

A PRACTICAL PERSPECTIVE ABOUT ANNEXATION IN FLORIDA — MAKING SENSE OF FLORIDA STATUTES CHAPTERS 164 AND 171 IN 2003 AND BEYOND

Alison Yurko*

In Volume 25 of the *Stetson Law Review*, Spring 1996, I wrote my first article about annexation in Florida, *A Practical Perspective about Annexation in Florida*.¹

That article has been cited widely because it summarized annexation law at that time and discussed annexation from a city's, county's, and landowner's perspective. That article also discussed handling and avoiding annexation challenges, with a substantial emphasis on joint-planning-area agreements (agreements between cities and counties that set forth future annexation areas).

The purposes of this Article are to update the 1996 article, discuss Chapter 164, the Florida Governmental Conflict Resolution Act (which now expressly applies to annexation),² and suggest changes to Chapter 171, the Municipal Annexation or Contraction Act.³ It is anticipated that the Florida Legislature will revise Chapter 171 in 2003 substantially; therefore, the reader should consult that statute to determine the current status of Florida annexation law.

* © 2003, Alison Yurko. All rights reserved. Of Counsel, Thomas P. Callan, P.A. B.A., University of Notre Dame, 1985; J.D., Stetson University College of Law, 1988.

Ms. Yurko practices in the areas of land-use, environmental, and public-utilities law. She has lectured extensively in the areas of annexation, quasi-judicial proceedings, and property rights, and has served as an adjunct professor at the University of Central Florida. She previously practiced as a partner in the Orlando office of the law firm of Gray, Harris & Robinson, P.A., and as an Assistant County Attorney in Orange County, Florida, for six years.

1. Alison Yurko, *A Practical Perspective about Annexation in Florida*, 25 *Stetson L. Rev.* 699 (1996).

2. Fla. Stat. §§ 164.101–164.1061 (2002).

3. *Id.* §§ 171.011–171.093.

*STATUTORY FRAMEWORK OF ANNEXATION IN
FLORIDA AS OF EARLY 2003*

A. Voluntary Annexation

Florida Statutes Section 171.044 continues to govern the requisites of voluntary annexation.⁴ The procedure simply allows property owners to petition to have their property annexed.⁵ Specific statutory notice and hearing requirements are set forth in this Section.⁶ These requirements are strictly construed pursuant to case law and therefore must be followed specifically.⁷ Section 171.044(6) was amended by Laws of Florida Chapter 98-176 to include language requiring that certified-mail notice be sent to the Board of County Commissioners of the county in which the municipality is located, but specifically notes that “[t]he notice provision provided in this subsection shall not be the basis of any cause of action challenging the annexation.”⁸

Although the language makes it elective to provide such notice, it is recommended that this certified-mail notice be provided. This notice will help avoid situations in which a county is surprised by an annexation and thus more likely to challenge the annexation ordinance. Strict adherence to the statute also will help to avoid a legal argument in a certiorari appeal that procedural due process was not provided.

B. Involuntary Annexation

The procedures for involuntary annexation are set forth in Florida Statutes Section 171.0413.⁹ This Section requires that an ordinance be passed by the local government and provides that the ordinance does not become effective until a majority of the electors in the area to be annexed vote for the referendum.¹⁰ The

4. *Id.* § 171.044.

5. *Id.*

6. *Id.*

7. *See Town of Mangonia Park v. Homan*, 118 So. 2d 585, 588 (Fla. Dist. App. 2d 1960) (stating that when a statute has delegated the power to extend boundaries to a municipal corporation, the power must be exercised in strict accord with the statute (citing 37 Am. Jur. *Municipal Corporations* § 24 (1941))).

8. Fla. Stat. § 171.044(6).

9. *Id.* § 171.0413.

10. *Id.* § 171.0413(2). This Section also affords the local government the opportunity to take the annexation ordinance “to a separate vote of the registered electors of the annexing municipality.” *Id.*

vote must occur within thirty days following the annexation ordinance's approval date.¹¹ Laws of Florida Chapter 99-378 added language to Section 171.0413 that allows owners of more than fifty percent of the land in the area to be annexed to consent to the annexation when more than seventy percent of the total area being annexed is owned by individuals, corporations, or other legal entities that are not registered electors.¹²

If an area does not have any registered electors, a referendum is not required; however, the owners of at least fifty percent of the land area and the owners of at least fifty percent of the annexed parcels must consent.¹³ Cities have used this Section, and involuntary annexation in general, as a means of tacking commercial properties onto the involuntary annexation of residential subdivisions.

This language has proven controversial in some situations throughout the State because it effectively allows certain properties to be annexed without any consent, or even any notice, to the property owners. This type of annexation would occur in a situation in which the property owner is not a resident elector (as in the case of a business or corporation). A property owner could find that the property had been annexed into a new jurisdiction, with new rules and higher taxes, without any notice or opportunity to be heard. Potential legal implications are apparent, but are not the subject of this Article.

C. Annexation by Charter

Florida Statutes Section 171.044(4) specifically states the following:

The method of annexation provided by this [S]ection shall be supplemental to any other procedure provided by general or special law, except that this [S]ection shall not apply to municipalities in counties with charters which provide for an exclusive method of municipal annexation.¹⁴

11. *Id.*

12. *Id.* § 171.0413(5).

13. *Id.* § 171.0413(6).

14. *Id.* § 171.044(4).

Several charter counties in Florida have utilized this provision.¹⁵ Two examples are set forth below.

1. *The Pinellas County Model*

Using this statutory language, Pinellas County has passed a charter amendment that sets forth a county-wide procedure, changing the process for voluntary annexation.¹⁶ This amendment was accomplished by county ordinance approved by a referendum of the voters in that county.¹⁷

2. *The Orange County Model*

Orange County has attempted to implement a similar procedure, but has not done so uniformly. Instead, Orange County has attempted to add to its charter, on a piecemeal basis, a revised process for voluntary annexation in various “preservation districts” throughout the county.¹⁸

While the procedure is the same for these areas, it is arguably not a uniform procedure because it does not apply throughout the county. Counties have home-rule authority to act without express authorization by a statute;¹⁹ however, annexation is one area in which the Florida Constitution expressly limits home-rule authority. Specifically, Article VIII, Section 2(c) of the Florida Constitution states that “[m]unicipal annexation of unincorpo-

15. It is noteworthy that annexation, contraction, and the exercise of extra-jurisdictional authority are three areas in which local governments have no home-rule authority except by charter amendment, which by its nature requires a referendum. *See generally* Fla. Const. art. VIII, § 2(c). Thus, any local regulation must be authorized expressly by statute or special act.

16. *See* Pinellas County, Fla., Ordin. 00-63 (Nov. 2, 2000) (applying only to voluntary annexations in all incorporated and unincorporated areas of the county). In addition to the existing requirements of Chapter 171, the ordinance requires that annexed properties must either be in the designated planning area or reduce an existing enclave. *Id.*

17. *Id.*

18. Orange County Code Ordin. (Fla.) § 505 (2002). “Voluntary annexation in a preservation district may occur only if it is approved by a majority of the board of county commissioners after an advertised public hearing and by a majority of the registered electors residing within the boundaries of the preservation district.” *Id.* § 505(b). Since my last article in 1996, Orange County has created three such additional preservation districts, the Dr. Phillips Urban Preservation District, Taft Urban Preservation District, and Pine Castle Preservation District. *Id.* § 505(a)(2)–(4). The latter has been the topic of threatened litigation by neighboring municipalities. Martin E. Comas, *Pine Castle District Isn’t End of Debate: Vote Dismays Annexation Advocates*, Orlando Sent. K1 (Nov. 17, 2002).

19. Fla. Const. art. VIII, § 1(g).

rated territory” must be done by “general or special law.”²⁰ Even though this language falls under the constitutional heading of “Municipalities,”²¹ it arguably would limit any local government’s home-rule authority to pass by charter a variation of the voluntary-annexation provision that is contained specifically within a statute, special law, or local bill of the Florida Legislature.

DEFENDING THE ANNEXATION SUIT

A. Chapter 164 Requirements

Since my 1996 article, Florida Statutes Chapter 164, the Florida Governmental Conflict Resolution Act, was rewritten pursuant to Laws of Florida Chapter 99-279.²² Florida Statutes Section 164.1051(2) expressly states that “[p]ursuant to [Section] 164.1041, this act shall apply, at a minimum, to governmental conflicts arising from any of the following issues or processes, including, but not limited to . . . (2) *Municipal Annexation*.”²³ The Act expressly states that it represents “the creation of a governmental conflict resolution procedure that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities.”²⁴ Section 164.102 further states that “[i]t is the intent of the Legislature that conflicts between governmental entities be resolved to the greatest extent possible without litigation.”²⁵

The Act requires that local governments initiate specified conflict resolution procedures before instituting court proceedings.²⁶ Specifically, the statute mandates the following:

- (1) The governing body of a governmental entity shall initiate the conflict resolution procedures provided by this act through passage of a resolution by its members. The resolution shall state that it is the intention of the governing body to initiate the conflict resolution procedures provided by this act *prior to initiating* court proceedings or prosecuting action on a previously filed court proceeding to resolve the conflict

20. *Id.* § 2(c).

21. *Id.* § 2.

22. Fla. Stat. §§ 164.101, 164.1065.

23. *Id.* § 164.1051(2) (emphasis added).

24. *Id.* § 164.102.

25. *Id.*

26. *Id.* § 164.1052.

and shall specify the issues of conflict and the governmental entity or entities with which the governing body has a conflict. Within 5 days after the passage of the resolution, a letter and a certified copy of the resolution shall be provided to the chief administrator of the governmental entity or entities with which the governing body has a conflict by certified mail, return receipt requested. The letter shall state, at a minimum, the conflict, other governmental entities in conflict with the initiating governmental entity, the justification for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting to be held pursuant to [Section] 164.1053, and suggestions regarding the officials who should be present at the conflict assessment meeting.²⁷

Section 164.1041(1) expressly requires that a local government “shall use these procedures *before* court proceedings.”²⁸

The Act specifies that litigation should be instituted only after the Chapter 164 conflict resolution process has been implemented and failed.

If there is failure to resolve a conflict between governmental entities through the procedures provided by [Sections] 164.1053 and 164.1055, the entities participating in the dispute resolution process may avail themselves of any *otherwise available* legal rights.²⁹

An exception to initiating a court proceeding before the conflict resolution procedures occurs when a governmental body expressly finds, by a three-fourths vote, that “immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised” by delaying a court proceeding until after conflict resolution proceedings.³⁰ In such an event, “no notice or public meeting or other pro-

27. *Id.* § 164.1052(1) (emphasis added). An interesting question arises about whether a thirty-day statutory time frame for filing an annexation appeal is tolled under Chapter 164. For help in this situation, consult *supra* notes 23–24 and accompanying text.

28. *Id.* § 164.1041(1) (emphasis added). This Subsection specifically exempts governmental entities that “have reached an impasse during an alternative dispute resolution process engaged in prior to court action.” *Id.* “A joint public meeting between the primary conflicting government entities” is required if the initial conflict assessment meeting fails to resolve the matter. *Id.* § 164.1055(1). Mediation is required if the joint public meeting also fails to resolve the conflict. *Id.* § 164.1055(2).

29. *Id.* § 164.1056 (emphasis added).

30. *Id.* § 164.1041(2).

ceedings as provided by this act shall be required *before* such a court proceeding.”³¹ Hence, when initiating annexation litigation, a local government should pay close attention to these statutory requirements.

Use of the conflict resolution statute before litigation helps bring elected officials from both governing bodies to the table for a face-to-face discussion of the issues that were set forth in the resolution. It helps prevent the expenditure of legal fees to defend or prosecute annexation challenges in court. The statute expresses a clear legislative intent to minimize or eliminate the situation in which one local government uses taxpayer dollars to litigate against another local government (which must also use taxpayer dollars to defend against the suit).

When defending an annexation challenge, a prudent practitioner should review the tapes of the meeting at which a county, if applicable, authorized the litigation to determine whether the Chapter 164 requirements were met. This review also will give the defending party insight into the real reasons for the suit and could help prompt settlement. Also, if the Chapter 164 requirements were not met, and this deficiency becomes an issue in the case, it also can help the court to determine why the challenge is being made.

B. Other Sources to Check before Filing Suit

In addition to consulting the county charter for specific charter amendments and special acts pertaining to annexation, a potential challenger of an annexation ordinance also should check for any planning-reserve or joint-planning-area agreements. These types of agreements, contemplated specifically in Chapter 163, essentially lay out areas that a municipality, by contractual agreement with the county, has agreed will be logical areas for future annexation.³² *City of Ormond Beach v. City of Daytona*

31. *Id.* (emphasis added). This Section specifically authorizes a court to “review the justification for failure to comply with the provisions of this act and make a determination as to whether the provisions of this act should be complied with prior to action by the court.” *Id.* In *Pasco County v. City of Dade City*, the court declined the petitioner’s motion for abatement when it was made at a time well into the litigation. No. 02-1410 CA (Fla. 67th Jud. Cir. Dec. 17, 2002).

32. See Yurko, *supra* n. 1, at 714–718 (extensively analyzing these agreements, including describing certain provisions that should be contained therein).

Beach,³³ a relatively recent case in which the court held that municipalities may not contract away the power to annex, could be construed as calling into question these types of agreements.³⁴

Notwithstanding this unsettled area of law, a carefully drafted joint-planning-area agreement is still highly desirable. Such an agreement should include language to the effect that (1) it is a legal, valid, and binding agreement; (2) the parties will covenant to litigate regarding the agreement's enforceability should it become necessary; and (3) there are no third-party beneficiaries. With this type of agreement, as a practical matter, the likelihood of annexation litigation is reduced greatly. The party most likely to challenge the annexation — the county — will now be neither surprised nor enraged when it sees its boundaries reconfigured.

C. Importance of the Record and Objections at the Annexation-Ordinance Adoption Hearing

Parties also should be mindful of the importance of objecting at the annexation hearings and of having a court reporter present at the final-adoption hearing. In *Battaglia Fruit Company v. City of Maitland*,³⁵ the court quashed the circuit court's petition for writ of certiorari, in part, based upon the City of Maitland's failure to object at the administrative proceeding.³⁶ In so holding, the court noted that it is limited in certiorari review to reviewing the record of the administrative agency.³⁷ "In a certiorari proceeding the circuit court has no zoning powers but can only review the administrative record of the agency that has such powers."³⁸ Accordingly, a party should be careful not to raise its objections for

33. 794 So. 2d 660 (Fla. Dist. App. 5th 2001).

34. *Id.* at 664. But the court refused to uphold an agreement prohibiting annexation in certain areas largely because the agreement predated a change to Chapter 163 that appears to sanction these types of agreements. *Id.* at 663–664. The clear implication is that such agreements, if entered into subsequent to the Chapter 163 revisions (specifically Florida Statutes Section 163.3171), would be enforceable. "At the time of the agreement between Ormond Beach and Daytona Beach, there was no statutory modification permitting a municipality to contract with another city, via resolution to (permanently?) refrain from annexing." *Id.* at 664.

35. 530 So. 2d 940 (Fla. Dist. App. 5th 1998).

36. *Id.* at 943–944.

37. *Id.* at 943.

38. *Id.* This case dealt with zoning, not annexation; however, the case is still instructive because a petition for writ of certiorari was the device for suit in both instances.

the first time in a court proceeding and expect a court to grant its petition.

When passing an annexation ordinance, the annexing municipalities should be very cautious to expressly follow all notice and hearing requirements. These requirements are construed strictly, and failing to follow them precisely will lead to legal arguments that procedural due process was violated.³⁹ When challenging the annexation ordinance, however, challengers should remember that attendance at a hearing may waive challenges based on notice, particularly if the appearing party makes objections at the hearing.⁴⁰

D. Standard of Appeal

Florida Statutes Section 171.081 specifically requires that any party “who believes that he or she will suffer material injury” because of an annexation or contraction ordinance must file a petition in circuit court seeking certiorari review no later than thirty days after the ordinance is passed.⁴¹

The standard of review in certiorari cases is extremely narrow.⁴²

39. See *Homan*, 118 So. 2d at 588 (holding that adequate notice of an intention to annex is “a condition precedent to due process”).

40. See *Schumacher v. Town of Jupiter*, 643 So. 2d 8, 9 (Fla. Dist. App. 4th 1994) (holding that “[t]he general rule is that, while strict compliance with statutory notice requirements is mandatory and jurisdictional, a contesting landowner may waive the right, or be estopped, to assert a defect in the notice if that landowner appeared at the hearing and was able to fully and adequately present any objections to the ordinance”); see generally *State ex. rel. Landis v. City of Coral Gables*, 163 So. 308, 308 (Fla. 1935) (standing for the general proposition that estoppel may defeat a landowner’s attack on ordinances); *Silverthorne v. Port Orange*, 356 So. 2d 36, 37 (Fla. Dist. App. 1st 1978) (holding that estoppel may prevent landowners from contesting the validity of an annexation ordinance); *Pasco County*, slip op. at 1 (noting “an attorney for Petitioner was present at all times when Respondent considered the proposed annexation and, despite being given an opportunity to speak, neither advised Respondent of this procedural error nor requested a delay in the proceeding to give an opportunity for Petitioner to formulate a position. Notice is not jurisdictional and cannot form an objection to its proceedings pursuant to Section [171.044(6)].”). Section 171.044(6) expressly states that “[t]he notice provision provided in this subsection shall not be the basis of any cause of action challenging the annexation.” Therefore, if a party later alleges that it could not adequately prepare for a hearing, this argument may ring hollow if that party is present and does not ask for a continuance of the matter or at least express concerns about inadequate notice.

41. Fla. Stat. § 171.081.

42. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

The reviewing court will not undertake to re-weigh or evaluate the evidence presented before the tribunal or agency whose order is under examination. The appellate court merely examines the record made below to determine whether the lower tribunal had before it competent substantial evidence to support its findings and judgment which also must accord with the essential requirements of the law.⁴³

Substantial and competent evidence is simply that which is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.”⁴⁴

E. What Substantial and Competent Evidence Supports an Annexation?

Upon filing an annexation challenge, the question for the court becomes what, if any, substantial and competent evidence supports the annexation? To answer this question, the court must analyze voluntary and involuntary annexation separately. The court also should examine the standards for an involuntary annexation (an annexation that does not involve unanimous consent of the property owners).

An involuntary annexation of property under Florida Statutes Sections 171.0413, 171.042, and 171.043 requires a factual determination that the property to be annexed has certain qualities and characteristics pertaining to issues such as utility service and urban character.⁴⁵ Those determinations are in addition to a legislative finding that the property is compact and contiguous pursuant to Chapter 171.⁴⁶ Such a determination necessarily involves a showing of substantial and competent evidence outside the four corners of the annexation ordinance to support a local government's decision to annex.⁴⁷ This evidence typically would be in the nature of items such as utility-service reports, information, or testimony regarding the type of development or population within the properties.⁴⁸

43. *Id.*

44. *Id.*

45. Fla. Stat. §§ 171.0413, 171.042, 171.043.

46. *Id.* § 171.043.

47. *Id.*; *De Groot*, 95 So. 2d at 916.

48. Fla. Stat. §§ 171.042, 171.043.

In contrast, the only nonprocedural prerequisites for voluntary annexation are that (1) the property owners consented; (2) the property is “contiguous to a municipality and reasonably compact”; and (3) the property is developed for urban purposes or meets the statutory parameters regarding proximity to property developed for urban purposes.⁴⁹ These terms are further defined in Chapter 171.⁵⁰ Hence, the primary evidence in a voluntary-annexation proceeding is the maps of the properties to be annexed, the total resident population within the annexed area, and the lot sizes within the annexed area. The annexation ordinance is the appropriate place for the local government to make the findings of compactness, contiguity, urban character, and compliance with the statute’s notice and consent requirements.

F. Are Annexations Legislative or Quasi-Judicial?

In *Board of County Commissioners of Brevard County v. Snyder*,⁵¹ the Florida Supreme Court set forth the distinction between legislative and quasi-judicial acts as follows:

A judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions. On the other hand, a quasi-legislative or administrative order prescribes what the rule or requirement of administratively determined duty shall be with respect to transactions to be executed in the future, in order that same shall be considered lawful.⁵²

The Court further held that “rezonings affecting a large portion of the public are legislative in nature,” but rezonings impacting only “a limited number of persons or property owners” are quasi-judicial.⁵³

49. *Id.* §§ 171.043, 171.044. Section 171.043(3)(a) provides for an extremely narrow review of utility services in limited situations in which the area to be annexed lies between the municipal boundary and an area developed for urban purposes, and the area developed for urban purposes cannot be served by the municipality without extending water and sewer lines through the sparsely developed area to be developed. This review arguably applies to both voluntary and involuntary annexations.

50. *Id.* §§ 171.031, 171.043.

51. 627 So. 2d 469 (Fla. 1993).

52. *Id.* at 474.

53. *Id.*

Significantly, the Florida Supreme Court also recognized the critical distinction between legislative and quasi-judicial acts in *Haines City Community Development v. Heggs*.⁵⁴

It may also be true that review of administrative decisions may be more difficult, since care must be exercised to determine the nature of the administrative proceedings under review, and to distinguish between quasi-judicial proceedings and those legislative in nature.⁵⁵

As the Court stated in *Snyder*, “[I]n deference to the policy-making function of a board when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable.”⁵⁶ In effect, “fairly debatable” means that as long as there is some ostensible basis to support a legislative decision, that decision will not be overturned, and these actions will receive a presumption of validity.⁵⁷

The certiorari standard involves a determination of procedural due process, compliance with the essential requirements of law, and substantial and competent evidence.⁵⁸ The latter two prongs of the test in a voluntary-annexation case, however, boil down to the question of whether the annexing city correctly applied the relevant sections of Chapter 171. Because annexation proceedings are legislative in nature,⁵⁹ it could be argued that the ultimate issue is whether the annexing city’s legislative determination of reasonable compactness, contiguity, and development for urban purposes, was correct.

Property annexation changes the overall boundaries of a city and has fiscal impacts relating to ad valorem taxes, fees, and services concerning the entire city, not just the property being annexed. In fact, Florida Statutes Section 171.091 specifically requires that “[a]ny change in the municipal boundaries through annexation or contraction shall revise the charter boundary arti-

54. 658 So. 2d 523, 531 (Fla. 1995).

55. *Id.*

56. 627 So. 2d at 474 (quoting *Nance v. Town of Indiatlantic*, 419 So. 2d 1041, 1041 (Fla. 1982)).

57. *Orange County v. Costco Wholesale Corp.*, 823 So. 2d 732, 737 (Fla. 2002); *Town of Bay Harbor Islands v. Driggs*, 522 So. 2d 912, 914 (Fla. Dist. App. 3d 1988).

58. *Martin County v. City of Stuart*, 736 So. 2d 1264, 1266 (Fla. Dist. App. 4th 1999).

59. *Id.*; *City of Lake Mary v. Seminole County*, 419 So. 2d 737, 738 (Fla. Dist. App. 5th 1982).

cle and shall be filed as a revision of the charter with the Department of State within 30 days.”⁶⁰ Also, the change of jurisdictional boundaries caused by annexation determines the rules and requirements that will apply to the annexed property in the future,⁶¹ and, as such, this process would seem to fit the distinctions drawn in *Snyder*.

Therefore, annexation could reasonably be viewed as an example of a “policy decision of broad application,” as the Florida Supreme Court has described that phrase,⁶² rather than the mere application of a policy or rule to a single piece of property, as would be the case with a variance, special exception, or small-scale rezoning. In further support of this theory, Section 171.062(2) now reads as follows:

If the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area.⁶³

Hence, although the annexation alters the jurisdictional boundaries of the city, it does not address the land uses or other site-specific issues that typically would be associated with quasi-judicial matters. These matters are addressed first by the comprehensive-plan amendment, and then by the rezoning, and subsequent land-use approvals.

Although no Florida cases address this point, and there is a rather comprehensive and well-reasoned law review article with a contrary view,⁶⁴ the better argument is that annexations are legislative rather than quasi-judicial. It is true that Section 171.081 specifically allows for certiorari review if the petitioner otherwise meets the statute’s requirements.⁶⁵ Thus, the legislative versus quasi-judicial distinction may be somewhat academic, particularly

60. Fla. Stat. § 171.091.

61. *See id.* § 171.062(2) (creating the practical effect that the annexing city has no regulatory jurisdiction over an area until a comprehensive-plan amendment is adopted, even if the property is within the city limits after the annexation).

62. *See Costco*, 823 So. 2d at 737 (citing *Snyder*, 627 So. 2d at 474).

63. Fla. Stat. § 171.062(2).

64. Scott D. Makar & Michael L. Buckner, *Son of Snyder: Municipal Annexations and Quasi-Judicial Proceedings*, 1 Fla. Coastal L.J. 133 (1999).

65. Fla. Stat. § 171.081.

when challenging an involuntary annexation, because meaningful substantial and competent evidence in support of the annexation is arguably still necessary.⁶⁶

In the context of defending a voluntary-annexation challenge, however, it could be argued that the only real dispute in most cases is the petitioner's disagreement over the annexing city's legislative determination of compactness, contiguity, and urban purposes. This assumes, of course, that the annexing city adhered to the requirements of consent, notice, and hearing.

Therefore, it could be argued effectively that the standard of review for a challenge to a voluntary-annexation ordinance is a blended test based on *Heggs*,⁶⁷ *De Groot v. Sheffield*,⁶⁸ *City of Lake Mary v. Seminole County*,⁶⁹ and *Snyder*.⁷⁰ The court must ask whether *reasonable people*⁷¹ would conclude that it was, at a minimum, a *fairly debatable* decision⁷² that (1) the annexed properties were *contiguous*⁷³ to the city's current boundaries; (2) a map of the annexed properties, in relationship to the current boundaries of the city, would result in an area that is *reasonably compact*; and (3) the properties were developed for urban purposes.⁷⁴

By asking a court to grant a certiorari petition in a voluntary-annexation proceeding, it could be argued that a petitioner is, in effect, attempting to override the annexing city's legislative determination that the property is reasonably compact, contiguous, and developed for urban properties. As such, the petitioner is attempting to force the property owners back into the unincorporated area against their will through a court-ordered de-annexation. As set forth in *City of Miami Beach v. Weiss*,⁷⁵ a court is not an appropriate entity to exercise legislative authority.⁷⁶

66. *Supra* nn. 43–48 and accompanying text.

67. 658 So. 2d 523.

68. 95 So. 2d 912 (Fla. 1957).

69. 419 So. 2d 737 (Fla. Dist. App. 5th 1982).

70. 627 So. 2d 469.

71. *De Groot*, 95 So. 2d at 916 (emphasis added).

72. *Snyder*, 627 So. 2d at 474 (emphasis added).

73. Fla. Stat. § 171.044(1) (emphasis added).

74. *Id.* (emphasis added); *but see supra* nn. 48–49 and accompanying text (regarding the limited situation in which utility-service capabilities and plans may be relevant). In this narrow circumstance, the required substantial and competent evidence may be somewhat more subjective.

75. 217 So. 2d 836 (Fla. 1969).

76. *Id.* at 837 (invalidating, on separation-of-powers grounds, a judicial order mandating a rezoning).

G. If a Petitioner Does Not Meet the Requirements for Statutory Certiorari under Florida Statutes Section 171.081, Is Common-Law Certiorari Still Available?

Florida Statutes Section 171.081 sets forth the specific criteria for challenging an annexation.⁷⁷ In *SCA Services of Florida, Incorporated v. City of Tallahassee*,⁷⁸ the court held that Section 171.081 was the “sole and exclusive procedure for challenging municipal government’s failure to comply with Chapter 171.”⁷⁹ Subsequent to that case, however, the Fifth District Court of Appeal held to the contrary, noting that the remedy of common-law certiorari is “independent and cumulative” to that of statutory certiorari.⁸⁰ In any event, either under statutory certiorari or common-law certiorari, the parties are required to file a complaint within thirty days of an annexation’s passage to effect certiorari review in circuit court.⁸¹

The most meaningful distinction between the two types of review is that, under statutory certiorari, Section 171.081 specifi-

77. Fla. Stat. § 171.081.

78. 418 So. 2d 1148 (Fla. Dist. App. 1st 1982).

79. See *id.* at 1150 (noting that the statute “requires that the complainant: (1) be a ‘party affected’; (2) allege ‘that he will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in’ Chapter 171 ‘or to meet the requirements established for annexation . . . as they apply to his property’; (3) file his complaint seeking judicial review within thirty days following passage of the annexation ordinance; and (4) seek review by certiorari in circuit court”).

80. See *Splash & Ski, Inc. v. Orange County*, 596 So. 2d 491, 494 (Fla. Dist. App. 5th 1992) (invalidating a ten-day notice requirement that the Orange County code required as a prerequisite to filing a certiorari appeal); see generally *G-W Dev. Corp. v. Village of N. Palm Beach Zoning Bd. of Adjustment*, 317 So. 2d 828, 830 (Fla. Dist. App. 4th 1975) (noting that Article V, Section 5(b) of the Florida Constitution confers “two independent jurisdictional bases for reviewing administrative action: the first is by common-law certiorari; the second is as may be prescribed by general law, otherwise commonly referred to as statutory certiorari”). Since neither of these cases dealt specifically with annexation, the issue appears to remain unsettled.

81. Fla. Stat. § 171.081; Fla. R. Civ. P. 1.630(c); see generally Fla. R. App. P. 9.030(c)(1)(A) (allowing circuit courts to “review, by appeal . . . final orders of lower tribunals as provided by general law”); *id.* 9.030(c)(1)(C) (allowing “review, by appeal . . . [of] administrative action if provided by general law”); *id.* 9.030(c)(3) (allowing circuit courts to issue writs of “common law certiorari . . . and all writs necessary to the complete exercise of the court’s jurisdiction”). It is arguable that neither Florida Rule of Appellate Procedure 9.030(c)(1)(C) nor Rule 9.030(c)(1)(A) would apply. Rule 9.030(c)(1)(A) would not apply because an annexation ordinance is not an administrative act, but is instead either legislative or quasi-judicial. Rule 9.030(c)(1)(A) would not apply because an annexation ordinance is not a final order. Rule 9.030(c)(3) appears to be more on point, although there is continuing confusion about whether the Florida Rules of Civil Procedure or the Florida Rules of Appellate Procedure apply. Fla. R. Civ. P. 1.630 Court Commentary.

cally allows the prevailing complainant to collect costs and attorney's fees.⁸²

H. The "Reasonably Compact" Requirement

Both Florida Statutes Section 171.043, relating to involuntary annexation, and Section 171.044, relating to voluntary annexation, require as a prerequisite that the properties be "reasonably compact."⁸³

Section 171.031(12) defines compactness as:

a concentration of a piece of property in a single area [that] 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.⁸⁴

The last sentence makes it clear that the Legislature intends to look at the city's boundaries that will result after the annexation to determine whether the requirement of reasonable compactness is met.

The situation of a serpentine pattern arose in *City of Sunrise v. Broward County*,⁸⁵ when a winding, snake-like pattern that resulted from an annexation was deemed not to be reasonably compact because it created "finger areas in a serpentine pattern" and also created enclaves.⁸⁶ The *Broward County* court stated that enclaves could be incorporated areas surrounded by unincorporated areas.⁸⁷ The changes to Chapter 171 in 1993, however, effectively reversed that portion of the decision by virtue of ascribing a definition to the term "enclave" that is expressly limited to unincorporated areas fully surrounded by incorporated areas.⁸⁸

In *Sarasota County v. North Port City Commission*,⁸⁹ the court invalidated two annexation ordinances because they created small, isolated areas of unincorporated property within the areas

82. Fla. Stat. § 171.081.

83. *Id.* §§ 171.043–171.044.

84. *Id.* § 171.031(12).

85. 473 So. 2d 1387 (Fla. Dist. App. 4th 1985).

86. *Id.* at 1389.

87. *Id.*

88. Fla. Stat. § 171.031(13); 1993 Fla. Laws ch. 206.

89. No. 2000-14966-CA-01 (Fla. Cir. Ct. 12th Oct. 2, 2001).

annexed by the city (see Appendix A).⁹⁰ The court also considered several ordinances that featured small areas of annexed property jutting into the unincorporated property.⁹¹ Although the term “pocket” is not defined in the Florida Statutes, the court applied reasoning similar to that found in my prior article.⁹² Effectively, if the Florida Legislature specifically defined an enclave as unincorporated property that is surrounded totally by incorporated property, then a pocket must be unincorporated area surrounded on less than all sides by a municipality.⁹³ As the map shows, a vestige of unincorporated property that is left in a sea of incorporated area may tend to meet the definition of a pocket, even though the statute does not expressly articulate such a definition. Hopefully, this is one area that the legislature will address in any 2003 amendments.

An argument attempting to stretch the term “pocket,” however, to include an area of incorporated property surrounded on less than all four sides by unincorporated property, more than likely goes too far. This argument was attempted in *Pasco County v. City of Dade City*,⁹⁴ but the court held that annexed properties jutting into unincorporated areas were reasonably compact (see Appendix B).⁹⁵ The petitioner cited *North Port* as authority in its unsuccessful argument that the annexed properties were not compact because they resulted in a territory that created a pocket.⁹⁶

I. The Contiguity Requirement

Florida Statutes Section 171.044(1) requires as a prerequisite to a voluntary annexation that an “owner or owners of real property in an unincorporated area of a county which is contiguous to

90. *Id.* at 4.13. The court invalidated Ordinance 2000-18A and Ordinance 2000-19A. *Id.*

91. *Id.* The ordinances considered were Ordinance 2000-17A and Ordinance 2000-23A. *Id.*

92. *Id.*; Yurko, *supra* n. 1, at 703.

93. Yurko, *supra* n. 1, at 703; see generally *City of Sanford v. Seminole County*, 538 So. 2d 113, 115 (Fla. Dist. App. 5th 1989) (defining a pocket, based on *Webster's New Collegiate Dictionary* 879 (Henry Bosley Wolf ed., Merriam-Webster 1981), as a “small isolated area or group”).

94. No. 02-1410 CA, slip op. at 1 (Fla. 6th Jud. Cir. Dec. 17, 2002).

95. *Id.* at 2–3. The annexed properties considered were the Cameron and Roadside Groves properties.

96. Pet. for Writ of Cert. at 5-9, *Pasco County*, No. 02-1410 CA.

a municipality” may petition a governing body to annex the property.⁹⁷ Similarly, Section 171.043(1) requires that the “area to be annexed must be contiguous to the municipality’s boundaries at the time the annexation proceeding is begun.”⁹⁸ “Contiguous” is defined in Section 171.031(11) as “mean[ing] that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality.”⁹⁹

It is common practice in Florida to annex properties simultaneously by separate ordinance. This practice appears to be supported by the language in Section 171.043(1) that refers to “[t]he total area to be annexed” as being required to “be contiguous to the municipality’s boundaries at the time the annexation proceeding is begun.”¹⁰⁰ In *MacKinlay v. City of Stuart*,¹⁰¹ the court effectively validated this practice by expressly deeming seven separate annexation ordinances passed on the same date as part of the total area to be annexed.¹⁰² The court did express concern, however, about the fact that adjacent municipal property that was used as a basis for contiguity was the subject of an annexation ordinance that had not become final at the time that the other seven ordinances passed on second reading.¹⁰³

An annexation ordinance’s finality is governed by the language in the ordinance itself. Typically, the ordinance will state that it becomes effective “in accordance with general law.” The “general law” referred to is found in Section 166.041(4) and states that ordinances take effect ten days after their passage.¹⁰⁴

97. Fla. Stat. § 171.044(1).

98. *Id.* § 171.043(1). This statutory subsection arguably applies to voluntary or involuntary annexation.

99. *Id.* § 171.031(11).

100. *Id.* § 171.043(1).

101. 321 So. 2d 620 (Fla. Dist. App. 4th 1975).

102. *Id.* at 623.

103. *Id.* In so noting, the court reasoned that none of the land involved in the seven ordinances was contiguous to the city at the time those ordinances had their first reading. *Id.* The court did not invalidate the ordinances, however, because the appeal was not timely. *Id.* at 623–624.

104. Fla. Stat. § 166.041(4).

J. Can a City's Comprehensive Plan Provide a Basis for Overruling an Annexation Ordinance?

Another document that may be relevant in an annexation dispute is the annexing municipality's comprehensive plan. Provisions contained in the comprehensive plan should not provide the basis for a court to overrule an annexation because they do not rise to the level of "essential requirements of law" in the context of certiorari review under Florida Statutes Chapter 171.¹⁰⁵ Florida Statutes Section 163.3194 specifically limits any review of consistency with a comprehensive plan to development orders.¹⁰⁶ Section 163.3164(7), defines a development order as "any order granting, denying, or granting with conditions an application for a development permit."¹⁰⁷ The definition of "development permit" in Section 163.3164(8) does not include an annexation.¹⁰⁸ If the comprehensive-plan policy specifically addresses standards or prerequisites for annexation, however, an annexing city would be wise to include findings that any such annexation policies have been satisfied to avoid any misplaced legal challenges.

WHAT THE FUTURE HOLDS FOR ANNEXATION LAW IN FLORIDA

At the time this Article was written, the Florida Legislature had not convened its session for 2003. The Florida League of Cities and Florida Association of Counties have been working together to recommend changes to the current annexation statute and make annexation a less contentious proceeding in Florida.

Discussions about requiring cities to have an urban-services impact report before annexation, clarifying the definition of "pocket," and perhaps broadening the attorney's-fees provision to allow all prevailing parties to get attorney's fees in annexation

105. Comprehensive plans are not referenced in Chapter 171 except for the mention in Section 171.062(2) that the county's land-use regulations control until a comprehensive-plan amendment is passed for the annexed property. For a review of the constitutional prohibition against local regulations on the subject of annexation, consult *supra* notes 19–21 and the accompanying text.

106. See Fla. Stat. § 163.3194(1)(a) (requiring that "all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted").

107. *Id.* § 163.3164(7).

108. *Id.* § 163.3164(8).

litigation (rather than just the complainant, as currently drafted) are some ideas that have been advanced. It is unlikely, though, that any of these potential amendments really will resolve the inevitable collision course that cities and counties find themselves on when annexation is contemplated.

Perhaps the best way to avoid annexation challenges is for cities and counties to sit down beforehand to map out a general area where cities plan to annex and provide services. If the parties cannot reach a consensus, an alternative is for cities to have at least an annexation plan in effect that puts counties on notice as to where future annexations and capital infrastructure are planned. Of course, the ultimate decision about whether these annexations ever will occur typically is left to the individual property owners. So even the best plan is just that, a plan.

As Florida becomes more urbanized, both its cities and counties will continue to become more populated and will seek ways to broaden their tax base and political influence to serve these populations. The practical effect of annexation, however, is that it causes the geographical areas and potential service base of a given city to grow in direct proportion to the diminishment of the given county's geographical area and potential service base. Radical wholesale changes to the manner in which jurisdictional boundaries are altered in the future are inevitable. As cities' boundaries reach proportions so that they are competing with each other for annexation opportunities, and urban counties realize that their viability could be at stake if they do not have better control over their future boundaries, it is likely that we will see an increase in consolidations and special acts effecting large-scale changes to jurisdictional boundaries and service areas.

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