

---

---

**CITY OF STUART  
OFFICE OF THE CITY  
ATTORNEY**

---

---



---

---

**MEMORANDUM**

---

---

**TO:** STEPHEN MAYER, DEVELOPMENT DEPARTMENT

**SUBJECT:** VOLUNTARY ANNEXATION OF 15.88 ACRE PARCEL OF LAND  
ON THE NORTHWEST CORNER OF STATE ROAD 76 (KANNER  
HIGHWAY) AND SW MARTIN HIGHWAY.

**CC:** DAVE DYESS, CITY MANAGER

**DATE:** September 11, 2019

---

**ISSUE**

I have reviewed an annexation request for a 15.88-acre parcel adjacent to the City of Stuart. It is unfortunate that the additional nine (9) acres of land adjacent to the site isn't included in the submittal. The City has demonstrated that it is a strong environmental steward. The placement of this land into conservation is also a consideration made by the Commission when reviewing this project and it makes sense that it be included with the developed parcel. However, in light of the fact that it was not included, the review is limited to the 15.88 acres.

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.”

Section 171.044(1), F.S., authorizes the owner or owners of real property in an unincorporated area of the county, which is contiguous to a municipality and reasonably compact, to petition the municipality for such property to be annexed to the municipality. After determining that the petition bears the signatures of all of the property owners in the area proposed to be annexed,

the city may adopt a nonemergency ordinance to annex the property and redefine the municipal boundaries at a regular meeting of the governing body.

Under the voluntary annexation procedure set forth in s. 171.044, there are three (3) general requirements for a non-charter county annexation. 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 create a municipal enclave.

1. **Signed by all property owners in the geographic area being annexed.** *The present annexation is made up of a single parcel and the application has been executed by the owner of the property.*
2. **Contiguous 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 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. 5<sup>th</sup> DCA 1989); May v. Lee County, 483 So. 2d 481 (Fla. 2d DCA 1986).

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 or 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.

*In the current application, a substantial part of the boundary is coterminous with the City of Stuart. 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. 4<sup>th</sup> DCA 1985).

*A review of the map and the application determines that this property is reasonably compact and meets Florida Statute 171.031(12). The property will remain geographically unified and is compact in size. The annexation of this site will not create a municipal enclave.*

## No Enclaves

Subsection 5 of 171.044, F.S. Provides that “[I] and shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves”. Because the property adjacent to this parcel remains in the County even though all property owners have executed a consent to annexation agreement, the enclave discussion appeared to need further discussion. Attorney General Opinion 80-84, titled “*Enclaves of County Land Within Municipal Territory Not Prohibited.*” In said opinion, the Florida Attorney General opined that even though the annexation would result in the creation of an enclave of *unincorporated territory*, Section 171.044(5)'s prohibition against the creation of enclaves (as clarified by the definition of "compactness" contained in s. 171.031(12)) seems to contemplate *municipal enclaves*, and that statute does not purport to prohibit or otherwise regulate enclaves of county land brought about by municipal annexation. (See ss. 171.044(1) and 171.031(12), both of which are concerned with and refer to the "area" or the "piece of property" to be annexed. Both sections possess a purpose of assuring creation of geographically unified and compact municipalities.) And, it is significant that the presence of a boulevard abutting the southwesterly boundary of the county parcel in question will allow the county ample access, since this road and its right-of-way are apparently not subject to the jurisdiction of the city.

*A review of the map shows that the “unincorporated properties would remain adjacent to the unincorporated portions of Martin County via the St. Lucie River which is clearly an exception described in Section 171.031(11) discussed above. However, even if the unincorporated properties did not remain adjacent to Palm City via the river as contemplated by F.S. 171.031(11), the Attorney General has opined that the intent of the statute is to not create “municipal enclaves” and this annexation does not. In addition, Kanner Highway which runs directly in front of the property is not under the jurisdiction of the City of Stuart and continues to provide direct access to the other properties. Therefore, this annexation will not create a municipal 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'

