

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-222

A RESOLUTION JOINING OTHER LOCAL GOVERNMENTS IN A LAWSUIT CHALLENGING SENATE BILL 360 AS BEING UNCONSTITUTIONAL.

WHEREAS, over the objections of many Florida municipalities and counties, as well as the Florida League of Cities and the Florida Association of Counties, Governor Charlie Crist, on June 1, 2009, signed Senate Bill 360, the Community Renewal Act (the “Act”), into law; and

WHEREAS, the Act makes sweeping changes to growth management laws and was expressly intended to “encourage urban infill and development by removing costly and unworkable state regulations in urban areas;” and

WHEREAS, the impacts of the Act reach far beyond urban infill and development areas to encompass approximately half of the municipalities, eight of the largest counties, and half of the state’s population; and

WHEREAS, the language in the Act is unclear, resulting in disagreements between attorneys for developers and attorneys for local governments as to its applicability; and

WHEREAS, the Act may have substantial negative impacts on many local governments throughout the State of Florida, particularly if the interpretation set forth by attorneys for developers is adopted, possibly including:

1. The extension of some or all types of local development orders and building permits for two years;
2. State preemption of the ability of local governments to deny future land use map amendments to the comprehensive plan based upon transportation levels of service;
3. Elimination of the process of review for developments of regional impacts (“DRI’s”) in half of the local governments in the State, which means major development projects will be able to proceed without regard to cross-jurisdictional impacts;
4. Elimination of state-mandated traffic concurrency in certain areas without input from or regard to the impact on neighboring jurisdictions;
5. State preemption of the ability of local governments to require security cameras in private business;
6. Mandatory expenditure of substantial funds by local governments to amend their comprehensive plans to fund mobility and otherwise comply with the Act, and
7. The potential transfer of the costs for mitigating traffic impacts from developers to taxpayers; and

WHEREAS, the law firm of Weiss Serota Helfman Pastoriza Cola & Boniske, PL (the “Firm”), which serves as the City Attorney for the City of Weston (“Weston”), was asked to do a legal analysis to determine whether the Act was subject to challenge on constitutional grounds; and

WHEREAS, the Firm determined that a strong argument can be made that the enactment of the Act violated (1) Article VII, Section 18 of the Florida Constitution, which prevents the Florida Legislature from imposing requirements on local governments without providing a means to pay for such requirements unless certain requirements are satisfied (the “Unfunded Mandate Provision”), and (2) Article III, Section 6 of the Florida Constitution, which requires that every law embrace only one subject (the “single Subject Provision”); and

WHEREAS, based upon the foregoing, the City Commission of Weston passed Resolution No. 2009-49, which authorized and directed its City Manager and City Attorney to encourage other local governments to join Weston as plaintiffs in a lawsuit challenging the Act for violating the Unfunded Mandate Provision and Single Subject Provision of the Florida Constitution (the “Lawsuit”); and

WHEREAS, the City of Weston adopted a resolution requesting that other cities join in a lawsuit to challenge the law; and

WHEREAS, Weston is willing to file and fund the attorney’s fees costs of the lawsuit, if and only if, a sufficient number of other local governments agree to join the lawsuit as plaintiffs and each contribute \$2,500 towards the attorneys’ fees and costs of the lawsuit; and

WHEREAS, the City of Coral Gables desires to join Weston and the other local governments as a plaintiff in the lawsuit;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:

SECTION 1: The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption thereof.

SECTION 2: That the firm is authorized and retained to include the City of Coral Gables as a plaintiff in the lawsuit, subject to determination by Weston that a sufficient number of local governments also agree to join the lawsuit as plaintiffs. The City of Coral Gables acknowledges that its inclusion in the lawsuit shall not preclude the Firm from representing other clients in connection with the City of Coral Gables and hereby waives any such conflicts.

SECTION 3. That the City Manager is directed and authorized to contribute \$2,500 to Weston towards the attorneys' fees and costs of the lawsuit.

SECTION 4. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-NINTH DAY OF JULY, A.D., 2009.

(Moved: Anderson / Seconded: Kerdyk)

(Yeas: Anderson, Cabrera, Kerdyk, Withers, Slesnick)

(Unanimous: 5-0 Vote)


(Agenda Item: I-1)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY