NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

Council Report

To: The Honorable Mayor and City Council

From: Tanya Wilson-Sejour, Director, Community Planning & Development

Date: January 10, 2017

Subject: Resolution Establishing Citywide Zoning in Progress

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, RECOGNIZING THAT THE CITY OF NORTH MIAMI IS AMENDING ITS LAND DEVELOPMENT REGULATIONS (LDRS) PURSUANT TO SECTION 163.3202, FLORIDA STATUTES, AND HEREBY INVOKING THE ZONING IN PROGRESS OR PENDING ORDINANCE DOCTRINE WITH RESPECT TO THE CITY'S LDRS; PROVIDING THAT FROM JANUARY 10, 2017 AND DURING THE PENDENCY OF THE CITY'S CONSIDERATION OF THE NEW LDR AMENDMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS RESOLUTION, THE CITY WILL DEFER THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS AMENDMENTS, SITE PLAN APPROVALS, AND CONDITIONAL USE PERMITS FOR BONUS DENSITY REQUESTS; PROVIDING FOR EFFECTIVE DATES AND FOR ALL OTHER PURPOSES.

RECOMMENDATION

That the Mayor and City Council adopt the proposed Resolution, establishing a zoning in progress deferring the acceptance, processing and approval of applications for Comprehensive Plan and Land Development Regulation (LDR) amendments, site plan approvals and conditional use permits for bonus density for a period of 180 days from adoption of said ordinance or until the City Council adopts on second reading, whichever is earlier, the future ordinance updating the LDRs.

BACKGROUND

On April 26, 2016, through the adoption of Ordinance No. 1399 the Mayor and City Council unanimously approved the proposed Evaluation and Appraisal Review ("EAR") based amendments to the City's Comprehensive Plan and authorized City staff to transmit the document to the State of Florida Department of Economic Opportunity (DEO) in accordance with the requirements of Rule 73C-49, Florida Administrative Code, and Section 163.3191, Florida Statutes. Furthermore, on June 23, 2016, the State of Florida DEO, issued a Notice of Intent (NOI) finding the City's Comprehensive Plan to be in compliance pursuant to Section 163.3184(4), Florida Statutes.

Also, Section 163.3202 Florida Statutes requires that the City subsequently update its Land Development Regulations within 12 months of final issuance of a NOI approving its Comprehensive Plan (i.e., completion by June 23, 2017). As such, the City through approval of Resolution 2016-R-115 retained the services of Keith and Schnars, P.A. ("Consultant"), to review and update the LDRs and Zoning Map.

PURPOSE & INTENT

The purpose of the proposed legislation (see attached Resolution) is to establish zoning in progress restrictions for the duration of time the City will be undergoing the update of its Land Development Regulations in order to prevent the acceptance, processing and approval of applications for comprehensive plan text and Future Land Use Map amendments, LDR text and Zoning Map amendments, site plan approval, and for Conditional Use Permits for Bonus Density requests.

Zoning in progress is a legal status enacted when a change to a local government's land development regulations is being contemplated. As such, zoning in progress is invoked by a local government with the clear intent to discourage the premature processing of applications that may be in conflict with the proposed changes underway through the City's LDR update and pose adverse impacts to the City's health, safety and welfare. Given the foregoing, if approved the resolution would impact new applications not yet filed with the City. Conversely all existing development applications already filed prior to the date of the subject resolution will continue to be governed by the law in effect at the time the application was originally filed. The aforementioned deferral shall be in effect for 180 days, or until the City Commission adopts on second reading, the amendments under review and such amendments become effective, whichever occurs earlier.

CONCLUSION

City Administration believes the zoning in progress is necessary in order to create certain safeguards to limit the processing of applications that may be detrimental to the City's public health, safety and welfare and conflict with the City's vision as expressly outlined in the comprehensive plan. Notwithstanding, if the resolution is adopted, applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from the proposed resolution through written request to and decision by the Planning Director, where the Planning Director may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief from the effect of the resolution, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed.

Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from the subject resolution. Given the foregoing staff recommends that the Mayor and City Council adopt the proposed resolution as presented.

TWS

Attachment:

1. Proposed Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, RECOGNIZING THAT THE CITY OF NORTH MIAMI IS AMENDING ITS LAND DEVELOPMENT REGULATIONS (LDRS) PURSUANT TO SECTION 163.3202, FLORIDA STATUTES, AND HEREBY INVOKING THE ZONING IN PROGRESS OR PENDING ORDINANCE DOCTRINE WITH RESPECT TO THE CITY'S LDRS; PROVIDING THAT FROM JANUARY 10, 2017 AND DURING THE PENDENCY OF THE CITY'S CONSIDERATION OF THE NEW LDR AMENDMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS RESOLUTION, THE CITY WILL DEFER THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS AMENDMENTS, SITE PLAN APPROVALS, AND CONDITIONAL USE PERMITS FOR BONUS DENSITY REQUESTS; PROVIDING FOR EFFECTIVE DATES AND FOR ALL OTHER PURPOSES.

WHEREAS, on April 26, 2016, the Mayor and City Council of the City of North Miami ("City") unanimously passed Ordinance No. 1399, adopting the Evaluation and Appraisal Review ("EAR") based amendments to the City Comprehensive Plan ("Comprehensive Plan") in accordance with the requirements of Rule 73C-49, Florida Administrative Code, and Section 163.3191, Florida Statutes; and

WHEREAS, on June 23, 2016, the State of Florida Department of Economic Opportunity, as the state land planning agency, issued a Notice of Intent finding the EAR-based amendments to the Comprehensive Plan adopted by Ordinance No. 1399, to be in compliance pursuant to Section 163.3184(4), Florida Statutes; and

WHEREAS, Section 163.3202, Florida Statutes, requires the City to amend, adopt and enforce Land Development Regulations that are consistent with and implement its adopted Comprehensive Plan within one (1) year of the Comprehensive Plan becoming effective; and

WHEREAS, since at least July 8, 2016, the City has been actively engaged in the process of undertaking the procurement of services to review and update the City's current Land Development Regulations ("LDRs") and post adoption of the Comprehensive Plan as required by Florida law; and

WHEREAS, on November 7, 2016, the Mayor and City Council passed Resolution No. 2016-R-115, approving the selection of Keith and Schnars, P.A. ("Consultant"), to review and update the City's LDRs and Zoning Map in light of the newly adopted Comprehensive Plan, and further authorized the City Manager and City Attorney to negotiate and execute an agreement with Consultant for the provision of services as required by state law; and

WHEREAS, the City, pursuant to execution of the agreement with the Consultant, will investigate, study and propose amendments to the LDRs consistent with Chapter 163, Florida Statutes (2016) and to implement the intent and purpose of the Comprehensive Plan; and

WHEREAS, the City is concerned that the acceptance, processing and approval of applications for comprehensive plan text and Future Land Use Map amendments, LDR text and Zoning Map amendments, site plan approval, and for Conditional Use Permits for Bonus Density requests, would be premature and detrimental to the public health, safety and welfare, due to the incompleteness of the studies necessary to implement the changes to the LDRs contemplated by the update of the Comprehensive Plan, including but not limited to the study during the update process of impacts that might result from such changes to the LDRs and their relationship to the above identified applications, and other concerns of the City; and

WHEREAS, pending the adoption of the amended LDRs, the Mayor and City Council hereby invoke the zoning in progress or pending ordinance doctrine as referenced in Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2nd DCA 1980), with respect to the City's LDRs, thereby deferring the acceptance, processing and approval of all applications identified above; and

WHEREAS, the deferral described above shall last for 180 days, or until the City Commission adopts on second reading, the amendments under review and such amendments become effective, whichever occurs earlier, except as provided below; and

WHEREAS, applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from this resolution through written request to and decision by the Planning Director, where the Planning Director may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief therefrom, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed. Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from this resolution. Appeals from decisions of the Planning Director shall be processed pursuant to

Chapter 29, Article 3, Division 7, of the City Code. Relief for actions taken pursuant to this resolution shall be limited to petitions for writs of certiorari pursuant to the Florida Rules of Appellate Procedure. The City shall retain complete administrative, quasi-judicial or legislative discretion in whether to approve or deny any application so filed.

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Recitals. The 'WHEREAS' clauses set forth above are incorporated herein by reference.

Section 2. Approval. The Mayor and City Council of the City of North Miami, Florida, hereby adopt this Resolution and invoke the zoning in progress or pending ordinance doctrine with respect to the City's LDRs, thereby deferring the acceptance, processing and approval of all applications not filed as of the effective date of this resolution for comprehensive plan text and Future Land Use Map amendments, LDR text and Zoning Map amendments, site plan approval and for Conditional Use Permits for Bonus Density requests; and

This deferral shall last for 180 days, or until the City Commission adopts on second reading the amendments under review and such amendments become effective, whichever occurs earlier, except as provided below; and

Applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from this resolution through written request to and decision by the Planning Director, where the Planning Director may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief therefrom, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed. Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from this resolution. Appeals from decisions of the Planning Director shall be processed pursuant to Chapter 29, Article 3, Division 7, of the City Code. Relief for actions taken pursuant to this resolution shall be limited to petitions for writs of certiorari pursuant to the Florida Rules of Appellate Procedure. The City shall retain complete administrative, quasi-judicial or legislative discretion in whether to approve or deny any application so filed.

Section 3. Effective Date. This Resolution shall be effective upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this ____ day of _____, 2017.

_____
DR. SMITH JOSEPH
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____
JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.	_____ (Yes)_____ (No)
Vice Mayor Scott Galvin	_____ (Yes)_____ (No)
Councilwoman Carol Keys, Esq.	_____ (Yes)_____ (No)
Councilman Philippe Bien-Aime	_____ (Yes)_____ (No)
Councilman Alix Desulme	_____ (Yes)_____ (No)