



## SUNSHINE CITY LAW

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March 18, 2025

**Re: Settlement Communication for *Seamark, Inc., et al v. City of St. Pete Beach* (6th Jud. Cir.), 24-000008-AP.**

Dear Mr. Boltrek,

My client Protect St. Pete Beach Advocacy Group, Inc. (“Petitioner”) was shocked to learn about the recent revelations of serious deficiencies in the City of St. Pete Beach’s public works infrastructure. We appreciate the City Commission’s willingness to publicly acknowledge these wrongs and address it at public meetings and through outreach to the Florida Department of Environmental Protection. It is outrageous, as well as a violation of the public’s trust, that a former City staff member failed to honestly report the systematic shortfalls of the level of service for reclaimed water, stormwater, and wastewater to the City Commission over a period of two years.

During this time, the Commission approved several large redevelopment projects in the Community Redevelopment District, including the Sirata redevelopment project pursuant to Resolution 2023-21, approved March 5, 2024. As you know, Petitioner is currently appealing this decision in Pinellas County Circuit Court on multiple grounds. *Seamark, Inc., et al v. City of St. Pete Beach* (6th Jud. Cir.), 24-000008-AP. As a result of the inaccurate and inadequate information supplied by the Public Works Director at the time of approval, the Commission evaluated the Sirata project through the lens of inaccurate and false information. The citizens of the City should not bear the brunt of this ex-staffer’s misfeasance. My client is exploring the full extent of its legal remedies to right this wrong, including filing a motion pursuant to Fla. R. App. P. 9.600(b) to request the Court relinquish jurisdiction and remand to require the





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City to reconsider the Sirata project in light of the newly discovered evidence, as well as filing a separate declaratory judgment action to void the approval based on the ultra vires action of the former Public Works Director. *See Neapolitan Enterprises, LLC v. City of Naples*, 185 So. 3d 585, 593 (Fla. 2d DCA 2016).

However, in the spirit of collaboration with the City to implement a faster and easier solution, Petitioner offers the following terms for settlement. My client communicated with co-Petitioner Seamark, Inc. about this settlement offer and Seamark, Inc. has no objections. A separate communication from Seamark, Inc. to the City is forthcoming

1. The City publicly acknowledges that Resolution 2023-21 is void based on inaccurate and inadequate data relating to public works and infrastructure. The City Commission will pass a resolution repealing Resolution 2023-21, recognizing that the inaccurate information led to an approval without proper evaluation of infrastructure impacts, in violation of the Land Development Code.
2. The City and Petitioners agree to allow the Sirata Conditional Use Permit to be reheard by the City Commission to ensure that the criteria under Section 4.4, Section 4.12, and Section 29.6 are evaluated based on the correct data relating to the public infrastructure.
3. Once Resolution 2023-21 is voided, Petitioners will file a motion to dismiss, with prejudice.
4. City shall pay Petitioners' attorneys' fees related to the petition for Writ of Certiorari.

### **I. Background**

On March 5, 2024, the City Council voted to approve Resolution 2023-21, approving a conditional use permit to allow construction of a 290 temporary lodging unit with rooftop features, a 130 unit temporary lodging unit hotel with rooftop features, along with ancillary and accessory structures, and permit a rooftop and dining and drinking amenity that includes the playing of outdoor music, in connection with an Application for a Conditional Use Permit #23053 for the redevelopment of the Sirata, St. Pete Beach.

Conditional use applications are subject to procedural requirements and criteria of Division 4, Conditional Use Permits, of the City of St. Pete Beach Land Development Code ("LDC"). Pursuant to Section 4.4(a)(2), LDC, the City Conditional use applications require the City Commission to consider:

Whether the proposed use will be compatible with the character of the existing area, including existing structures and structures under construction, **existing public facilities** and public facilities under





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construction, and residential, commercial and/or service facilities available within the existing area.

The Sirata Redevelopment Project is a project of significant density and intensity located in a community redevelopment district. As such, Section 4-11, LDC requires its approval was subject to:

a higher than usual level of public scrutiny and technical review prior to permitting, and necessitate the articulation of specific requirements on the part of both the developer and the city to ensure that such developments are in harmony with community character and consistent with the policies of the community redevelopment plan.

Section 4-12(a)(1)(2) requires that conditional use applications in the community redevelopment district:

shall be evaluated upon the extent to which the applicant can demonstrate that the following issues are addressed in a manner consistent with the policies established in the community redevelopment plan for the district and that no unreasonable or disproportionately negative impacts are imposed upon adjacent or nearby properties:

(1) Utility infrastructure, including sanitary sewer, reclaimed water, potable water, electric and natural gas services, and data transmission and telecommunications services;

\* \* \*

(3) Hydrological features and storm water management infrastructure;

The City's concurrency requirements are governed under Division 29 of the LDC. The purpose of this division is to ensure the availability of public facilities and the adequacy of those facilities at adopted levels of service concurrent with the impacts of development. Section 29.1(b), LDC. Section 29.6, LDC requires:





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An application for a **development permit** and/or order must comply with the following minimum concurrency requirements for each of the following public facilities and services:

(a) For potable water, sanitary sewer, solid waste, and drainage one of the following are the minimum standards that must be met to satisfy the concurrency requirement:

(1) The necessary facilities and services are in place at the time a development permit or order is issued;

(2) A development permit or order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;

(3) The necessary facilities are under construction at the time a permit or order is issued;

Section 29-2, LDC states, a development permit means any building permit, zoning permit, subdivision approval, certification, conditional use, variance, or any other official action of local government having the effect of permitting the development of the land. Therefore, the conditional use approval via Resolution 2023-21 is a development permit and subject to the minimum concurrency requirements of Section 29.6, LDC.

## **II. New Information Comes to Light**

After the impacts of the 2024 Hurricane Season, long-standing deficiencies in the City's wastewater, reclaimed water, and stormwater systems were brought to light. As a result, it has become clear that the City Commission's approval of the Sirata Redevelopment project via Resolution 2023-21 was based on inaccurate and incomplete information from the City Public Works director relating to the level of service.

At the December 10, 2024, City Commission Meeting, Mr. Camden Mills, the Interim Public Works Director gave a presentation on the dire status of the Enterprise Program Overview, and highlighted that numerous levels of service for reclaimed water, stormwater, and wastewater were not met, and that they likely had not been met for the last two years. [City Commission Meeting • • CivicClerk](#) Regarding laterals for reclaimed water, he stated, "due to limited resources, we've been moving to quick fixes and maintenance repairs, and I do not believe we are





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meeting our level of service.” Minute 29. Additionally, there were “shortfalls in the implementation of the stormwater project” relating to baffle boxes and tie check valves, and the city failed to meet the adopted level of service, dedicated to reactive maintenance instead of preventative maintenance. Minute 45. The level of service for wastewater was similarly not met. Mills notably stated, “Pump Station 1 is our limited bottleneck that limits our capacity and we cannot fully build out until master pump station 1 is upgraded,” which importantly, is relating to capacity in the community redevelopment district. Minute 56-60. *See also* December 10, 2024 minutes. (pg 42).

On February 11, 2025, the City Manager wrote a letter to the Department of Environmental Protection and Florida Commerce stating that the City:

...recently became aware that the wastewater collection system needs additional restoration, repair and improvements. Inspections and examination of our existing system after recent hurricanes revealed that preventative maintenance has been neglected for many years, and numerous wastewater system components within the City of St. Pete Beach need repair, replacement and improvements.

Interestingly, the Sirata agenda materials reveal that there had been a discrepancy between the Applicant’s engineer, from Kimley Horn, and the City’s Assistant Public Works Director regarding maintaining adequate sewer flow. (Appendix at 548).<sup>1</sup> It is unclear from the record whether this discrepancy had ever been fully addressed, evaluated, and resolved.

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<sup>1</sup> Kimley Horn’s response to Senior Planner Brandon Berry’s Staff Report, stated November 13, 2023 stated:

Criteria 4.12(a)(1) - The applicant's engineer and the City's Assistant Public Works Director have been discussing ways of maintaining adequate sewer flow and impacted lift station capacity from the Sirata and Hotel 3 projects as of the date of the publication of this report. If progress has been made in the week between the publication of this report and the public hearing, the applicant should provide an update, including whether on-or off-site improvements will be needed to handle the sewer impact of the new development.

**Response:** During the review process, the engineering teams have been working through confirmation of several technical requirements. Regarding this particular requirement, a miscommunication between the engineers led to an erroneous calculation by City Staff that showed a sanitary sewer lift station exceeding available capacity. However, there is no lift station capacity issue. As outlined in an email to staff from Scott Gilner on 11/6/2023, peak instantaneous flow rates were initially used by staff to calculate the project's discharge to the sewer system. However, peak hour flow rate, which represents the highest daily hourly flow, should have been used. The peak hourly flow is significantly less than peak instantaneous flow. The City's lift





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### III. Conclusion

Based on this information, it is clear that the City Commission was not presented with accurate information at the time of their vote last March. Now that this information is available, the City must right this wrong by voiding the approval and bringing it back to a vote, based on clear, accurate and unequivocal data and testimony as to the infrastructure capabilities of the City, in order to support development projects.

Petitioner's settlement offer takes the rights of CP St. Pete, LLC, into account by agreeing to another hearing to allow its reconsideration, despite the fact that the proceedings are stayed while the Petition is still pending in Circuit Court. Section 3.14(C), LDC. Moreover, ordinarily, a governmental entity may not be estopped from the enforcement of its ordinances by an illegally issued permit. *Corona Properties of Fla., Inc. v. Monroe Cty.*, 485 So. 2d 1314, 1317 (Fla. 3d DCA 1986), citing *Dade Cty. v. Gayer*, 388 So. 2d 1292, 1294 (Fla. 3d DCA 1980): "In ruling that estoppel may not be asserted against a county for a permit issued in error, this court stated:[w]hile at first blush it seems that the application of the rule may be harsh, it would be inconceivable that public officials could issue a permit, either inadvertently, through error, or intentionally, by design, which would sanction a violation of an ordinance adopted by the legislative branch of government."

Please let me know by March 26<sup>th</sup> the City's position on the settlement offer. My client looks forward to working with the City to right this wrong and move forward together.

Sincerely,

s/ Jane Graham  
Jane Graham, Esq., B.C.S.  
Sunshine City Law  
Counsel for Petitioner, *Protect St. Pete*  
*Beach Advocacy Group*

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station capacities are calculated using the peak hourly flow, and using peak hourly flow rates, the lift stations both north and south of the project have sufficient capacity. This calculation is being confirmed by staff. However, if any issue remains after staff's confirmation, the on-site sewer system can be redesigned to redistribute more sewage flow to the northern lift station located north of the development. The Applicant's engineers confirm there is enough capacity between the two available lift stations, and in the sanitary sewer system overall, which complies with the concurrency requirement outlined in Section 29.6(a)(2). Once City Staff reruns the calculations, this issue should be resolved.