

STATUTORY REQUIREMENTS AND PROCESS FOR CONTRACTION

Chapter 171 of the Florida Statutes is the Municipal Annexation and Contraction Act (“Act”).¹ The Act sets forth a process for contraction of municipal boundaries and specific required criteria for lands proposed for contraction.² This Report has been prepared at the direction of the City in response to a petition submitted under the provisions of the statute that allow a petition of 15% of the qualified voters in an area desiring to be excluded from the municipal boundaries.³ The process of review of a citizen contraction petition includes: (1) verification of the required petition signatures, which was provided by the Sarasota County Supervisor of Elections on Nov. 17, 2020, (2) preparation of a feasibility study of the proposed contraction for the City, which is this Report, and (3) determining whether the land proposed for contraction meets the criteria for contraction of municipal boundaries pursuant to FS §§171.052 and 171.043, which is discussed in this section of the Report.

If the proposed Contraction Area fulfills the statutory criteria for contraction, then the City Council shall either: (1) initiate contraction proceedings under FS §171.051(1), or (2) reject the petition, specifically stating the facts upon which the rejection is based.⁴ The statutory process and criteria in FS §§171.052 and 171.043 determine whether an area may be considered for contraction from municipal boundaries, not whether the proposed contraction is feasible or reasonable. The Florida Attorney General’s Office has opined that, in addition to compliance with FS §171.043 being sufficient grounds for rejecting a petition for initiation of contraction procedures, “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.”⁵

CONTRACTION CRITERIA

Only those areas that do not meet the criteria for involuntary annexation under FS §171.043⁶ may be proposed for contraction. In other words, if the area proposed for contraction fulfills the criteria in FS §171.043, then the area is not appropriate for contraction. The Contraction Area analyzed in this Report is defined in the Petition as removal of “all lands west of the Myakka River” from the City of North Port municipal boundary.⁷ The proposed Contraction Area reviewed in this Report can be considered as fulfilling the requirements of FS §171.043(1), (2), and (3), and

therefore is arguably not appropriate for contraction. The specific criteria are discussed in more detail below. It is possible that a court could determine that the Contraction Area does not fulfill the required criteria and therefore could be contracted. However, continuing to include the Contraction Area, as it exists today and is planned for in the future, within the City of North Port clearly furthers and implements the policies and intent of the Act. Regardless of the City Council's determination on whether the Contraction Area meets the requirements of FS §171.043, the existing circumstances of the Contraction Area and the policies of the Act may reasonably be considered by the City Council when evaluating the suitability and feasibility of the proposed Petition Contraction.

Characteristics of the Contraction Area

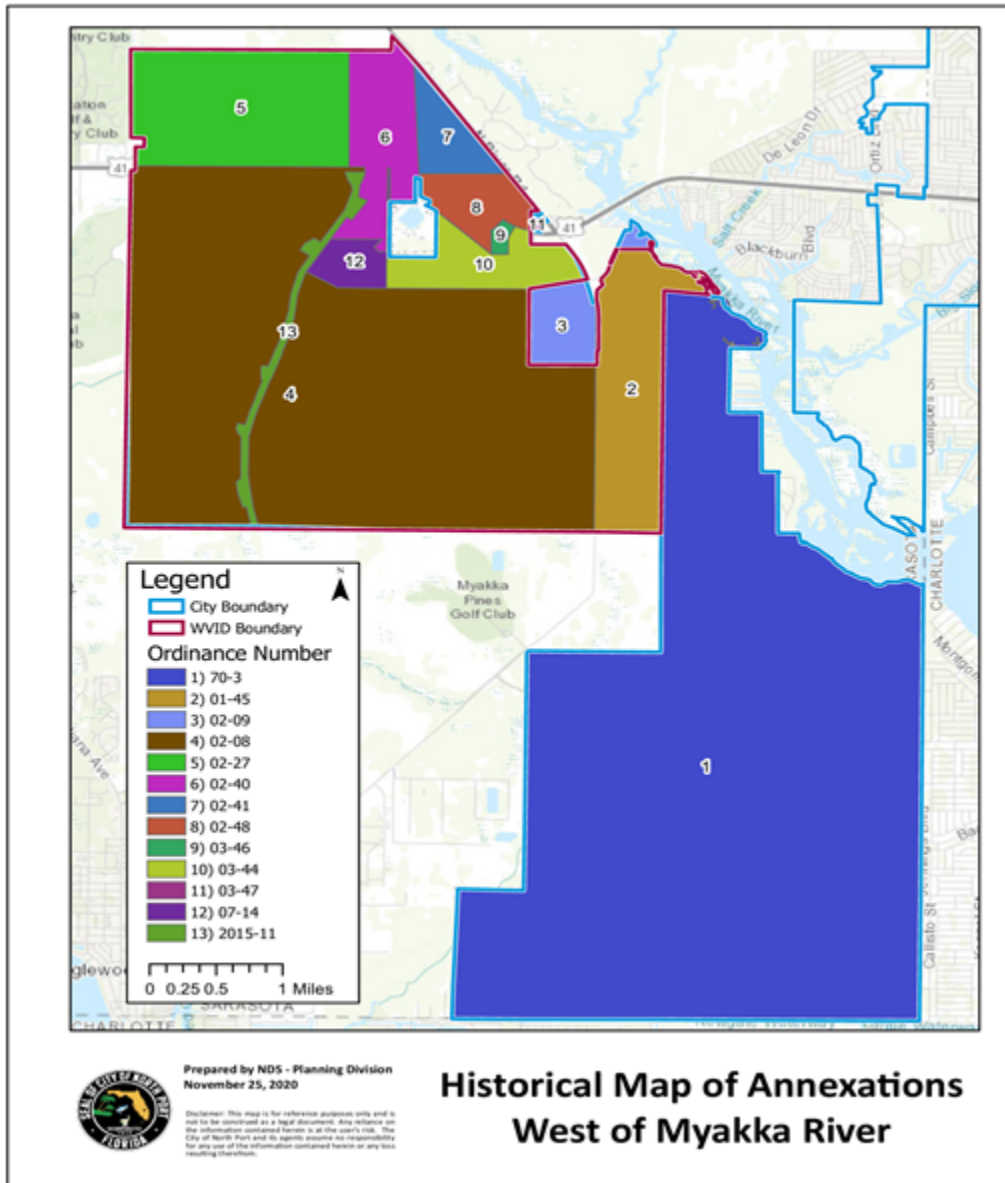
As a practical matter, it must be the Contraction Area as it currently exists that is evaluated against the criteria for contraction of municipal boundaries described in FS §171.043 and §171.052 rather than the original annexation areas. To revert to the circumstances existing at the time of annexation would functionally circumvent the specific statutory deadlines for appealing a municipality's actions on an annexation or contraction in FS §171.081. The short 30-day challenge period makes sense given that parties often make substantial financial investments in reliance on annexation and contraction decisions and therefore the need for finality. None of the relevant annexations were challenged within the allowed time periods, and the mechanism of a contraction petition should not be used to attack the original annexations that mostly occurred decades ago. There have been significant changes in the proposed Contraction Area since the annexations that should be considered when evaluating the proposed Petition.

The Contraction Area (all lands within the City of North Port boundaries that are west of the Myakka River) includes lands located within the West Villages Improvement District ("WVID") which includes approximately 8,730 acres,⁸ the Myakka State Forest and SFWMD Park/Preserve lands of approximately 6,981 acres, and some additional parcels comprising approximately 242.7 acres of land within the City boundary but that are not part of WVID.⁹ The Contraction Area is comprised of lands that were annexed by the City over a period of 45 years through thirteen annexation ordinances.

Today, developable land within the Contraction Area is primarily zoned as Village Land Use to provide for a mix of residential land uses as well as helping the City achieve a more sustainable balance of non-residential land uses to improve the long-term viability of the entire City of North Port. The creation of the West Villages Independent District (“WVID”) by the Florida Legislature in 2004¹⁰ and subsequent amendments to the Special Act established an entity that could, in cooperation with and pursuant to development plans, policies, and regulations of the City of North Port, help finance and manage the efficient provision of infrastructure needed for municipal services and manage long-term development of the Villages. The City is the primary provider of municipal services including water and wastewater, fire protection, emergency medical services, police services, solid waste/recycling collection and disposal services, parks and recreation services, major roadways, and neighborhood development services in the Contraction Area and throughout the City. The existing and planned development and associated public infrastructure reflect reliance by the City, WVID, and Developers on the settled status of the annexations and the fulfillment and implementation of the policies and purposes of the Act.

Predominately within the WVID areas included in the Contraction Area, substantial land has been developed for urban purposes, a spring training facility for the Atlanta Braves was constructed and opened in 2020, extensive City water and sewer utility facilities including wastewater and water treatment facilities have been constructed, City community park facilities developed, and a City fire/police station facility is under construction. In the portion of the Contraction Area that is within the WVID, over 1,800 acres are developed¹¹ or under construction and an additional approximately 1,900 acres are authorized for development for urban purposes, not including open space.¹² This developed area includes existing development within Island Walk and Gran Paradiso, located north and south of US41 at the northwestern boundary of the City, which each have existing resident populations of at least 2 residents per acre within the boundary of each developed area.¹³ Including the almost 7,000 acres of lands in the Myakka State Forest and SFWMD Park/Preserve (“Myakka State Forest”) in the proposed Contraction Area of approximately 15,954 acres results in at least 44% of the total Contraction Area consisting of large tracts of park and preserve land with no resident population. Under the definition of “urban purposes” in FS §171.031, the almost 7,000 acres of Myakka State Forest lands are considered to

be developed for urban purposes. Section 171.031 defines “urban purposes” as land that is “used intensively for residential, commercial, industrial, institutional, and governmental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas” (emphasis added). However, additional criteria are applicable to evaluating land developed for urban purposes for annexation under FS §171.043.



Application of Contraction Criteria to Contraction Area

The Historical Map of Annexations West of Myakka River above shows the relevant annexations that are included in the Contraction Area. None of the annexations shown on the map were challenged pursuant to FS §171.081, and any challenge to the annexations would be time barred. For the Contraction Area to be appropriate for contraction, it must fail to meet the general standards of subsection (1) and either subsection (2) or subsection (3) of FS §171.043.

Subsection (1): The first required criteria of FS §171.043 is that the area to be annexed must be contiguous to the municipality's boundaries and reasonably compact, and no part of the area shall be included in another incorporated municipality. No lands within another incorporated municipality were part of the annexations. An initial annexation of an area then called Myakka Estates (see dark blue area noted as #1 on the map), now the Myakka State Forest, was approved by Ordinance No. 70-3.¹⁴ Per findings in the adopting ordinance, the lands annexed by Ordinance No. 70-3 were contiguous¹⁵ and reasonably compact. All subsequent annexations were also found the by City Council to be contiguous and reasonably compact based on the evidence and testimony provided during public hearings for the ordinances.

Materials submitted with the Contraction Petition attack the City's voluntary annexations in 2002 by analyzing several voluntary annexations the City approved in 2000 that were challenged by Sarasota County in 2000.¹⁶ The court in Sarasota County v. City of North Port City Commission held that the Taylor Ranch annexation (Ord. No. 2000-18A, also referred to as Urban Village West) was not reasonably compact because it created a "pocket of considerable size" of unincorporated area.¹⁷ This "pocket" was approximately 640 acres in size and could be considered to hinder the goals of unity and community of interest as residents of one place behind the requirement of compactness.¹⁸ A second annexation (Ord. No. 2000-19A, River Road Office Park) was also held invalid as it relied upon the Taylor Ranch annexation to establish contiguity. The Petitioners and the EnSite memorandum allege that the City's annexations in the Contraction Area were not sufficiently compact because they created an enclave or a pocket of unincorporated area.

However, the City's annexations in 2002 and later took a more incremental approach and built upon the contiguity provided by previous annexations and avoided even the appearance of a

pocket or an enclave until a majority of the land had been annexed. Looking at the Historical Map of Annexations West of Myakka River (shown above in this section), it could be alleged that Ordinance No. 2002-48 (Area 8) and subsequent Ordinance No. 2003-44 (Area 10) created an enclave or pocket and were not reasonably compact. This area of unincorporated lands is distinctly different from the pocket of considerable size that invalidated the 2000 Taylor Ranch annexation. The area surrounded by lands annexed in Ordinance Nos. 02-48 and 03-44 is much smaller (approximately 100 acres compared to 640 acres with Taylor Ranch), is predominately owned and occupied by the Manatee Community College, \pm 99.9 acres, and contains a parcel with a Sarasota County fire station, \pm 0.24 acres. Both parcels have access to US 41 just north of them via a road on approximately 4.97 acres of unincorporated land owned by Manasota Beach Ranchlands LLLP. Neither the MCC property nor the County fire station parcel are enclaves under §171.031(13) as neither parcel is enclosed within and bounded on all sides by a single municipality nor are they bounded by municipal property and a natural or manmade obstacle in a way that allows passage of vehicular traffic to that unincorporated area only through the municipality. Pocket is not defined in the statute, but the Cambridge Dictionary defines pocket as a group, area, or mass of something that is separate and different from what surrounds it. It is hard to see the Manatee Community College as being anything but an area that is different from but still a part of what surrounds it, whether it is in the incorporated or unincorporated area. The Community College serves residents of the incorporated areas and unincorporated area equally and is part of both communities. The County's fire station has been functioning at this location with incorporated lands as its neighbors for at least 18 years with no apparent difficulties. As mentioned above, the City of Sanford v. Seminole County court, quoting City of Sunrise v. Broward County, looked to the general purpose and goals of a municipality to understand the concepts of compactness. It seems that even if a pocket were found to have been formed by the annexation of Areas 8 and 10, the goals of a municipality of oneness, community, and a body of people collected together and having a community of interest have not been impaired in this situation for either the City or the County and that the annexations were reasonably compact. Given all the above, the Contraction Area can be considered to be contiguous and reasonably compact.

Subsection (2): The second criterion is that part or all of the area to be annexed must be developed for urban purposes. Under this subsection, an area developed for urban purposes is defined as any area which meets at least 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.

The developed areas of Island Walk and Gran Paradiso within Wellen Park (within the WVID) fulfill the standard of Subsection (2)(a) based on their resident populations. Island Walk had a resident population of approximately 2.87 persons per acre in 2020, while Gran Paradiso had a resident population of approximately 2.01 persons per acre in 2020.¹⁹ Because the statute simply requires that “part” of the area to be annexed be developed for urban purposes, the remaining Contraction Area is not required to be developed for urban purposes to fulfill the requirements of FS §171.043(2)(a). It appears that the Island Walk and Gran Paradiso neighborhoods also fulfill the requirements of subsection (2)(b), but it is only necessary to meet one of the standards (subsection a, b, or c).

Subsection (3): The third criterion provides that 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.

In addition to fulfilling subsection (2)(a) of FS §171.043, the Contraction Area reflects the purposes and goals of subsection (3) and fulfills the criterion in subsection (3)(a). Extensive land designated in the City's future land use map as Village Overlay lie between the existing developed urban areas of Gran Paradiso and Island Walk and the remaining lands within the City. Extensive planning as well as provision of water and wastewater treatment, transmission and collection infrastructure has been performed to ensure that water, sewer, and other municipal services are provided within all undeveloped areas from the Myakka River to the existing areas developed for urban purposes in the northwest corner of the City.

Because the Contraction Area is contiguous and reasonably compact, because the Contraction Area includes existing areas developed for urban purposes with resident populations equal to at least two persons per acres of land, and because the Contraction Area contains areas lying between the area developed for urban purposes and the Myakka River that is not adjacent to the municipal boundary and will require extension of water and/or sewer lines through the sparsely developed area that is projected to become developed for urban purposes, the proposed Contraction Area fulfills the requirements of §171.043 and is not appropriate for contraction. Regardless of whether the City Council finds that the proposed Contraction Area does or does not fulfill the requirements of §171.043, the characteristics of, as well as future planning for development and infrastructure, lands within the Contraction Area support findings that the Contraction Area is suitable for remaining within the City boundaries. Continued inclusion of the Contraction Area within the municipal boundaries of the City of North Port will further the purposes and goals of the Act, including ensuring sound urban development and accommodation to growth, ensuring the efficient provision of urban services to areas that become urban in character, and ensuring that municipal services can and will be provided within the Contraction

Area. Findings related to the existing characteristics of the Contraction Area may be considered by the City Council in determining the feasibility and advisability of the proposed boundary contraction in the Citizen Petition.

¹ F.S. §171.011.

² F.S. §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.

(2) The ordinance shall make provision for apportionment of any prior existing debt and property.

History.—s. 1, ch. 74-190.

³ F.S. §171.051(2).

⁴ F.S. §171.051(2).

⁵ Florida AGO 76-221. “[I]t 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.” See also, Order denying Petition for Writ of Certiorari, Orlampa, Inc. v City of Polk City, 2010CA-007881, Tenth Judicial Circuit for Hardee, Highlands, and Polk County, Florida, Nov. 23, 2011 (upholding Polk City Council’s rejection of petition for contraction finding City’s decision was supported by competent substantial evidence).

⁶ 171.043 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.

⁷ The Petition analyzed in this Report was submitted to the City on Oct. 28, 2020 and verified by the Sarasota County Supervisor of Elections on Nov. 16, 2020. A previously submitted petition proposed a contraction area that would have resulted in the creation of islands of incorporated lands that no longer had continuity with the remainder of the City which is prohibited by F.S. §171.052(1). The Oct. 2020 petition defines a significantly larger contraction area.

⁸ Source: Map of City of North Port West Villages, prepared by NDS – Planning Division, August 11, 2020.

⁹ Acreage of areas within the Contraction Area but outside the boundaries of the WVVID is based on acreage data available on the Sarasota County Property Appraiser’s website and review of maps prepared by NDS – Planning Division.

¹⁰ Chap. 2004-456, Laws of Florida. Subsequent amendments have been adopted, see Chap. 2006-355, 2007-307 and 2008-284, Laws of Florida.

¹¹ Based on map analysis of Gran Paradiso and Island Walk developed areas by Munitytics.

¹² Initial Complaint, ¶ 32 and 33, Wellen Park, LLLP v. West Villagers for Responsible Government, Inc., Case No. 2020 CA 003838 SC, Circuit Court of the 12th Judicial Circuit in and for Sarasota County, State of Florida, Civil Division.

¹³ Based on map and population data analysis by Munitytics.

¹⁴ The Petition materials mention the adoption of City Ord. No. 90-9 relating to a City initiated proposed boundary contraction to exclude the Myakka Estates, previously annexed into the City by Ord. No. 70-3. Ordinance No. 90-9, which is null and void per an August 31, 1990 letter from the City of North Port City Clerk to the Sarasota County Supervisor of Elections, was part of legal and financial strategies of the City related to the then ongoing bankruptcy of the General Development Corp., which had a history of subdividing and selling lots that lacked infrastructure. As Ordinance No. 90-9 is null and void, any findings made in that ordinance regarding the characteristics of the annexed lands to support a municipal contraction are also null and void.

¹⁵ The portion of the annexation area’s boundary along the Myakka River is coterminous with City boundaries for approximately 46% of that boundary which is a substantial portion of that boundary of the annexed area. Contiguity is defined in F.S. §171.031(11) as meaning a substantial portion of a boundary of the annexed territory is coterminous with a part of the municipal boundary. Watercourses running parallel with and between the annexed territory shall not prevent annexation provided that the watercourse does, not as a practical matter, prevent the inhabitants from fully associating and trading with each other, socially and economically or prevent the provision of municipal services by the City.

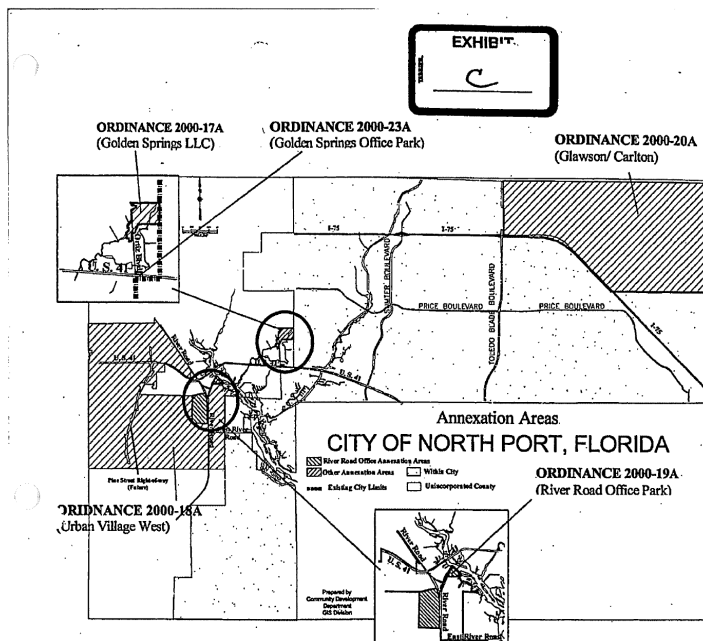
¹⁶ Memorandum to West Villagers for Responsible Government from EnSite, Inc., dated May 26, 2020, addressing questions regarding the annexations referenced in City Ordinance Nos. 2000-18A and 2000-19A and whether those annexations comprise the same lands as the Annexed Property in the West Villages Developer Agreement. The annexations in Ord. No 2000-18A and 2000-19A, which were held invalid in Sarasota County v North Port City Commission, Case No. 2000-14966-CA-01, in the Circuit Court of the 12th Judicial District for Sarasota County, Florida, are significantly different from annexations in the same area adopted by the City in 2001 and 2002. See at the end of this Report section, Map labeled EXHIBIT C, Annexations Areas City of North Port, Florida from Case No. 2000-14966-CA-01 included in Petitioner’s Appendix at page 14. The EnSite memorandum questions the contiguity of the lands identified as Urban Village West (also referred to as Taylor Ranch) because it was coterminous with City boundaries for two and a half miles (per testimony of Sam Jones, City of North Port Planning Director). When stating that this was insufficient for the required contiguity, the EnSite memorandum seems to incorrectly state that a substantial part of the entire boundary of the annexed area must be coterminous with City boundaries (opined that 15% of the entire linear perimeter of the Taylor Ranch area being contiguous with City boundary was insufficient). This misreads the statute which defines “contiguous” as having “a substantial part of a boundary” of the annexed area coterminous with a part of the municipal boundary. FS §171.031(11)(emphasis added). The actual coterminous area of the eastern boundary of the Taylor Ranch parcel appears to be closer to or greater than 90%. Thus, the Taylor Ranch parcel did have the required statutory contiguity.

¹⁷ Sarasota County v. City of North Port City Commission, Case No. 2000-14966-CA-01, Final Judgment on Amended Petition for Writ of Certiorari.

¹⁸ See City of Sanford v. Seminole County, 538 So.2d 113, 116 (Fla. Dist. App. 1989) (holding that lower court improperly invalidated annexations as not compact when annexation did not create small isolate islands that prevented a oneness of community and a collective body) (quoting City of Sunrise v. Broward County, 473 So.2d 1387, 1388 (Fla. 4th DCA 1985).

¹⁹ Based on map and population analysis by Munitytics.

Map of City of North Port Annexations in 2000,
From Sarasota County v City of North Port City Commission, Case No. 2000-CA-14966



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DATE: 11-4-00