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KCB files motion to dismiss drive

By RICHARD TAMBORRINO Special to The Citizen
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The City of Key Colony Beach has filed a motion to dismiss the resident-initiated petition drive to halt the rebuilding of city hall. The city had 20 days to respond after Judge Mark Jones heard arguments on Sept. 21 in a case levied on the city by the resident group, Concerned in KCB.

In its motion to the court to dismiss Concerned in KCB leader Laurie Swanson's amended petition for a temporary injunction, the city provided a detailed summary of the general stages in this on-going process.

The group's attorney, Matt Hutchinson, said then that a ruling wasn't issued for either the group or the city because the original injunction was predicated on halting the rebuild until petitions were gathered and submitted to the city.

However, with petitions having been collected and submitted, the case shifted to being about awarding the rebuild to Hands on Builders for \$8.3 million and the many details in the city's construction plan that the group is challenging.

Now that the group has amended its petition, the city has filed its motion to dismiss. The city is arguing the decision to rebuild city hall was an administrative decision and not subject to a referendum.

It also maintains that the KCB City Commission held numerous open meetings, providing residents with multiple opportunities to provide comment concerning the commission's plans to rebuild city hall.

The group has responded by outlining specific examples where the public did express concern multiple times about replacing the existing city hall with a new building instead of repairing the old one.

They specifically refer to eight different city meetings from February 2018 through April 2022 where residents voiced their concerns, concluding that on Feb. 16, 62 members of the public attended a city meeting in person with another 42 via Zoom, and of the 26 citizens that spoke, all were opposed to proceeding with the city hall project as proposed.

The group maintains, and communicated to Hutchinson, that a review of the structural integrity of city hall by FEMA, K2M Design and other experts immediately after Hurricane Irma's impact "didn't find enough damage to warrant demolishing and rebuilding City Hall."

There are differing interpretations about FEMA and other experts' assessments that indicate the damage was cosmetic, not structural, and didn't meet the "50% rule" required for a substantial damage determination.

Hutchinson is preparing the group's response to this latest motion this week.

"The case is in a different place from last time," he said. "now the name of the game from a procedural standpoint is the city's assertion that the referendum can't be used for that, which we disagree with."

He added that once he files the group's response another hearing will be set.

—Judge (Mark) Jones can weigh in on the multiple counts now in play and can

decide for either party on these counts,” Hutchinson said. “It’s tough to know when the next hearing will occur, especially with the holidays approaching.

“Our response zeroes in on the main legal issue, that this is democracy in action and citizens have the right to petition for an election,” he added. “The sheer number of signatures collected, with over 40% of voters signing, is significant. It should be heard, and the citizens have the right to have it on a ballot.”

There is one underlying reason the city continues to pursue the city hall replacement route — money. For one, the Florida state grant of \$2.3 million the city is heavily relying upon is predicated on a rebuild.

City officials believe that if the city were instead to refurbish without hardening the police department and EOC, that grant disappears.

Second, the full extent of the rebuild cost remains in flux. HOB did not include landscaping and a parking lot in its \$8.3 million bid. Potential cost overruns, especially given escalating construction costs, could also come into play.

The group’s claim now is solely about awarding the contract to HOB.

“The city has good legal counsel, and their motion makes a good argument,” Hutchinson said. But “on the specific legal issue, we disagree.”

He added he will reference cases involving similar capital improvement projects that were subject to referenda, although he wasn’t aware of a Florida case specifically involving a city hall project.

Concerned in KCB says the city could avoid this contentious situation if it would agree to put the rebuild out for bid again. The group believes by doing that, the commission will come to the realization that a complete rebuild is out of its price range.

Even though the KCB City Commission is concurrently undergoing transition – now that former Mayor Patti Trefry has resigned – Hutchinson acknowledges the case has both political and legal dynamics.

“It’s tough to separate the political part from the legal aspect,” he said.

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