

RESOLUTION NO. 22-1810

A RESOLUTION OF THE TOWN OF MIAMI LAKES COUNCIL, AUTHORIZING THE TOWN ATTORNEY, PURSUANT TO FLORIDA STATUTE 164.1041(2) TO TAKE ALL LEGAL ACTION AND SEEK ALL AVAILABLE LEGAL REMEDIES TO PROTECT THE TOWN AND ITS RESIDENTS FROM IMMEDIATE DANGER TO THE HEALTH, SAFETY, AND WELFARE OF TOWN RESIDENTS FROM THE USURPATION OF MUNICIPAL RIGHTS BY MIAMI-DADE COUNTY REGARDING THE PERMITTING OF ROAD WORK ON N.W. 170TH STREET; PROVIDING FOR INCORPORATION OF RECITALS; BYPASSING FLORIDA STATUTES CHAPTER 164 CONFLICT RESOLUTION PROCEDURES IN ORDER TO PROTECT THE TOWN FROM IMMINENT HARM; PROVIDING THE TOWN ATTORNEY WITH AUTHORITY; AND PROVIDING FOR AN EFFECTIVE DATE. (CID)

WHEREAS, N.W. 170th Street is the northern municipal boundary of the Town of Miami Lakes (the “Town”); and

WHEREAS, a bridge exists over I-75 at N.W. 170th Street, that remains unconnected for vehicular traffic (the “Bridge”); and

WHEREAS, on February 11, 2003, the Town adopted Resolution No. 03-11, which authorized the transfer of local roads including N.W. 170th Street from Miami-Dade County (the “County”) to the Town (the “Road Transfer Agreement”); and

WHEREAS, the Road Transfer Agreement transferred the County’s rights and obligation over the maintenance, planning, design and construction of road segments, including N.W. 170th Street, to the Town; and

WHEREAS, on December 19, 2003, the Town adopted its Comprehensive Development Master Plan (“CDMP”), which included goals, objectives, and policies regarding development, land use, and transportation; and

WHEREAS, relying on the Road Transfer Agreement, the Town included transportation policies in its CDMP that provided for the development and maintenance of road segments, including N.W. 170th Street, including pedestrian and multimodal transportation; and

WHEREAS, the Town has invested tax dollars towards the development and maintenance of road segments, including N.W. 170th Street; and

WHEREAS, on August 19, 2019, the Town initiated Chapter 164 Conflict Resolutions Proceedings after learning that the County, in derogation of rights transferred to the Town through the Road Transfer Agreement, was taking unilateral steps to connect and open the Bridge to vehicular traffic onto N.W. 170th Street; and

WHEREAS, on October 3, 2019, after witnessing the illegal trespass, defacement, and attempts to construct on N.W. 170th Street by contractors, acting with permits provided by the County and without consent or permission from the Town, the Town Council passed Resolution 19-1639, declaring the aforementioned acts to be a threat to the health, safety, and welfare of the Town and its residents, bypassing Chapter 164 Conflict Procedures and instructing the Town Attorney to seek all available legal recourse to protect the Town and its residents; and

WHEREAS, on October 3, 2019, the Town Attorney filed a complaint in the Eleventh Circuit Court of the State of Florida, against Miami Dade County, Case Number 2019 029261 CA 01, which was amended on October 16, 2019 and again on February 3, 2020, and which plead various causes of action including legal relief from the County's breach of the Road Transfer Agreement (the "Lawsuit"); and

WHEREAS, on October 15, 2020, the Lawsuit was dismissed; and

WHEREAS, on November 11, 2020, the Town filed a Notice of Appeal, effectually staying all proceedings related to the connection of the N.W. 170th Street Bridge; and

WHEREAS, during the months of October and November 2020, Two Lakes Lennar, Inc., a developer of homes located on the west side of the Bridge ("Lennar"), submitted a construction permit request to the Town seeking to connect N.W. 170th Street to the bridge; and

WHEREAS, based on numerous technical deficiencies and concerns the Town denied the application and requested additional plans, documents, and information from Lennar; and

WHEREAS, Lennar has failed to cure the permit deficiencies; and

WHEREAS, on June 16, 2021, Two Lakes Lennar ("Lennar") filed a lawsuit in the Eleventh Circuit Court of the State of Florida, seeking to compel the Town to issue a construction permit; and

WHEREAS, on July 12, 2021, based on the appeal, the Town filed a Motion to Stay Lennar's lawsuit; and

WHEREAS, on September 17, 2021, the Court granted in part the Town’s Motion to Stay, pausing Lennar’s lawsuit pending the result of the appeal and an adjudication of the Town’s rights under the Road Transfer Agreement; and

WHEREAS, on February 16, 2022, the Third District Court of Appeal reversed the District Court’s dismissal, effectively finding that the Lawsuit sufficiently plead a cause of action against Miami-Dade County for breach of the Road Transfer Agreement; and

WHEREAS, October 5, 2021, Miami-Dade County adopted Ordinance 21-99, which attempts to usurp the Town’s rights to regulate the permitting of any and all construction on N.W. 170th Street (“Ordinance 21-99”); and

WHEREAS, specifically, Ordinance 21-99 (d)(1) provides that:

“Except as provided in paragraph (b)(3) above, municipalities are prohibited from charging any fees, **imposing any requirements, including but not limited to, maintenance of traffic requirements, or requiring that any permit be obtained for any construction work, including any public works on..... (ii) Any road that is subject to paragraph (b)(2) above.**”

and, Ordinance 21-99 **(b)** “Permits required for construction” **(2)** provides:

“Except as provided herein, it shall be unlawful for any person, corporation, partnership, association, governmental agency, or other legal entity, without **first obtaining a permit from the Department to do any construction work related to any utilities or public works on any arterial collector, section line, or half-section line road or on any other road, bridge, tunnel canal, or related facility that is situated partially or entirely within the incorporated areas of the County regardless of ownership that the Department deems necessary for appropriate traffic movement on the County’s roadway network.**”

WHEREAS, on December 21, 2021, the County provided the Town with correspondence indicating that N.W. 170th Street was a necessary road and subject to permit pre-emption by the County Ordinance 21-99; and

WHEREAS, Ordinance 21-99 derogates rights transferred to the Town by the County, through the Road Transfer Agreement, including the right to permit construction on N.W. 170th Street, and improperly attempts to circumvent ongoing judicial proceedings; and

WHEREAS, the application of Ordinance 21-99, will affect the health, welfare, and safety of Town residents, and have a devastating overall impact to the Town; and

WHEREAS, Ordinance No. 21-99, is contrary to existing public policy and will significantly compromise the Town's legal rights and responsibilities under the Road Transfer Agreement to develop and maintain N.W. 170th Street; and

WHEREAS, the application of Ordinance No. 21-99 threatens all Town roads that are unilaterally deemed as important to traffic connectivity at the sole discretion of the County and without any consent from the Town; and

WHEREAS, the Town Council finds that without immediate action, to enjoin enforcement of Ordinance No. 21-99 as unconstitutional, illegal, and violative of the Road Transfer Agreement, and the Town's health, welfare and safety of its residents will be irretrievably harmed; and

WHEREAS, Florida Statute § 164.1041(2) provides in part that “ if a governmental entity, by a three-fourths vote of its governing body, finds that an immediate danger to the health, safety or welfare of the public requires immediate action, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of this act are complied with, no notice or public meeting or other proceeding as provided by this act shall be required before such a court proceeding.”

WHEREAS, the Council finds that in order to protect the health, safety, and welfare of its residents, it is necessary to seek direct relief from the Courts and by-pass Florida Statute 164 Conflict Resolution in order to protect the Town and its residents from the County's adoption and application of Ordinance 21-99 to illegally procure and permit the construction of a road connection between the Bridge and N.W. 170th Street; and

WHEREAS, the Town Council hereby authorizes the Town Attorney, Town Manager, and Town Mayor to draft, file, execute, take any and all action necessary to protect the Town from the effects of Ordinance No. 21-99 as it applies to the connection of the Bridge to N.W. 170th Street; and

WHEREAS, in accordance with Florida Statute § 164.1041(2) the Town Council authorizes the Town Attorney to proceed with any action, including amending the Lawsuit to include additional causes of action; and

WHEREAS, in accordance with Florida Statute § 164.1041(2) the Town Council authorizes the Town Attorney to proceed with any action, to protect the Town and its residents from the illegal and improper application of Ordinance 21.99.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council finds that the health, welfare, and safety have been compromised by the actions of Miami- Dade County's adoption of Ordinance 21-99 and unilateral usurpation of Town's right to permit construction on N.W. 170th Street. The Town Council finds that Miami-Dade County's adoption of Ordinance Number 21-99, its usurpation of the Town's right to permit construction on N.W. 170th Street, if allowed to continue will cause the Town and its residents irreparable harm. The Council finds that unless immediate judicial relief is sought, the health, welfare and safety of its residents will be irreparably jeopardized. Additionally, the County's actions have directly and significantly affected the Town's legal rights to manage and control the design, maintenance and construction of its roadways, and is an utter breach of the Miami-Dade County's 2003 Road Transfer Agreement. Accordingly, as per Florida Statute § 164.1041(2), the Town authorizes its Town Attorney and Officials to take all necessary steps to file an independent action or amend the Lawsuit, in order to seek relief from Miami-Dade County Ordinance 21-99, and include and all necessary parties to the legal action in order to prevent imminent danger to the health, safety, and well being of the Town and its residents, and the significant compromise of the Town's legal rights over N.W. 170th Street, and all other municipal roads.

Section 3. Authority of the Town Attorney. The Town Attorney, or his designee, is authorized to take all necessary actions to challenge the application of Miami-Dade County Ordinance 21-99, to file an independent action or amend the pending Lawsuit, and include all necessary private or public entities, and to seek all available remedies under the law.

Section 4. Authorization of the Town Manager . The Town Manager or his designee is authorized to take any action, execute any document, necessary in furtherance of this resolution.

Section 5. Authorization of the Town Mayor. The Town Mayor is authorized to execute any document in furtherance of this Resolution

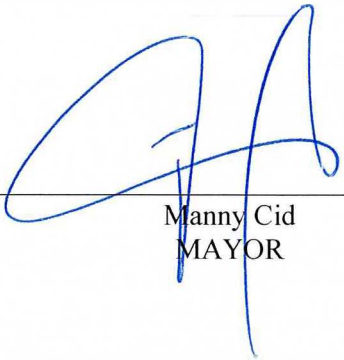
Section 6. Authorization to Expend Budgeted Funds. The Town Manager is authorized to expend budgeted funds.

Section 7. Effective Date. This Resolution shall be effective immediately upon adoption.

Passed and adopted this 2nd day of March 2022


The foregoing resolution was offered by Councilmember Dieguez who moved its adoption. The motion was seconded by Vice Mayor Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	Yes
Vice Mayor Jeffrey Rodriguez	Yes
Councilmember Carlos O. Alvarez	Yes
Councilmember Luis E. Collazo	Yes
Councilmember Josh Dieguez	Yes
Councilmember Tony Fernandez	Absent
Councilmember Marilyn Ruano	Yes



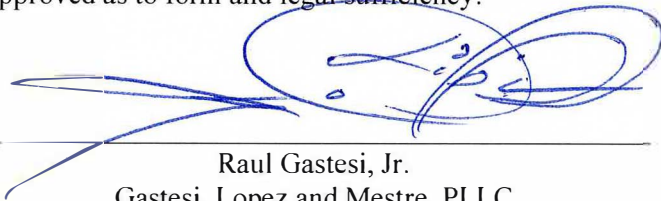
Manny Cid
MAYOR

Attest:



Gina M. Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr.
Gastesi, Lopez and Mestre, PLLC
TOWN ATTORNEY