



Hillsborough
County Florida

HILLSBOROUGH COUNTY
BOCC LAND USE MEETING AGENDA
August 13, 2024
CHANGES/CORRECTIONS/ADDITIONS

1. **Agenda Page 08, Item-B-09-Authorize the County Attorney's Office to file a petition for writ of certiorari with the Second District Court of Appeal in the matter of G.L. Acquisitions Corporation, Inc. v. Hillsborough County, which arose from Board's denial of RZ-PD 23-0132.**
Commissioner Wostal requested item to be pulled from the consent section of the agenda.
2. **Agenda Page 12, Item-G-01 B-MM 24-0758-CITIGROUP TECHNOLOGY INC**
Correction to the applicant's name from ~~CITIGROUP TECHNOLOGY INC~~ to CITIGROUP TECHNOLOGY INC.
3. **Agenda Page 13, Item-I-02-LDC 24-1069- Staff Report on Privately Initiated Land Development Code Amendment to Amend Article VII - Signs**
The applicant is requesting a Continuance to the September 10, 2024, Board of County Commissioners Land Use Meeting

TIME CERTAIN

1. None

COMMISSIONERS' ITEMS

1. None

OFF-THE-AGENDA ITEM

1. **Special appearance by Outside Counsel, Samuel J. Salaro of Lawson Huck Gonzalez, PLLC, to discuss the status of School Board of Hillsborough County vs. Hillsborough County and Craig Latimer, Case No. 24-CA-5947, and the attached Resolution**



Agenda Item Cover Sheet

Agenda Item N^o: _____

Meeting Date: August 13, 2024

Consent Section

Regular Section

Public Hearing

Requires Chair Signature? Yes No

Includes a Technology Component? Yes No

Subject: Authorize the County Attorney's Office to file a petition for writ of certiorari with the Second District Court of Appeal in the matter of G.L. Acquisitions Corporation, Inc. v. Hillsborough County, which arose from Board's denial of RZ-PD 23-0132.

Department Name: County Attorney's Office

Contact Person: Cameron Clark

Contact Phone: (813) 272-5670

Sign-Off Approvals:

Assistant County Administrator _____ Date _____

Department Director _____ Date _____

Cameron S. Clark

Management and Budget – Approved as to Financial Impact Accuracy _____ Date _____

County Attorney – Approved as to Legal Sufficiency _____ Date _____

Staff's Recommended Board Motion:

Authorize the County Attorney's Office to file a petition for writ of certiorari with the Second District Court of Appeal in the matter of G.L. Acquisitions Corporation, Inc. v. Hillsborough County, which arose from Board's denial of RZ-PD 23-0132. This action will not have a financial impact on the County beyond the filing fee; funding for this fee is included in the County Attorney's budget.

Financial Impact Statement:

This action will not have a financial impact upon the County beyond the filing fee; funding for this fee is included in the County Attorney's budget.

Background:

G.L. Acquisitions Corporation, Inc. ("GLA") filed rezoning application MM 23-0132, seeking to rezone the Pebble Creek Golf Course in order to develop 251 single family homes on the approximately 150-acre site. The Pebble Creek Golf Course is located within the Pebble Creek community, east of Bruce B. Downs Boulevard and south of the Pasco/Hillsborough County line. On July 18, 2023, the Board of County Commissioners ("Board") denied GLA's rezoning application by a vote of 5 to 2, finding that the rezoning application was not consistent with the Comprehensive Plan and not compatible with the existing neighborhood. GLA challenged the rezoning denial in circuit court. On June 19, 2024, the court issued an order granting GLA's petition for writ of certiorari and quashing the Board's denial of the rezoning application. The County filed a Motion for Rehearing on July 3, 2024, which the court denied on July 19, 2024.

This agenda item seeks Board authorization to appeal the circuit court's order by filing a second-tier petition for writ of certiorari with the Second District Court of Appeal.

List Attachments: Order Granting Petition for Writ of Certiorari

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLORIDA
CIVIL DIVISION

G.L. ACQUISITIONS
CORPORATION, INC.,

Case No. 23-CA-015824

Division: I

Petitioner,

v.

HILLSBOROUGH COUNTY
BOARD OF COUNTY
COMMISSIONERS,

Respondent.

_____ /

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This case is before the Court on Petitioner G.L. Acquisitions Corporation, Inc.’s (G.L.) petition for writ of certiorari filed on October 11, 2023, seeking to review the Hillsborough County Board of County Commissioners’ denial of its application to rezone a property it has contracted to purchase. The petition alleges that the Board failed to follow the essential requirements of the law and that its denial is not supported by competent substantial evidence. Because the Court agrees that the record lacks any evidentiary support for the Board’s determination, the petition must be granted.

The 150-acres of property (“the Property”) at issue, Pebble Creek Golf Course, opened in 1967 and was zoned specifically as a golf course. The surrounding Pebble Creek neighborhood was zoned and developed as a mixed-use community in 1972, five years after the golf course opened. In 2021, the property owner, Ace Golf, Inc., determined that the golf course was no longer financially viable as a business due to consistently low membership and related financial difficulties. Ace Golf first offered to sell the golf course to the Pebble Creek Homeowners

Association. When that offer was rejected, Ace Golf sought other potential purchasers, including Hillsborough County, and ultimately entered into a contract with G.L..

In 2023, G.L. filed an application to rezone the Property from its current classification as a golf course to residential. G.L. sought to develop single family homes at the center of what was once the golf course while maintaining a ring of buffer areas between the existing neighborhood and the new homes. G.L. received conditional approvals from the County Planning Commission and the County Development Services Department, despite proposing less than the minimum density required by the Comprehensive Plan. On May 15, 2023, the Zoning Hearing Master (ZHM) held a duly noticed evidentiary hearing on G.L.'s application. Multiple witnesses testified at the hearing, including county staff, experts, and residents. The ZHM concluded that G.L.'s rezoning request was consistent with the Comprehensive Plan and recommended approval with certain conditions to which G.L. agreed. Specifically, the ZHM found that "[t]he proposed parks and site plan design that includes developing the single-family homes internal to the site and providing a ring of stormwater ponds and significant open space along the perimeter serves to increase compatibility with the neighboring residential homes."

On July 18, 2023, the Board held a duly noticed hearing on G.L.'s application. The Board heard presentations and arguments from county staff, G.L.'s attorney, G.L.'s expert planner, and multiple residents. The residents opposed to the application gave lay comment, primarily focused on unsubstantiated environmental concerns, the loss of green space in the neighborhood, and the alleged bad actions of the current landowner, Ace Golf. The Board proceeded to open the matter for discussion on record.

Multiple commissioners voiced opinions, expressing sympathy for the residents, discussing the Ace Golf's president's conduct, and speculating about alternative uses if the present application

were to be denied. The Board denied G.L.'s application on a 5-2 vote. On September 14, 2023, the Board rendered a Resolution, finding that the application was not consistent with the existing land uses, not compatible with the zoning districts of the surrounding land, inconsistent with the Comprehensive Plan, and that the "record evidence supports that the retention of the existing PD zoning accomplishes a legitimate public purpose." The Board was primarily concerned with the removal of the "open space" around which the neighborhood had been designed and built.

Under Florida law, the scope of issues that are reviewable under first-tier certiorari review of quasi-judicial rezoning decisions is strictly limited as to whether: (1) the local government afforded G.L. due process; (2) the local government observed the essential requirements of law; and (3) the decision is supported by competent and substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Florida Supreme Court has set forth a framework that requires rezoning applicants to prove that their proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. *Snyder*, 627 So. 2d at 476 (Fla. 1993). If the proposal complies with the comprehensive plan, the Board may still deny the application to accomplish "a legitimate public purpose," at which point the Board has "the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable." *Id.* The Court is thus tasked with reviewing whether there is any competent, substantial evidence to establish: (1) the application is inconsistent with the comprehensive plan or with the applicable zoning ordinance's procedural requirements; or, if found consistent, (2) there is a legitimate public purpose behind maintaining the existing zoning classification. *Id.*

G.L. asserts that its proposal complied with the Comprehensive Plan, based in large part on the testimony and reports of hired experts and County Staff, who found that the proposed single family residential homes are compatible with the surrounding residential homes and that the

proposed ponds and open spaces would serve as a sufficient buffer between the old and the proposed, new neighborhoods. There is nothing in the record to indicate that the proposal does not in fact comply with the Comprehensive Plan, meaning that the burden shifted to the Board to demonstrate a legitimate public purpose in maintaining the existing classification.

The Board argues logically that because the neighborhood was designed and built around the golf course, the land acts as a fundamental “centerpiece.” It is key to note here that the land is specifically zoned as a “golf course,” which is distinct from other types of parks or recreational areas. At present, the land is not a functioning golf course. Rather, it is an unkempt space that has reverted back to a natural Florida look. The golf course buildings are in disrepair. There is no competent, substantial evidence in the record to indicate that the land could be used as a golf course in the future, meaning there is no competent, substantial evidence to support the alleged legitimate purpose of maintaining the golf course zoning designation.

The Board’s decision was based, in part, on the belief that the president of Ace Golf lacks good sense and common decency. Some residents speculated that the current owner’s past behavior was the root cause of the golf course no longer being a viable business. Although this may be the case, the Board is not permitted to make arbitrary, discriminatory, or unreasonable decisions. If the president of Ace Golf was the kind of person who delivered flowers to the residents weekly and birthday presents annually, would the Board have voted differently? Certainly such a rhetorical question highlights the arbitrariness of the reasoning at issue.

The Board’s decision was also based on the number of residents who gave testimony and wrote letters opposed to the change in zoning. Fact-based testimony of homeowners opposing the proposed rezoning may be considered by the Board and reviewing courts. *See Marion Cnty. v. Priest*, 786 So. 2d 623, 626-27 (Fla. 5th DCA 2001). Conversely, unsupported, conclusory

statements do not constitute competent evidence. *BML Invs. v. City of Casselberry*, 476 So. 2d 713, 715 (Fla. 5th DCA 1985) (citing *Conetta v. City of Sarasota*, 400 So. 2d 1051 (Fla. 2d DCA 1981)). The residents opposed to the change gave lay testimony speculating about future problems, including excessive noise and environmental hazards, but did not provide any fact-based testimony upon which the Board could base its decision. Thus, after examining the record in full, the Court cannot find that the Board relied on competent, substantial evidence when it denied G.L.'s proposal.

Because the record contains no competent, substantial evidence for the determination that denial of the proposed rezoning advances a legitimate public purpose, the Petition is hereby GRANTED and the resolution is QUASHED.

ORDERED on the date imprinted with the Judge's signature:

Electronically Conformed 6/19/2024
Paul Huey

PAUL L. HUEY, CIRCUIT JUDGE

COPIES TO:

Petitioner

Respondent

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Memorandum Cover Sheet

Agenda Item N^o. _____

Meeting Date 8-13-2024

Consent Section Regular Section

Subject: Special appearance by Outside Counsel, Samuel J. Salaro of Lawson Huck Gonzalez, PLLC, to discuss the status of School Board of Hillsborough County vs. Hillsborough County and Craig Latimer, Case No. 24-CA-5947, and the attached Resolution

Department Name: County Attorney's Office

Contact Person: Rob Brazel **Contact Phone:** 813-272-5670

Staff's Recommended Board Motion:

- (a) Special appearance by Outside Counsel, Samuel J. Salaro of Lawson Huck Gonzalez, PLLC, to discuss the status of School Board of Hillsborough County vs. Hillsborough County and Craig Latimer, Case No. 24-CA-5947 (the "Case"); and
- (b) Consider adopting a resolution in the form presented calling an election on November 5, 2024, for a referendum of the School Board of Hillsborough County for the School Board to levy additional ad valorem taxes for operating expenses, in accordance with and as mandated by the Order Granting Emergency Petition For Writ Of Mandamus dated August 2, 2024 (the "Order"), in the Case, with such resolution taking effect immediately upon its adoption and remaining in effect unless and until the District Court of Appeal of Florida, Second District, reinstates the Stay in the Case or reverses the Order.

List Attachments: Draft BOCC Resolution with Exhibits (School Board Resolution, Order Granting Emergency Petition For Writ Of Mandamus)

RESOLUTION NO. R24-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, CALLING AN ELECTION ON NOVEMBER 5, 2024, FOR A REFERENDUM OF THE SCHOOL BOARD OF HILLSBOROUGH COUNTY REGARDING THE LEVY BY SUCH SCHOOL BOARD OF ADDITIONAL AD VALOREM TAXES FOR OPERATING EXPENSES; PROVIDING AN EFFECTIVE DATE

Upon motion by Commissioner _____, seconded by Commissioner _____, the following resolution was adopted by a vote of _____ to _____, with Commissioner(s) _____ voting “No”; Commissioner(s) _____ being absent.

WHEREAS, at a meeting held on April 2, 2024, the School Board of Hillsborough County (the “School Board”) adopted a resolution, a copy of which was forwarded to the County on April 10, 2024, and is attached hereto as Exhibit “A” (the “School Board Resolution”), calling for a referendum to be held on November 5, 2024, to determine whether or not the School Board may levy an additional one (1) mil in ad valorem taxes to be used for operating expenses (the “Referendum”);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, THAT:

1. In accordance with Section 1011.73(2), Florida Statutes, and as mandated by the Order Granting Emergency Petition For Writ Of Mandamus dated August 2, 2024, a copy of which is attached hereto as Exhibit “B” (the “Order”), in Case No. 24-CA-005947 (the “Case”), an election is called on November 5, 2024, for the Referendum.
2. A copy of this Resolution shall be transmitted to the Supervisor of Elections of Hillsborough County by the Clerk of the Circuit Court and Ex Officio Clerk of the BOCC.
3. This Resolution shall take effect immediately upon its adoption and shall remain in effect unless and until the District Court of Appeal of Florida, Second District, reinstates the stay of the Order, otherwise stays or renders inoperative the Order, or reverses the Order.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Cindy Stuart, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board at its regular meeting of _____, 2024, as the same appears of record in Minute Book _____ of the Public Records of Hillsborough County, Florida.

WITNESS my hand and official seal this _____ day of _____, 2024.

CINDY STUART,
CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

Exhibit "A"
School Board Resolution

THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA

RESOLUTION 24-SB-1

A RESOLUTION OF THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA, CALLING FOR A REFERENDUM TO BE HELD ON NOVEMBER 5, 2024, FOR THE PURPOSE OF SUBMITTING TO THE DULY QUALIFIED ELECTORS OF HILLSBOROUGH COUNTY, FLORIDA A QUESTION REGARDING A LEVY OF AD VALOREM TAXES FOR OPERATING EXPENSES TO PROVIDE EDUCATIONAL EXCELLENCE FOR STUDENT LEARNING BY ENSURING COMPETITIVE SALARIES TO RETAIN AND RECRUIT HIGH QUALITY TEACHERS AND STAFF, IMPLEMENTING AND PRESERVING ACADEMIC PROGRAMS, AND DISTRIBUTING PROPORTIONAL FUNDS PURSUANT TO FLORIDA LAW WITH CHARTER SCHOOLS; SHALL THE SCHOOL DISTRICT OF HILLSBOROUGH COUNTY LEVY AN AD VALOREM OPERATING MILLAGE OF ONE MILL ANNUALLY FROM JULY 1, 2025 THROUGH JUNE 30, 2029, WITH ANNUAL REPORTING TO COUNTY RESIDENTS FOR TRANSPARENCY OF THE USE OF FUNDS; PROVIDING FOR PROPER NOTICE OF SUCH REFERENDUM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the education funds available to the Board through the state funding formula limit the District's resources to continue improving and providing the educational excellence that its public students deserve; and,

WHEREAS, the State's funding formula does not permit the use of capital funds for operating expenses except as provided by Section 1011.71(9) and Section 1011.73, Florida Statutes and for limited purposes pursuant to Section 1011.71(5), Florida Statutes; and,

WHEREAS, the national teacher shortage and increase in the number of resignations and retirements have created a significant vacancy rate in the District, and national exit interviews indicate that lower pay or higher wages elsewhere is one of the primary reasons for departures from the classroom; and,

WHEREAS, the District has experienced shortfalls in funding to recruit and retain high quality teachers and staff; and

WHEREAS, the District further faces a shortage of various support services positions, primarily due to pay significantly lower than the private sector for similar services; and,

WHEREAS, the District intends that the revenues generated by the additional millage for operational purposes shall be used to retain and recruit teachers and staff to make their compensation competitive with surrounding counties and other large Florida school districts; and,

WHEREAS, funds raised by the additional one mill will be proportionately shared with public charter schools based upon student enrollment, as prescribed by the Florida Legislature; and,

WHEREAS, implementing and preserving a high-quality education system that benefits all residents in Hillsborough County, regardless of whether they have children in school; and,

WHEREAS, Section 1011.71(9) and Section 1011.73, Florida Statutes, authorize the imposition by school boards of a levy of ad valorem taxes for up to four years for operating expenses, subject to approval by the electors of the county voting in a referendum; and,

WHEREAS, if such ad valorem tax levy is approved, the School Board will require regular reporting on all receipts and expenditures in connection with such levy, and will promptly post such reports on the School District's website for public inspection; and,

WHEREAS, the District finds that it is in the best interest of the students in public schools that the qualified electors be given the opportunity to approve additional millage for school operations;

NOW, THEREFORE, BE IT RESOLVED BY THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA:

Section 1. Levy of Ad Valorem Taxes for Operating Expenses. Pursuant to the provisions of Section 1011.71(9), Florida Statutes, there is hereby levied and imposed one mill of ad valorem taxes for operating expenses to enhance funding to increase compensation to recruit and retain high quality teachers and staff, implementing and preserving academic programs and distributing proportional funds to charter schools.

Section 2. Term of Levy. The one mill levy of ad valorem taxes for operating expenses shall commence July 1, 2025, and shall remain in full force and effect for up to four (4) years ending June 30, 2029, unless repealed or reduced prior to that time by resolution of the School Board, which repeal or reduction may be effectuated without referendum.

Section 3. Referendum. The School Board hereby requests a referendum to be held throughout Hillsborough County, Florida, on the first Tuesday in November, which is November 5, 2024, for the purpose of submitting to the duly qualified electors of Hillsborough County the question set forth herein. Pursuant to Section 1011.73(2), Florida Statutes, the School Board hereby directs the Hillsborough County Board of County Commissioners to direct the Hillsborough County Supervisor of Elections to place on the ballot the statement contained in the "Notice of Election" set forth in Section 4, below, and to conduct said election pursuant to the provisions of the election laws of the State of Florida. The vote at said referendum shall be by the voting devices provided by the Supervisor of Elections for the general election, as approved by the Florida Department of State pursuant to Chapter 101, Florida Statutes, and in each polling place, there shall be at least one such device.

Section 4. Notice of Election. Notice of said election shall be given by publication in a newspaper of general circulation throughout Hillsborough County, Florida. Such publication shall be made at least twice, once in the fifth week and once in the third week prior to the week of November 5, 2024, the first publication to be not less than 30 days prior to the date of the referendum. Such notice shall be substantially in the following form attached as Exhibit A, together with such additional information as the Supervisor of Elections of Hillsborough County, Florida shall require.

Section 5. Official Ballot. The official ballot to be used in the election to be held on November 5, 2024, shall be in full compliance with the laws of the State of Florida and shall be substantially in the following form:

OFFICIAL BALLOT

**The School Board of Hillsborough County Millage Election for
Public School Students**

To provide educational excellence for student learning by ensuring competitive salaries to retain and recruit high quality teachers and staff, implementing and preserving academic programs, and distributing proportional funds pursuant to Florida law with charter schools, shall the School District of Hillsborough County levy an ad valorem operating millage of one mill annually from July 1, 2025 through June 30, 2029, with annual reporting to county residents for transparency of the use of funds?

_____ Yes

_____ No

If the question shall be approved by a majority of the duly qualified electors of Hillsborough County, Florida, voting thereon, the School Board shall levy one mill to provide educational excellence for student learning by ensuring competitive salaries to retain and recruit high quality teachers and staff, implementing and preserving academic programs, and distributing proportional funds pursuant to Florida law with charter schools.

Section 6. Time and Place of Referendum. The polls will be open at the voting places on the date of such referendum from 7:00 A.M. until 7:00 P.M., or as provided by law. All qualified electors residing within the district shall be entitled and permitted to vote on such referendum as provided in Exhibit A. The referendum shall be held at the polling places provided for general elections in Hillsborough County, Florida and the inspectors and clerks shall be those appointed and qualified for general elections in Hillsborough County, Florida by the Supervisor of Elections. The inspectors and clerks at each polling place and the Supervisor of Elections shall canvass the vote and make due returns of same without delay to the Board. Such returns shall show, separately, the number of qualified electors who voted at such election on such question and the number of

votes cast respectively for and against approval of such question. The returns of the inspectors and clerks shall, as soon as practicable after the close of the polls, be canvassed by the Supervisor of Elections, who shall declare and certify the results of such referendum.

Section 7. Absentee Voting. Absentee electors participating in said referendum shall be entitled to cast their ballots in accordance with the provisions of the laws of the State of Florida with respect to absentee voting which shall have printed thereon the question herein above set forth, with proper place for voting either "Yes" or "No" following the statement of the question aforesaid.

Section 8. Voter Registration Books. The Supervisor of Elections is hereby authorized and requested to furnish to the inspectors and clerks at each place where the votes are to be cast in such referendum, applicable portions of the registration books or certified copies thereof showing the names of the qualified electors residing in the district.

Section 9. Statutory References. All statutory references herein shall be to said statutes as they exist on the date of adoption of this Resolution and as they may be from time to time amended or renumbered, except to the extent contractual commitments would preclude application of a subsequent statutory revision or repeal.

Section 10. Severability. It is declared to be the intent of the School Board that, if any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

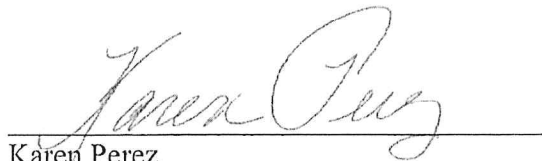
Section 11. Conflict. Any resolution or part thereof in conflict with this Resolution or any part hereof is hereby repealed to the extent of the conflict.

Section 12. Effective Date. Sections 1 through 2 of this Resolution shall be effective upon approval by a majority of votes cast by qualified electors in the referendum provided for herein and the remaining sections of this Resolution shall be effective immediately upon its adoption.

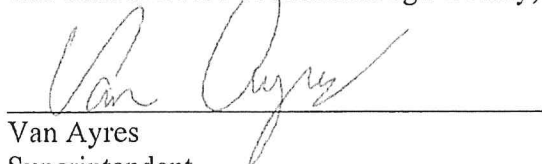
Approved by The School Board of Hillsborough County, Florida this 2nd day of April 2024.

[SEAL]

Attest:



Karen Perez
Board Chair
The School Board of Hillsborough County, Florida



Van Ayres
Superintendent
Hillsborough County Public Schools

EXHIBIT A

THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA NOTICE OF ELECTION

NOTICE IS HEREBY GIVEN THAT AN ELECTION HAS BEEN CALLED BY THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA FROM 7:00 A.M. UNTIL 7:00 P.M., OR AS PROVIDED BY LAW, ON TUESDAY, THE 5TH DAY OF NOVEMBER 2024, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY QUALIFIED ELECTORS OF SAID SCHOOL DISTRICT THE FOLLOWING QUESTION:

The School Board of Hillsborough County Millage Election for Public School Students

To provide educational excellence for student learning by ensuring competitive salaries to retain and recruit high quality teachers and staff, implementing and preserving academic programs, and distributing proportional funds pursuant to Florida law with charter schools, shall the School District of Hillsborough County levy an ad valorem operating millage of one mill annually from July 1, 2025 through June 30, 2029, with annual reporting to county residents for transparency of the use of funds?

_____ Yes

_____ No

IN ACCORDANCE WITH THE CONSTITUTION AND THE ELECTION LAWS OF THE STATE OF FLORIDA, ALL DULY QUALIFIED ELECTORS OF HILLSBOROUGH COUNTY, FLORIDA SHALL BE ENTITLED TO VOTE IN THE ELECTION TO WHICH THIS NOTICE PERTAINS.

IF THE QUESTION SHALL BE APPROVED BY VOTE OF A MAJORITY OF THE DULY QUALIFIED ELECTORS OF HILLSBOROUGH COUNTY, FLORIDA VOTING THEREON, THE SCHOOL BOARD SHALL LEVY ONE MILL TO PROVIDE EDUCATIONAL EXCELLENCE FOR STUDENT LEARNING BY ENSURING COMPETITIVE SALARIES TO RETAIN AND RECRUIT HIGH QUALITY TEACHERS AND STAFF, IMPLEMENTING AND PRESERVING ACADEMIC PROGRAMS, AND DISTRIBUTING PROPORTIONAL FUNDS PURSUANT TO FLORIDA LAW WITH CHARTER SCHOOLS.

Exhibit "B"

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

THE SCHOOL BOARD OF
HILLSBOROUGH COUNTY, FLORIDA,
Petitioner,

CASE NO.: 24-CA-5947

vs.

DIVISION: D

HILLSBOROUGH COUNTY,
FLORIDA, by and through its BOARD OF
COUNTY COMMISSIONERS, and

CRAIG LATIMER, in his capacity as
the HILLSBOROUGH COUNTY
SUPERVISOR OF ELECTIONS,
Respondents.

ORDER GRANTING EMERGENCY PETITION FOR WRIT OF MANDAMUS

THIS MATTER is before the Court on Petitioner Hillsborough County School Board (the School Board)'s July 23, 2024 Emergency Petition for Writ of Mandamus seeking a writ to compel Respondents Board of County Commissioners for Hillsborough County, Florida (the Commission) "to take all action necessary to cause to be placed upon the ballot of the November 5, 2024 general election an ad valorem millage referendum as the School Board has lawfully directed in Resolution 24-SB-1, which was transmitted to the Commission on April 10, 2024." Given the short time between the filing of the Petition and the deadline to place the referendum on the November 2024 ballot, the Court has treated the Petition as an emergency and granted the School Board's filing deadline requests to ensure that due process is afforded. The Court having reviewed the Petition, Responses, Reply, and being otherwise duly advised, finds as follows:

On April 2, 2024, the School Board adopted Resolution 24-SB-1, seeking an ad valorem operating millage pursuant to section 1011.73, Florida Statutes (2022). The Resolution sets the millage election to occur on November 5, 2024, the date of the next general election. The Resolution also “directs the Hillsborough County Commissioners to direct the Hillsborough County Supervisor of Elections” to place the measure on the general election ballot for 2024. The School Board transmitted the Resolution to the Commissioners on April 10, 2024. The Commission placed the Resolution on the agenda, for the first time, for its regularly scheduled meeting on June 20, 2024, over two months after the School Board transferred the Resolution. Consideration of the Resolution was delayed until July 17, 2024, approximately one month after it was first placed on the agenda. At the July 17 meeting, approximately three months after the School Board transmitted the Resolution, the Commission set the referendum on the ballot for the November 2026 general election.

Mandamus is the mechanism by which officials can be compelled to perform lawful, ministerial duties. See *Eichelberger v. Brueckheimer*, 613 So. 2d 1372, 1373 (Fla. 2d DCA 1993). “A ministerial duty or act is one where there is no room for the exercise of discretion, and the performance being required is directed by law.” *Polley v. Gardner*, 98 So. 3d 648, 649 (Fla.1st DCA 2012) (internal citations omitted).

The School Board alleges that the Commission has a ministerial duty under section 1011.73 to include the millage referendum on the ballot for the general election specified by the School Board. Sections 1011.73(2) and (3) state:

(2) Millage authorized not to exceed 4 years.—The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school district may approve an ad valorem tax millage as authorized under s. 1011.71(9). Such election may be held at any time, except that not more than one such election shall be held during any 12-month period. Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever is earlier. If any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held.

(3) Holding elections.—All school district millage elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this chapter. A referendum under this part shall be held only at a general election, as defined in s. 97.021.

As the Nineteenth Circuit states in its 2020 opinion, “Section 1011.73 is a statute that deals with the authority of the School Board, not that of the County Commissioners.” *School Bd. of Indian River Cnty. v. Bd. of Cnty. Comm’rs of Indian River Cnty.*, Case No. 2020-CA-000330 (Fla. 19th Jud. Cir. June 03, 2020). From a purely textual standpoint, this Court agrees with the Nineteenth Circuit—the relevant statute deals with the authority of the school board, not another governing body. “The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school district may approve . . . Such election may be held at any time . . .” §1011.73(2), Fla. Stat. The first sentence begins with a power and duty of the school board. The second sentence does not specify a power or duty of another governing body. The only logical, textual

interpretation is that the district school board has the authority to set the date for the vote on its resolution.

This Court also notes that in 2022, after the *Indian River County* decision was published, the Florida Legislature amended section 1011.73(3) to add the requirement that “[a] referendum under this part shall be held only at a general election, as defined in s.97.021.” § 1011.73(3), Fla. Stat.¹ The core issue in *Indian River County* was whether the school board could direct the county commissioners to put its referendum on the primary ballot or whether the county commissioners could choose to put the referendum on the ballot for the general election in November. Notably, the Nineteenth Circuit found that under section 1011.73 (2020), “the commissioners have no discretion to choose a different date, but must perform the ministerial act of calling for an election as directed by the School Board, including the date requested.” Given that the Legislature amended the statute after the *Indian River County* decision was made, and given that the amendment directly addresses the holding in that case, this Court cannot overlook the fact that the balance of section 1011.73(2) and (3) were left unaltered, meaning that the Nineteenth Circuit’s determination that commissions lack discretion to select the date of an election has effectively been upheld by the Legislature.

¹ In 2022, the Legislature added the requirement that “[a] referendum under this part shall be held only at a general election,” to subsection (3) but did not remove the phrase “at any time,” from subsection (2).

When interpreting a statute, it is generally understood that a specific clause controls when related to a more general clause. Additionally, from a pragmatic standpoint, now that section 1011.73 requires the referendum to be put on the ballot only during a general election, there is *one day* per general election year on which the referendum could possibly be voted. The only way to interpret the phrase “at any time” in context is that there is no limitation on which *general election year* a referendum may appear on the ballot. To say that a school board cannot choose the year in which they direct a referendum to be put on the ballot would directly conflict with the enumerated purpose of the statute.

The Commission argues that this reading of section 1011.73(2) and (3) would mean that, within this statutory framework, the commissioner would be “simply a rubber stamp with no discretion whatsoever to do anything.” Regardless of the Petitioner’s or Respondents’ feelings on the subject, the fact that there is only one day per year on which the referendum can be voted means that there is no discretion as to the date that the vote takes place in any given year—the vote can only take place on the date of the general election.

The Commission also cites several opinions that address section 212.055, Florida Statutes, which governs sales taxes levied by the school board. Notably absent from section 212.055 is the phrase “[t]he district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election. . . .” §1011.73(2), Fla. Stat. Since the wording of section 212.055 is distinguishable from that found in section 1011.73(2), the Court must

understand the process for putting a sales tax on the ballot under section 212.055 to be distinguishable from the process for putting an ad valorem tax millage under section 1011.73(2). The Commission thus has a ministerial duty to call for an election on the date identified in Resolution 24-SB-1.

The School Board also argues in the alternative that this Court should grant certiorari relief if it finds that mandamus is not the appropriate writ in this case. The Court finds that mandamus is the appropriate writ in this case. *Assuming arguendo* that certiorari was the appropriate writ, the Commission's application of section 212.055 to an ad valorem tax would be a departure from the essential requirements of the law.

Finally, Respondent Supervisor of Elections has filed a motion to be dismissed from the suit for failure to state a cause of action against the Supervisor of Elections. The School Board included the Supervisor of Elections as a respondent because of the "looming deadlines" and argues that "full relief will likely require the Court to instruct the Supervisor of Elections, directly, to place the School Board's referendum on the general election ballot." The School Board has not alleged that the Supervisor of Elections has failed or refused to perform a ministerial duty in relation to Petition, so dismissal is required. Given the time sensitive nature of this Emergency Petition, however, the Court will note that the Supervisor of Elections does have a ministerial duty to place the referendum on the general election ballot once directed to do so, on the date identified in Resolution 24-SB-1.

It is therefore ORDERED AND ADJUDGED that:

1. The Emergency Petition for Writ of Mandamus is GRANTED.
2. Respondent County Commissioners of Hillsborough County, Florida, must meet no later than August 13, 2024, for the purpose of adopting a resolution causing to be placed on the November 5, 2024 general election ballot the proposition contained within Hillsborough County School Board Resolution 24-SB-1, duly passed and approved April 2, 2024, and as further requested by the Hillsborough County School board via correspondence to the Board of County Commissioners of Hillsborough County, Florida, dated April 10, 2024.
3. Immediately upon adoption of the Resolution, the Board of County Commissioners of Hillsborough County, Florida, shall cause certified copies of the Resolution to be delivered to the Supervisor of Elections for Hillsborough County and to the Hillsborough County School Board.
4. Respondent Supervisor of Elections' motion to be dismissed from the suit is GRANTED and the Supervisor is hereby DISMISSED from the case.

ORDERED on the date imprinted with the Judge's signature.

Electronically Conformed 8/2/2024
Emily A. Peacock

EMILY A. PEACOCK, Circuit Court Judge

Copies to:

Petitioner

Respondent

Additional copy(ies) provided electronically through JAWS