing and codified C-2 height restrictions, and granted an application to build two 72-foot towers on the Property without a variance, without reference to any provision the county code authorizing it to do so. The failure to apply existing law constitutes a departure from the essential requirements of law, and the resulting approval should be quashed. See O'Connor, 410 So. 2d at 605-6 (holding that ignoring code requirements warrants certiorari relief).

The City Attorney's advice to the DRC demonstrates the City's departure from the essential requirements of law. During the hearing, Commissioner Blatt directly asked the City Attorney for clarification on the legal effect of Ordinance 25-3 and SB 180. In response, the City Attorney advised the Commission that Ordinance 25-3 had been rendered inapplicable and that the DRC should apply

the pre-Ordinance 25-3 C-2 zoning standards (allowing up to 75 feet by right). (App. at 2047-48). This advice was also given without any competent substantial evidence in the record showing that Pinellas County had repealed Ordinance 25-3, had declared it void, or formally determined that SB 180 nullified the 50-foot height limit as applied to this Application. The City Attorney offered no citation to a Department of Commerce determination, a court ruling, or any official County action invalidating the ordinance. Instead, she simply stated *“And I did confirm that with - - that that’s how the County has been treating it with the County Attorney’s Office.”* (App. at 2047-48).

It is unclear whether the City Attorney had received bad information from the County Attorney’s office, but her statement is demonstrably false. Ordinance 25-3 not only imposed the 50-foot maximum height limit in the C-2 district (which remains codified at § 138-746) but also included provisions establishing and empowering the Pinellas County Development Review Committee (codified at § 138-64), which performs a similar function as the City’s DRC. SB 180 treats “more restrictive or burdensome” **procedures** the same way it treats **regulations**, so if the County was treating Ordinance 25-3 as

void, it would have disbanded its DRC, yet the County DRC remains fully operative (holding a regular public meeting on the very day this petition was filed). (App. 1113).

The subsequent approval of the Application without a variance or any findings on Ordinance 25-3 was the direct result of the City Attorney's bad instruction, leading the DRC to apply the incorrect legal standard and ignore a duly enacted and codified county ordinance it was tasked to enforce. If the DRC had applied the correct law, the Applicant would have required a variance to obtain approval for two 72-foot towers. Because the Tierra Verde Marina has operated continuously since 1900 with a *single* 40-foot storage facility, a variance request to build additional 72-foot structures would almost certainly have been denied. Instead, the DRC applied the incorrect law and approved the project without a variance, which is a departure from the essential requirements of the law and is grounds for quashing the approval. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (stating that "'applied the correct law' is synonymous with 'observing the essential requirements of law.'").

B. The DRC Departed from the Essential Requirements of the Law by Acting Outside of its Lawful Authority.

The DRC exceeded its authorized powers and duties when approving the Application without a variance, and in so doing departed from the essential requirements of the law. The Approval should be quashed.

Municipalities derive their home rule powers from Article VIII, § 2(b) of the Florida Constitution, which provides that they “shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.” City of Tampa v. Liberty Hosp. Mgmt., LLC, 431 So. 3d 552, 557 (Fla. 2d DCA 2026), review denied, No. SC2026-0410, 2026 WL 1401211 (Fla. May 19, 2026) (quoting Fla. Const. art. VIII, § 2(b).). Municipalities thus possess broad authority to enact, revoke, apply, and enforce ordinances under their municipal home rule powers, but these powers only exist **within the municipality** and end at the city limits. See City of Hollywood, 934 So. 2d at 1243.

The DRC's authority is downstream of the City's municipal authority. As provided by City Code § 16.80.020.01, the DRC shall "evaluate and act on the development proposals within the City in order to ensure compliance with the Comprehensive Plan, zoning ordinance and other appropriate City regulations" and shall "have such other duties and responsibilities as are delegated to it under this chapter." §§ 16.80.020.01(A),(C). Thus, the City **cannot** delegate to the DRC powers and duties that it did not possess or are nondelegable.

When a city annexes a property already subject to county land use regulations, it cannot treat duly enacted county ordinances as a pick-and-choose menu. See § 171.062(2) Fla. Stat. (when a city annexes an area that has been subject to county land use restrictions, such restrictions remain "in full force and effect" until the city amends its own comprehensive plan to include the annexed area). Because the City has no discretion under § 171.062 to determine which codified county ordinances it enforces over the Property post-annexation, the DRC lacks it as well.

If the City wished to impose its own zoning regime over the Property, § 171.062(2) requires it to first amend its comprehensive plan, which it has not done. The amendment of a comprehensive plan falls squarely within the legislative function of a municipality. Martin Cnty. v. Yusem, 690 So. 2d 1288, 1293 (Fla. 1997) (stating “we expressly conclude that amendments to comprehensive land use plans [under Chapter 163] are legislative decisions.”). Even small-scale or single-parcel amendments are considered legislative because they entail policy reassessment and changes to fundamental planning documents. *See Id.*; *see also* Coastal Dev. of N. Fla., Inc. v. City of Jacksonville Beach, 788 So. 2d 204, 209 (Fla. 2001) (Small-scale development amendments are legislative decisions). Because Fla. Const. art. VIII, § 2(b) requires every municipal legislative body to be elective, legislative powers cannot be delegated to planning bodies, including the City’s appointed, quasi-judicial DRC. The DRC is restricted to enforcing the City’s policy determinations, including the hybrid land use regime controlling the Property. Thus, until the City legislatively acts to amend its own comprehensive plan and discontinues its practice of applying Pinellas County ordinances to the Property, the entire county code remains in full force and effect.

The DRC's powers and duties are limited to ensuring development proposals for the Property comply with county regulations—as they exist at the time of review—and the established entitlement framework. §§ 16.80.020.01(A),(C). By exceeding its lawful authority, the City's DRC departed from the essential requirements of the law and the Approval should be quashed.

C. Even if the City Had Authority to Interpret SB 180, County Ordinance 25-3 is Not “More Restrictive or Burdensome” as Applied to the Property

Whether a state statute preempts a local ordinance enacted is a wholly judicial function and does not reside with the municipality. See Fla. Const. art. V, § 1.; City of Hollywood, 934 So. 2d 1238. However, **even if** SB 180 survives the current constitutional challenges, and **even if** reducing the permissible height within a zoning district constitutes a violation of Section 18 or 28 of SB 180, and **even if** the DRC had the authority to interpret a state statute and invalidate a portion of the Pinellas County Code, the 50-foot height adjustment enacted by Ordinance 25-3 **would still not be more restrictive or burdensome as applied to the Property.**

As discussed herein, the Property has been subject to a parcel-specific 42-foot height restriction since 1989. When Ordinance 25-3 was passed in January 2025, this limitation remained. Consequently, not only did the DRC lack the authority to determine the county code was “more restrictive or burdensome” when enacted and in conflict with SB 180 Section 28, there was no logical rationale for making this determination as applied to the Property. This too is a departure from the essential requirements of the law. Unfortunately, as discussed below, this is consistent with the DRC’s total failure to consider or make required findings relating to the 1989 Property-specific height restrictions.

II. EVEN IF THE APPLICATION COULD HAVE BEEN GRANTED WITHOUT A VARIANCE, THE DRC’S DECISION SHOULD STILL BE QUASHED

A. The DRC Departed From the Essential Requirements of the Law by Failing to Consider or Make Required Findings on the 1989 Parcel-Specific Height Condition and Lacks Competent Substantial Evidence Supporting the Decision.

During the hearing, Commissioner Flynt directly raised the 1989 Board of Adjustment approval that imposed a 42-foot height cap on this specific parcel. (App. at 10). Staff confirmed the existing high-and-dry barn was built to that limit. Despite this, the

Applicant's presentation never mentioned or attempted to justify departure from the 1989 condition. The DRC made no findings explaining why a 30-foot increase in height (from 42 feet to 72 feet) remained compatible with the prior entitlement framework or the surrounding residential community. This failure is especially glaring because the 1989 condition was parcel-specific and formed part of the original compatibility justification for allowing marina use on this site. The DRC's silence constitutes a departure from the essential requirements of law when reviewing a major modification to a previously approved use.

The DRC was not reviewing a new use on raw land; it was reviewing an intensification of an existing entitled use. The Overlay and comprehensive plan still required a compatibility analysis and specific findings. These which were never made. Regardless of whether the correct zoning maximum was 50 or 75 feet, the DRC cannot dispose of the prior entitlement framework or overlook Overlay policies without making specific findings. (App. at 1871, 1917).

Compatibility is the central criterion under both the PLANPinellas and the Overlay. Petitioner presented extensive testimony that the proposal represents a “fundamental revolutionary and transformative change” to the site, including the shift from enclosed/interior uses to large-scale exterior open boat racks, a near-doubling of height from 42 feet to 72 feet, and a substantial increase in mass, activity, and visual impact (App. at 1892-93). Multiple residents and experts reinforced that the project is incompatible with the Overlay’s requirement that development be compatible with the island’s established residential development pattern. This evidence was unrebutted.

Respondents may argue that the City staff recommended approval after reviewing the six Type 2 criteria. However (and setting aside the criterium requiring compliance with current zoning restrictions), a staff recommendation does not relieve the Commission of its obligation to address competent substantial evidence in the record or to make required findings. It is the DRC, not City staff, that is the quasi-judicial decision-maker. If the commission was going to adopt the staff recommendation, it must do

so specifically by making its own findings on compatibility and the 1989 condition. In this case, the DRC made no specific findings on these policies or how the project satisfied (or could lawfully depart from) the required compatibility analysis, which is a departure from the essential requirements of the law. Such findings could have shown the DRC considered the evidence presented by Petitioner and found it unpersuasive. As it stands, the decision lacks competent substantial evidence in support of the Application. For those reasons, the DRC's decision should be quashed.

B. The DRC Abdicated its Quasi-Judicial Responsibility by Deferring Unrebutted Hurricane Safety and Structural Integrity Issues to Post-Approval Permitting by Other Departments

The DRC is authorized—indeed it is required—to address compatibility and site-specific impacts raised by the Application, other City departments are not. While detailed Florida Building Code compliance may be a special condition of approval, the Commission may not abdicate its responsibility by deferring all hurricane safety and structural integrity issues raised by the Application to post-approval permitting by other departments.

Here, the record contains detailed, un rebutted engineering analysis offered by Petitioner demonstrating that the proposed 72-foot partially enclosed twin towers create unacceptable risks in a hurricane-prone coastal zone, including internal pressurization (“ballooning effect”), vortex shedding, and dangerous wind-tunnel channeling between the two facing open structures (App. at 70, 123). No independent structural or wind-load review was required by the DRC or performed by the Applicant. The Applicant’s own hurricane management plan was preliminary and relied heavily on individual boat owners securing their vessels — an approach the DRC never meaningfully scrutinized despite extensive public testimony on the issue (App. at 1919). Commissioners themselves questioned these risks during the hearing (App. at 1881-83), yet the DRC made no findings on these issues and added no conditions requiring independent structural review or modifications to the design. This constitutes a departure from the essential requirements of law and renders the decision unsupported by competent substantial evidence.

C. The Two Safeguards in the DRC Approval Letter Are Legally and Factually Deficient

The DRC's May 8, 2026 Approval Letter added only two safeguards: (1) a requirement for the Applicant to conduct "a thorough noise study," and (2) restrictions on operating hours. Both are inadequate and demonstrate that the DRC departed from the essential requirements of the law.

First, the "thorough noise study" condition improperly deferred critical analysis until **after** the Application was approved. While the Applicant submitted a pre-hearing noise study, that study failed to evaluate impulsive noise as required by Pinellas County Code § 58-450, used incorrect measurement distances to the nearest residences, ignored the tunnel effect between the two proposed 300+ foot structures, and did not account for wind effects on a barrier island (App. at 44, 1925). Multiple residents testified at the hearing that the current marina already violates noise ordinances on a daily basis due to forklift backup alarms and operations (App. at 1925). Despite this un rebutted evidence of existing violations and a flawed study, the DRC did not require submission or review of a corrected noise study before approval. Instead, it deferred the issue by conditioning approval on a future "thorough noise study." This

deferral is legally deficient and represents a departure from the essential requirements of the law. A quasi-judicial body cannot approve a project that presents significant noise impacts and then require the applicant to study the problem afterward. The results of a proper noise analysis should have been a material part of the approval decision, not a post-approval afterthought.

Second, the hours-of-operation condition is meaningless in light of existing 24/7 commercial operations at the marina. Although the approval letter ostensibly imposes limits on marina and pool operating hours, the record establishes that the Tampa Bay Pilots Association has operated 24 hours a day, 7 days a week out of this marina for over two years—without any foreseeable sunset. The DRC was provided un rebutted evidence that on a single day in April 2026, only 7 of 22 pilot boat movements occurred during the hours the Applicant claimed it would operate (App. at 43). These are large diesel-powered vessels whose engines exceed 90 dBA and produce low-frequency noise that travels into nearby homes, directly violating Pinellas County noise standards at night. The DRC's hours condition does nothing to address these existing, ongoing commercial

operations. The condition is therefore illusory and fails to mitigate the very impacts the opponents documented in the record.

CONCLUSION

Based on the foregoing, the DRC's approval departs from the essential requirements of law and is not supported by competent, substantial evidence. Therefore, Petitioner respectfully requests this Court quash the DRC's decision approving the Application.

Dated: June 8, 2026.

/s/ R. Quincy Bird

R. Quincy Bird, Esq.

FBN: 105746

Weber, Crabb & Wein, P.A.

5453 Central Avenue

St. Petersburg, FL 33710

Telephone: (727) 828-9919

Facsimile: (727) 828-9924

Primary:

Quincy.Bird@webercrabb.com

Timothy.Weber@webercrabb.com

Secondary:

Lisa.Willis@webercrabb.com

honey.rechtin@webercrabb.com

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2026, the foregoing was filed using the Florida Court's E-Filing Portal, which will electronically serve City of St. Petersburg Florida, Mayor Ken Welch, mayor@stpete.org and Chan Srinivasa, City Clerk, city.clerk@stpete.org, chandrasahas.srinivasa@stpete.org, 175 5th St. No., St. Petersburg, FL 33701. I am additionally serving James M. Harmsworth, CFO of TV Investment Holdings, LLC, 3802 Coconut Palm Dr. Tampa, FL 33619 by U.S. Mail.

/s/ R. Quincy Bird

R. Quincy Bird, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition meets the word count limitations contained in Fla. R. App. P. 9.100(g) in that it contains 6,938 words, not including the certifications and signature blocks

/s/ R. Quincy Bird

R. Quincy Bird, Esq.