CITY OF STUART
OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: STEPHEN MAYER, DEVELOPMENT DEPARTMENT
FROM: MICHAEL MORTELL, CITY ATTORNEY

SUBJECT: VOLUNTARY ANNEXATION OF 0.8 ACRE PARCEL OF LAND ON US HIGHWAY ONE, SOUTH OF 14th STREET (BAKER RD) AND NORTH OF 13th TERRACE.

CC: DAVE DYESS, CITY MANAGER

DATE: July 31, 2018

ISSUE

I have reviewed an annexation request for a 0.8 acre parcel adjacent to the City of Stuart.

Voluntary annexations are governed by the standards of Section 171.044 Florida Statutes. The basic requirement is stated as follows:

> "(1) The owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality."

The statute contains four (4) general requirements. First, a petition for voluntary annexation must be unanimously signed by all property owners in the area to be annexed. Second, the property proposed to be annexed must be contiguous and reasonably compact. Third, the proposed annexation cannot produce an enclave. Finally, county charters which provide for an exclusive method of municipal annexation override the Florida Statute. Martin County is not a Charter county and therefore, the fourth criteria does not apply to an annexation in the City of Stuart, Florida.

1. **Signed by all property owners in the geographic area being annexed**. *Based upon representations by the applicant and review by the development department it has been determined that the request for voluntary annexation has been signed by all property owners.*

2. **Contiguous to the Municipality:** Pursuant to Section 171.044(1), F.S., "the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality." Property is deemed to be "Contiguous" under Section 171.031 (11), F.S., where a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous (sharing a common boundary) with a part of the boundary of the municipality. "Contiguous" has also been defined as "touching or adjoining in a reasonably substantial … sense." See City of Sanford v. Seminole County, 538 So. 2d 113 (Fla. 5th DCA 1989); May v. Lee County, 483 So. 2d 481 (Fla. 2d DCA 1986). The Sanford Court found that Section 171.031(11) F.S. only requires "that a substantial part of a boundary" touch municipal property as opposed to the entire perimeter of the property.

   Section 171.031(11) provides that:

   > Separation of the territory sought to be annexed from the annexing municipality by a publicly owned right-of-way for a highway, road, railroad, canal or utility or a body of water, watercourse of other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such division does not, as a practical matter, present the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent inhabitants from fully associating and trading with each other socially and economically.

In the current application, a substantial part of the boundary is coterminous with the City of Stuart. Specifically, the north side of the property borders the City of Stuart. The portion of property "touching" the City of Stuart is significant and does not constitute a finger or minimal contact. Therefore, the property meets condition one and is contiguous to the City of Stuart.

3. Reasonably Compact

"Compactness is defined under subsection (12) of 171.031, F.S., to mean a concentration of a piece of property in a single area. The requirement for compactness precludes any action which would create enclaves, pockets, or ginger areas in serpentine patterns. The purpose of the compact and contiguous requirement is to assure creation of

geographically unified and compact municipalities, City of Sunrise v. Broward County, 473 So. 2d 1387 (Fla. 4th DCA 1985). The court in City of Sanford v. Seminole County, 538 So. 2d 113 (Fla. 5th DCA 1989) found that our statutes do not define the term pocket but Webster's defines the term in relevant part as a small isolated area of group. *Id.* AT 115 (referencing Websters New Collegiate Dictionary, p. 879).

As for "finger areas in serpentine patterns," the Sanford Court found that "serpentine" is defined in Webster's as "winding or turning one way and another". The court further found that the property annexed in the Sanford case did not violate the compactness requirement because "[while the annexations may be viewed to some extent as being in a finger pattern, they are not winding or turning." A review of the map, Exhibit "A", clearly shows that the parcel is compact, and that annexation would not create enclaves, pockets, or finger areas in serpentine patterns.

The issue of whether a parcel of property is "small" and "isolated" is relative to, and necessarily dependent upon, the size and configuration of the parcel and the surrounding municipal property. Size, be it small or large, is a relative term that can only be determined in relation to something else. Although the Court said in City of Sanford that a pocket is "a small isolated area or group," it did so recognizing that whether a parcel is small and isolated must be determined in relationship to the overall scope and configuration of the parcel in question and the surrounding municipal property. The statutory requirement that pockets not be created by annexations was intended to insure that no vestiges of unincorporated property be left "in a sea of incorporated property." See City of Ctr. Hill v. McBryde, 952 So. 2d 599 (Fla. 5th DCA 2007).

A review of the map and the application determines that this property is reasonably compact and meets Florida Statute 171.031(12). Given the configuration of the City as well as the property requesting annexation, the annexation will not create pockets of unincorporated areas or serpentine finger areas.

No Enclaves

Subsection 5 of 171.044, F.S. Provides that "[l] and shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves". The term "enclave" is defined under Section 171.031(13), F.S., as "any unincorporated improved or developed area that is bounded on all sides by a single municipality or any 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." A review of the map, Exhibit "A", clearly shows that annexation of the parcel would not create an area bounded on all sides by a single municipality, and there is no natural or manmade obstacle to vehicular traffic in close proximity to either parcel. Therefore, no enclaves are created.

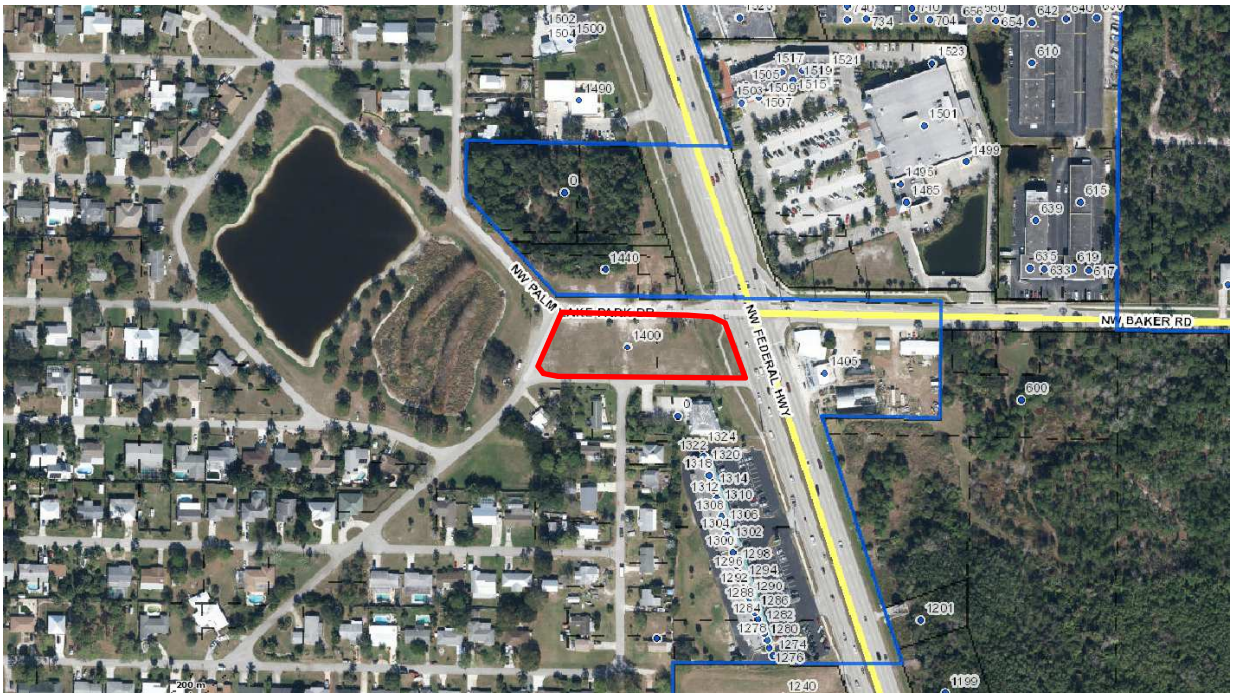
A review of the map clearly shows that an annexation of this parcel would not impede the passage of vehicular traffic onto the interior property located in unincorporated Martin

County because vehicular traffic has ingress and egress via Antioch Avenue located directly south of 14th Street. Therefore, this annexation will not create an enclave.

Conclusion

Based upon the foregoing facts and analysis it is my opinion that the voluntary annexation of this parcel into the municipal boundaries of the City of Stuart comply with Florida Statute §171.044. This opinion is prepared solely at the request of and for the use of, the City of Stuart, and no other person or entity may rely on it for any purpose without the express written permission of the City of Stuart.

Exhibit 'A'


NW PALM
NW FEDERAL HWY
NW BAKER RD
1400
1440
1490
1405
1201
600
610
615
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