

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BAY COUNTY, FLORIDA

CITIZENS COALITION TO  
PRESERVE CEDAR GROVE,

Plaintiff/Petitioner,

v.

CASE NO. 2008-

TOWN OF CEDAR GROVE,

Defendant/Respondent.

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COMPLAINT FOR WRIT OF CERTIORARI FOR  
DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, CITIZENS COALITION TO PRESERVE CEDAR GROVE, by and through their undersigned counsel, pursuant to Rule 1.630, *Florida Rules of Civil Procedure*, and Rule 9.100, Florida Rules of Appellate Procedure, respectfully moves this Court to review the actions of Defendant/Respondent, TOWN OF CEDAR GROVE, in adopting Ordinance number 446, and presents as grounds therefore the below stated information and attached documents.

BASIS FOR INVOKING JURISDICTION

This Court has jurisdiction to issue a Writ of Certiorari under Rule 1.630(b) of the *Florida Rules of Civil Procedure* and pursuant to Rule 9.030 of the *Florida Rules of Appellate Procedure* as well as under *Florida Statute* §165.081. Plaintiff has made objection to the actions of the Defendant and all prerequisites to bringing this litigation have been met prior to filing suit.

## STANDARD OF REVIEW

In certiorari review of a quasi-judicial order or action of a local agency, the circuit court's standard of review is limited to determining whether the agency 1) complied with procedural due process; 2) observed the essential requirements of law; and 3) based its ruling on competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla. 1982).

## STATEMENT OF THE FACTS AND CASE

On or about May 6, 2008, members of the Cedar Grove Town Commission expressed interest in the dissolution process and directed Interim Town Attorney, Mike Burke, to conduct a workshop to explain to the commission the process for revoking the Town Charter and dissolving the Town's corporation. This workshop was held on or about May 20, 2008 and the facts and information surrounding the dissolution process and how it may apply to the Town of Cedar Grove were explained and discussed in detail among the Commissioners, Town Attorney and the public in attendance.

During this initial workshop many objections and concerns were expressed by residents, commissioners and the Town Attorney regarding the municipality's ability to meet the standards necessary to effectuate dissolution for Cedar Grove. Specifically, a large portion of the meeting was spent discussing the required criteria for a Town corporation to be dissolved, more particularly whether the town was considered to be substantially surrounded by other municipalities. The Town Attorney was questioned about what defines "substantially surrounded" and he advised that this was an issue that had never before been addressed or defined by the Florida Courts and the Statute did not

specifically define. He advised verbally and through his initial memorandum to the Commissioners that this is an issue that creates sufficient legal questions and that it did appear that the Town could certainly be considered to be substantially surrounded by the abutting municipalities of Lynn Haven, Panama City and Springfield particularly.

The Town Attorney went on to clarify on many addition occasions during that initial workshop meeting that he was unable to provide a definitive answer regarding what the Court would define to be substantially surrounded and that no case law existed within the State of Florida addressing this issue, as this would be a case of first impression. No other municipality within the State of Florida has attempted to dissolve in this manner.

The Town Attorney was able to provide some guidance to the Commissioners and the public in attendance based upon case law from other jurisdictions. While there was still not a large quantity of case law available there were a few that addressed substantially surrounded. One case of particular interest came out of the California Court, ruling that a municipality that was surrounded sixteen percent (16%) by other municipalities was considered to be substantially surrounded.

The Town Attorney completed that meeting with the suggestion that the Commission authorize him and his staff to work in conjunction with the current Town employees and the employees of Bay County to attempt to compose a draft of a dissolution plan that would address all of the necessary issues they would have to resolve prior to or during the course of dissolving. This was an important step that would assist the Town in deciding whether this was a necessary or wise option for them to pursue, prior to incurring the time and expense of preparing an ordinance. He also suggested that

the Commissioners continue to run the municipality as if no dissolution was being considered to ensure that the best operation of the community was being provided. The Commission failed to follow either suggestion and immediately began eliminating employees and job positions with the Town. They instructed the Town Attorney to compose an ordinance for dissolution.

On or about July 15, 2008 a second workshop was held regarding the proposed dissolution ordinance. At this time the Commissioners and Town Attorney were brought together to discuss the suggested changes and the impacts of the ordinance. Again the issues related to the necessary standards required by the ordinance were raised, particularly the matter regarding whether the Town was considered substantially surrounded and therefore would prohibit dissolution from taking place. The Town Attorney was very clear that he could not give any definition or opinion as to whether this Town fell within the guidelines of being substantially surrounded but stated many times that he anticipated this would initiate litigation in the Court and would require some judicial determination. The Commissioners were advised that this could certainly be deemed to be a substantially surrounded municipality and they would have to use their judgment to determine what they believed to be the most logical decision in the best interest of Cedar Grove.

This workshop meeting included a conversation addressing whether the ordinance should include a specific percentage of property the Commissioners believed was surrounded by other municipalities rather than by unincorporated county property. Many maps were introduced and addressed by the public but the commission made no effort to consider all of them or distinguish why they would choose to use the particular map

selected. They were unable to provide any explanation as to how the percentage numbers they suggested using were calculated and how they arrived at the amount of land that was surrounded by the county versus other municipalities.

This workshop concluded with multiple unanswered and unjustified decisions and determinations regarding the terminology of the final ordinance. The commission again instructed the Town Attorney to finalize the ordinance for publication and reading. The final draft was completed and provided to the commission at the July 22<sup>nd</sup> meeting where it was approved by a 3-2 vote. It was placed on the agenda for the first reading on August 12, 2008, where the commission discussed the matter and allowed public comment where the Plaintiff made objection to the proposed ordinance and dissolution.

The ordinance was set for its second reading before the commission on August 28, 2008 at 6:00p.m. where a public hearing was again held with the objections of Plaintiff being made. It was approved on a 3-2 vote with Commissioners Janet Beier, Mary Ann Gardner, and Tony Brannen voting in favor and Mayor Nathan Lisenby and Commissioner Chris Burnham against the dissolution and proposed ordinance. The Town Clerk has been advised to immediately initiate efforts to schedule and organize the voter referendum for September 30, 2008.

To date, the Town of Cedar Grove has expended in excess of approximately \$100,000.00 of taxpayer funds in conjunction with the efforts of three commissioners' mission to dissolve the Town Corporation. Plaintiff does not wish to witness the expenditure of additional taxpayer dollars from the Citizens of Cedar Grove to organize and conduct a voter referendum on an ordinance that is not believed to be sound and valid according to that law and requirements of the Florida Statutes.

## NATURE OF THE RELIEF SOUGHT

The Plaintiff, by and through their counsel, asks that this Court accept review of the quasi-judicial action and the Ordinance proposing dissolution of the Town of Cedar Grove and make a finding that the necessary standards set forth in the Florida Statutes to allow a municipality to dissolve have not, and can not be met by the Defendant.

Specifically, the Plaintiff asks that the Court find that the Town of Cedar Grove is substantially surrounded by other municipalities and therefore, by law, may not be dissolved. The percentage of surrounding area alleged by the ordinance is not quantified or justified and even the Commissions own discussions and debates over the credibility of the ordinance acknowledge that this matter is not properly evidence and may need to be addressed by a Court.

The Commission has been unable to explain or justify why they are basing their determinations regarding substantially surrounded standards on a single map provided for review by one of the commissioners rather than considering any other maps available and analyzing information that conflicts with the map utilized. The commissioners are also unable to confirm or explain who calculated the percentages of surrounding municipalities that they are basing their figures on or how the amounts were calculated. They based their decisions to consider the Town as not substantially surrounded without knowing the complete facts regarding what properties were considered, what parcels were excluded, how the calculations were made, whether parcels that have illegally created enclaves and annexation pockets under Florida Statute §171 throughout the community were included, and without forming an opinion about what they believe to be the definition of substantially surrounded.

Additionally, at this time adequate information is not in evidence that the County can provide services necessary to the Town residents upon dissolution, nor has a plan been devised or provided to show that an equitable arrangement has been made regarding the bonded indebtedness of the Town and vested rights of its employees. The ordinance proposes and includes only minimal guidelines for the handling of these issues and no communication or discussion with Bay County has occurred.

The Plaintiff requests that the Court grant injunctive relief to prohibit the Town of Cedar Grove from proceeding with their actions to set a vote of the qualified voters through a specially organized referendum vote prior to the Court making a determination and review of the elements set forth by Statute and the municipality's inability to meet said standards. This action would be a substantial expense to the Town and therefore its citizens that may likely be deemed inappropriate and unacceptable upon the Court's review.

The municipality of Cedar Grove has spent approximately \$100,000.00 of taxpayer funds to date toward fighting and attempting this dissolution process. Their efforts have all been found to be invalid by the Court and have shown to be a useless waste of taxpayer money. Allowing this vote to proceed forward without first determining whether these mandatory standards have been met would simply be another wasteful expenditure that could be prohibited by this Court.

Additionally, the Plaintiff requests that the Court order the Defendant to continue operation of the Town in a manner that would provide for its ongoing existence during the course of this Court's review. Actions are currently being taken by the Town Commissioners that are causing the municipality to be broken down and become

inoperable. The Town is in good financial standing and does not currently have any major hardships they are experiencing and unable to handle. These actions have been and will continue to cause irreparable harm to the community and should be halted immediately.

The Plaintiff asks specifically that the Court require the commission of the Town to maintain the proper and necessary staff, emergency personnel, Town officers, etc. required to keep the Town operating and functioning at an acceptable level to prohibit decrease of productivity and functionality. If the commission is permitted to continue to decrease staff, release employees without replacements being hired, and eliminating essential and necessary positions they will be permitted to effectively dissolve and destroy the function of the Town without having to follow the guidelines of the law. This activity has even been recommended to the Town Commission by their Town Attorney but has not been accepted or followed. Plaintiff therefore asks that the Court grant assistance to prevent destruction of the Town by the Commission's inactivity and lack of concern for the current status of the municipality.

The Plaintiff asks that this Court consider an award of attorney fees and costs incurred to the Plaintiff as they have been forced to hire and pay the expense of legal counsel. The commission has proceeded forward with this ordinance and activity without adequate thought or investigation into the situation or the result of their actions. They expressed no concern for the legality of their actions, their inability to meet the legal standards required under Florida Statutes, and the cost and financial effect that would be born by the Town. The citizens were forced to bring this litigation to protect the interest of the municipality, as was admitted to be necessary by the commissioners. They chose to

enter into this process even after being advised that their decisions would likely come under fire through litigation and they still chose to proceed forward without placing the needed efforts to complete a full and thorough investigation. The citizens should not be forced to bare these financial costs in addition to the continued expenditure of their tax dollars as occurred over the past year and will continue if this matter proceeds forward to a referendum vote.

### LEGAL ARGUMENT

The Florida Legislature has established the exclusive method by which municipal corporations may be formed and dissolved. The method is codified in Chapter 165, Formation of Local Governments, Florida Statutes 2008. Chapter 165 sets forth three steps that must be met during the dissolution process: 1) How to Dissolve, *Florida Statute §165.051*; 2) Criteria for Dissolution, *Florida Statute §165.061(3)*; and 3) Transfer of property and financial obligations upon dissolution, *Florida Statute §165.071(3)*.

The first section of the statute provides that a Town Corporation, such as Cedar Grove, may be dissolved by one of two methods: 1) through a special act of Legislature or 2) by an ordinance of the governing body of the municipality, approved by a vote of the qualified voters. The statute continues to set forth the requirements that must be met by the municipality as it applies to a referendum vote and proper notice if such is necessary. *Florida Statute §165.051*.

The second step that must be addressed is the Criteria for Dissolution. The following criteria must be met in order to dissolve the Town Corporation of Cedar Grove:

1) the Town must not be substantially surrounded by other municipalities; 2) the county or another municipality must be demonstrably able to provide necessary services to the dissolved Town; and 3) an equitable arrangement must be made in relation to bonded indebtedness and vested rights of municipal employees. Each of these elements must be met in order for dissolution to move forward. This layer of criteria for dissolution is arguably the most important area of review, particularly step 1 of this paragraph, and will therefore be addressed in much greater detail below. *Florida Statute §165.061*.

Step three addresses the need for title to all of the property owned by the Town to be transferred to the County that shall be assuming all the indebtedness of the Town, unless it has otherwise been provided for in the dissolution plan. *Florida Statute §165.071*. Once that has happened, the County that has assumed such debt is then authorized to levy and collect ad valorem taxes in the same manner as other county taxes from the area of the Town for repayment of any assumed indebtedness. The levy of those ad valorem taxes may be provided for through the creation of special districts established for this specific purpose. *Florida Statute §189*.

Each of these steps must be met before the municipality can even compose a valid ordinance to attempt the dissolution process. The Town of Cedar Grove has failed to meet these standards but has proceeded forward with the composition of an ordinance proposing dissolution and proceeded with the necessary votes, publications, readings and public hearings; passing the ordinance by a 3-2 vote in favor of pursuing the dissolution process through use of this subject ordinance.

Reviewing the ordinance in detail and focusing on each of the mandatory requirements established by the Statute indicates that this ordinance is not valid for reasons stated below:

#### Method of Dissolution

The Town of Cedar Grove is attempting to dissolve by an ordinance of the governing body of the municipality to be approved by a vote of the registered voters. The details of the necessary vote have been addressed in the ordinance.

#### Criteria for Dissolution

- 1) The Town may not be substantially surrounded by other municipalities.

This is an issue of first impression before this Court. There is no case law within the State of Florida at this time that defines substantially surrounded, regulates the method of determination of surrounding properties, or clarifies the issue at hand. Florida Statutes fail to assist in this matter either as they merely state that a municipality may not be substantially surrounded by other municipalities in order to be permitted to dissolve.

Secondary evidence and sources must be reviewed for assistance and direction in determining this issue. Webster's dictionary defines substantially to mean "considerable in quantity" and surrounded to mean "to extend around the margin or edge of". Black's Law Dictionary does not define either of these terms but they do establish that a "reasonable standard" is applied in determining what qualifies as substantial. What an ordinary person would deem to be reasonably substantial would be applied as the standard for the quantity necessary to qualify. Case law has been found in other jurisdictions that establish the reasonable standard of what is deemed to be substantially

surrounded as only needing to surround the municipality with other municipalities by sixteen percent (16%).

The method of calculation of the property that adjoins the Town of Cedar Grove or the percentage of the municipality that is surrounded by other municipalities has not been defined by the Florida Courts or Statute. The Town Commissioners in this situation have been unable or unwilling to explain the method that they utilized to compile their calculations. They have not provided information regarding which parcels of property have been included in the calculations, whether they excluded portions of the Town boundaries and if so why, whether the property abutting the annexed railroad tracks owned by the City of Panama City had been added into the calculation, etc. Their method of calculation should be provided so that it can be compared and evaluated against conflicting information.

Multiple maps of Cedar Grove and the surrounding areas exist and exhibit conflicting evidence regarding the amount of town property that adjoins other municipal boundaries and should be compared and evaluated. The commission has refused to do this and instead is relying solely upon a single map provided by one commissioner without any explanation or comparison analysis.

The Plaintiff believes that if a true analysis of the property that belongs to Cedar Grove was conducted it would be determined that the figures of Town property surrounded by other municipalities would be much higher than the numbers assumed by the commission. If the linear footage of outside boundaries of all areas of the Town limits were calculated and divided by the linear footage of the exterior boundaries that abut another municipality the percentage of property surrounded by unincorporated Bay

County would be much lower than the 58% alleged by the commission. Even with the numbers provided by the commission regarding property of the Town that is surrounded by Bay County being 58% that still provides that 42% of the Town is surrounded by other municipalities, which should be deemed to be substantially surrounded.

The commission has failed to define what “substantially” or “surrounded” means to them. They have instead, by their own testimony and statements, decided to not make that formation of an opinion with the idea that if someone or some group contests it than a court will decide the issue. They have treated the evaluation of this element of the statute with flagrant disregard for their ability to meet the minimum standards required.

Demonstrate Ability to Provide Necessary Services; Equitable Arrangement Regarding Indebtedness and Vested Rights of Employees; Transfer of Title and Indebtedness

The ordinance has provided the absolute minimum guidelines and standards for the above stated requirements of the Statute. There is not a dissolution plan devised or put into place at this time, nor has any discussion occurred between the Town and Bay County regarding the details of the transition if dissolution does occur. The Town has pressed forward without any thorough investigation regarding all the details that must be addressed during a dissolution process and the commission has failed to heed the advice and suggestions of Town counsel that the process will need time and attention to close detail in order to properly complete.

The commission has failed to provide the citizens adequate information regarding their plans during and following the dissolution process in order for them to make an educated decision during a voter referendum. They have attempted to press forward in a rushed and expedited manner with the goal of sweeping through the process without

affording adequate time or consideration to all the issues at hand. Additionally, the commission attempted to create assurances for the citizens by placing prohibitions into the ordinance against the County preventing them from assessing a special district for the collection of taxes against the current residents of Cedar Grove. This was done to pacify the concerns of the people that they wouldn't be hit with additional taxes. Finally, at the continued advice of Town counsel, the commissioners agreed to remove the clause from the approved ordinance as they had no authority to take away an option created and bestowed upon the County by statute. Only at that time were the citizens provided accurate information regarding some of the potential tax consequences associated with the dissolution process.

#### APPENDIX

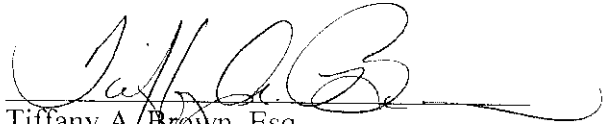
Pursuant to Rule 1.630 of the *Florida Rules of Civil Procedure* and Rule 9.220 of the *Florida Rules of Appellate Procedure*, an appendix is attached including the essential items and documents for review by this Court. The same has been provided with the Complaint to the Defendant/Respondent.

#### CONCLUSION

This process can and will produce a substantial impact upon the Town in question and its residents if the dissolution moves forward. As such, each citizen and resident of the municipality has the right to be fully informed and educated about the issues raised by this attempt to dissolve the Town of Cedar Grove. More importantly, they have the right to know that the laws and guidelines set forth in the Florida Statutes are being followed

and met. Parties affected by the actions of the Town of Cedar Grove and the Ordinance for dissolution have joined to ask the Court to accept review and make judicial determinations on the matters at hand in addition to granting the relief previously requested in this complaint.

HADLEY, McLEROY, & BROWN PLLC

A handwritten signature in cursive script, appearing to read 'Tiffany A. Brown', written over a horizontal line.

Tiffany A. Brown, Esq.  
Florida Bar No. 0589081  
P.O. Box 28419  
Bay Point, FL 32411  
Telephone (850) 233-5455  
Attorney for Plaintiff