IN THE TWELFTH JUDICIAL CIRCUIT COURT
IN AND FOR SARASOTA COUNTY, FLORIDA

WEST VILLAGERS FOR
RESPONSIBLE GOVERNMENT,
JOHN MEISEL ,
Plaintiff,

v.

CASE NO. 2021 CA 002673 SC
DIVISION H CIRCUIT

CITY OF NORTH PORT
FLORIDA,
Defendant.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

BEFORE THE COURT is the Petition for Writ of Certiorari [DIN 2], the response in opposition [DIN 31], and the reply to the response [DIN 35]. The Court heard oral argument from the parties on October 8, 2021.

The North Port City Commission failed to "specifically stat[e] the facts upon which the rejection is based" and applied the wrong definition of feasible. This was a miscarriage of justice; the Commission departed from the essential requirements of law. Further, the Court cannot find there is competent, substantial evidence supporting the Commission's rejection of West Villagers' contraction petition.

The Court grants the writ of certiorari and quashes the Final Order under review.

1.
THE PARTIES AND THE PETITION

Petitioners are West Villagers for Responsible Government, Inc., ("West Villagers") and John Meisel ("Meisel"). Respondent is the City of North Port, Florida ("City"). The City's governing board is the North Port City Commission ("Commission"). West Villagers is a political organization that organized and submitted petitions to the City for the contraction (or de-annexation) of certain property ("contraction area") currently within the City limits, as provided for under section 171.051(2), Florida Statutes. At the conclusion of a quasi-judicial hearing on April 29, 2021, the Commission voted to reject the petition. Through the present petition, West Villagers and Meisel seek a writ of certiorari quashing the Commission's decision and remanding the matter with directions to grant the petition and adopt the proposed contraction ordinance.

2.
THE FINAL ORDER UNDER REVIEW

On May 3, 2021, Amber L. Slayton, North Port's City Attorney, entered the following final order denying West Villagers' request for the Commission to initiate proceedings that could lead to the contraction of the municipal boundaries of the City ("Final Order").

The Court quotes the relevant portions of the Final Order.

ORDER DENYING PETITION FOR CONTRACTION

Petitioners' Representative: West Villagers for Responsible Government

Petition Submission Date: October 28, 2020

Signature Verification Date: November 17, 2020

Petition Request: Adopt an ordinance removing all lands west of the Myakka River from the City of North Port municipal boundary

PROCEEDINGS

On October 28, 2020, West Villagers for Responsible Government submitted a petition pursuant to Florida Statutes Section 171.051(2) asking the City Commission to redraw the City's municipal boundaries and exclude certain property that is currently within the City limits. On November 5, 2020, the City submitted all signatures on the petition to the Supervision of Elections for verification. On November 17, 2020, the Supervisor of Elections verified the sufficiency on the petition, confirming that, of the 1315 signatures on the petition, 1260 signatures were verified as valid under Chapter 171, Florida Statutes.

Pursuant to Florida Statutes Section 171.051(2), the City undertook a study of the feasibility of the proposal. On April 29, 2021, the City Commission conducted a full-day hearing to consider the eligibility of the area for contraction and the feasibility of contraction, including but not limited to, the feasibility study conducted by the City. The City Commission conducted the hearing in compliance with the City's procedures for quasi-judicial

proceedings set forth in Chapter 2, Article III of the Code of the City of North Port, Florida. The following parties were given equal time and opportunity to present documentary and testimony evidence, as well as to conduct cross-examination and provide argument as to this subject:

1. Petitioner, West Villagers for Responsible Government;
2. Administrative staff of the City of North Port;
3. Wellen Park, LLLP;
4. Mattamy Sarasota/Tampa, LLC d/b/a Mattamy Homes;
5. Neal Communities, LLC; and
6. Sam Rogers Properties, Inc.

ACTION AND FINDINGS

Immediately after conducting the hearing on this matter and considering all evidence and testimony presented, the City Commission deliberated and took the following final action by a unanimous 5-0 vote:

> Based upon the competent, substantial evidence presented in this hearing, to REJECT the municipal contraction petitioner submitted by West Villagers for Responsible Government on October 28, 2020 for the following reasons:
>
> 1. The area meets the criteria for Florida Statutes Section 171.043; therefore, this area is not appropriate for contraction;
>
> 2. Public health and safety are our primary responsibilities for all citizens of North Port;
>
> 3. Contraction is not feasible due to the existing urbanization;
>
> 4. Contraction is not in the best interest of the City's prior planning and future goals; and
>
> 5. Contraction is not fiscally neutral.

Pet. App. Ex. 31, Order Denying Petition for Contraction, signed May 3, 2021 [DIN 19].

On June 2, 2021, West Villagers and Meisel timely filed with the Court their Petition for Writ of Certiorari [DIN 2]. The Court directed a response and conducted oral argument.

3.
JURISDICTION AND STANDARD OF REVIEW

The Court has certiorari jurisdiction to review municipal action on annexation or contraction. Art. V, § 5(b), Fla. Const.; Broward County v. G.B.V. Intern., Ltd., 787 So. 2d 838, 842-843 (Fla. 2001); Fla. R. App. P. 9.030(c)(3). In this "first-tier" certiorari review, the Court is limited to determining: (1) whether the City afforded procedural due process to the parties; (2) whether the City observed the essential requirements of the law; and (3) whether the City's decision is supported by competent substantial evidence. Martin County v. City of Stuart, 736 So. 2d 1264, 1266 (Fla. 4th DCA 1999). The Court's review of the Final Order is limited to these considerations; it is not a plenary appeal.

The City agrees that the Court has common law certiorari jurisdiction; however, the City disagrees that that the Court has jurisdiction pursuant to section 171.081(1), Florida Statutes. In that the Court indisputably has common law certiorari jurisdiction, the Court need not address whether it separately has jurisdiction pursuant to section 171.081(1), which authorizes "any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal government body to comply with the procedures set forth" in chapter 171 to "file a petition in the circuit court for the county in which the municipality . . . [is] located seeking review by certiorari."

Further, the Court need not determine whether Meisel separately has standing as West Villagers indisputably has standing.

Given the Court's limited review, West Villagers' request that the Court direct the Commission to adopt a contraction ordinance is legally improper.

4.
THE STATUTORY FRAMEWORK FOR CONTRACTION OF MUNICIPAL BOUNDARIES

"Florida law establishes a statutory process that could result in the contraction of a municipality's boundary. Section 171.051, Florida Statutes [(2021)], contains the present-day statutory requirements. Contraction—also known as deannexation—is not a new concept. More than 150 years ago, the Florida Legislature established a process to contract the boundaries of a municipality. See ch. 1688, §29, Laws of Fla. (1869), approved Feb. 4, 1869.

Over the years, the Legislature has amended the deannexation process. While the details of the process have changed, the potential for deannexation has been a constant since at least 1869, if not prior." Wellen Park, LLLP v. West Villagers for Responsible Government, Inc., 2021 WL 277433, at *4 (Fla. 12th Cir.Ct. Sarasota Jan. 25, 2021).

In 1974, the Legislature overhauled the entire contraction process. There are three separate statutes directly implicated by the pending petition: section 171.051, the contraction statute; section 171.052, criteria for contraction; and section 171.043, the character of the area for annexation. The Court first addresses the contraction process established by section 171.051. The Court then addresses the criteria in sections 171.052 and 171.043 that determine whether any contraction may proceed.

4-A
The Contraction Process (§171.051, Fla. Stat.)

The Legislature rewrote section 171.051 in 1974, and it has remained unchanged since then except for one minor change in 1990 not relevant here. See ch. 90-279, §17, Laws of Fla. Section 171.051 establishes various steps that must occur—in sequence—prior to any contraction.

Present day section 171.051 contains 10 subsections. West Villagers filed their petition under subsection (2). The Court reproduces the first 5 subsections of that statute because statutory context is important in determining the proper meaning of subsection (2). The Court omits subsections 6-10, which address the mechanics of a referendum election not relevant here:

> **171.051 Contraction procedures.**—Any municipality may initiate the contraction of municipal boundaries in the following manner:
>
> (1) The governing body shall by ordinance propose the contraction of municipal boundaries, as described in the ordinance, and provide an effective date for the contraction.
>
> (2) A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries, filed with the clerk of the municipal governing body, may propose such an ordinance. ***The municipality to which such petition is directed shall immediately undertake a study of the feasibility of such proposal and shall, within 6 months, either initiate proceedings under subsection (1) or reject the petition, specifically stating the facts upon which the rejection is based.***

(3) After introduction, the contraction ordinance shall be noticed at least once per week for 2 consecutive weeks in a newspaper of general circulation in the municipality, such notice to describe the area to be excluded. Such description shall include a statement of findings to show that the area to be excluded fails to meet the criteria of s. 171.043, set the time and place of the meeting at which the ordinance will be considered, and advise that all parties affected may be heard.

(4) If, at the meeting held for such purpose, a petition is filed and signed by at least 15 percent of the qualified voters resident in the area proposed for contraction requesting a referendum on the question, the governing body shall, upon verification, paid for by the municipality, of the sufficiency of the petition, and before passing such ordinance, submit the question of contraction to a vote of the qualified voters of the area proposed for contraction, or the governing body may vote not to contract the municipal boundaries.

(5) The governing body may also call for a referendum on the question of contraction on its own volition and in the absence of a petition requesting a referendum.

(Emphasis added.)

Florida's Attorney General has expressed an opinion concerning the proper functioning of section 171.051, which in most respects is relatively straightforward. The Court agrees with most—but not all—of the General's assessment. The Court reproduces the General's relevant analysis, but the Court emphasizes that portion in which the Court disagrees.

Before answering your questions, I would offer the following summary of the contraction procedure provided by s. 171.051, F. S., for exclusion of an area not meeting the requirements for annexation. There are two methods by which initiation of the contraction procedures may be accomplished, and there are two separate petition procedures.

Under s. 171.051(1), F. S., a municipal governing body may, on its own initiative, "by ordinance propose the contraction of municipal boundaries, as described in the ordinance, and provide an effective date for the contraction." In the alternative, under s. 171.051(2), F. S., such a contraction ordinance may be proposed by a "petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries." If the

latter course is taken—proposal of the contraction ordinance by petition—the governing body is required to undertake a feasibility study of the contraction proposed by the petition. Within 6 months from the time the required study is begun by the governing body, that body must do one of two things: It must either initiate contraction proceedings by ordinance pursuant to subsection (1), supra, or reject the petition (in which case the specific facts on which the rejection is based must be stated). Section 171.052(1) (criteria for contraction) clearly provides that "[o]nly those areas which do not meet the criteria for annexation in s. 171.043 may be proposed for exclusion by municipal governing bodies." (Emphasis supplied.) Thus, it would certainly seem that a finding of compliance with s. 171.043 would constitute sufficient grounds for rejecting a petition for initiation of contraction procedures. ***However, a municipal governing body would appear to have broad discretion under the statute to reject any such petition, so long as it specifically states its reasons therefor.***

The second petition procedure is provided for in s. 171.051(4), F. S. It must be understood that this petition procedure would be available only after the governing body has introduced a contraction ordinance pursuant to subsection (1) of s. 171.051 [either on its own initiative or after conducting a feasibility study pursuant to a petition submitted under subsection (2)]. After introduction of the contraction ordinance and advertisement or public notice thereof pursuant to subsection (3) which, among other things, must include a statement of findings showing the area to be excluded fails to meet the criteria of s. 171.043, supra, the next step is consideration of the contraction ordinance at a meeting of the governing body held for that purpose. It is at this point—the holding of the meeting at which the ordinance is to be considered—that the second petition procedure comes into play. This second procedure, under subsection (4) of s. 171.051, concerns whether or not the contraction ordinance is to be the subject of a referendum submitted to the vote of the "qualified voters of the area proposed for contraction." Section 171.051(4). Such a referendum may be sought by submission at such meeting of a petition requesting a referendum on the question of contraction as prescribed in subsection (4), or, in the absence thereof, such a referendum may be proposed by the governing body on its own initiative under subsection (5).

Op. Att'y Gen. Fla. 76-221 (Nov. 15, 1976) (emphasis added to indicate disagreement).

As addressed in section 5-A of this Opinion, the Court disagrees with that portion of the General's opinion involving the General's gratuitous suggestion that a municipality has unfettered discretion in reviewing a section 171.051(2) petition, because such statement deviates from the statute's text. That discretion seems to be afforded at the later section 171.051(4) step in the contraction process.

4-B
Contraction Criteria (§§171.052(1) and 171.043, Fla. Stat.)

Regardless of whether contraction is initiated by a municipality under section 171.051(1), or, in this case, by petition under section 171.051(2), two related statutes describe required criteria that must be present for contraction to proceed. Section 171.051 provides:

> **171.052 Criteria for contraction of municipal boundaries.—**
>
> (1) Only those areas which do not meet the criteria for annexation in s. 171.043 may be proposed for exclusion by municipal governing bodies. If the area proposed to be excluded does not meet the criteria of s. 171.043, but such exclusion would result in a portion of the municipality becoming noncontiguous with the rest of the municipality, then such exclusion shall not be allowed.

By the express terms of the first sentence of this subsection, contraction is not permitted if the area for contraction does not meet the criteria for annexation in section 171.043. The first sentence of section 171.052(1) expressly references section 171.043, which sets forth criteria an area must possess to be eligible for ***annexation***. Stating that first sentence more directly: If the area sought to be contracted qualifies for annexation under section 171.043, contraction is not permitted. This is a legislative command.

The second sentence of section 171.052(1) provides an additional prohibition to contraction not relevant here: contraction is not permitted if the result of the contraction would render a portion of the municipality being noncontiguous with the remainder of the municipality. Because there is no contention in the papers that the result of West Villagers' petition, if adopted, would render a portion of the City noncontiguous with the remainder, the Court will ignore the second prohibition for the remainder of this Opinion.

Returning to the first sentence of section 171.052(1), there is reference to section 171.043 discussing ***annexation***. That statute provides:

171.043 Character of the area to be annexed.—A municipal governing body may propose to annex an area only if it meets the general standards of subsection (1) and the requirements of either subsection (2) or subsection (3).

(1) The total area to be annexed must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun and reasonably compact, and no part of the area shall be included within the boundary of another incorporated municipality.

(2) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(a) It has a total resident population equal to at least two persons for each acre of land included within its boundaries;

(b) It has a total resident population equal to at least one person for each acre of land included within its boundaries and is subdivided into lots and tracts so that at least 60 percent of the total number of lots and tracts are 1 acre or less in size; or

(c) It is so developed that at least 60 percent of the total number of lots and tracts in the area at the time of annexation are used for urban purposes, and it is subdivided into lots and tracts so that at least 60 percent of the total acreage, not counting the acreage used at the time of annexation for nonresidential urban purposes, consists of lots and tracts 5 acres or less in size.

(3) In addition to the area developed for urban purposes, a municipal governing body may include in the area to be annexed any area which does not meet the requirements of subsection (2) if such area either:

(a) Lies between the municipal boundary and an area developed for urban purposes, so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services or water or sewer lines through such sparsely developed area; or

(b) Is adjacent, on at least 60 percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (2).

The purpose of this subsection is to permit municipal governing bodies to extend corporate limits to include all nearby areas developed for urban purposes and, where necessary, to include areas which at the time of annexation are not yet developed for urban purposes whose future probable use is urban and which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

§171.043, Fla. Stat.

The application of sections 171.052(1) and 171.043 results in only two scenarios that contraction may qualify to proceed, regardless if initiated by a municipal governing body or by petition. *First*, if the area for contraction does not qualify under 171.043(1) for annexation, then contraction may proceed. *Second*, if the area for contraction qualifies under 171.043(1) for annexation but does not qualify under both .043(2) and .043(3), then contraction may proceed. In all other circumstances, contraction cannot proceed by legislative command.

Having discussed these contraction statutes, the Court in Part 5 now applies those statutes to the current certiorari petition.

5.
ANALYSIS OF THE PETITION

The Commission identified five reasons to deny West Villagers' petition for contraction. They were:

1. The area meets the criteria for Florida Statutes Section 171.043; therefore, this area is not appropriate for contraction;

2. Public health and safety are our primary responsibilities for all citizens of North Port;

3. Contraction is not feasible due to the existing urbanization;

4. Contraction is not in the best interest of the City's prior planning and future goals; and

5. Contraction is not fiscally neutral.

Pet. App. Ex. 31, p. 2, Order Denying Petition for Contraction, signed May 3, 2021 [DIN 19].

Initially, the Court notes that each of these enumerated reasons falls well short of the statutory command that the Commission "specifically stat[e] the facts upon which the rejection" of the feasibility of West Villagers' petition is based. In large part, these are ultimate conclusions. The Legislature's direction to require a governing body to "specifically stat[e] the facts" is designed, in part, to allow a reviewing court to understand the decision and be able to determine if there exists competent substantial evidence supporting the facts. As the Court is quashing the Commission's rejection of the petition, the Court is confident that the Commission—should it again decide to reject the petition at the section 171.051(2) step—will apply the correct law, which includes the statutory command to "specifically stat[e] the facts upon which the rejection is based." §171.051(2), Fla. Stat.

In footnote 5 of their Response, the Commission with citation to Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469, 476 (Fla. 1993), appears to reject the need for specificity. The Commission is mistaken. The Court in Snyder explained in the context of a rezoning application under the then existing Growth Management Act that the governing body did not have to make findings of fact, even if useful. Id. Of course, Snyder did not address a contraction petition where the Legislature directed the governing body to "specifically stat[e] the facts upon which the rejection" of feasibility is based.

Having addressed that fatal flaw in the Final Order, the Court continues its review to address other flaws also requiring the quashal of the Final Order.

The interplay of section 171.051(2) with sections 171.052(1) and 171.043, required the Commission to make two fundamental assessments: (1) whether contraction is feasible; and (2) whether the area proposed to be contracted meets the statutory criteria for annexation. The Court will address each seriatim.

5-A
Feasibility

"Many high-stakes cases turn on . . . narrow linguistic questions." Dean Wish, LLC v. Lee County, 2D19-4843, 2021 WL 4557060, at *1 (Fla. 2d DCA Oct. 6, 2021) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The

Interpretation of Legal Texts 141 (1st ed. 2012)). Whether West Villagers' proposed contraction is feasible turns on the definition of feasible. This is foundational, as section 171.051(2) required the Commission to determine "the feasibility of" the West Villagers' proposal. Because Chapter 171 does not define "feasibility," the Court must give that term its plain and ordinary meaning.

The Florida Supreme Court recently reminded what a court should do in assessing the plain and ordinary meaning of a term:

> In interpreting the statute, we follow the "supremacy-of-text principle"—namely, the principle that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means. We also adhere to Justice Joseph Story's view that every word employed in a legal text is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.
>
> We thus recognize that the goal of interpretation is to arrive at a fair reading of the text by determining the application of the text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued. This requires a methodical and consistent approach involving faithful reliance upon the natural or reasonable meanings of language and choosing always a meaning that the text will sensibly bear by the fair use of language.

Ham v. Portfolio Recovery Associates, LLC, 308 So. 3d 942, 946–47 (Fla. 2020) (internal citations, quotations, and alternation omitted). In implementing this task, courts may resort to dictionaries, especially those from the time the Legislature first used the term. SeeDebaun v. State, 213 So. 3d 747, 751 (Fla. 2017).

When the Legislature in 1974 rewrote section 171.051 and included the feasibility determination requirement for the first time, the Fourth Edition of Black's Law Dictionary was the then current edition. That dictionary defined feasible as "[c]apable of being done, executed, or affected." Black's Law Dictionary (4th ed. rev. 1968). ***None*** of the alternate definitions for feasible included a value judgment of whether something ***should be done***.

Resort to more current dictionaries confirm that feasible continues to exclude value judgments. The Sixth Edition of Black's Law Dictionary—from 1990—contains virtually the same primary definition: "Capable of being done, executed, affected or accomplished." It adds, "reasonable assurance of success." That dictionary lists "possible" as a synonym. A nonlegal dictionary from 1991—Webster's Ninth New Collegiate Dictionary—defines feasible as

"capable of being done or carried out." The secondary definition provides "capable of being used or dealt with successfully." It, too, identifies "possible" as a synonym.

Online dictionaries from today contain the same definition. The Merriam-Webster's online dictionary primarily defines feasible as "capable of being done or carried out," with a secondary definition of "capable of being used or dealt with successfully." (www.merriam-webster.com/dictionary/feasible, last visited 11/9/2021). Dictionary.com similarly defines feasible as "capable of being done, effected, or accomplished." (www.dictionary.com/browse/feasible, last visited 11/9/2021). As with the Fourth Revised Edition of Black's Law Dictionary, the Sixth Edition of Black's Law Dictionary, and Webster's Ninth New Collegiate Dictionary, none of these online dictionaries include the value judgment of whether something should be done.

Interestingly, Respondents cited a1995 version of Black's Law Dictionary was consulted for a definition of "feasibility study." Respondents dropped footnote 7 in their Response, arguing:

> Black's has long contained a specific definition for 'feasibility study' which means 'analyzing to see if a project is technically doable, cost effective, and profitable. *Black's Law Dictionary* (2d ed. 1995). This definition was also provided to the City Commission during the Feasibility Hearing (Tr. 68:17-69:3).

Response, p.12, n.7 [DIN 31].

Of course, those words—"feasibility study"—were not used in order by the 1974 Legislature, which calls into question the resort to that phrase. The Fourth Revised Edition of Black's Law Dictionary—from 1968—does not include the phrase "feasibility study" as a defined phrase. Similarly, the Sixth Edition from 1990 does not include the phrase "feasibility study." The Court did not find the dictionary version identified by Respondents, and the Court could not find it in the appendix. Regardless, Respondents have made no contention that "feasible study" has achieved the level of being a term of art. In all events, the Supreme Court of Florida has directed that we view the meaning of the term at the time of its adoption, which here is 1974.

The structure of section 171.051 confirms that the term feasible in subsection (2) excludes any value judgment. A later step in the contraction process—section 171.051(4)—provides that at that later meeting "the governing body may vote not to contract the municipal boundaries." This subsection appears to grant the governing body discretion whether to proceed with contraction. Yet, in contrast, the subsection (2) step "direct[s]" the governing

body to either initiate contraction proceedings or reject the petition as not feasible by "specifically stating the facts upon which the rejection is based."

Reading these two subsections together and in context with each other, the Court easily concludes the subsection (2) step is a limited, technical review, ***i.e., whether it can be done***; whereas the later subsection (4) step is a broader consideration, ***i.e., whether it should be done***. This construction of section 171.051 is the basis of the Court's earlier partial disagreement with the Attorney General's construction of section 171.051. The discretion afforded to a municipal governing body is allowed at the subsection (4) step, not at the subsection (2) step.

In reliance on its consultant Munilytics, the Commission included value judgments in its reasoning instead of constraining itself to determining if the proposed contraction is feasible, i.e., whether contraction could be done. To be sure, Munilytics heavily asserted that feasible meant much more than whether something can be done. Instead, the consultant argued strongly that feasibility included the concept of whether something should be done. Munilytics began its presentation with this concept as its first foundational assertion. After providing her qualifications, Ms. Schoettle-Gumm from Munilytics testified:

> The City hired Munilytics, a group of consultants, to address the statutory requirement for a feasibility study. As the Petitioner mentioned, the statute does not define what a feasibility study is, but in looking at the Cambridge Dictionary, Black Law Dictionary and some other dictionaries, determined that a feasibility study examines the situation to see if the suggested plan is possible, cost effective, or reasonable. And it provides an overview of essential issues related the action being considered.
>
> ***So it is not simply a narrow analysis of whether or not something can be done. It also looks at whether it should be done.*** Here with me today is Chris Wallce, the owner of Munilytics of Underwood Management Services, who performed a lot of the fiscal analysis; and myself, I applied the statutory criteria to the proposed contraction area.

(Hearing transcript, pp. 68-69; Ex. 32 to petition, emphasis added [DIN 20]).

The bulk of Munilytics' report is built upon this improper, expansive definitive of feasible. Not only did Munilytics concede this in its testimony, but its report is replete with examples of applying the value judgment of whether West Villages' petition should be approved.

Munilytics's study of the feasibility of West Villagers' petition analyzed the fiscal impact of the proposed contraction, the impact on municipal services, and other anticipated effects on the City. The report found that reductions in City revenue and expenditures would create a net loss of approximately $21 million over five years, but this loss could be offset by the reduction of services and increased taxes. The report finds that the contraction area would see a reduction in fire, EMS, and law enforcement services, and to the extent the County would not be able to cover shortcomings in these services, the City may bear an inequitable burden under mutual aid agreements.

As for the transition of permitting, inspection, planning, and zoning from the City to Sarasota County, both levels of government would need to coordinate in handling plan reviews and permits already underway at the time of contraction, fee collection authority will change hands, and the contraction area will be subject to a different Comprehensive Plan. The report noted that the City may have legal exposure for development delays occasioned by the change of applicable rules.

The City would continue to own rights-of-way and easements in the contraction area that provide utilities services. The streets, roads, and drainage infrastructure in the contraction are largely owned and maintained by an independent special district whose existence would continue. However, the City and Sarasota County would need to negotiate responsibility for repayment of certain bonds for roadway improvements as they pertain to property within the contraction area.

The issues raised by Munilytics in the study of the West Villagers' petition are inherent in any transition of an area from city to county governance. Indeed, Chapter 171 explicitly contemplates the negotiation of certain debts, expenditures, and other responsibilities between a municipality and the receiving county, and the contraction area will be subject to the county's laws, ordinances, and regulations. §§ 171.061-.062, Fla. Stat. The report itself proposes various solutions for the issues raised, including partnerships or agreements with the county, that would mitigate many of the anticipated negative effects of the contraction. While the contraction at issue may be fiscally detrimental to the City and may require additional work to "unwind" fully the contraction area from the City, the report and its findings fall well short of establishing that the contraction is not "capable of being done." For that reason, the lengthy evidence and testimony on those matters fails to provide competent, substantial evidence that contraction is not feasible.

An appellate panel of the Nineteenth Judicial Circuit concluded that section 171.051(2) does not afford a governing body discretion. Vonickx v. Town of St. Lucie Village, 05-CA-832 (Fla. 19th Cir. Ct. St. Lucie Cnty Feb. 11, 2008). Although less clear in that decision, it appears the Vonickx court also

rejected concern about fiscal loss from a section 171.051(2) determination. The Court understands that another Circuit Court in Orlampa, Inc. v. City of Polk City, 2010CA-7881 (Fla. 10th Cir. Ct. Polk Cnty Nov. 28, 2011), appeared to conclude that a municipality may consider the fiscal impact of a proposed contraction within its feasibility determination. That decision, though, is not binding on the Court, and that decision did not analyze the proper scope of a governing body's feasibility review.

Four of the five reasons given by the Commission in denying the contraction petition were based on the Commission's misapprehension of its review for feasibility. Specifically, reasons 2 (public health and safety are primary responsibilities for all citizens of North Port), 4 (contraction is not in the best interest of the City's prior planning and future goals, and 5 (contraction is not fiscally neutral) do not address whether contraction ***can be done***. Instead, these findings speak more to whether contraction ***should be done***. For the same reason, reason 3 (contraction is not feasible due to the existing urbanization) is not a valid consideration to the question of feasibility. As urbanization is referenced in section 171.043, the Court will further address reason 3 when reviewing that section's requirements.

Having determined the Commission legally erred, the Court must assess the seriousness of that error. Williams v. Oken, 62 So. 3d 1129, 1133 (Fla. 2011). Certainly, not every legal error qualifies as a departure of the essential requirements of the law. A fact-finding tribunal departs from the essential requirements of the law in applying the wrong legal standard. Amalgamated Transit Union, Local 1579 v. City of Gainesville, 264 So. 3d 375, 381 (Fla. 1st DCA 2019) (quashing trial court order vacating arbitration award). The existence of a controlling statute constitutes "clearly established law" to permit a court granting certiorari based on a departure of the essential requirements of the law. Id. at 380.

The Commission's error in this case is significant and constitutes a miscarriage of justice. The Commission fundamentally miscomprehended the nature of its fact-finding task, which is understandable given Munilytics' invitation into error. Applying an erroneous—and much too-broad definition of feasible—the Commission materially altered its statutory required role. This constitutes a departure of the essential requirements of the law.

The Commission's reasons 2, 3, 4, and 5 finding that the contraction is not feasible is both based on an absence of competent, substantial evidence as well as a departure from the essential requirements of the law.

The Court pauses here to note West Villagers' submission of the Sheriff's affidavit in this certiorari petition, which was not before the Commission during its proceedings. That affidavit suggests that Munilytics offered opinions and

recommendations concerning law enforcement without even attempting to speak with the Sheriff, the lead law enforcement official in the County. Certainly, this affidavit is troubling because it suggests Munilytics failed to adequately or comprehensively address the assignment for which it was hired to do, which failure could potentially erode a fact-finder's view of Munilytics' work product.

The Court, however, is not serving in the role of fact-finder in this proceeding. And the Court is not tasked with evaluating credibility in this review. The Sheriff's affidavit was not before the fact-finder, so it is not proper to insert it here on review. As the Court is quashing the Commission's Final Order rejecting the petition, the Commission will be able to address the contents of the affidavit in the first instance in further proceedings before the Commission. Nothing in this Opinion precludes the Commission from reopening the evidence.

5-B
Criteria for annexation.

The Commission's other stated reason (reason 1) for denying the petition is that the contraction area meets the statutory criteria of section 171.043 and is therefore ineligible for contraction. Like the other reasons given by the City, this is an ultimate conclusion and falls short of the City's obligation to "specifically stat[e] the facts[.]" That failure is even more pronounced here, as a finding of ability to be annexed under section 171.043 can be accomplished by disparate methods. Without the City "specifically stating the facts" the Court simply cannot discern whether competent, substantial evidence exists that supports unstated facts the Commission may or may not have made. This failure constitutes a departure from the essential requirements of the law, and it is, by itself, sufficient for the Court to quash the decision under review.

For instance, under section 171.043(1), an area potentially qualifies for annexation if it is reasonably compact and contiguous to the municipality's boundary. Contiguity in this context requires that a substantial part of the area's boundary be coterminous with the municipality's boundary. § 171.031(11), Fla. Stat. Division by a body of water, watercourse, or similar geographical feature does not disqualify an area under the statute unless the division practically prevents the two areas "from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically." Id. Compactness means the property is concentrated in a single area and does not create enclaves, pockets, or finger areas in serpentine patterns. § 171.031(12), Fla. Stat.

At the hearing below, West Villagers presented a report and testimony from Max Forgey, a planning and land-use consultant and member of the American Institute of Certified Planners. Mr. Forgey opined that the contraction area does not meet the statutory criteria. Mr. Forgey noted that the City previously attempted to contract the same area in 1990. Ordinance 90-9 found that the Myakka River would, as a practical matter, prevent the area from becoming unified with the remainder of North Port and prevent the inhabitants from fully associating and trading. (A bankruptcy court would later void Ordinance 90-9.) These findings were echoed in the 1989 supporting opinion of then-City Attorney David Levin, which also opined that the area was not contiguous to the remainder of North Port and did not touch or adjoin the City's boundary in a reasonably substantial sense. Mr. Forgey opined that these deficiencies are still present today, noting that no bridge connects the contraction area to the remainder of North Port across the Myakka River and travel between the two areas consists of several miles outside City limits.

Mr. Forgey also found that the contraction area is separated from the boundary of the rest of North Port not only by the Myakka River but also by unincorporated Sarasota County neighborhoods on both the East and West shores of the river. Based on these separations, he opined that the contraction area was not contiguous with the City boundary and was not reasonably compact due to the presence of pockets or enclaves.

The City presented the testimony of Ms. Schoettle-Gumm, an attorney with 30 years' experience in land use and local government law. Ms. Schoettle-Gumm largely summarized the findings of Munilytics' report with respect to the contraction area's eligibility under section 171.043, Fla. Stat. The report described the contraction area as 8,730 acres comprising the West Villages Improvement District (WVID), 6,981 acres comprising the Myakka State Forest and Southwest Florida Water Management District Park/Preserve lands (preserve lands), and 242.7 acres of other land. The report found that approximately 46 percent of the preserve lands boundary along the Myakka River was coterminous with the remainder of North Port. The citation for this figure is limited to unspecified "analysis of maps and data by Munilytics." The report also notes that Ordinance 90-9 was voided on August 31, 1990, and Munilytics argues that any related findings were apparently part of the City's legal and financial strategies related to the bankruptcy of the General Development Corporation. In other words, Munilytics argues that the City did not mean what it expressly said.

On the issue of compactness, the report concedes that the contraction area "could be viewed as containing a pocket area and an enclave area," which are prohibited. §§ 171.031(12), 171.043(1), Fla. Stat. The report dismisses this concern "in light of the purposes of [chapter 171] and the policy reasons for minimizing enclaves and pockets." However, the plain language of the statutes

does not provide for any such purpose-based exception to the compactness requirement. The report also misapprehends the holding in City of Sanford v. Seminole County, 538 So. 2d 113 (Fla. 5th DCA 1989). The Sanford court did not hold that "some small pockets did not prevent a oneness of community and . . . invalidate an annexation." The trial court found the annexation did not create enclaves but did create pockets and finger areas in serpentine patterns; the Fifth District held that the annexation did not create enclaves and any finger patterns were not serpentine. Id. at 114-15.

The Commission's "finding" is based on unspecified facts from unspecified analysis of unspecified maps and data, and certainly is well short of the obligation to "specifically stat[e]" its findings. The Court cannot conclude there is competent substantial evidence in this record, or even if it were, whether this satisfies the statutory contiguity requirement for the contraction area as a whole. Further, the City's concession that the contraction area could contain enclaves and pockets undermines any finding of reasonable compactness. To the extent the Commission finds that such enclaves and pockets are permissible, such a conclusion is contrary to the plain language of the statutes and a departure from the essential requirements of the law.

That leaves only the need to further to readdress reason 3 provided by the Commission—the contraction is not feasible due to the existing urbanization—which the Court previously rejected. Section 171.043(2) and (3) contain specifics concerning urbanization that would qualify an area of land to be eligible for annexation. Reason 3, however, makes no findings to any of the multiple sub-elements of those statutes. This, again, constitutes a departure from the essential requirements of the law, and it makes it impossible for the Court to determine if competent substantial evidence exists to support the Commission's rejection of West Villagers' contraction petition.

5-C
Other issues raised by West Villagers

West Villagers also contended in their petition that two commissioners should not have participated in the hearing and that the Commission improperly allowed the impacted independent special district to make a presentation. West Villagers frame these issues as due process violations. The Court rejects these contentions as meritless without further comment.

CONCLUSION

The Commission did not comply with the express dictates of the contraction statute to "specifically stat[e] the facts upon which [its] rejection" of the feasibility of West Villagers' contraction petition was based. In reliance on

its consultant, the Commission adopted a much broader definition of feasible than the ordinary meaning of that term. The Commission's "findings" underlying the Commission's denial of the contraction petition are not supported by competent substantial evidence and depart from the essential requirements of the law.

The petition for writ of certiorari is granted, and the Commission's Final Order denying the petition is quashed. As explained in this Opinion, nothing in this Opinion precludes the Commission from reopening its evidence.

DONE AND ORDERED in Venice, Sarasota County, Florida, on 11/15/2021.

11/15/2021 9:08 AM 2021 CA 002673 SC

e-Signed 11/15/2021 9:08 AM 2021 CA 002673 SC

HUNTER W CARROLL CIRCUIT JUDGE

SERVICE CERTIFICATE

On 11/15/2021, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court.

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