

Leon County Board of County Commissioners

Cover Sheet for Agenda #23

February 10, 2015

To: Honorable Chairman and Members of the Board

From: Herbert W. A. Thiele, County Attorney 

Title: Acceptance of Staff Report on the Rules Governing Annexation Procedures and Authorization to Prepare Amendments to the Tallahassee-Leon County Comprehensive Plan

County Attorney Review and Approval:	Herbert W. A. Thiele, County Attorney
Lead Staff/Project Team:	Patrick T. Kinni, Deputy County Attorney

Fiscal Impact:

This item has no fiscal impact to the County

Staff Recommendation:

- Option #1: Accept the staff report on the rules governing annexation procedures.
- Option #2: Direct staff to prepare proposed amendments to the Tallahassee-Leon County Comprehensive Plan, Intergovernmental Coordination Element, Policy 2.1.4 [I], consistent with the Board's direction.

Title: Acceptance of Staff Report on the Rules Governing Annexation Procedures and Authorization to Prepare Amendments to the Tallahassee-Leon County Comprehensive Plan
February 10, 2015
Page 2

Report and Discussion

Background:

On December 9, 2014, during consideration of an Agenda Item on a voluntary annexation, the Board directed the County Attorney to bring back an item outlining the rules and procedures governing the annexation of property into the boundaries of the City of Tallahassee (“COT”). Both Chapter 171, Florida Statutes, and the current Tallahassee-Leon County Comprehensive Plan address annexation procedures. Chapter 171, Florida Statutes, provides for both voluntary and involuntary annexation procedures, and each requires that the property to be annexed must be contiguous, compact, and not create an enclave (pocket of land standing alone).

Involuntary Annexation:

Any municipality may annex any contiguous, compact, unincorporated territory. Prior to commencing an involuntary annexation, the governing body of the municipality must prepare a report that sets forth a plan to provide urban services, such as sewer and water, for the area subject to annexation. At least fifteen (15) days’ prior to commencing annexation procedures, a copy of such report must be filed with the board of county commissioners, and failure to do so may be a basis for invalidating the annexation. *See*, Section 171.042, Florida Statutes (2014). Thereafter, the municipality must adopt an ordinance proposing to annex the property. Prior to such adoption, the municipality must hold at least two (2) advertised public hearings. Thereafter, a referendum must be held, and if approved at referendum, the ordinance will become effective ten (10) days’ after such approval. If there is a majority of votes against annexation, the ordinance will not become effective, and the proposed annexed area may not be the subject of an annexation ordinance by the annexing municipality for a period of two years from the date of the referendum. *See*, Section 171.0413, Florida Statutes (2014).

The character of the land to be annexed must be contiguous and must also be developed for an urban purpose or meet a set of designated requirements. A property is considered “contiguous” when a substantial part of a boundary of the territory is coterminous with a part of the boundary of the municipality. Section 171.031(11), Florida Statutes (2014). A property is considered developed for an “urban purpose” when it has either, a total resident population equal to at least two (2) persons per acre of land; a total resident population equal to at least one (1) person for each acre of land which is subdivided into lots, such that at least 60% of the total number of lots in the area are not greater than one (1) acre in size; or at least 60% of the number of lots are used for urban purposes and at least 60% of total acreage consists of lots which are not greater than five (5) acres in size. The purpose of involuntary annexation is to permit municipal governing bodies to extend corporate limits to include all nearby areas developed for urban purposes. *See*, Section 171.043, Florida Statutes (2014).

Title: Acceptance of Staff Report on the Rules Governing Annexation Procedures and Authorization to Prepare Amendments to the Tallahassee-Leon County Comprehensive Plan
February 10, 2015
Page 3

Voluntary Annexation:

An owner or owners of land may petition a municipality for voluntary annexation if the land is contiguous to the municipality and reasonably compact. The petition must include the signatures of all owners of the subject property. The municipality may adopt an ordinance to annex the property and redefine the boundary lines of the municipality to include the property, provided the notice of public hearing is published in a newspaper once a week for 2 consecutive weeks. To give proper notice, this newspaper notice must give the ordinance number and a brief, general description of the area proposed to be annexed, including a map showing the area, and a statement that the complete legal description and ordinance can be obtained from the city clerk. A copy of this notice must also be provided via certified mail to the board of county commissioners of the county where the subject property is located not less than ten (10) days' prior to publication. Failure to provide notice may be the basis for a cause of action invalidating the annexation. The ten (10) day notice requirement was added during the 2006 Legislative Session (§3, Ch. 2006-218). Voluntary annexation will not be allowed if such annexation will result in the creation of an enclave (pocket of land). *See*, Section 171.044, Florida Statutes (2014).

Comprehensive Plan:

In 2004, the Comprehensive Plan was amended to address concerns with the voluntary annexation process. Policy 2.1.4 of the Comprehensive Plan (Intergovernmental Coordination Element) requires that:

... Prior to the passage of any ordinance for annexation, the City shall prepare and have available for public inspection a pla[n] setting forth the schedule for the delivery of City provided urban services to the property subject to annexation and shall include:

- a. How land use compatibility will be insured;
- b. How facilities will be provided, and by which entity;
- c. How level of service standards will be made consistent with this plan;
- d. For voluntary annexation, the amount of any agreed upon water and/or sewer rebate that will be due to the petitioner.

When the City receives a request or petition for voluntary annexation, it will provide notice of the request or petition, together with the parcel number(s), for official review and comment, as well as ownership information from the County's online data furnished by the County Property Appraiser, to the relevant City departments; and, at the same time, send a copy of the notice to the County Administrator. The plan for each annexation shall be provided by the City Manager to the County Administrator, the County's Growth Management Direct[or] and the County Attorney at the time that it is provided to the City Commission, but no less than six (6) days before the first reading of the ordinance. *See*, Tallahassee-Leon County Comprehensive Plan, Intergovernmental Coordination Element, Policy 2.1.4 (Attachment #1).

Title: Acceptance of Staff Report on the Rules Governing Annexation Procedures and Authorization to Prepare Amendments to the Tallahassee-Leon County Comprehensive Plan
February 10, 2015
Page 4

The Board then has an opportunity to review, comment, and suggest changes regarding the proposed annexation before the adoption of the annexation ordinance. If the Board disagrees or objects to the proposed annexation, the Mayor and the Chairman are required to fully discuss the areas of concern expressed by the Board at a publicly noticed meeting. In the event the disagreement is not resolved, the City and County must submit the dispute to a mediator. See, Tallahassee-Leon County Comprehensive Plan, Intergovernmental Coordination Element, Policy 2.1.4 (Attachment #1).

Analysis:

At the December 9, 2014 meeting, questions were raised concerning the proposed voluntary annexation of property located along the North side of I-10, West of Sharer road, and whether the subject property met contiguity, reasonable compactness, and non-serpentine pattern requirements or otherwise created an enclave.

Contiguous:

Under section 171.031(11), Florida Statutes (2014), land will be considered “contiguous” when “a substantial part of a boundary of the territory... is coterminous with a part of the boundary of the municipality.” As interpreted by the courts, contiguity requires that only one side of the configuration being annexed must be substantially contiguous. *City of Sanford v. Seminole County*, 538 So.2d 113 (Fla. 5th DCA 1989). The court in that case did not feel it was necessary to look at the total perimeter of the area being annexed, because the statutory definition required only that a substantial part of a single boundary of the annexed area be coterminous with the annexing municipality. Further, the presence of a road running parallel to a city’s boundary should not prevent the assimilation of adjoining territory, as such land is still seen as contiguous. For example, in one case the petitioner’s property was still found contiguous, despite the property being bounded by I-75 and a body of water. See, *May v. Lee County*, 483 So.2d 481 (Fla. 2d DCA 1986). However, if an Interstate highway effectively bars access between the subject property and the municipality, the property will fail to be “contiguous”. *Town of Boynton v. State ex rel. Davis*, 103 Fla. 1113 (Fla. 1932). Connection of the annexing municipality and annexed area by a single point (corner contiguity) will likely not meet the contiguity requirement and will invalidate the annexation. See, *People ex rel. Hanrahan v. Village of Wheeling*, 356 N.E. 2d 806, 815 (Ill. App. Ct. 1976) (holding that point-to-point or cornering is generally not sufficient to satisfy the contiguity requirement).

Reasonable Compactness:

Property that is proposed to be voluntarily annexed must also be “reasonably compact”. Section 171.031(12), Florida Statutes (2014), defines “compactness” as a “concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area will be reasonably compact.” The courts have also held that a voluntarily annexed property was not “reasonably compact” because it created a 100-acre “pocket” of unincorporated territory surrounded by hundreds of acres of municipal property. *City of Center Hill v. McBryde*, 952 So.2d 599 (Fla. 5th DCA 2007). A “pocket” can be as large as this 100-acre area or “a small isolated area or group”. *City of Sanford*, 538 So.2d at 115. The statutory requirement that pockets not be created by annexation was intended to insure that no vestiges of unincorporated property be left in a sea of incorporated property. Yurko, 32 Stetson L. Rev. 517, 533 (2003)

Title: Acceptance of Staff Report on the Rules Governing Annexation Procedures and Authorization to Prepare Amendments to the Tallahassee-Leon County Comprehensive Plan
February 10, 2015
Page 5

Enclaves and Non-Serpentine Patterns:

Proposed property to be voluntarily annexed must not create enclaves nor be accomplished in a serpentine pattern or manner. Section 171.031(13), Florida Statutes (2014), defines an “enclave” as “[a]ny unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or [a]ny unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.” The court found that annexation was inappropriate in a particular circumstance because such annexation created enclaves of unincorporated territory within the newly annexed municipal territory with no access since the municipality had also annexed the roadways. *City of Sunrise v. Broward County*, 473 So.2d 1387 (Fla. 4th DCA 1985). The term “serpentine” is not defined in section 171.031, Florida Statutes (2014). However, the court in the *City of Sanford* case interpreted “serpentine” to mean “winding or turning one way and another.” *City of Sanford*, 538 So.2d at 115. The court in the *City of Sunrise* case determined that annexation was inappropriate because such annexation would create “finger areas in a serpentine pattern.” *City of Sunrise*, 473 So.2d at 1389.

For example, the voluntary annexation proposal raised at the December 9, 2014 Board meeting to annex the property located along the north side of I-10, west of Sharer Road would, under current law, be considered reasonably compact because it is located in a single area and falls under one county. Such annexation would not create an enclave because the property does not cut off access to other parcels that are not within the municipality. The fact that the property is bounded on one side by I-10 (a public highway) does not affect the contiguity of the property because, but for I-10, the property would abut the boundary of the municipality’s borders. On December 9, 2014, the Board voted to not object to the subject voluntary annexation.

Under Policy 2.1.4 [I] of the Comprehensive Plan, the County Administrator is provided notice of proposed voluntary annexations at the same time as relevant City departments, and the plan for each annexation is provided to the County at the same time it is provided to the City Commission, but in no event less than six (6) days’ prior to the first reading of the ordinance by the City. This six (6) day requirement may not, however, provide the Board sufficient time to consider such proposals. Therefore, a proposed amendment to the Comprehensive Plan, providing for not less than twenty (20) days’ notice prior to the first reading of the proposed annexation ordinance, may afford the County more time to sufficiently review such annexation proposals.

Title: Acceptance of Staff Report on the Rules Governing Annexation Procedures and Authorization to Prepare Amendments to the Tallahassee-Leon County Comprehensive Plan
February 10, 2015
Page 6

Options:

1. Accept the staff report on the rules governing annexation procedures.
2. Direct staff to prepare proposed amendments to the Tallahassee-Leon County Comprehensive Plan, Intergovernmental Coordination Element, Policy 2.1.4 [I], consistent with the Board's direction.
3. Board direction.

Recommendation:

Options #1 and #2.

Attachment:

1. Tallahassee-Leon County Comprehensive Plan, Intergovernmental Coordination Element, Policy 2.1.4.[I].

PTK:kam

Policy 2.1.4: [I]

Annexation by the City of Tallahassee shall be in accordance with the requirements of Chapter 171, Florida Statutes. Prior to the passage of any ordinance for annexation, the City shall prepare and have available for public inspection a plan setting forth the schedule for the delivery of City provided urban services to the property subject to annexation and shall include:

- a. How land use compatibility will be insured;
- b. How facilities will be provided, and by which entity;
- c. How level of service standards will be made consistent with this plan;
- d. For voluntary annexation, the amount of any agreed upon water and/or sewer rebate that will be due to the petitioner.

When the City receives a request or petition for voluntary annexation, it will provide notice of the request or petition, together with the parcel number(s), for official review and comment, as well as ownership information from the County's online data furnished by the County Property Appraiser, to the relevant City departments; and, at the same time, send a copy of the notice to the County Administrator. The plan for each annexation shall be provided by the City Manager to the County Administrator, the County's Growth Management Direction and the County Attorney at the time that it is provided to the City Commission, but no less than six (6) days before the first reading of the ordinance. The Board of County Commissioners shall have the opportunity to review, comment, and suggest changes regarding the proposed annexation prior to the adoption of the annexation ordinance(s) by the City Commission, but such comments must be received by the City Manager prior to the public hearing on the annexation ordinance(s) related to the plan. In the event that the County Commission objects to the annexation, the Mayor and the Chairman of the Board of County Commissioners shall confer in a publicly noticed meeting and fully discuss the areas of concern expressed by the County. The City shall delay the annexation process for a period not to exceed 30 days for the purpose of holding the joint meeting with the County. In the event the County continues to object to the proposed annexation following the joint meeting with the City, the City and County agreed to submit the dispute to a mutually acceptable mediator. Expense of the mediation shall be equally divided between the City and County. The City shall delay the annexation process for a period not to exceed 60 days for the purpose of conducting the mediation proceedings.