

RESOLUTION NO. 16-2009

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING THE CITY OF WESTON AND OTHER LOCAL GOVERNMENTS IN A LAWSUIT CHALLENGING SENATE BILL 360 AS BEING UNCONSTITUTIONAL; PROVIDING AN EFFECTIVE DATE.

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 redevelopment by removing costly and unworkable state regulations in urban areas"; 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. mandatory expenditure of substantial funds by local governments to amend their comprehensive plans to fund mobility and otherwise comply with the

Act, and

6. 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 on 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 Town of Malabar desires to support Weston and the other local governments as they pursue this challenge in the Lawsuit.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA:

Section 1. The foregoing recitals contained in the preamble to this Resolution are incorporated by reference herein.

Section 2. The Town of Malabar supports the efforts of Weston and other municipalities in the legal challenge to the constitutionality of Senate Bill 360.

Section 3. This Resolution shall take effect upon its adoption.

This Resolution was moved for adoption by Council Member Rivet. This motion was seconded by Council Member Vail and, upon being put to vote, the vote was as follows:

Council Member Nancy Borton	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Patricia (Pat) D. Dezman	<u>Aye</u>

This Resolution was then declared to be duly passed and adopted this 20th day of July, 2009.

By:

Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair
Town of Malabar

Approved as to form and content:

Karl Bohne
Karl W. Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin
Debby K. Franklin
Town Clerk/Treasurer

(seal)