

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

CITY OF WESTON, FLORIDA, et al.,

Plaintiffs,

v.

Case No. 09-CA-2639

THE HONORABLE CHARLIE CRIST,

et al.,

Defendants.

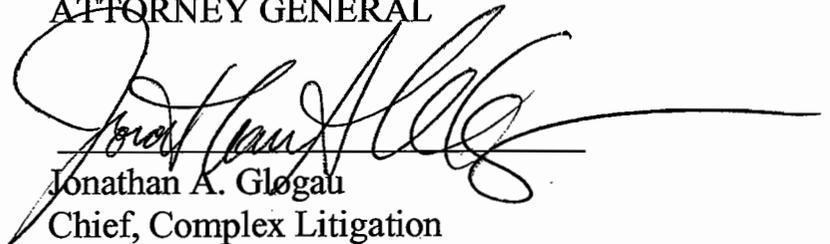
DEFENDANTS' NOTICE OF FILING

Defendants hereby give notice of the filing of the affidavit of Darrin F.

Taylor in opposition to Plaintiffs' Motion for Summary Judgment.

Respectfully submitted this 27th Day of May, 2010.

BILL McCOLLUM
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by U.S. mail and e-mail this 27th Day of May, 2010, on:

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Attorney

AFFIDAVIT

DARRIN F TAYLOR, being duly sworn, states as follows.

1. That he is a member of the American Institute of Certified Planners and has been for almost 7 years. He has almost 20 years of planning experience, including serving for 7 years as a Planning Manager for the Florida Department of Community Affairs, where he specialized in comprehensive planning and Development of Regional Impact (DRI) review and 5 years serving as a senior planner for the Tallahassee-Leon County Planning Department where he worked with comprehensive plan amendments, sector plans, zoning and other growth management issues. In August 2006, he joined Carlton Fields, P.A., a statewide law firm as a governmental consultant specializing in planning and continues to do work on comprehensive plans, DRI's, rezonings, and deals with other growth management issues. 80% of the time he works with private developers but 20% of his time is devoted to working with local government as the client

2. He is generally familiar with the legal challenge to Chapter 2009-96, Laws of Florida, which is generally referred to as Senate Bill 360 and is now codified in Florida Statutes.

Mobility Planning is already required under the Florida Growth Management Laws for all local governments

3. Prior to the adoption of SB 360, local governments were already required to plan for other modes of transportation under Chapter 163, F.S., and Rule 9J-5, F.A.C. Pursuant to s.163.3177(6)(j), F.S., local governments within urbanized areas, which presumably includes every local government designated as a dense urban land area, are required to address alternative modes of transportation including public transportation, pedestrian and bicycle travel. The local governments are also required to plan for land use densities and transportation programs to promote public transportation systems in designated public transportation corridors

4 Rule 9J-5.019, F.A.C. expands upon the mobility planning requirements for local governments in urbanized areas including identifying the existing multi-modal systems (e.g. transit, pedestrian and bicycle facilities), establishing level of service standards for multi-modal systems, analyzing the capacity of these facilities and any deficiencies present both now and in the future. If deficiencies are identified, then local governments are required to establish strategies to fund improvements to address deficiencies.

5. In addition to the requirements just mentioned, in 2008 the Legislature passed House Bill 697 (as codified in various sections of 163, F.S.) that requires all local governments (not just those within urbanized areas) to incorporate transportation strategies to address reduction in green house gas emissions from the transportation sector and to discourage urban sprawl. The DCA in its implementation of the statute has explained that for Florida reducing the usage of the automobile is a main component in reducing green house gas emissions. The DCA has implemented HB 697 by directing local governments to analyze future land use amendments, especially major plan updates, and to incorporate land use and transportation strategies that encourage other modes of transportation and reduce usage of the automobile if appropriate. These land use and transportation strategies include encouraging a compact land use form with a mix of land uses, balancing the location of jobs and housing, providing for other modes of transportation and reducing vehicles miles traveled on roadways. All of these strategies are components of mobility planning and all are being required today

6 The DCA began implementing this strategy in 2008 and today all local governments are reviewed for consistency with these requirements. The DCA has also held a series of workshops on a Draft Rule for the implementation of HB 697 which further expands upon the mobility planning requirements for local governments. This includes requiring local governments to establish "Energy Efficient land use patterns" which is defined in the Draft Rule as:

"A compact arrangement of higher density and higher intensity, complimentary land uses within areas planned for urban development that supports a multi-modal transportation system, infill and redevelopment; and accessibility to live, work, shop and play opportunities ."

The Rule also requires that all local governments identify and analyze designated "complete streets" which are defined as:

"A roadway that accommodates all travelers, particularly public transit users, bicyclists, pedestrians, and motorists, to enable all travelers to use the roadway safely and efficiently"

These provisions require that all local governments amend their comprehensive plans to address mobility planning including the funding of strategies identified. Thus, the new requirements in SB 360 for mobility planning mirror the requirements already established in s 163 and Rule 9J-5 and as proposed in the Draft Rule for HB 697

Local Governments have not lost their ability to maintain their adopted transportation concurrency management requirements

7 Under the interpretation of SB 360 by the DCA which has been accepted by local governments within the State, the local concurrency provisions remain in effect. SB 360 has removed the minimum state requirement for concurrency in designated dense urban land areas but did not abolish the local government concurrency requirements which were adopted locally under home rule powers. These comprehensive plan policies remain in effect by choice of more than 95% of local governments and require a comprehensive plan amendment in order to be removed.

The DCA has also determined that plan amendments to remove these requirements do not have to be supported by data and analysis unless the local government has its own requirement for this because of the language which removes the state mandate. This DCA interpretation provides a cost savings for those from local governments which choose to amend their plans to remove concurrency requirements in obviating the need to hire outside consultants or dedicate additional staff time on supporting data and analysis.

8. Finally, local governments have essentially accepted the DCA interpretation and have moved forward consistent with that interpretation. Thus, SB 360 has not required local governments to seek outside counsel as local governments have generally relied upon interpretations from DCA, the Florida League of Cities and other entities for guidance

Senate Bill 360 has provided cost savings to local governments

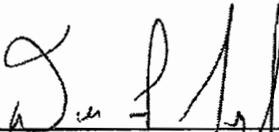
9 While the full costs of SB 360 are not yet known, SB 360 can and has resulted in cost savings to some local governments. First, local governments have saved on the hiring of outside counsel for the review of developments of regional impact (DRI). The DRI review process is an intensive and expensive specialized review process. When a DRI is proposed within a community, a local government typically hires outside counsel and consultants to review the proposed application, transportation and affordable housing analysis, negotiate with the developer and draft the development order. SB 360 exempts designated dense urban land areas from DRI review and thereby eliminates the need for outside consultants.

An example of this is where Carlton Fields, P.A. and Marina Pennington, ACIP, were hired to assist the City of Gainesville in the processing of the Butler Plaza DRI within that jurisdiction. SB 360 became law about a third through the process and Gainesville was designated as a dense urban land area. As a result, the DRI developer chose not to proceed as a DRI and outside counsel and consultant services were no longer needed.

10. Second, SB 360 gives local governments the option to eliminate transportation concurrency and establish an alternative mobility fee process. This gives local governments the flexibility to exempt certain areas from review and provide a specialized standard for each community. For example, the City of Gainesville in its Transportation Concurrency Exception Area (TCEA) has established zones based upon proximity to downtown and character of the area. If development is proposed in the central core, then very little transportation mitigation is required. As development is proposed further from the urban core additional requirements are in place to encourage other modes of transportation and reflect the increased reliance on the automobile. This strategy allows local governments to prioritize resources and avoid a one size fits all approach. This strategy is also very timely with the reduction of local governmental staff and the need maximize the staff remaining. Plus, since downtown improvements are recognized as more costly and, in most instances the local government needs to pay a portion of the improvement cost due to backlog, this flexibility can provide significant cost savings to the local government.

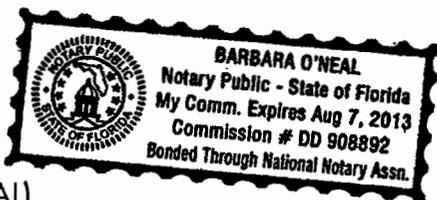
This concludes my Affidavit

Dated this 27th day of May, 2010.


DARRIN F. TAYLOR, AICP
Government Consultant
Carlton Fields, P.A.
215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301

STATE OF FLORIDA
COUNTY OF LEON

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 27th day of May, 2010 by DARRIN F. TAYLOR who is personally known to me.



(SEAL)


(Signature)

(Printed Name)