

**RESOLUTION NO. 2008-04**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA SUBMITTING TO THE CITY OF ST. PETE BEACH'S PLANNING BOARD FOR THE PLANNING BOARD, TO REVIEW AND MAKE RECOMMENDATIONS BACK TO THE CITY COMMISSION, THE SIX PETITIONS OF THE SAVE OUR LITTLE VILLAGE, INC. LAND USE PLANNING AMENDMENTS AND ZONING AMENDMENTS, AND RELATED ALTERNATIVE AMENDMENTS TO THE LAND USE PLANS.**

WHEREAS, on November 8, 2007, Save Our Little Village, Inc. (SOLV) submitted six petitions to the City of St. Pete Beach (City) with six proposed ordinances which were amendments to the Countywide comprehensive land use plan (Countywide Plan), the City of St. Pete Beach's comprehensive land use plan (City Plan), three amendments to the City's Land Development Code (City LDC), and a Community Redevelopment Area (CRA) Plan; and

WHEREAS, it is unclear whether SOLV collected the signatures on the petitions in compliance with the City Charter, including whether the entire text of the amendments were included or presented with the petitions as required by City Charter Section Sec. 7.04, which requires that "petitions shall or have attached thereto throughout the circulation the full text of the ordinance proposed." and

WHEREAS, the SOLV petitioners did not pay the per signature fee per signature for certification of the signatures of \$0.10 until January 9, 2008, and

WHEREAS, it is doubtful factually and legally whether the ballot summary and ballot explanation on the SOLV petitions were (1) clear, unambiguous, and unbiased and (2) gave fair notice of the meaning, effect and full sweep of the petitions proposed ordinances; and

WHEREAS, the SOLV proposed Countywide comprehensive land use plan amendment and the proposed amendment to the City's comprehensive land use plan amendment ordinances are substantially identical to the 2005 City Plan amendment repealed by the City voters on November 6, 2006 and appear to be essentially a request for a revote; and

WHEREAS, reasonable alternatives to the proposed SOLV ordinances which should be considered and evaluated under the Florida Growth Management Act process along with the proposed SOLV proposed ordinances, including amending the maximum densities, intensities and building height limits of the Countywide Plan and the City's Plan to those similar or identical to those of the existing City LDC; and

WHEREAS, the SOLV proposals appear to violate to procedural requirements of Florida's Growth Management Act Florida Statutes Chapter 163 as set forth below, and Section 163.3211, Fla. Stat. states the following.

**"163.3211 Conflict with other statutes.**— Where this act may be in conflict with any other provision or portion of laws regarding to local governments having

authority to regulate the development of land, the provisions of this act shall govern unless the provisions of law relating are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or 166. Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with standards or rules”; and

WHEREAS, Section 163.3174, Fla. Stat. mandates the creation of the **Local Planning Agency** (LPA), sets forth the LPAs duties in the process for adoption of plan amendments and LDR amendments, states that LPAs shall be

“responsible for the preparation of comprehensive plan and plan amendments and shall make recommendations to the governing body regarding the adoption or amendment of such plan”; and

WHEREAS, Section 163.3174(4)(c), Fla. Stat. declares that LPAs shall “[r]eview proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted plan, or element or portion thereof”; and WHEREAS, Section 163.3194(2), Fla. Stat., entitled the “Legal status of comprehensive plan,” provides in pertinent part as follows.

“(2) After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof”; and

WHEREAS, Section 163.3189, Fla. Stat. reads as follows.

**“163.3189 Process for amendment of adopted comprehensive plan.**

(1) The procedure for amendment of an adopted comprehensive plan or element which has been found to be in compliance shall be solely as prescribed by this section.

(2) A local government which has a comprehensive plan that has been found to be in compliance may amend its comprehensive as set forth in s. 163.3184...”; and

WHEREAS, effective July 1, 2007, Section 163.32465, Fla. Stat., entitled “State review of local comprehensive plans in urban areas,” created an alternative state review process pilot program in an attempt to expedite the state review process for plan amendments, but

- did not alter the LPA hearing requirement for amendments of comprehensive land use plans and LDCs,

- nor did it alter the requirement the City Commission hold two public hearings (a transmittal hearing and an adoption hearing) with approval by a majority vote by City Commission members,

- nor the requirement that the City submit all plan amendments to state agencies for review and comment,

- nor did it alter right to request a formal administrative hearing for substantive review under Chapter 120, Florida Statutes (Florida’s Administrative Procedures Act, which refers the case to the Division of Administrative Hearings with a direct appeal to the District Courts of Appeal under the Section 163.3184(9)&(10), Fla. Stat.,

- nor the prohibition on plan amendments becoming effective until the time period for challenges expires or a state agency final order is entered on a timely challenge; and

WHEREAS, while Section 163.3164(12) of the GMA allows local governments to utilize a referendum process in regard to plan amendments if the amendment affects more than five parcels of land, the GMA also sets forth the “sole” adoption process for plan amendments; and

WHEREAS Section 163.3189(2). Fla. Stat. requires compliance with the detailed GMA

adoption process by local governments prior to placement of an amendment to the City Plan or City LDC on the ballot as a referendum issue; and

WHEREAS, the Florida Supreme Court in Florida Hometown Democracy II [cite] found that the procedure for voter approval was constitutional where voter approval was required after going through the statutory procedures; and

WHEREAS, City Charter Section 7.04(f)(1) reads in pertinent as follows.

“(f) Results of election.

(1) Initiative. If a majority of qualified electors voting on a proposed ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the commission.”

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA, HEREBY:**

Submits to the City of St. Pete Beach Planning Board, as part of the Florida Growth Management Act amendment adoption process, to review and report back to the City Commission and authorize Attorney Tom Reese to act as legal counsel to the Local Planning Agency concerning the following items:

1. SOLV’s proposed Countywide Plan amendment.
2. SOLV’s the proposed City Plan amendment. The Planning Board is requested at a minimum to perform the following specific actions with regard to this proposed amendment.
  - A. A comparison of this proposed SOLV amendment and the 2005 City Land amendment which City voters repealed on November 6, 2006.
  - B. An analysis of the density and heights of the proposed amendment compared to: a) the density and height of existing buildings, and b) the existing LDC.

C. Identify and mitigate the financial impacts of the proposed amendment for infrastructure improvements.

D. Identify the impacts on existing levels of service (i.e., roads, police, fire, EMS, park land per citizen, libraries, stormwater, potable water, domestic wastewater, and public transportation).

E. Whether hardship variances can be prohibited.

F. Whether impact fees should be in the City Plan or the City LDC.

G. Whether the proposed affordable housing impact fee is supported by an affordable housing plan, and data and analysis as to amount of the fee.

H. Whether the City Plan by adopt by reference undated documents and criteria such as the Green Development standards.

I. Clarification on how building height is to be measured (stories or feet) and whether the proposed amendment would increase the total building height limit in feet above ground level.

J. Whether the proposed density pool is in compliance with the criteria of the Growth Management Act .

3. SOLV's three proposed City LDC amendments, including an analysis of the consistency of these proposed amendments with the existing City Plan and City LDC;

4. SOLV's proposed CRA Plan;

5. A request to prepare reasonable alternatives to the six proposed SOLV ordinances, including preparing amendments which modify the maximum densities, intensities and building height limits of the Countywide Plan and the City's Plan to those similar or

identical to those of the existing City LDC; and

6. A request to report back to the City Commission regarding the pros and cons of preparing a CRA Plan based upon the densities, intensities and building heights of the existing City LDC.

Ward J. Friszolowski

Ward J. Friszolowski, Mayor

I, Theresa McMaster, the City Clerk of the City of St. Pete Beach, Pinellas County, Florida, do hereby certify that the foregoing Resolution was duly adopted in accordance with the provisions of the City Charter this 8<sup>th</sup> day of February, 2008.

Theresa McMaster  
City Clerk