

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**FILED**

2010 SEP 23 PM 1:28

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

**1545 ORMOND BEACH, LLC,**  
a Rhode Island limited liability company,

CASE NO.: 6:10-CV-1416-ORL-35-GJK

Plaintiff,

vs.

**CITY OF ORMOND BEACH,**  
a Florida municipal corporation,

Defendant.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff, 1545 ORMOND BEACH, LLC, by and through its undersigned attorney, and sues the Defendant CITY OF ORMOND BEACH, and states as follows:

**JURISDICTION**

1. This suit is brought pursuant to this Court's diversity jurisdiction under 28 U.S.C. §1332.
2. The value of Plaintiff's real property and property rights exceeds \$75,000; the amount in controversy therefore exceeds \$75,000.
3. Plaintiff, 1545 ORMOND BEACH, LLC, is a citizen of the State of Rhode Island, being organized as a limited liability company in the State of Rhode Island and having its principal place of business at 100 North Main Street, Suite 300 Providence, Rhode Island 02903.

4. Defendant, CITY OF ORMOND BEACH, is a Florida municipal corporation and a citizen of the State of Florida for diversity purposes.

5. The Plaintiff and the Defendant are residents of different states and their respective principal places of business lie in different states.

**COMMON ALLEGATIONS**

6. Plaintiff 1545 ORMOND BEACH, LLC is a Rhode Island limited liability company which is properly registered with the State of Florida as a foreign limited liability company.

7. Plaintiff does business at 1545 N. U.S. Highway 1, in unincorporated Volusia County, Florida. Plaintiff is the entity beneficially interested in the relief herein sought and seeks to invoke the original jurisdiction of this Court on account of the facts and matters herein stated.

8. Plaintiff owns a “gentlemen’s club” at the said location which features live exotic dance performances in a night club setting featuring a full-service bar.

9. Plaintiff’s business is not an adult entertainment establishment or sexually oriented business because the performers wear coverings over their breasts, buttocks and pubic region at all times. Plaintiff’s business format may generally be described as a “bikini bar”.

10. The dance performances offered at Plaintiff’s business are presumptively protected by the First Amendment to the United States Constitution. Plaintiff has a clear legal right to engage in protected speech of this nature.

11. Plaintiff’s bikini bar format is lawful in unincorporated Volusia County.

12. Plaintiff has all requisite permits from Volusia County and the State of Florida to operate its bikini bar.

13. The CITY OF ORMOND BEACH opposes exotic dance performances and seeks to censor the message of eroticism conveyed by Plaintiff's performers.

**Annexation Ordinance**

14. The CITY OF ORMOND BEACH currently has no regulatory authority over Plaintiff because Plaintiff lies outside the municipal boundaries of the City.

15. Plaintiff does not wish to be annexed into the City and has informed the CITY OF ORMOND BEACH that it opposes annexation.

16. Plaintiff is currently engaged in the partial renovation of its property. The permits for that renovation were applied for and issued by Volusia County and Volusia County personnel supervise and approve the work being conducted on Plaintiff's property.

17. The CITY OF ORMOND BEACH is seeking to annex Plaintiff's property into the City so that it can exercise direct regulatory authority over Plaintiff. In particular, the City wishes to take over supervision of Plaintiff's renovations and to displace County personnel currently exercising jurisdiction over that work;

18. The City intends to use its police and regulatory officials to harass Plaintiff until Plaintiff is forced to give up its speech activities.

19. On or about September 16, 2010, the City initiated annexation proceedings against Plaintiff's property. The annexation is being processed as a voluntary annexation pursuant to §171.044, Fla.Stat. A copy of the staff Memorandum regarding the annexation effort and the proposed annexation ordinance is attached as Exhibit "A" to this Complaint.

20. The City has apparently advertised the annexation ordinance (Ord. 2010-46) for public hearing and intends to hold the final public hearing for adoption of the Ordinance on October 7, 2010.

21. The City has no authority to initiate a voluntary annexation under §171.044, Fla.Stat. because Plaintiff has not consented to the annexation and has informed the City in writing that it opposes the annexation. A copy of the letter to the City Planning Director, dated September 17, 2010, expressing Plaintiff's opposition to annexation, is attached as Exhibit "B" to this Complaint.

22. The City is attempting to force an annexation under §171.044, Fla.Stat. because it knows that it cannot annex Plaintiff's property through the alternative means provided by §§171.0413 and 171.042, Fla.Stat.

23. The City premises its annexation attempt on an invalid "Water, Sewer and Annexation Agreement" which was negotiated by and between the City and a remote predecessor in Plaintiff's chain of title, Saddle Jack's Bar & Grill, Inc.

24. The putative Water, Sewer and Annexation Agreement was signed by Saddle Jack's Bar & Grill, Inc. on or about December 19, 2006. A copy of the Water, Sewer and Annexation Agreement is attached as Exhibit "C" to this Complaint.

25. The putative Water, Sewer and Annexation Agreement has not been signed by the Plaintiff, which is the owner of the subject property.

26. Plaintiff is not and was not in privity of contract with Saddle Jack's Bar & Grill, Inc.. Saddle Jack's was a remote owner in the chain of title which lost its interest in the subject real property through foreclosure.

27. The City did not sign the Agreement in 2006 or at any other time when Saddle Jack's Bar & Grill, Inc. owned or controlled the property.

28. Saddle Jack's Bar & Grill, Inc. lost all right, title and interest in the subject property on or about August 27, 2009, when a certificate of title was recorded in a mortgage foreclosure action against Saddle Jack's.

29. All parties claiming by, through or under Saddle Jack's Bar & Grill, Inc., including any right or claim of the CITY OF ORMOND BEACH, was lost in the said foreclosure action.

30. A certificate of title in the Saddle Jack's foreclosure was entered on August 27, 2009, in favor of the mortgagee, Bayview Loan Servicing LLC.

31. Bayview Loan Servicing LLC subsequently conveyed the subject real property to Plaintiff on February 24, 2010.

32. The Water, Sewer and Annexation Agreement was not recorded in the Public Records of Volusia County, Florida at the time Plaintiff purchased the subject real property.

33. Plaintiff conducted a full search of the title and otherwise engaged in proper due diligence before purchasing the subject property. Plaintiff uncovered no record of the existence of the Water, Sewer and Annexation Agreement prior to purchasing the subject real property.

34. Plaintiff had no notice of or knowledge regarding the Water, Sewer and Annexation Agreement at the time it purchased the property on February 24, 2010.

35. Plaintiff was a bona fide purchaser for value without notice of the existence of the Water, Sewer and Annexation Agreement.

36. Plaintiff purchased the subject real property in part because it was located in unincorporated Volusia County and was not subject to municipal regulation or

taxation. Plaintiff would not have purchased the subject property had it known that a putative Agreement existed which might force the annexation of the property.

37. As noted above, the City did not execute, sign or accept the tender of the Water, Sewer and Annexation Agreement prior to Plaintiff's purchase of the subject real property. The City did not take action to approve or ratify the Agreement until September 3, 2010, when the issue was placed on the Ormond Beach City Commission Agenda for approval. A copy of the staff Memorandum recommending ratification of the Agreement is attached as Exhibit "D" to this Complaint.

38. The City did not actually accept and ratify the Water, Sewer and Annexation Agreement until September 7, 2010, when the City enacted Resolution 2010-132, a copy of which is attached as Exhibit "E" to this Complaint.

39. By the time the City moved to accept and ratify the Water, Sewer and Annexation Agreement, that Agreement was stale and unenforceable.

40. The City's ratification of the Water, Sewer and Annexation Agreement on September 7, 2010 was not part of an orderly scheme of municipal growth and had nothing to do with the extension of public utilities, which occurred years ago. Rather, the City attempted to revise the Agreement out of a desire to regulate and control Plaintiff's business in an effort to censor and curtail Plaintiff's speech.

41. The Water, Sewer and Annexation Agreement is unenforceable for the following reasons:

A. Plaintiff's rights as a bona fide purchaser for value, without notice, are superior to the City's contract rights given the City's failure to timely ratify and record the Agreement.

B. All right or claim the City derived from Saddle Jack's Bar & Grill, Inc. was lost in the foreclosure of the subject property.

C. The City is barred by laches from enforcing the Agreement against Plaintiff.

D. The City is estopped from enforcing the Agreement against Plaintiff because Plaintiff purchased the subject property in reliance on the fact that it was located in unincorporated Volusia County, it made diligent inquiry to confirm that fact, and the City made no effort to notify Plaintiff of the alleged existence of an annexation Agreement.

#### **THREAT TO TERMINATE PUBLIC UTILITIES**

42. Employees of the City have advised Plaintiff's contractors that the City intends to terminate public utilities servicing Plaintiff's property in an effort to close its business and suppress and censor Plaintiff's speech activities. The City informed Plaintiff's contractors that it intends to cut off water and sewer service to Plaintiff's property as soon as the property is annexed into the City.

43. Plaintiff has paid all of its utility bills and is current on any obligations associated with water and sewer service.

44. There is no threat to the public health, safety or welfare which would justify the termination of utilities to the Plaintiff's property.

45. The City has no lawful basis to terminate water and sewer service to Plaintiff's property.

46. If the City terminates Plaintiff's access to City water and sewer, Plaintiff would have to close its business immediately. In addition to lost profits and the loss of

use of its property, Plaintiff's First Amendment rights to present live dance performances would be infringed.

**COUNT I**

**(Declaratory Judgment – Annexation)**

47. Plaintiff, realleges and incorporates paragraphs 1 through 41 herein, and further alleges as follows:

48. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.

49. Plaintiff is uncertain as to its rights and remedies under the Water, Sewer and Annexation Agreement and under the laws of the State of Florida.

50. Plaintiff believes and herein alleges that the Water, Sewer and Annexation Agreement is void and unenforceable against the Plaintiff.

51. Plaintiff believes and herein alleges that the City's effort to forcibly annex Plaintiff into the City utilizing the procedures for annexation under §171.044, Fla.Stat. is void and violates Florida laws governing annexation.

52. Plaintiff believes and herein alleges that it is subject to the laws of Volusia County, Florida and that the CITY OF ORMOND BEACH has no jurisdiction over Plaintiff or its real property.

53. Plaintiff is entitled to a declaration concerning the parties' respective rights with respect to annexation and the validity of the Water, Sewer and Annexation Agreement.

WHEREFORE, Plaintiff seeks a declaration that the CITY OF ORMOND BEACH has no jurisdiction over Plaintiff or its real property; that the Water, Sewer and



Annexation Agreement is void and unenforceable against the Plaintiff; and that the City is barred from annexing Plaintiff's property under the auspices of §171.044, Fla.Stat. because the annexation is not voluntary, but is opposed by the Plaintiff. Plaintiff further requests supplemental relief including an award of costs, and such other and further relief as this Court deems just.

**COUNT II**

**(Injunctive Relief – Annexation)**

54. Plaintiff, realleges and incorporates paragraphs 1 through 41 herein, and further alleges as follows:

55. This is an action for temporary and permanent injunctive relief brought under this Court's general jurisdiction and pursuant to the applicable portions of Title 28, United States Code.

56. The City is attempting to rush the annexation process in order to enact an ordinance before Plaintiff can effectively challenge the annexation or the underlying Water, Sewer and Annexation Agreement through the Courts.

57. The City has not afforded Plaintiff or the public sufficient time to challenge the annexation of Plaintiff's property or to study the impacts of annexing an adult-themed bikini bar into the City.

58. The City is rushing the annexation process in an effort to secure control over Plaintiff's property before Plaintiff's renovations are completed.

59. Annexation of Plaintiff's property will disrupt the on-going renovations of Plaintiff's business and will provide the City with an immediate opportunity to curtail and chill Plaintiff's right of free speech.

60. Annexation of Plaintiff's property will afford the City an opportunity to terminate water and sewer service to the property.

61. Plaintiff is suffering irreparable injury and is threatened with irreparable injury in the future by reason of the threatened annexation and Plaintiff has no plain, adequate nor complete remedy to protect its rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

62. The harm which would be suffered by the Plaintiffs without an injunction exceeds any conceivable harm the Defendant would suffer if it is prohibited from undertaking an illegal and invalid annexation.

63. Plaintiff, and the public at large, will suffer irreparable injury if an injunction does not issue. The confusion over regulatory control in the midst of development and the threats to Plaintiff's speech rights both threaten public order if an injunction does not issue.

64. Plaintiffs has no adequate remedy at law, as damages would not cure the chilling effect on speech caused by the involuntary imposition of the City's ordinances and regulatory authority.

65. The public interest would be served by the granting of injunctive relief. In fact, the public interest is disserved by actions, such as those of Defendant, which disregard the statutory procedures for municipal annexations.

66. An injunction against the enactment of the proposed annexation ordinance will preserve the status quo which is the last peaceable non-contested condition that preceded Defendant's actions.

**WHEREFORE**, Plaintiff prays for the following relief:

A. That this Court take jurisdiction over the parties and this cause.

B. That this Court enter an injunction enjoining the CITY OF ORMOND BEACH and its agents, servants, employees and all others in concert with or under its direction and control from annexing Plaintiff's property under §171.044, Fla.Stat. unless and until it obtains Plaintiff's voluntary consent to such annexation.

C. That this Court enter an injunction enjoining the CITY OF ORMOND BEACH and its agents, servants, employees and all others in concert with or under its direction and control from enforcing the putative Water, Sewer and Annexation Agreement executed by Saddle Jack's Bar & Grill, Inc.

D. That this Court award Plaintiff its recoverable costs.

E. That this Court award Plaintiff all other relief in law and in equity to which it may be entitled.

### **COUNT III**

#### **(Injunctive Relief – Utilities)**

67. As a third, separate and alternate Count, Plaintiff realleges and incorporates paragraphs 1 through 45 of its Complaint and further alleges as follows:

68. This is an action for temporary and permanent injunctive relief brought under this Court's general jurisdiction and pursuant to the applicable portions of Title 28, United States Code.

69. The City has expressed its intent to terminate water and sewer service to Plaintiff's property as soon as the property is annexed into the City.

70. Plaintiff cannot operate its business and cannot disseminate its speech if water and sewer service are terminated.

71. Any such termination would be entirely pretextual and without legal basis as the Plaintiff is current on all of its utility payments and there is no other reason to terminate utility service to the property.

72. Plaintiff stands ready and able to pay any reasonable future charges for water and sewer service just as it has since it purchased the subject property in February of this year.

73. The City has not followed Florida law relative to giving notice to affected persons prior to terminating utility service and no emergency exists which would excuse notice in this instance.

74. Plaintiff is suffering irreparable injury and is threatened with irreparable injury in the future by reason of the threatened termination of utility services and Plaintiff has no plain, adequate nor complete remedy to protect its rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

75. The harm which would be suffered by the Plaintiffs without an injunction exceeds any conceivable harm the Defendant would suffer if it is prohibited from terminating Plaintiff's utility services.

76. Plaintiffs, and the public at large, will suffer irreparable injury if an injunction does not issue. While Plaintiff's business losses can be recovered in a damages suit, the threats to Plaintiff's speech rights and the chilling effect already experienced by Plaintiff are not compensable through damages.

77. Plaintiffs has no adequate remedy at law, as damages would not cure the chilling effect on speech caused by the termination of utility services.

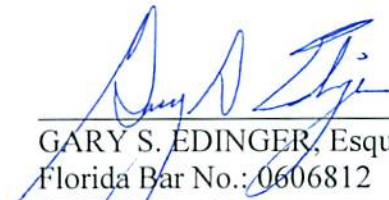
78. The public interest would be served by the granting of injunctive relief. In fact, the public interest is disserved by actions, such as those of Defendant, which disregard the legal rights of its citizens.

79. An injunction against the termination of utility services will preserve the status quo which is the last peaceable non-contested condition that preceded Defendant's actions.

**WHEREFORE**, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause.
- B. That this Court enter an injunction enjoining the CITY OF ORMOND BEACH and its agents, servants, employees and all others in concert with or under its direction and control from terminating water and sewer service to Plaintiff's property for any reason other than non-payment of reasonable and undisputed charges.
- C. That this Court award Plaintiff its recoverable costs.
- D. That this Court award Plaintiff all other relief in law and in equity to which it may be entitled.

GARY S. EDINGER & ASSOCIATES, P.A.



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GARY S. EDINGER, Esquire  
Florida Bar No.: 0606812  
305 N.E. 1st Street  
Gainesville, Florida 32601  
(352) 338-4440/ 337-0696 (Fax)  
GSEdinger@aol.com  
Attorney for Plaintiff

**CITY MANAGER  
MEMORANDUM**

**To:** Honorable Mayor Costello and City Commissioners  
**Through:** Joyce A. Shanahan, City Manager  
**From:** Ric Goss, AICP, Planning Director  
**Date:** September 16, 2010  
**Subject:** Annexation of property at 1545 North U.S.1

**Introduction:** This item involves the proposed annexation of approximately 1.42± acres at 1545 North U.S.1, and being generally located approximately 825 feet south of Interstate 95. The property is owned by 1545 Ormond Beach, LLC, a foreign limited liability company.

**Background:** Section 180.02(3), *Florida Statutes*, authorizes municipalities to require the annexation of property as a condition of municipal utility connection. Consent to annexation by a connecting property owner is required for connections to city utilities by Chapter 3, Article V, Section 3-61(B)(2)(b) and (c), of the city's *Land Development Code*. The predecessor in title to the property, Saddle Jack's Bar & Grill, Inc., executed such an agreement with the city, allowing the city to annex the property when it becomes contiguous to the city. The property is contiguous to the city and city utilities are provided to the property. The city's planning staff has prepared the attached annexation report.


**Recommendation:** It is recommended that the City Commission **APPROVE** the annexation of the property at 1545 North U.S.1 for the following reasons:

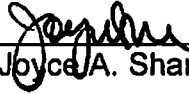
1. City utilities were provided to the property pursuant to an annexation agreement that allows the city annex the property when it becomes contiguous.
2. The property is contiguous to the city along the western part of the property adjoining North U.S.1.
3. City utilities are being provided to the property and the city has adequate capacity and infrastructure to serve the property.

Honorable Mayor Costello and City Commissioners  
September 16, 2010  
Page 2

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4. The annexation meets the applicable requirements of Florida Statutes and the city's Land Development Code.

Reviewed by:  9/16/10  
Theodore S. MacLeod, P.E. Date  
Assistant City Manager

Approved by:  9/16/10  
Joyce A. Shanahan, City Manager Date

Prepared by: Steven Spraker, AICP, Senior Planner

**ORDINANCE NO. 2010-46**

AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY INTO THE CITY OF ORMOND BEACH, SAID PROPERTY BEING GENERALLY LOCATED ALONG THE EAST SIDE OF NORTH U.S. HIGHWAY 1 APPROXIMATELY 825 FEET SOUTH OF INTERSTATE 95 AND BEING COMMONLY LOCATED AT 1545 NORTH U.S. HIGHWAY 1; REDEFINING THE TERRITORIAL BOUNDARIES OF THE CITY OF ORMOND BEACH TO INCLUDE THE PROPERTY; REDESIGNATING THE BOUNDARIES OF ZONE 1 OF THE CITY OF ORMOND BEACH TO INCLUDE THE PROPERTY; PROVIDING FOR TRANSMISSION; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

**WHEREAS**, 1545 Ormond Beach, LLC, a foreign limited liability company is the owner of certain real property in unincorporated Volusia County, Florida, depicted and described in Exhibit "A" attached hereto and incorporated herein by reference ("Property"); and

**WHEREAS**, the Property is generally located along the east side of North U.S. Highway 1 approximately 825 feet south of Interstate 95 and being commonly located at 1545 North U.S. Highway 1; and

**WHEREAS**, the annexation of the Property is a voluntary annexation under the authority of Section 171.044, *Florida Statutes*, as evidenced by a true copy of the annexation petition attached hereto and incorporated herein by reference as Exhibit "B"; and



**WHEREAS**, annexation as a condition of municipal utility connection is authorized by Section 180.02(3), *Florida Statutes*, and the home rule constitutional and proprietary powers of the City; and

**WHEREAS**, consent to annexation by a connecting property owner is required for connections to City utilities by Chapter 3, Article V, Section 3-61(B)(2)(b) and (c) of the City's *Land Development Code* (formerly Ordinance 91-33 of the City of Ormond Beach, initially adopted and made effective August 20, 1991); and

**WHEREAS**, the City Commission of the City of Ormond Beach desires to exercise its statutory power to annex the Property; now therefore,

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH, FLORIDA, THAT:**

**SECTION ONE.** The City Commission of the City of Ormond Beach makes the following findings:

- (a) The annexation petition attached hereto as Exhibit "B" and incorporated herein by reference bears the signatures of all owners of the Property to be annexed at the time the petition was submitted to the City;
- (b) The annexation petition was submitted in accordance with the requirements of the City for utility extension pursuant to section 180.02(3), *Florida Statutes*, and Chapter 3, Article V, Section 3-61(B)(2)(b) and (c) of the City's *Land Development Code* (formerly Ordinance 91-33 of the City of Ormond Beach, initially adopted and made effective August 20, 1991);
- (c) As a result of the annexation of that real property described and depicted in Ordinance 2010-45, the Property that is the subject of the annexation

petition attached hereto as Exhibit "B" has now become contiguous to the City; and

- (d) The Property is reasonably compact and does not create any enclaves of unincorporated territory in Volusia County.

**SECTION TWO.** The Property depicted and described in Exhibit "A" is hereby annexed into the City of Ormond Beach, Florida, and the municipal boundary lines of the City are hereby changed to include the Property.

**SECTION THREE.** Upon the effective date of the annexation of the Property, and except as may be otherwise provided by law, the Property shall be subject to all laws, ordinances and regulations of the City of Ormond Beach; shall be entitled to the same privileges and benefits as other lands in the City; and shall be subject to the taxes and debts of the City, including municipal ad valorem taxes as provided by Section 171.061(1), *Florida Statutes*.

**SECTION FOUR.** The boundary of City Commission Zone 1 is hereby redefined to include the Property.

**SECTION FIVE.** The City Clerk is hereby authorized and directed to provide a certified copy of this Ordinance to the County Manager of Volusia County, the Clerk of Circuit Court in and for Volusia County, and the Department of State for the State of Florida, within seven (7) days of the adoption of this Ordinance as required by Section 171.044(3), *Florida Statutes*.

**SECTION SIX.** In the event any section or provision of this Ordinance is declared by a court of competent jurisdiction to be unconstitutional or invalid, such declaration shall not be deemed to affect the validity of this Ordinance as a whole or any other section or provision hereof.

**SECTION SEVEN.** This Ordinance shall be effective immediately upon its adoption.

**PASSED UPON** at the first reading of the City Commission, this 21st day of September, 2010.

**PASSED UPON** at the second and final reading of the City Commission, this 7th day of October, 2010.

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**FRED COSTELLO**  
Mayor

**ATTEST:**

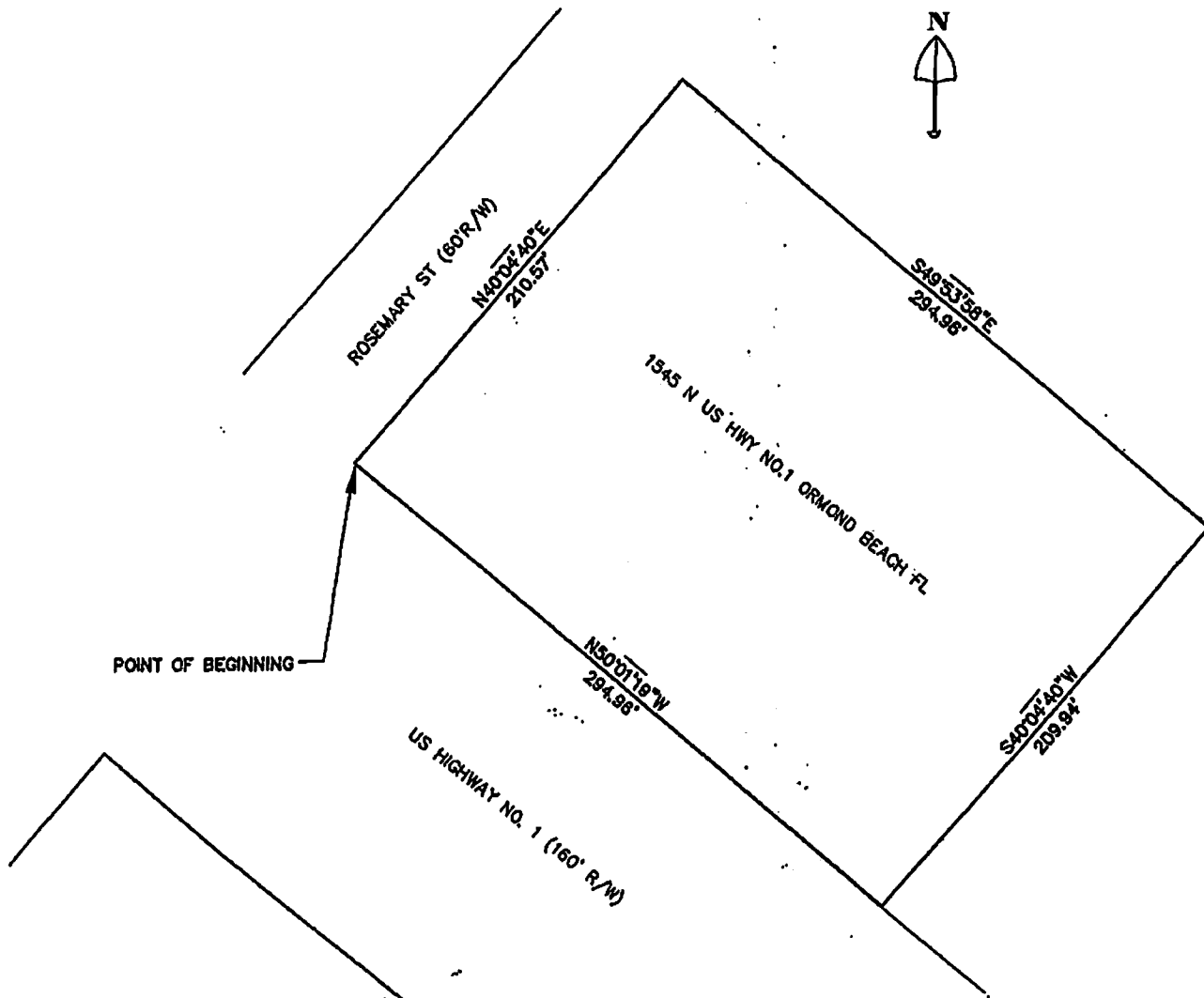
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**VERONICA PATTERSON**  
City Clerk

**EXHIBIT "A"**

Part of Block 36, NATIONAL GARDENS SUBDIVISION, as per plat recorded in Map Book 10, Pages 250 thru 253, Public Records of Volusia County, Florida, being more particularly described as follows:

As a point of reference and the point of beginning, commence at the intersection of the Southerly right-of-way line of Rosemary Street (a 60' right-of-way) with the easterly right-of-way line of U.S. Highway #1 (a 160' right-of-way); thence N 40°04'40" E along the Southerly right-of-way line of Rosemary Street a distance of 210.57 feet; thence leaving said Southerly right-of-way line S 49°53'58" E a distance of 294.96 feet; thence S 40°04'40" W a distance of 209.94 feet to the Easterly right-of-way line of U.S. Highway #1; thence N 50°01'05" W along said right-of-way line a distance of 294.96 feet to the Point of Beginning.



**OWNER:** 1545 ORMOND BEACH, LLC, a foreign limited liability company  
**ADDRESS:** 1545 N. US HIGHWAY 1  
**ZIP CODE:** 32174  
**PARCEL ID:** 3136-01-36-0020

**EXHIBIT "B"**

**WATER, SEWER AND ANNEXATION AGREEMENT**

This Agreement is entered into by and between the City of Ormond Beach, Florida, a municipal corporation ("City"), and Saddle Jack's Bar & Grill, Inc., a corporation duly authorized to transact business in the State of Florida ("Developer").

**Witnesseth:**

Whereas, the Developer owns the real property ("the Property") described on Exhibit "A" which is situated in Volusia County, Florida and the Property is presently situated outside the corporate limits of the City; and

Whereas, the Property is fully developed and is in use as a bar and grill; and

Whereas, the Property currently utilizes private water and sewer facilities and services, the availability of which is being discontinued; and

Whereas, the City has reviewed and commented upon a Site Plan and engineering drawings for water and sewer facilities required to connect to the City's water and sewer system, and determined that the proposed facilities are consistent with the City's requirements to connect to the City system; and

Whereas, the City and Developer agree that the property will be annexed into the City upon the Property being contiguous to the corporate limits of the City, but only if after such annexation the Property as developed and its current uses will be legally conforming uses under the applicable City zoning and land use laws and ordinances; and

Whereas, the City's *Land Development Code* requires owners of property to agree to annex their property into the City in order to obtain water and sewer services from the City, and

**Whereas, the Developer acknowledges the City's water rates for users outside the City are higher than the rates charged for users within the City; and**

**Now therefore, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:**

**1. Recitals.** The foregoing recitals accurately reflect the purpose and intent of the parties and are incorporated herein by reference.

**2. Extension of Water and Sewer Lines.** The Developer shall construct all potable water lines and sanitary sewer lines, including lift stations if necessary, to serve the Property. All water mains, sanitary sewer lines, and lift stations shall be designed, constructed and installed in accordance with the City's standards and in a location to be approved by the City. The Developer shall dedicate to the City the water and sewer systems it constructs within the public right-of-way hereunder. The City represents, warrants and covenants that: (a) the City's water and sanitary sewer systems currently have adequate capacity to provide water and sanitary sewer service to the Property; (b) the City shall reserve water and sanitary sewer capacity for the Property; and (c) the City will accept, when dedicated by the Developer, dedication of the water and sewer systems constructed within public right-of-way by the Developer, including without limitation all water lines, sewer lines, and lift stations.

**3. Annexation and Provision of Water.** Subject to the terms and conditions of this Agreement, when any part of the boundary of the Property is contiguous with any part of the corporate boundary of the City, the Developer and City shall take all necessary and reasonable action

to annex the Property into the City, including the filing of a petition/request for annexation and other necessary and incidental papers. The Developer shall seek annexation exclusively with the City. The City shall exercise its best efforts to annex other properties in order to make the City's corporate boundaries contiguous with the Property. The City further agrees that it shall continue to provide water and sewer services to the Property in the unlikely event the City does not annex the Property.

4. Effective Date. This Agreement shall be effective on the date it is last executed by the respective parties. The officials who have subscribed their names below are duly authorized representatives of the principals for whom they have executed this Agreement, and they each have full and complete authority to execute this Agreement on behalf of and to bind their principals.

IN WITNESS WHEREOF, the City and the Developer have each caused this Agreement to be executed on the dates described below.

DATED: September 7, 2010

THE CITY OF ORMOND BEACH


By: Fred Costello  
FRED COSTELLO  
Mayor


Attest: Joyce Shanahan  
JOYCE SHANAHAN  
City Manager

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

DATED: 12/19/, 2006

Saddle Jack's Bar & Grill, Inc.

By:   
Print Name: Michael M. HaHer  
Title: President  
Address: 1545 North U.S. One  
Ormond Beach, Florida 32174

Attest:   
Print Name: Michael M. HaHer  
Title: Secretary  
Address: 1545 North U.S. One  
Ormond Beach, Florida 32174



**EXHIBIT "A"**

Part of Block 36, NATIONAL GARDENS SUBDIVISION, as per plat recorded in Map Book 10, Pages 250 thru 253, Public Records of Volusia County, Florida, being more particularly described as follows:

As a point of reference and the point of beginning, commence at the intersection of the Southerly right-of-way line of Rosemary Street (a 60' right-of-way) with the easterly right-of-way line of U.S. Highway #1 (a 160' right-of-way); thence N 40°04'40" E along the Southerly right-of-way line of Rosemary Street a distance of 210.57 feet; thence leaving said Southerly right-of-way line S 49°53'58" E a distance of 294.96 feet; thence S 40°04'40" W a distance of 209.94 feet to the Easterly right-of-way line of U.S. Highway #1; thence N 50°01'05" W along said right-of-way line a distance of 294.96 feet to the Point of Beginning.

# ANNEXATION REPORT

September 16, 2010



**1545 NORTH US 1 (1.42 ± ACRES)**

Prepared by:  
City of Ormond Beach  
Planning Department

## ANNEXATION REPORT

### 1545 NORTH US1

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#### **INTRODUCTION:**

This item involves the proposed annexation of approximately 1.42± acres at 1545 North U.S.1, and being generally located approximately 825 feet south of Interstate 95. The property is owned by 1545 Ormond Beach, LLC, a foreign limited liability company.

#### **BACKGROUND:**

Section 180.02(3), *Florida Statutes*, authorizes municipalities to require the annexation of property as a condition of municipal utility connection. Consent to annexation by a connecting property owner is required for connections to city utilities by Chapter 3, Article V, Section 3-61(B)(2)(b) and (c) of the city's *Land Development Code*. The predecessor in title to the property, Saddle Jack's Bar & Grill, Inc., executed such an agreement with the city, allowing the city to annex the property when it becomes contiguous to the city. The property is contiguous to the city. Consequently, this is a voluntary annexation pursuant to section 171.04, *Florida Statutes*.

#### **ANALYSIS:**

Chapter 171, *Florida Statutes* governs the annexation of property. Annexation reports are only required for involuntary annexations under Sections 171.0413 and 171.042, *Florida Statutes*; however, a report has been prepared in this instance for the purpose of providing additional information. The city's planning staff has determined that the proposed annexation meets the applicable requirements for the annexation of property in accordance with *Florida Statutes* and the city's *Land Development Code*.

Section 171.042 provides that, *Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall prepare a report setting forth the plans to provide urban services to any area to be annexed, and the report shall include the following:*

**(A) A map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, as required in paragraph (c), and the general land use pattern in the area to be annexed.**

Maps are attached. The predominant city land use in this area is "Highway Tourist Commercial". The "Highway Tourist Commercial" district extends both north and south of the I-95 interchange, a distance of approximately 4,500 linear feet along U.S.1.

**(B) A statement certifying that the area to be annexed meets the criteria in s. 171.043, which provides that:**

*(1) The total area to be annexed must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun and reasonably compact, and no part of the area shall be included within the boundary of another incorporated municipality.*

"Contiguous" is defined in Section 171.031, *Florida Statutes*, to mean in part that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. The subject property is contiguous to the City of Ormond Beach along the western portion of the site for approximately 95 linear feet along U.S.1.

"Compactness" is defined in Section 171.031, *Florida Statutes*, to mean the concentration of a piece of property in a single area and precluding any action which would create enclaves, pockets, or finger areas in serpentine patterns. The subject property is compact and already has city utility services. No part of the property is located within the boundary of another incorporated municipality. Additionally, the property is within the city's utility service area. The attached location map depicts the orientation of the subject property.

*(2) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:*

- (a) It has a total resident population equal to at least two persons for each acre of land included within its boundaries;*
- (b) It has a total resident population equal to at least one person for each acre of land included within its boundaries and is subdivided into lots and tracts so that at least 60 percent of the total number of lots and tracts are 1 acre or less in size; or*
- (c) It is so developed that at least 60 percent of the total number of lots and tracts in the area at the time of annexation are used for urban purposes, and it is subdivided into lots and tracts so that at least 60 percent of the total acreage, not counting the acreage used at the time of annexation for nonresidential urban purposes, consists of lots and tracts 5 acres or less in size.*

"Urban purposes" is defined in Section 171.031, *Florida Statutes*, as land that is used intensively for residential, commercial, industrial, institutional, and governmental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas. The subject property is a commercial parcel of land that is located approximately 825 feet south of the I-95 and U.S.1 interchange.

The subject property is connected to city utilities and meets the urban purpose criteria.

***(C) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:***

- 1. Provide for extending urban services except as otherwise provided herein to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation.*
- 2. Provide for the extension of existing municipal water and sewer services into the area to be annexed so that, when such services are provided, property owners in*

*the area to be annexed will be able to secure public water and sewer service according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.*

- 3. If extension of major trunk water mains and sewer mains into the area to be annexed is necessary set forth a proposed timetable for construction of such mains as soon as possible following the effective date of annexation.*
- 4. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.*

An existing 8" force main and 12" water main extends along the west side of North U.S. 1, and an 8" water line and 4" sewer line extends under U.S.1 to serve the subject property. The annexation would not impact the provision of existing utility services, and adequate capacity exists to continue to serve the subject property.

### **URBAN SERVICES**

**Water:** The subject property has existing water service from the City of Ormond Beach. The annexation will not impact the existing provision of water service to the site. There is adequate plant and infrastructure capacity to serve the property.

**Wastewater:** The subject property has existing sewer service from the City of Ormond Beach. The annexation will not impact the existing provision of water service to the site. There is adequate plant and infrastructure capacity to serve the property.

**Traffic:** The site is an existing developed site with the traffic being accounted for in the average annual traffic counts. The annexation will not negatively impact public roadways and there is adequate traffic capacity to serve the property.

**Fire/Police:** The proposed annexation area would be served by city police and fire protection services. Fire Station #93, located at 300 Wilmette Avenue, would serve this site with an approximate response time of 4-5 minutes. The police department has adequate staff to serve the property.

Land Use and Zoning: Adjacent land uses and zoning are as follows:

**Land Use and Zoning Designations of Adjacent Property**

	<b>Current Land Uses</b>	<b>Future Land Use Designation</b>	<b>Zoning</b>
<b>North</b>	Vacant Gas Station and Restaurant	Volusia County "Commercial"	Volusia County B-6 (Highway Interchange Commercial)
<b>South</b>	Vacant Gas Station	Volusia County "Commercial"	Volusia County B-6 (Highway Interchange Commercial)
<b>East</b>	Vacant	Volusia County "Commercial"	Volusia County B-6 (Highway Interchange Commercial)
<b>West</b>	Gas Station & McDonald's	Volusia County "Commercial"	Volusia County B-6 (Highway Interchange Commercial)

**RECOMMENDATION**

It is recommended that the City Commission approve the annexation of the property at 1545 North U.S.1, based on the following:

1. City utilities were provided to the property pursuant to an annexation agreement that allows the city to annex the property when it becomes contiguous.
2. The property is contiguous to the city along the western art of the property adjoining North U.S.1
3. City utilities are being provided to the property and the city has adequate capacity and infrastructure to serve the property.
4. The annexation meets the applicable requirements of *Florida Statutes* and the city's *Land Development Code*.

**Gary S. Edinger**  
**& Associates, P.A.**

Gary S. Edinger  
GSEdinger@aol.com

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305 N.E. 1st Street • Gainesville, FL 32601 • Phone (352) 338-4440 • FAX (352) 337-0696

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September 17, 2010

Richard P. Goss, AICP  
Planning Director  
City of Ormond Beach  
2 South Beach Street  
Ormond Beach, Florida 32174

RE: 1545 Ormond Beach, LLC

Dear Mr. Goss:

This firm has the privilege of representing 1545 Ormond Beach, LLC with respect to its business interests within Volusia County. I have been asked to respond to your letter of September 3, 2010, as well as the recent adoption of Resolution 2010-132.

As Planning Director, I am sure that you are aware that the property located at 1545 Ormond Beach does not lie within the municipal boundaries of Ormond Beach, but is located in unincorporated Volusia County. As such, all matters pertaining to the permitting and regulation of that property are overseen by Volusia County and not by your City. My client has no intention of submitting any plans or permit requests to your office.

I read with interest your assertion that the 1545 property has undergone a change in use which would require my client to conform to the City's gateway corridor design standards. I believe that your information in this regard is incorrect. My client has been issued a building permit by Volusia County to undertake limited interior renovations. The business operations have continued uninterrupted during these renovations. There has been no change of use and no official at Volusia County has suggested otherwise.

In any event, your office is not responsible for determining whether 1545 Ormond Beach, LLC complies with applicable land use regulations. Volusia County is responsible for overseeing the building permit as well as the County's land use code. I am confident that County officials know how to apply their own code provisions.

Richard P. Goss, AICP  
September 17, 2010  
Page 2 of 2

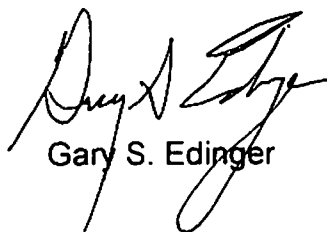
I also wish to express my client's position with respect to Resolution 2010-132 and the alleged Water, Sewer and Annexation Agreement with Saddle Jack's Bar & Grill, Inc.. My client opposes annexation into the City at this time. In addition, my client maintains that Resolution 2010-132 is void and unenforceable.

1545 Ormond Beach, LLC received no notice of the existence of any agreement between the City and the previous owner. The Agreement was not disclosed during purchase negotiations and was not a matter of public record. The Agreement does not run with the land as my client was a bona fide purchaser for value without notice. The Agreement is also barred by equitable principles of laches as the initial tender in 2006 was never accepted by the City.

My client recognizes that its property is serviced by City water and sewer lines. 1545 Ormond Beach, LLC is willing to negotiate a new water and sewer agreement which is consistent with the terms of the interlocal agreement and my client's interests. However, any annexation attempted on the basis of Resolution 2010-132 would be subject to legal challenge and would be vigorously opposed.

The hostility your City has shown to my client's business has not gone unnoticed. My client will not tolerate any interference with its constitutional rights or its vested property rights – particularly from a local government which does not even have jurisdiction over it. I can assure you that my client knows the way to the Federal Courthouse and will not hesitate to enforce its rights in that venue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary S. Edinger", written in a cursive style.

Gary S. Edinger

/gse  
cc: 1545 Ormond Beach, LLC



WATER, SEWER AND ANNEXATION AGREEMENT

This Agreement is entered into by and between the **City of Ormond Beach**, Florida, a municipal corporation ("City"), and **Saddle Jack's Bar & Grill, Inc.**, a corporation duly authorized to transact business in the State of Florida ("Developer").

Witnesseth:

**Whereas**, the Developer owns the real property ("the Property") described on Exhibit "A" which is situated in Volusia County, Florida and the Property is presently situated outside the corporate limits of the City; and

**Whereas**, the Property is fully developed and is in use as a bar and grill; and

**Whereas**, the Property currently utilizes private water and sewer facilities and services, the availability of which is being discontinued; and

**Whereas**, the City has reviewed and commented upon a Site Plan and engineering drawings for water and sewer facilities required to connect to the City's water and sewer system, and determined that the proposed facilities are consistent with the City's requirements to connect to the City system; and

**Whereas**, the City and Developer agree that the property will be annexed into the City upon the Property being contiguous to the corporate limits of the City, but only if after such annexation the Property as developed and its current uses will be legally conforming uses under the applicable City zoning and land use laws and ordinances; and

**Whereas**, the City's *Land Development Code* requires owners of property to agree to annex their property into the City in order to obtain water and sewer services from the City, and

Whereas, the Developer acknowledges the City's water rates for users outside the City are higher than the rates charged for users within the City; and

Now therefore, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

1. **Recitals.** The foregoing recitals accurately reflect the purpose and intent of the parties and are incorporated herein by reference.

2. **Extension of Water and Sewer Lines.** The Developer shall construct all potable water lines and sanitary sewer lines, including lift stations if necessary, to serve the Property. All water mains, sanitary sewer lines, and lift stations shall be designed, constructed and installed in accordance with the City's standards and in a location to be approved by the City. The Developer shall dedicate to the City the water and sewer systems it constructs within the public right-of-way hereunder. The City represents, warrants and covenants that: (a) the City's water and sanitary sewer systems currently have adequate capacity to provide water and sanitary sewer service to the Property; (b) the City shall reserve water and sanitary sewer capacity for the Property; and (c) the City will accept, when dedicated by the Developer, dedication of the water and sewer systems constructed within public right-of-way by the Developer, including without limitation all water lines, sewer lines, and lift stations.

3. **Annexation and Provision of Water.** Subject to the terms and conditions of this Agreement, when any part of the boundary of the Property is contiguous with any part of the corporate boundary of the City, the Developer and City shall take all necessary and reasonable action

to annex the Property into the City, including the filing of a petition/request for annexation and other necessary and incidental papers. The Developer shall seek annexation exclusively with the City. The City shall exercise its best efforts to annex other properties in order to make the City's corporate boundaries contiguous with the Property. The City further agrees that it shall continue to provide water and sewer services to the Property in the unlikely event the City does not annex the Property.

4. **Effective Date.** This Agreement shall be effective on the date it is last executed by the respective parties. The officials who have subscribed their names below are duly authorized representatives of the principals for whom they have executed this Agreement, and they each have full and complete authority to execute this Agreement on behalf of and to bind their principals.

IN WITNESS WHEREOF, the City and the Developer have each caused this Agreement to be executed on the dates described below.

DATED: September 7, 2010

THE CITY OF ORMOND BEACH

By: Fred Costello  
FRED COSTELLO  
Mayor

Attest: Joyce Shanahan  
JOYCE SHANAHAN  
City Manager

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

DATED: 12/19/, 2006

Saddle Jack's Bar & Grill, Inc.

By: 

Print Name: Michael M. Hafer

Title: President

Address: 1545 North U.S. One  
Ormond Beach, Florida 32174

Attest: 

Print Name: Michael M. Hafer

Title: Secretary

Address: 1545 North U.S. One  
Ormond Beach, Florida 32174

EXHIBIT "A"

Part of Block 36, NATIONAL GARDENS SUBDIVISION, as per plat recorded in Map Book 10, Pages 250 thru 253, Public Records of Volusia County, Florida, being more particularly described as follows:


As a point of reference and the point of beginning, commence at the intersection of the Southerly right-of-way line of Rosemary Street (a 60' right-of-way) with the easterly right-of-way line of U.S. Highway #1 (a 160' right-of-way); thence N 40°04'40" E along the Southerly right-of-way line of Rosemary Street a distance of 210.57 feet; thence leaving said Southerly right-of-way line S 49°53'58" E a distance of 294.96 feet; thence S 40°04'40" W a distance of 209.94 feet to the Easterly right-of-way line of U.S. Highway #1; thence N 50°01'05" W along said right-of-way line a distance of 294.96 feet to the Point of Beginning.

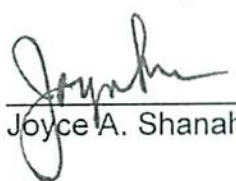
**CITY MANAGER  
MEMORANDUM**

**To:** The Honorable Mayor Costello and City Commissioners  
**Through:** Joyce A. Shanahan, City Manager  
**From:** Richard P. Goss, AICP, Planning Director  
**Date:** September 3, 2010  
**Subject:** Authorization of the Execution of Saddle Jack's Annexation Agreement

**Introduction:** This is a request to approve Resolution #2010-132 authorizing the execution of a water/sewer annexation agreement for Saddle Jack's Bar & Grill located at 1575 No. US Highway 1.

**Recommendation:** It is recommended that the City Commission approve Resolution # 2010-132 authorizing the execution of an annexation agreement with Saddle Jacks.

Reviewed by:  \_\_\_\_\_ Date 9/3/10  
Theodore S. MacLeod, P.E.  
Assistant City Manager

Approved by:  \_\_\_\_\_ Date 9/3/10  
Joyce A. Shanahan, City Manager

**RESOLUTION NO. 2010-132**

A RESOLUTION AUTHORIZING THE EXECUTION OF A WATER, SEWER AND ANNEXATION AGREEMENT BETWEEN THE CITY AND SADDLE JACK'S BAR & GRILL, INC., PROVIDING FOR RECORDATION; AND SETTING FORTH AN EFFECTIVE DATE.

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF ORMOND BEACH, FLORIDA:**

**SECTION ONE.** The Mayor and the City Manager are hereby authorized and directed to execute a Water, Sewer and Annexation Agreement between the City and Saddle Jack's Bar & Grill, Inc attached hereto.

**SECTION TWO.** A certified copy of this Resolution and Sewer and Annexation Agreement, shall be recorded in the public records of Volusia County, Florida.

**SECTION THREE.** This Resolution shall take effect immediately upon its adoption.

**APPROVED AND AUTHENTICATED, this 7th day of September, 2010.**

\_\_\_\_\_  
**FRED COSTELLO**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**VERONICA PATTERSON**  
City Clerk

JS 44 (Rev. 11/04)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> 1545 ORMOND BEACH, LLC</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Providence, R.I.</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) Gary S. Edinger, Gary S. Edinger &amp; Associates, P.A. 305 N.E. 1st Street, Gainesville, FL 32601 (352) 338-4440</p>	<p><b>DEFENDANTS</b> CITY OF ORMOND BEACH</p> <p>County of Residence of First Listed Defendant <u>Volusia</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) Unknown</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td><input checked="" type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from another district (specify)   
 6 Multidistrict Litigation   
 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. sec. 1332 (Diversity Jurisdiction)

Brief description of cause:  
Challenge to attempted annexation; injunction against termination of utilities

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND \$ N/A    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 09/22/2010    SIGNATURE OF ATTORNEY OF RECORD: Gary S. Edinger 

Digitally signed by Gary S. Edinger  
DN: cn=Gary S. Edinger, o=Gary S. Edinger & Associates, P.A., ou=email@GSEdinger@aol.com, c=US  
Date: 2010.09.22 15:52:07 -0400

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_