



December 11, 2024

VIA ELECTRONIC MAIL

Honorable Patti King, Mayor
City of Flagler Beach
105 South 2nd Street
Flagler Beach, Florida 32136

Re: *Veranda Bay – Proposed Annexation (Ordinance 2024-17) (Agenda Item 8.c)*

Dear Mayor King and Fellow City Commissioners:

Our law firm represents Preserve Flagler Beach & Bulow Creek, Inc. (“Preserve”), and Stephen Noble. At its regular meeting on ***Thursday, December 12, 2024***, the Flagler Beach City Commission (“City Commission”) is scheduled to consider the proposed voluntary annexation of approximately 899± acres of land located on the east and west sides of John Anderson Highway in Flagler County, Florida, to enable the development of 2,200 residential units and 650,000 square feet of commercial uses within the Veranda Bay development.¹ As discussed herein, the proposed annexation will result in the creation of an impermissible enclave (or, alternatively, pocket) of unincorporated property in violation of Florida’s annexation laws, and, thus, would be unlawful. Accordingly, our clients respectfully request that the City Commission ***deny*** the proposed voluntary annexation of the subject property and Ordinance 2024-17.

I. Preserve & Stephen Noble

Preserve is a Florida not-for-profit corporation that was formed in August 2019. As stated in its Articles of Incorporation, Preserve’s stated purpose is “so concerned citizens of Flagler County work together to preserve the beauty and environment of . . . Flagler County,” including,

¹ As currently approved in Flagler County, the subject property is supposed to be developed as a residential/golf community consisting of a maximum of 453 residential units, an 18-hole golf course, and 230,694 square feet of commercial uses.

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but not limited to, “developing and advocating for legislation, regulations and government programs to improve the environment, protect natural resources and stimulate the economy.” A substantial number of Preserve’s members reside or own property in Flagler Beach, including, but not limited to, along John Anderson Highway or in the immediate proximity of the property proposed for annexation. Stephen Noble is a member of Preserve and owns property in Flagler Beach located at 614 John Anderson Highway, which is immediately adjacent to the impermissible enclave (or, alternatively, pocket) of unincorporated property that will be created by the proposed annexation.

On behalf of its members, including Mr. Noble, Preserve maintains that the proposed annexation and related Veranda Bay development will have an adverse impact on utilities, school facilities, transportation facilities, stormwater management facilities and floodplains, allow incompatible development that will devalue and interfere with the quiet enjoyment of such members’ private property, and cause potential confusion regarding public services, such as police, fire, and emergency rescue services in the area. Moreover, the requested increases in densities and intensities of development on the property proposed for annexation are wholly inconsistent with the existing rural pattern of development along John Anderson Highway – a designated scenic roadway. Consequently, such members, including Mr. Noble, maintain that they will suffer material injury if the City Commission were to approve the proposed annexation in violation of the statutory requirements governing voluntary annexations.

II. Legal Requirements for Voluntary Annexations

Chapter 171, *Florida Statutes*, known as the “Municipal Annexation or Contraction Act” (“Annexation Act”), governs annexations in Florida. It is well established that a municipality’s power to annex “must be exercised in strict accord with the statute conferring it.”² With respect to voluntary annexations – such as the proposed Veranda Bay annexation – Section 171.044, *Florida Statutes*, provides in pertinent part:

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.³

² *Smith v. Ayres*, 174 So. 2d 727, 729 (Fla. 1965). The City’s Comprehensive Plan and Code of Ordinances recognize that annexations must comply with the Annexation Act. *See* Policy G.1.1.4, Flagler Beach Comprehensive Plan (noting that “[a]ny annexation procedures undertaken by the City shall be subject to State annexation laws”); § 2.2, Flagler Beach Code (noting that “[t]he provisions of F.S. §§ 171.042, Prerequisites to Annexation; 171.043, Annexation Procedures; and 171.044, Voluntary Annexation, shall apply to annexations conducted by the city”).

³ § 171.044(1), Fla. Stat. (2024) (emphasis supplied).

Thus, for a voluntary annexation to comply with Florida law, the property proposed for annexation must be “reasonably compact.”⁴

Section 171.031(2), *Florida Statutes*, defines the term “compactness” as follows:

“**Compactness**” means concentration of a piece of property in a single area and **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.

(Emphasis supplied). Hence, an annexation that results in either an “enclave” or “pocket” of unincorporated territory is, by statute, **not** “reasonably compact.”⁵

Section 171.031(5), *Florida Statutes*, defines the term “enclave,” in part, as “[a]ny unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality.” The term “pocket” is not defined by statute, but has been defined by case law as a “small isolated area or group.”⁶ As opposed to an enclave, a pocket consists of unincorporated area surrounded on less than all sides by a municipality. The statutory prohibition on the creation of enclaves and pockets was intended to “insure that no vestiges of unincorporated property be left ‘in a sea of incorporated property.’”⁷

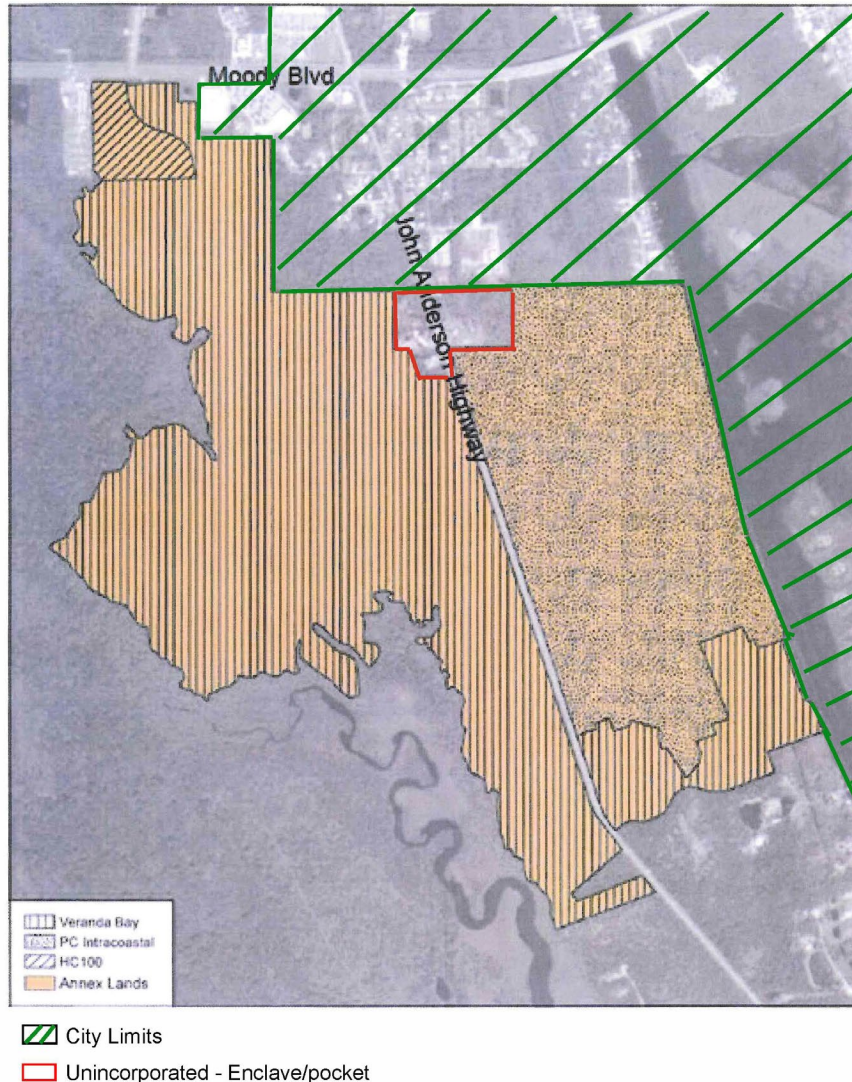
Turning to the instant case, if approved, the proposed annexation will result in the creation of an impermissible enclave (or, alternatively, pocket) of 20.6± acres of developed and/or improved unincorporated property along John Anderson Highway comprised of the following eight (8) tax identification parcels: (1) 14-12-31-0000-01010-0000; (2) 14-12-31-0000-01010-0010; (3) 14-12-31-0000-01011-0000; (4) 14-12-31-4310-00000-0040; (5) 14-12-31-4310-00000-0030; (6) 14-12-31-4310-00000-0020; (7) 14-12-31-4310-00000-0010; and (8) 14-12-31-0000-02030-0000. The impermissible enclave (or, alternatively, pocket) of unincorporated property is outlined in “red” on the image on the next page.

⁴ See *City of Center Hill v. McBryde*, 952 So. 2d 599, 602 (Fla. 5th DCA 2007) (“Property annexed by municipalities must be contiguous, reasonably compact, and not create enclaves.”).

⁵ See *id.*

⁶ See *id.*

⁷ See *id.* at 603.



III. Conclusion

In sum, as reflected above, the proposed annexation of the Veranda Bay development violates the statutory requirements of Section 171.044, *Florida Statutes*. In particular, if approved, the proposed annexation will result in the creation of an impermissible enclave (or, alternatively, pocket) of approximately 20.6± acres of unincorporated property along John Anderson Highway. As previously discussed, municipalities are required to strictly comply with the statutory requirements in the Annexation Act, including the prohibition on annexations that will result in impermissible enclaves or pockets of unincorporated property.⁸ Accordingly, our clients respectfully request that the City Commission adhere to the statutory requirements in the Annexation Act and ***deny*** the proposed annexation and Ordinance 2024-17.

⁸ See *id.* at 602; see also § 171.044(5), Fla. Stat. (2024) (“Land shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves.”).

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Due to a previously scheduled hearing in St. Cloud, Florida, I am unable to attend the City Commission's meeting on December 12, 2024. In light thereof, I request that a copy of this letter be admitted into evidence and included as part of the record of the hearing on the proposed Veranda Bay annexation (Agenda Item 8.c – Ordinance 2024-17).

I appreciate the City Commission's attention to this matter of great importance to the Preserve's members and Mr. Noble and thank the City Commission in advance for its support. As always, please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

S. Brent Spain

S. Brent Spain

cc: Chairman Scott Spradley (via e-mail)
Commissioner Rick Belhumeur (via e-mail)
Commissioner Eric Cooley (via e-mail)
Commissioner Jane Mealy (via e-mail)
Commissioner James Sherman (via e-mail)
Drew Smith, Esquire (via e-mail)