

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.

IN THE DISTRICT COURT OF APPEALS
SECOND DISTRICT, STATE OF FLORIDA

JAMES ANDERSON

Appellant,

vs.

Case No. 2D12-5969

Case No.: 11-1319-CI-8

CITY OF ST. PETE BEACH, a municipal
government of the State of Florida, and
BEVERLY GARNETT, LORRAINE HUH,
MARVIN SHAVLAN, JAMES PARENT,
and MAYOR STEVE MCFARLIN,
all in their official capacities as the members of
the St. Pete Beach City Commission,

Appellees.

REPLY BRIEF OF APPELLANT, JAMES ANDERSON
ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA
THE HONORABLE DAVID A. DEMERS, PRESIDING

Timothy W. Weber, Esq.
Florida Bar No. 86789
Weber, Crabb & Wein, P.A.
5999 Central Avenue, Suite 203
St. Petersburg, FL 33710
timothy.weber@webercrabb.com
(727) 828-9919
(727) 828-9924 (fax)

Kenneth L. Weiss, Esq.
Florida Bar No. 0159021
11085 9th St. E.
Treasure Island, FL 33706
kweiss1@tampabay.rr.com
727-367-8829

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
TABLE OF AUTHORITIES	iii
ARGUMENT	1
I. FLORIDA STATUTES S. 163.32466 IS AN UNCONSTITUTIONAL SPECIAL LAW; EVEN IF CONSTITUTIONAL, ORDINANCE 2011-19 DOES NOT MEET ITS REQUIREMENTS	1
A. The statute is a special law enacted without the notice required by Article III, Section 10 of the Florida Constitution	1
B. Even if constitutional, the City did not meet the act’s express requirements	6
II. THE CITY VIOLATED THE SUNSHINE LAW IN PLANNING THE ADOPTION OF LEGISLATION IN SHADE MEETINGS. THESE VIOLATIONS WERE NEITHER CURABLE NOR CURED	8
III. ORDINANCE 2011-19 IS VOID AS THE CITY DID NOT COMPLY WITH THE NOTICE REQUIREMENTS OF FLORIDA STATUTES S. 166.041 IN ADOPTING IT.....	15
CERTIFICATE OF COMPLIANCE.....	17

TABLE OF AUTHORITIES

PAGE

CASES

<i>Bassett v. Braddock</i> , 262 So. 2d 425 (Fla. 1972)	13
<i>Canney v Board of Pub. Instruct. Alachua Cty.</i> , 278 So. 2d 260 (Fla. 1973)	15
<i>Cantwell v. St. Petersburg Port Auth.</i> , 21 So. 2d 139 (Fla. 1945)	3
<i>Carter v. Norman</i> , 38 So. 2d 30 (Fla. 1948)	5
<i>Coleman v. City of Key West</i> , 807 So.2d 84 (Fla. 3d DCA 2001).....	15
<i>David v. City of Dunedin</i> , 473 So. 2d 304 (Fla. 2d DCA 1985).....	15
<i>Department of Business Regulation v. Classic Mile, Inc.</i> , 541 So.2d 1155 (Fla. 1989)	2, 3, 5
<i>Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.</i> , 434 So.2d 879 (Fla. 1983)	2
<i>IDS Properties, Inc. v. Town of Palm Beach</i> , 273 So. 2d 353 (Fla. 4th DCA 1973)	13
<i>Monroe County v. Pigeon Key</i> , 647 So. 2d 857 (Fla 3d DCA 1995).....	14
<i>Neu v. Miami Herald Pub. Co.</i> , 462 So. 2d 821 (Fla. 1985)	13
<i>Schrader v. Florida Keys Aqueduct Auth.</i> , 840 So. 2d 1050 (Fla. 2003)	4, 5

<i>St. Johns River Water Management District v. Deseret Ranches</i> , 421 So. 2d 1067 (Fla. 1982)	3, 4
<i>State v. Florida State Turnpike Auth.</i> , 80 So. 2d 337 (Fla. 1955)	3, 4
<i>State v. Leavins</i> , 599 So. 2d 1326 (Fla. 1st DCA 1992)	4
<i>Zoda v. Hedden</i> , 596 So. 2d 1225 (Fla. 2d DCA 1992)	12

OTHER AUTHORITIES

Op. Att’y Gen Fla. 2006-03 (2006)	10
Op. Att’y Gen. Fla. 2004-35 (2004)	10
Op. Att’y Gen. Fla. 2009-14 (2009)	10
Op. Att’y Gen. Fla. 2009-25 (2009)	10
Op. Att’y Gen. Fla. 98-21 (1998)	10

RULES

Fla.R.App.P. 9.310	7
--------------------------	---

ARGUMENT

I. FLORIDA STATUTES S. 163.32466 IS AN UNCONSTITUTIONAL SPECIAL LAW; EVEN IF CONSTITUTIONAL, ORDINANCE 2011-19 DOES NOT MEET ITS REQUIREMENTS

A. The statute is a special law enacted without the notice required by Article III, Section 10 of the Florida Constitution

In its Answer Brief, the City makes every conceivable effort to blur the distinction between Section 76 and other provisions of Chapter 2011-139. Undoubtedly there are provisions in Chapter 2011-139 which operate universally throughout the state and have the potential to apply to other situations in the future. Section 76 is simply not one of them. Undoubtedly the Legislature undertook a multi-year process of overhauling the Growth Management Act. However, Section 76 was inserted into the legislation less than two weeks before its passage. Undoubtedly Chapter 2011-139's preemption of referenda requirements applies throughout the state and is a valid general law. Again, however, these arguments have nothing to do with whether Section 76 is a special law.

The City's efforts to confuse the purpose and effect of Section 76 with the purpose and effect of other provisions of the Act is plainly an effort to obfuscate the fact that Section 76 creates a discrete statutory provision which has the sole purpose and effect of permitting the City of St Pete Beach to readopt a single comprehensive plan amendment. The statute will never apply to any other locale or

plan amendment in the future and the classification utilized in Section 76 is merely descriptive of Ordinance 2008-15. By any definition, the law is a special law.

The City's search for support in *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983), highlights the fallacy of its argument. The City correctly quoted, "it matters not at all that when the legislation was wending its way through the House and Senate that the members were aware it would benefit Seminole: The law in question had the potential of applying to other tracks." *Id.* at 882. However, the City overlooked the key point in the sentence – that the law in question had the potential of applying elsewhere. This point was emphasized in *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, 1157 (Fla. 1989), wherein the court stated, "In determining if a reasonable relationship exists '[t]he fact that matters is that the classification is potentially open to other tracks.'" (quoting *Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d at 882). The court in *Classic Mile* concluded that "[a] statute is invalid if 'the descriptive technique is employed merely for identification rather than classification.'" *Id.*

Similarly, the City's reliance on the regulatory function of the DCA is unavailing. In *Classic Mile*, the Department of Business Regulation attempted to salvage the law at issue by arguing that it was a general law because of the regulatory function of the state in pari-mutuel matters. *Id.* It stressed the statewide

impact of revenue from pari-mutuel wagering and argued that local laws with statewide importance and impact were valid as general laws. *Id.* at 1159 (citing *St. Johns River Water Management District v. Deseret Ranches*, 421 So. 2d 1067 (Fla. 1982); *State v. Florida State Turnpike Auth.*, 80 So. 2d 337 (Fla. 1955); and *Cantwell v. St. Petersburg Port Auth.*, 21 So. 2d 139 (Fla. 1945)). The Florida Supreme Court rejected the argument, reasoning:

In each of these cases this Court upheld as general laws statutes which, on their faces, appeared to affect only limited geographic areas of the state, and found that the primary purpose of the statutes contemplated important and necessary state functions and that the actual impact of the statutes far exceeded the limited geographic area identified by the terms of the statutes. (*St. Johns*, establishment of a water management subdistrict implicating the important and necessary state function of managing the water resources of Florida; *Florida Turnpike*, funding and construction of a turnpike spanning several Florida counties; *Cantwell*, construction of bridges and other transwaterway modes of travel on the Gulf Coast of Florida).

Id. The Florida Supreme Court reasoned that the mere fact that revenue might be generated by a law cannot form the basis of statewide impact. “To hold otherwise would require validation of all revenue-generating statutes as general law,” the court reasoned. *Id.*

Similarly, as in *Classic Mile*, Section 76 cannot be upheld as a general law of statewide impact or importance. Cases in which enactments have been saved on this ground have a common thread. They involve either state functions or local classifications that are based on some circumstance or characteristic that is peculiar

to the locale. For example, regulation of the state's water resources is so vitally important a state function that the creation of a water management subdistrict was not invalid as local legislation, *St. Johns*; the Florida Turnpike was a key transportation artery spanning several counties, *Florida Turnpike*; separate regulation of wastewater discharge into the nearshore reefs of the Florida Keys was permissible because the reefs are only located in the Florida Keys and have statewide impact as a tourism destination, *Schrader v. Florida Keys Aqueduct Auth.*, 840 So. 2d 1050 (Fla. 2003); and a law prohibiting the use of an oyster rake in Apalachicola Bay was a valid general law because 90% of the state's shellfishing industry was located in the bay and it was designated an area of critical state concern, *State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA 1992).

The court in *Schrader* recognized that "if a law utilizes a classification that is geographical in its terms but the purpose of the statute is one of statewide importance and impact, *and the classification is reasonably related to the law's purpose*, it is a valid general law." 840 So. 2d 1056 (emphasis supplied). However, in order to meet this exception, the law must contain a classification that is based upon proper differences which are inherent in or peculiar to the class and are not arbitrary or illegal. *Id.* (citing *Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d at 881).

The court in *Schrader* distinguished *Classic Mile* on the basis that regulation

of wastewater impacts on the nearshore reefs of the Florida Keys had statewide importance as they were an area of critical state concern and bore a direct relationship with industries of statewide importance, tourism and seafood. *Id.* at 1056. The classification used was proper because the keys had unique characteristics not generally found elsewhere and impacts that extend far beyond Monroe County. *Id.*

The City simply cannot bring § 76 into the *Schrader* exception and has offered no evidence whatsoever that the SOLV plan amendment addressed an area of critical state concern and had impacts far exceeding St. Pete Beach. The City's contention that the SOLV plan amendment would foster economic growth is far too indirect and tenuous. *See Classic Mile*, supra (rejecting argument that any revenue-generating measure could be valid general law). Importantly, as argued above, unlike the enactment in *Schrader* the City cannot rely on this exception because its classification was improper and not based upon some characteristic peculiar to or inherent in the City of St. Pete Beach. *See also Carter v. Norman*, 38 So. 2d 30 (Fla. 1948) (classification must rest upon a difference which bears some reasonable relationship to the act and must not be arbitrary).

The undeniable fact remains that the City lost a lawsuit which resulted in the invalidation of a comprehensive plan amendment favored by the City Commission. The City secretly hired lobbyists to add a specific section to a then pending bill

relating to growth management. The section had the singular purpose and effect of allowing the City to readopt the specific comprehensive plan amendment that was invalidated in the lawsuit. It is an invalid special law, and this Court should not hesitate to so declare.

This Court should conclude that the statute is unconstitutional.

B. Even if constitutional, the City did not meet the act's express requirements

The record is undisputed that Ordinance 2008-15 was declared void *ab initio* by the circuit court because the City *never* validly adopted it. Section 3.15 of the City Charter required, as a condition precedent to adoption, that the ordinance be approved by the voters. As conclusively established by the final judgment in *Kadoura*, the City never submitted Ordinance 2008-15 to the voters for approval. Moreover, the only ordinance submitted to the voters for approval, Ordinance 2008-10, was declared void *ab initio* in *Pyle* because voter approval was obtained under false pretenses. The City abandoned its appeals of the final judgments in *Pyle* and *Kadoura* and these judgments are forever final and binding on the City.

Notwithstanding these clear, undisputed facts, the City now argues in its Answer Brief that Ordinance 2008-15 was adopted.¹ The City makes this argument

¹ Despite their argument in this appeal, the City Attorneys have previously advised the City Commissioners on several occasions that if the City did not file appeals or lost the *Pyle* or *Kadoura* appeals, the SOLV plan would “go away,” “cease to be effective,” and “would be stricken.” (R-1696, 1759; 1795-1796)

in an effort to bring itself within the language of s. 162.32466 which, by its express terms, only applies to comprehensive plan amendments that were previously adopted. The declaration that Ordinance 2008-15 was never adopted conclusively establishes that the City failed to meet the plain and unambiguous requirements of the statute it authored.

The City points to the circuit court's reliance on legislative intent to establish the applicability of the statute. However, courts may not resort to legislative intent where the statute itself is clear and unambiguous. Here, the statute clearly required a prior adoption and the City clearly did not have one. It was simply error for the circuit court to overlook a textual requirement of the statute on the basis that the legislature intended this provision to apply to the City's invalid ordinance.

Finally, and quite notably, the City fails to even address the argument it convinced the circuit court to accept, i.e. that Ordinance 2008-15 was valid "at the time" of the readoption because the final judgment declaring it void was automatically stayed by Fla.R.App.P. 9.310. The circuit court erred in adopting this theory in the final judgment. Section 163.32466 was inapplicable because Ordinance 2008-15 was never adopted; thus, Ordinance 2011-19 is invalid.

II. THE CITY VIOLATED THE SUNSHINE LAW IN PLANNING THE ADOPTION OF LEGISLATION IN SHADE MEETINGS. THESE VIOLATIONS WERE NEITHER CURABLE NOR CURED

The City argues that it was permitted to discuss in the shade any matter which could potentially reduce the City's litigation expenditures, either for the existing litigation or future litigation concerning the same subject matter. According to the City's arguments, it was free to legislate in the shade so long as it can colorably be argued that the new legislation would reduce the City's cost of defending challenges to either the existing legislation² or the new legislation itself.

On the basis of this rationale, the City argues that its discussion of repealing provisions of the City's Charter, (R-1504-09, 1585-1586, 1611-17, 1632); lobbying for a special law in the Legislature, (R-1803-07, 1817, 1819-1820; 1852-3; 1927); passage of a new comprehensive plan amendment, (R-1504-05, 1511-12, 1561, 1585, 1603, 1611-17, 1644-5, 1679-80, 1741, 1759, 1791, 1795-1807, 1855); the manner in which the City would head-off or avoid future administrative challenges to the comprehensive plan amendment it would adopt, (R-1798, 1802, 1807, 1816-1817; 1855; 1927); the specific procedures to follow in order to adopt the comprehensive plan amendment, (R-1606, 1609-10, 1679-80, 1791-1800, 1803-07,

² Notably, the City's claim that passage of Ordinance 2011-19 would moot the challenges to Ordinances 2008-10 and 2008-15 in *Pyle* and *Kadoura* was incorrect. See *Finnerty v. Pyle*, 2D11-483 (August 11, 2011 Response to Motion to Dismiss Appeal as Moot, September 30, 2011 Order deferring mootness claim to merits panel).

1927); the means by which the City could use the automatic stay provided by Fla.R.App.P. 9.310 to prevent “gaps” in the City’s comprehensive plan, (R-1504, 1676, 1679, 1856); and the political strategy that the commissioners would employ to convince voters of the correctness of their actions, (R-1585, 1769), need not be conducted in the Sunshine.³ The Sunshine Law simply does not permit such “shady” dealings.

Furthermore, by failing to address them, the City apparently concedes the existence of numerous violations having nothing whatsoever to do with settlement discussions or litigation strategy related to expenditures. These include discussing the Ancillary Issues agenda for the November 8, 2008 shade meeting, (R-1895, 1493), protecting the offices of the incumbent commissioners, (R-1555-56), restricting future citizen initiatives by Charter amendment, (R-1617), seeking an opinion of the Attorney General to permit the City to readopt the plan without state review, (R-1783-84), the hiring of the City Attorneys as lobbyists, (R-1803-04), taking steps to eliminate the political consequences of the referendum on the election of incumbent commissioners, (R-1717-18), the use of continuances and appeals to adopt the plan before this Court could rule on the *Pyle* or *Kadoura* appeals, (R-1741, 1743-1744), and discussion of a twenty-five percent increase in the City Attorneys’ billing rates. (R-1562-65)

³ The City even discussed in the shade withholding from its citizens the fact that the City had decided to readopt the plan, (R-1811-12, 1815-16)

First, the City's arguments disregard the well-settled rule that exemptions to the Sunshine Law should be construed narrowly. The City's arguments admit of no limiting principle for the shade exemption and advocate for a broad, expansive exception, contrary to the history and purpose of the Act. See Answer Brief at 27.

Second, the City's arguments are focused on avoiding future litigation costs yet the exemption is limited to "settlement negotiations" or "strategy related to litigation expenditures" for *pending* litigation. The City argues, "The City was fully within its rights, and the scope of the exemption, by considering the feasibility and costs of its options-which included the likely consequences (namely, legal challenges) attendant to those options." Answer Brief at 27. However, the City's argument could only be true if the word "pending litigation" was removed from the exemption. Importantly, the Attorney General has repeatedly opined that the exemption does not permit discussions of future litigation, even though the parties believe litigation is inevitable. See Op. Att'y Gen. Fla. 98-21 (1998); Op. Att'y Gen. Fla. 2009-25 (2009); Op. Att'y Gen. Fla. 2009-14 (2009); Op. Att'y Gen. Fla. 2004-35 (2004); Op. Att'y Gen. Fla. 2006-03 (2006). Nonetheless, the City extensively discussed in the shade how to avoid future challenges to its plan. (e.g., R-1798, 1802, 1807, 1816-1817; 1855; 1927).

The City extensively discussed repealing City Charter amendments which stood in the way of the Commission's goals, (R-1504-09, 1585-1586, 1611-17,

1632), as well as the process for readopting the comprehensive plan amendment once the Charter provisions were eliminated. (R-1606, 1609-10, 1679-80, 1791-1800, 1803-07, 1927). These were clearly legislative items and had nothing to do with settlement negotiations in the *Pyle* or *Kadoura* cases or the litigation expenditures being incurred therein. To hold otherwise would grant the City, and similarly situated government bodies, an unlimited license to discuss and plan legislation in the shade on the basis that it might affect pending or prevent future litigation.

As it relates to the issue of cure, the City, in asserting cure as a defense, had the burden of proving that its repeated discussion of matters beyond the scope of the exemption, as well as its shade decision to “repeal and readopt,” were cured. As the City admitted in its Answer Brief, the options it discussed in the shade for passing a new comprehensive plan amendment were (1) resubmitting the SOLV Plan to the voters for approval with truthful ballot summaries and titles; and (2) repealing the City Charter provision requiring voter approval and readopting the plan amendment before the expiration of the automatic stay. Answer Brief, at 26. The transcripts clearly show that by the end of the first shade meeting on November 8, 2010, the City had embarked on its plan to repeal the City Charter provisions and readopt the plan. (e.g. R-1506, 1515-1516, 1521) The Commission

never discussed at any public meeting the fact that it had considered, but rejected, option 1, to resubmit the plan to the voters.⁴

Furthermore, the only public discussion of any aspect of its decision was the discussion to place the repealers on the ballot during the December 2010 and January 2011 meetings. The City's secret "repeal and readopt" strategy was discussed only in the shade meetings. No mention was made in any public meeting of an intent to readopt the plan if the Charter provisions were repealed. No mention was made in any public meeting of a decision not to resubmit the plan to voters. The City cannot point to a single record citation supporting the claim that the shade meeting decisions were cured by a public meeting at which there was a full and independent discussion of the shade meeting deliberations.

Evidence of cure submitted as summary judgment evidence by the City consisted solely of an affidavit of the City Attorney containing summaries of public comments made before the Commission over several years; these comments began in May 2006, *five* years before the subject violations occurred.⁵ (R-2922-35).

⁴ The primary discussion at the December 2010 and January 2011 meetings was determining the language to be used in the repealer ballot language in light of the ruling in *Pyle* that previous ballot summaries and titles were false and misleading. (R-6828)

⁵ The affidavit and attachment were submitted as summary evidence pursuant to Florida Statutes § 90.956 yet the records which were summarized were not attached to the affidavit as required. *Zoda v. Hedden*, 596 So. 2d 1225 (Fla. 2d DCA 1992).

At least five of the “instances” were shade meetings from which the public was excluded.⁶ The City barely mentions the affidavit in this Court, if at all.

The City also argues that it never took formal action in the shade, and that even if it did “The long-standing law is that public meetings are not required for the aspects of the decision-making process that take place before formal action.” Answer Brief at 35. This is not the law.⁷ The Court in *IDS Properties, Inc. v. Town of Palm Beach*, 273 So. 2d 353 (Fla. 4th DCA 1973), citing this Court, stated:

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; And it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest. Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each step constitutes an ‘official act,’ and indispensable requisite to ‘formal action,’ within the meaning of the act.

The record before this Court reveals that the “repeal and readopt” strategy was crystallized in the shade and only the formal votes to place the repealers on the ballot and to adopt the comprehensive plan were performed in public. *See Monroe*

⁶ Appellant filed a motion to determine that this affidavit was filed in bad faith and violated Fla. R. Civ. P. 1.510(g). (R-7442-7616) The trial court recused itself, stating “The court has already advised counsel in chambers that because of the nature of the allegations in the plaintiff’s motion, the court feels that it cannot be fair and impartial in ruling on that particular matter” (R-7956)

⁷The City cites *Bassett v. Braddock*, 262 So. 2d 425, 427 (Fla. 1972), which has been superseded by statute and clarified by *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821, 824 (Fla. 1985), to apply only to the right of public employees to bargain collectively.

County v. Pigeon Key, 647 So. 2d 857, 860 (Fla 3d DCA 1995) (“Sunshine Law violations can be cured by independent, final action in the sunshine that is “not merely a ceremonial acceptance ... or ... a perfunctory ratification of secret decisions.”).

As noted above, there was no discussion by any Commissioner of the content of the comprehensive plan amendment, or any prior decision to readopt it, at the June 14⁸ and June 28, 2011 meetings at which it was adopted. R-4647, DVD of June 14, 2011 Commission meeting at 1:36:51; R-4648, DVD of June 28, 2011 Commission meeting at 1:01:37. At the June 14, 2011 shade meeting, only minutes before the first hearing to adopt Ordinance 2011-19, the City decided it would not accept a proposal for settlement from the citizens but would “simply proceed on course, adopt the new comp plan.” (R-1857)

At bottom, the City has abused the shade exemption and used it as a vehicle to plan political strategy to gain passage of amendments to the City Charter, a Florida statute, and a new comprehensive plan amendment in secret. No court in Florida has ever countenanced such an expansive interpretation of the shade meeting exemption. The Court should heed the reminder:

Various boards and agencies have obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist. Even though their intentions may be sincere, such boards and

8

agencies should not be allowed to circumvent the plain provisions of the statute. The benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to circumvent the plain provisions of the statute by devious ways in the hope that the judiciary will read some exception into the law.

Canney v Board of Pub. Instruct. Alachua Cty., 278 So. 2d 260, 264 (Fla. 1973).

III. ORDINANCE 2011-19 IS VOID AS THE CITY DID NOT COMPLY WITH THE NOTICE REQUIREMENTS OF FLORIDA STATUTES S. 166.041 IN ADOPTING IT

Tellingly, the City made no attempt in its Answer Brief to argue that it complied with the mandatory notice provisions of s. 166.041 in adopting Ordinance 2011-19. The record shows that, in very specific discussions with the City Attorneys, the City decided to adopt the plan “the quicker way.” (R-1792, 1798) (i.e., to dispense with the Growth Management Act notice requirements and publish notice simply as an ordinary ordinance).

“The courts have consistently held that ordinances which fall within the ambit of section 166.041(3), Florida Statutes (1997), must be strictly enacted pursuant to the statute’s notice provisions or they are null and void.” *Coleman v. City of Key West*, 807 So.2d 84 (Fla. 3d DCA 2001); *see David v. City of Dunedin*, 473 So. 2d 304 (Fla. 2d DCA 1985) (zoning ordinances not strictly enacted pursuant to s. 166.041 are void). The circuit court erred in rejecting Appellant’s notice claim. The City did not advertise Ordinance 2011-19 as required by Florida Statutes s. 166.041(c)(3). It is, therefore, void.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing has been provided to the following by e-mail this 26th day of August, 2013:

Susan H. Churuti, Esq.
schuruti@bmolaw.com

Michael S. Davis, Esq.
mdavis@bmolaw.com
dgiacoia@bmolaw.com

Bryant Miller Olive, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602

David Miller, Esq.
dmiller@bmolaw.com
Bryant Miller Olive, P.A.
SunTrust International Center
1 SE 3rd Avenue
Suite 2200
Miami, FL 33131

Elizabeth W. Neiberger, Esq.
eneiberger@bmolaw.com
jbrown@bmolaw.com
Bryant Miller Olive, P.A.
101 North Monroe Street, Suite 900
Tallahassee, FL 32301

Jonathan D. Kaney, Jr.
jon@kaneyolivari.com
55 Seton Trl.
Ormond Beach, FL 32176-6524

s/ Timothy W. Weber

Timothy W. Weber, Esq.
Florida Bar No.: 086789
Weber, Crabb & Wein, P.A.
5999 Central Avenue, Suite 203
St. Petersburg, Florida 33710
Tel: (727) 828-9919; Fax: (727) 828-9924
Email: timothy.weber@webercrabb.com and
lisa.willis@webercrabb.com
Attorney for Appellant, JAMES ANDERSON
and

Kenneth L. Weiss, Esq.
Florida Bar No.: 0159021
11085 9th Street East
Treasure Island, FL 33706-1111
Tel: (727) 367-8829
Email: kweiss1@tampabay.rr.com
Attorney for Appellant, JAMES ANDERSON

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements
(14-point Times New Roman) of Fla.R.App.P. 9.210(a)(2).

s/ Timothy W. Weber

TIMOTHY W. WEBER, ESQ.

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.