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John R. Flint
City Manager



16 June 2009

Florida Municipal and County Officials

Re: Potential Constitutional Challenge to Growth Management Act (SB 360)

On June 1, 2009, over the objections of Florida cities and counties, as well as the Florida League of Cities and the Florida Association of Counties, the Governor signed Senate Bill 360, the Community Renewal Act (the "Act"), into law, which makes sweeping changes to growth management laws. The City of Weston ("Weston") is very concerned about the potential impacts of the Act on local governments throughout Florida.

The language in the Act is unclear, prompting disagreements between attorneys for developers and attorneys for local governments as to its applicability. Weston believes the Act has substantial negative impacts on Weston and other local governments, particularly if the interpretation set forth by attorneys for developers is adopted. These negative impacts may include:

- 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.*

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The law firm of Weiss Serota Helfman Pastoriza Cole & Boniske, PL (the "Firm"), which serves as the City Attorney for Weston, was requested to do a legal analysis to determine whether the Act was subject to challenge on constitutional grounds. A copy of the Firm's analysis is attached. As set forth in the analysis, the Firm determined that a strong argument can be made that the enactment of the Bill violated: (1) Article VII, Section 18 of the Florida Constitution, which prevents the 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").

The Weston City Commission, on June 15, 2009, adopted Resolution No. 2009-49, wherein the City Manager and City Attorney are directed to request other local governments to join Weston as plaintiffs in a lawsuit challenging the Bill for violating the Unfunded Mandate Provision and Single Subject Provision of the Florida Constitution (the "Lawsuit").

Weston is willing to file the Lawsuit and fund the attorneys' fees and costs of the Lawsuit, if, but only if, a sufficient number of other local governments agree to join as plaintiffs and contribute \$2,500 towards the attorneys' fees and costs of the Lawsuit. The Weston City Commission intends to determine at its next meeting, July 2, 2009, whether a sufficient number of other local governments have agreed to join the Lawsuit.

We have prepared a form resolution (attached) to be considered if your local government is interested in joining the Lawsuit. If you have any questions, please call me or our City Attorney, Jamie Cole. We look forward to hearing from you.

Sincerely,

THE CITY OF WESTON



John R. Flint
City Manager

Attachments (2)
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