



City of North Port

4970 CITY HALL BLVD
NORTH PORT, FL 34286

Meeting Minutes - Final City Commission Special Meeting

CITY COMMISSIONERS

Pete Emrich, Mayor
Barbara Langdon, Vice Mayor
Jill Luke, Commissioner
Debbie McDowell, Commissioner
Alice White, Commissioner

APPOINTED OFFICIALS

Jerome Fletcher, City Manager
Amber L. Slayton, City Attorney
Heather Faust, City Clerk

Thursday, October 27, 2022

10:00 AM

CITY COMMISSION CHAMBERS

CALL TO ORDER

Mayor Emrich called the meeting to order at 10:00 a.m. and provided instruction on rules of decorum.

ROLL CALL

Present: 5 - Mayor Pete Emrich, Vice Mayor Barbara Langdon, Commissioner Jill Luke, Commissioner Debbie McDowell and Commissioner Alice White

Also Present:

City Manager Fletcher, City Attorney Slayton, Special Counsel Attorney Day, City Clerk Faust, Assistant City Clerk Jianelli, Police Chief Garrison, and Fire Chief Titus

Mayor Emrich recognized Former Sarasota County Commissioner Charles Hines.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Phil Stokes.

1. APPROVAL OF AGENDA

Mayor Emrich requested a motion to approve the agenda.

A motion was made by Vice Mayor Langdon, seconded by Commissioner Luke, to approve the Agenda as presented. The motion carried on the following vote:

Yes: 5 - Mayor Emrich, Vice Mayor Langdon, Commissioner Luke, Commissioner McDowell and Commissioner White

APPROVAL OF AGENDA

Mayor Emrich queried Commissioners for ex parte communications from the date the public hearing was closed on April 29, 2021 through today that have not already been disclosed with the agenda and supplemented prior to this meeting.

Commissioner McDowell disclosed various emails, media contact inquires, and Facebook posts provided to the City Clerk, review of court proceeding, John Meisel's newsletter, Public Information Officer email, newspaper article, and candidate interviews and debates, citizen status requests, civil lawsuit filed against her on September 18, 2020, and confirmed her ability to be fair and impartial and base her decision only on evidence properly presented to and received by the City Commission.

Commissioner White disclosed emails forwarded to the City Clerk and confirmed her ability to be fair and impartial and base her decision only on evidence properly presented to and received by the City Commission.

Commissioner Luke disclosed emails provided to the City Clerk, review of script of Judge Carroll's deliberations, and confirmed her ability to be fair and impartial and base her decision only on evidence properly presented to and received by the City Commission.

Vice Mayor Langdon disclosed emails provided to the City Clerk, Facebook posts, verbal citizen status updates, and confirmed her ability to be fair and impartial and base her decision only on evidence properly presented to and received by the City Commission.

Mayor Emrich disclosed emails provided to the City Clerk, citizen status updates, and confirmed his ability to be fair and impartial and base his decision only on evidence properly presented to and received by the City Commission.

2. PUBLIC COMMENT:

Mayor Emrich noted the process for public comments received for the quasi-judicial agenda item below.

Ms. Faust read the following eComment into the record:

Tom Moffatt: expressed opposition to the proposed petition

Patricia Brown: expressed support of the proposed petition

John Faubert: expressed support of the proposed petition

Larry Cobb: expressed opposition to the proposed petition

Jennifer Detwiler: expressed opposition to the proposed petition

Gerald Maresca: expressed support of the residents voting on the proposed petition

John Timpanaro: expressed support of the proposed petition

William Brown: expressed support of the residents voting on the proposed petition

Barbara Chou: expressed support of the proposed petition

Gege Mix: expressed support of the proposed petition

Steven Bowman: expressed support of the proposed petition

Thomas DeSane: expressed support of the proposed petition

Robert Baker: expressed support of the proposed petition

Jimmy Keesee: expressed opposition to the proposed petition

John Solini: expressed support of the residents voting on the proposed petition

Mary Solini: expressed support of the residents voting on the proposed petition

Dan Downs: expressed support of the residents voting on the proposed petition

John Gerrity: expressed support of the proposed petition

Arthur Adams: expressed support of the residents voting on the proposed petition

Michael Meehan: expressed support of the residents voting on the proposed petition

Gerald Wrublewski: expressed support of the proposed petition

Bill Tyng: expressed support of the residents voting on the proposed petition

Greg Jaeger: expressed support of the residents voting on the proposed petition

John McCandless: expressed support of the proposed petition

Richard Torossian: expressed support of the residents voting on the proposed petition

In person public comment:

CDR Jim Cranston, USN: expressed opposition of the proposed petition
Mark Wojnarowizz: expressed opposition of the proposed petition
Paul Maloney: expressed opposition of the proposed petition
Peter Yasigian: expressed opposition of the proposed petition
Gyhl Theurer: expressed opposition of the proposed petition
Dr. Norine Hemping: expressed opposition of the proposed petition
Steve Hemping: expressed opposition of the proposed petition
Kevin Shaughnessy: expressed opposition of the proposed petition
John Meisel: agenda backup documents, and expressed support of the proposed petition
Phil Stokes: expressed opposition of the proposed petition
Rick Severence: expressed opposition of the proposed petition
Jeffrey Boone: expressed opposition of the proposed petition
Scott Steady, Esq: expressed opposition of the proposed petition
Hank Fishkind: expressed opposition of the proposed petition
Lindsay Whelan: expressed opposition of the proposed petition
John Luczynski: expressed opposition of the proposed petition
Paul Kahle: expressed support of the proposed petition
Jerome Boitano III: expressed support of the proposed petition
David Browwell: expressed support of the proposed petition
Kriss Andrews: expressed concern with parties not communicating to attempt an agreement

Mayor Emrich reminded Commissioners to not have any communications with parties or the public during recess which was taken from 11:25 a.m. until 11:40 a.m.

Mayor Emrich queried Commissioners for disclosure of any ex parte communications during the break. There were none.

3. QUASI-JUDICIAL DELIBERATIONS:

[22-3658](#)

Resume Governing Body Deliberations Due to Circuit Court Quashal of the City Commission's April 29, 2021 Vote Rejecting the Municipal Contraction Petition Received on October 28, 2020 from West Villagers for Responsible Government (QUASI-JUDICIAL)

Mayor Emrich announced the item and requested the City Attorney explain the proceeding status.

Ms. Slayton spoke to the status of the proceeding including the April 29, 2021, hearing, November 15, 2021, circuit court quashal of the City Commission's vote to reject the petition, denial of the City's petition for second-tier certiorari relief from the Second District Court of Appeals and expiration of the time for rehearing, quashal process, and procedural steps for today's meeting.

Mayor Emrich queried Commissioners regarding their desire to re-open the evidence on this matter. There was no expressed desire by any Commissioner to re-open the evidence.

Ms. Slayton reminded the Commission the decision must be based solely on competent substantial evidence presented at the April 29, 2021 hearing as it relates to the merits of whether the contraction can be done and queried Commissioners on their ability, after

hearing today's public comment, to be fair and impartial and base their decision only on evidence properly presented to and received by the City Commission. All Commissioners confirmed their abilities.

Mayor Emrich requested a motion.

A motion was made by Commissioner McDowell, seconded by Commissioner Luke, to reject the municipal contraction petition submitted by the West Villagers' for Responsible Government on October 28, 2020 based on the competent substantial evidence presented at the April 29, 2021 hearing based on the following specific facts:

Florida State Statute 171.052(1) outlines the criteria required for contraction of municipal boundaries. The area petitioned for contraction does meet the criteria outlined in Florida State Statute 171.043. Therefore, contraction cannot proceed.

Florida State Statute 171.043(1) has three requirements - annexed areas must be contiguous, compact, and not located in another municipality. This area is not appropriate for contraction due to the area being contiguous and compact to the municipal boundaries. In the expert report given by Munilytics, Figure 12, outlined the various approved annexation ordinances. Each annexation required City Commission findings and adoption. The City's Charter, Section 2.02(b) requires the Commission's Districts territory be compact and contiguous. In December 2014, the Commission adopted Ordinance No. 2014-41 establishing the boundaries of Commission Districts 1 through 5. District 5 includes the area proposed for contraction. Commission's findings in that ordinance concluded the districts are compact and contiguous. Additionally, based on the expert testimony of Mr. Steady and Dr. Fishkind, the contraction area is reasonably compact, the Myakka River is a watercourse, the river does not impede the connection to the community on either side, and does not affect contiguity. Furthermore, it is undisputed the proposed contraction area lies solely within the City of North Port's municipal boundaries. Therefore, Florida State Statute 171.043(1) has been met.

Based on Florida State Statute 171.043(2) – the annexed lands must be developed for urban purposes. Florida State Statute 171.031(10) defines urban purposes as “intensively used for residential, commercial, industrial, institutional and government purposes.” Based on the compelling and unchallenged testimony of Mr. Severance, there are approximately 6,709 residents in this area, with a projection of 9,197 residents by 2026, there are 8,221 residential units, 4,100 acres are developed or under construction, 520,000 square-feet of commercial space and 200,000 square-feet of office space. Fire services, police services, city water and wastewater services, trash and recycling services, along with all permitting and development processes are provided by the City of North Port. The Atlanta Braves spring training facility is within this area. A future K-12 school and downtown is planned. Also, there are areas which have been kept in their natural state, based on the expert testimony of Ms. Schottle-Gumm. Additionally, based on the expert testimony of Mr. Johnson, the West Villages Improvement District (WVID) was established by the Florida Legislature in 2004. The West Villages Improvement District is a special purpose local government and has a Charter. To provide infrastructure to over 8,000 acres in the City of North Port, the WVID has taken bonds in excess of \$222,000,000 to meet the infrastructure requirements of development of more than 8,000 acres in the proposed contraction area. Many pieces of the infrastructure have been or are soon to be conveyed to the City of North Port. This area has clearly met the definition of urban purpose.

Florida State Statute 171.043(2) a, b or c – Based on Ms. Schottle-Gumm and Dr. Fishkind’s expert testimony, there are 2.1 residents per acre, which exceeds the requirement in Florida State Statute 171.043(2)a and b. More than 60% of the land is being used for urban purposes. The annexed lands have been platted into lots which are less than 1 acre in size and/or tracks [sic] of land greater than 5 acres in size. Based on the expert testimony, Florida State Statute 171.043(2) a, b and c have been met. If only one of these criteria were met, contraction cannot continue. However, all three have been met; therefore, statutorily, contraction cannot continue.

Florida State Statute 171.081, which dictates the appeal process for annexations. Based on the unchallenged expert testimony of Ms. Galehouse there are no outstanding annexation litigations [sic] that need to be finalized and all challenge periods have expired. In addition, based on the expert testimony of Mr. Severance, the Wellen Park LLLP purchased approximately 5000 acres in 2014 for development based on the understanding the annexation was valid. Additionally, the Lake Geraldine subdivision was developed based on the validity of annexation according to the testimony of Mr. Boone. The appeals process for these annexed lands have expired.

We cannot dismiss, Florida State Statute 171.051(1) and (9), which requires a contraction ordinance to include an effective date. Nobody, on either side, could offer an effective date for contraction. An effective date is impossible to determine based on the compelling testimony given by Dr. Fishkind and Mr. Severance with the multiple individual and co-mingled agreements with West Villages Improvement District, Wellen Park LLLP, the City, the County and various builders in the area. Without an effective date, the Commission cannot proceed with a contraction ordinance.

Florida State Statute 171.021 outlines the purpose of annexation and contraction - to ensure urban development, ensure efficient provisions of urban services and ensure areas are not annexed unless municipal services can be provided. Based on the expert testimony by Ms. Schottle-Gumm, Mr. Boone, Mr. Steady and Dr. Fishkind, the purpose for annexation has been met and exceeded. The proposed contraction does not support these annexation purposes. Therefore contraction cannot take place.

Based on each of the specific facts outlined in this motion, contraction cannot statutorily proceed.

Commissioner McDowell restated her motion to add "and to direct the City Attorney to draft a written order of denial to be sent to the petitioner and filed with the City Clerk."

Discussion took place regarding possible changes including adding the 11 developer agreements in place, approved and being carried out, appreciation of meeting, evidence and expert testimony presented during the hearing, contractual procedures including determining feasibility, staff input regarding outstanding litigation, fiduciary responsibility, contiguity requirement for boundaries, reasonable compactness, enclave as defined not being met, urbanization including 2020 population of area, land showing future probability for urban use, and current land use authorizations by the City, infrastructure provided to the annexed area and agreement for repayment, services provided, substantial urban purpose land currently developed, and expert testimony regarding county responsibility.

A motion to amend was made by Vice Mayor Landon, seconded by Commissioner

Luke, to add the following facts:

The annexed area meets the contiguity requirements for a coterminous boundary between the annexed territory and the City of North Port.

The boundary of the annexed area is coterminous with the municipal boundary. The actual coterminous area of the eastern boundary of the annexed parcel is shown to be about 90% of that boundary in the maps provided in the City's feasibility study.

Reasonable compactness is required by the statute and none of the parcels within the annexed area are surrounded on all sides by City land. In addition, the annexation did not result in the isolation of any areas to the point of residents being hampered in obtaining services and securing social and economic benefits. In addition, there is easy access to U.S. 41 through the annexed property. Also, it is a fact that any isolation is created by natural boundaries and is not the result of municipal boundaries.

The urbanized area's current population as of 2020 in Wellen Park already meets the density requirements of state statute. Island Walk has a resident density of 2.87 residents per acre and Gran Paradiso 2.01 residents per acre.

And even if the annexed area did not currently meet the population density, the land use of this area qualifies for annexation. The following land uses have been authorized by the City but have not yet been constructed. Those are: 92 acres of institutional commercial uses, 1000 acres of mixed use residential, and 570 acres of residential with the density of 4+ residents per acre.

The City of North Port currently owns and operates infrastructure located in the annexed area and is delivering water, wastewater, and sewer services to the residents and businesses in Wellen Park. These assets were conveyed to the City from the developer by the 2019 utilities agreement. Through a contractual arrangement, the City will pay the developers through a schedule of reduced impact fees over a span of 25 years. The City of North Port owns and operates the security buildings on Preto Blvd. and provides fire protection, emergency medical services, and police protection to the residents of the area. Through a contractual arrangement, the City will reimburse the developer for these assets in return for reduced impact fees.

Substantial land has already been developed for urban purposes: a shopping plaza containing retail shops, restaurants, and other businesses are already operating; a downtown retail commercial area is scheduled to open in early 2023; and an ancillary government building is planned to provide City services to the residents of the annexed area.

Vice Mayor Langdon reviewed and revised her motion for accuracy.

Commissioner Luke confirmed the changes in the motion are acceptable.

Discussion took place regarding adding the appropriate statute to the additions, use of the term urban purposes, and providing additional clarifications.

Vice Mayor Langdon provided further clarification revisions within her motion.

Commissioner Luke confirmed the changes in the motion are acceptable.

The motion to amend carried on the following vote:

Yes: 4 - Vice Mayor Langdon, Commissioner Luke, Commissioner McDowell and Commissioner White

No: 1 - Mayor Emrich

Mayor Emrich dissented due to the original motion being clear and additional information not being needed.

A motion to amend was made by Commissioner Luke, seconded by Commissioner McDowell, to add:

There is no path to transfer the proposed area to the county from the City of North Port because of the lack of land use codes on the part of the county, the lack of urban service boundaries, and mobility and impact fees proven in testimony by Attorney Scott Steady and Vice President of Wellen Park, Rick Severence.

Contraction is economically impossible per the testimony and evidence provided by Dr. Fishkind.

Discussion took place regarding Mr. Steady's testimony.

Commissioner Luke revised her motion to provide clarity.

Commissioner McDowell confirmed the changes in the motion are acceptable.

The motion to amend carried on the following vote:

Yes: 4 - Vice Mayor Langdon, Commissioner Luke, Commissioner McDowell and Commissioner White

No: 1 - Mayor Emrich

Mayor Emrich dissented for reasons previously stated.

Commissioner McDowell reviewed and revised the main motion for accuracy and clarification.

Commissioner Luke confirmed the changes in the main motion are acceptable.

The main motion as amended to read:

"To reject the municipal contraction petition submitted by the West Villagers' for Responsible Government on October 28, 2020 based on the competent substantial evidence presented at the April 29, 2021 hearing based on the following specific facts and to direct the City Attorney to draft a written order of denial to be sent to the petitioner and filed with the City Clerk.

Florida State Statute 171.052(1) outlines the criteria required for contraction of municipal boundaries. The area petitioned for contraction does meet the criteria outlined in Florida State Statute 171.043. Therefore, contraction cannot proceed.

Florida State Statute 171.043(1) has three requirements - annexed areas must be contiguous, compact, and not located in another municipality. This area is not appropriate for contraction due to the area being contiguous and compact to the municipal boundaries. In the expert report given by Munilytics, Figure 12, outlined the various approved annexation ordinances. Each annexation required City

Commission findings and adoption. The City's Charter, Section 2.02(b) requires the Commission's Districts territory be compact and contiguous. In December 2014, the Commission adopted Ordinance No. 2014-41 establishing the boundaries of Commission Districts 1 through 5. District 5 includes the area proposed for contraction. Commission's findings in that ordinance concluded the districts are compact and contiguous. Additionally, based on the expert testimony of Mr. Steady and Dr. Fishkind, the contraction area is reasonably compact, the Myakka River is a watercourse, the river does not impede the connection to the community on either side, and does not affect contiguity. Furthermore, it is undisputed the proposed contraction area lies solely within the City of North Port's municipal boundaries. Therefore, Florida State Statute 171.043(1) has been met.

Based on Florida State Statute 171.043(2) – the annexed lands must be developed for urban purposes. Florida State Statute 171.031(10) defines urban purposes as “intensively used for residential, commercial, industrial, institutional and government purposes.” Based on the compelling and unchallenged testimony of Mr. Severance, there are approximately 6,709 residents in this area, with a projection of 9,197 residents by 2026, there are 8,221 residential units, 4,100 acres are developed or under construction, 520,000 square-feet of commercial space and 200,000 square-feet of office space. Fire services, police services, city water and wastewater services, trash and recycling services, along with all permitting and development processes are provided by the City of North Port. The Atlanta Braves spring training facility is within this area. A future K-12 school and downtown is planned. Also, there are areas which have been kept in their natural state, based on the expert testimony of Ms. Schottle-Gumm. Additionally, based on the expert testimony of Mr. Johnson, the West Villages Improvement District (WVID) was established by the Florida Legislature in 2004. The West Villages Improvement District is a special purpose local government and has a Charter. To provide infrastructure to over 8,000 acres in the City of North Port, the WVID has taken bonds in excess of \$222,000,000 to meet the infrastructure requirements of development of more than 8,000 acres in the proposed contraction area. Many pieces of the infrastructure have been or are soon to be conveyed to the City of North Port. This area has clearly met the definition of urban purpose.

Florida State Statute 171.043(2) a, b or c – Based on Ms. Schottle-Gumm and Dr. Fishkind's expert testimony, there are 2.1 residents per acre, which exceeds the requirement in Florida State Statute 171.043(2)a and b. More than 60% of the land is being used for urban purposes. The annexed lands have been platted into lots which are less than 1 acre in size and/or tracks [sic] of land greater than 5 acres in size. Based on the expert testimony, Florida State Statute 171.043(2) a, b and c have been met. If only one of these criteria were met, contraction cannot continue. However, all three have been met; therefore, statutorily, contraction cannot continue.

Florida State Statute 171.081, which dictates the appeal process for annexations. Based on the unchallenged expert testimony of Ms. Galehouse there are no outstanding annexation litigations [sic] that need to be finalized and all challenge periods have expired. In addition, based on the expert testimony of Mr. Severance, the Wellen Park LLLP purchased approximately 5000 acres in 2014 for development based on the understanding the annexation was valid. Additionally, the Lake Geraldine subdivision was developed based on the validity of annexation according to the testimony of Mr. Boone. The appeals process for these annexed lands have expired.

We cannot dismiss, Florida State Statute 171.051(1) and (9), which requires a contraction ordinance to include an effective date. Nobody, on either side, could offer an effective date for contraction. An effective date is impossible to determine based on the compelling testimony given by Dr. Fishkind and Mr. Severance with the multiple individual and co-mingled agreements with West Villages Improvement District, Wellen Park LLLP, the City, the County and various builders in the area. Without an effective date, the Commission cannot proceed with a contraction ordinance.

Florida State Statute 171.021 outlines the purpose of annexation and contraction - to ensure urban development, ensure efficient provisions of urban services and ensure areas are not annexed unless municipal services can be provided. Based on the expert testimony by Ms. Schottle-Gumm, Mr. Boone, Mr. Steady and Dr. Fishkind, the purpose for annexation has been met and exceeded. The proposed contraction does not support these annexation purposes. Therefore contraction cannot take place.

Based on each of the specific facts outlined in this motion, contraction cannot statutorily proceed.

The annexed area meets the contiguity requirements for a coterminous boundary between the annexed territory and the City of North Port.

The boundary of the annexed area is coterminous with the municipal boundary. The actual coterminous area of the eastern boundary of the annexed parcel is shown to be about 90% of that boundary in the maps provided in the City's feasibility study.

Reasonable compactness is required by the statute and none of the parcels within the annexed area are surrounded on all sides by City land. In addition, the annexation did not result in the isolation of any areas to the point of residents being hampered in obtaining services and securing social and economic benefits. In addition, there is easy access to U.S. 41 through the annexed property. Also, it is a fact that any isolation is created by natural boundaries and is not the result of municipal boundaries.

The urbanized area's current population as of 2020 in Wellen Park already meets the density requirements of state statute. Island Walk has a resident density of 2.87 residents per acre and Gran Paradiso 2.01 residents per acre.

And even if the annexed area did not currently meet the population density, the land use of this area qualifies for annexation. The following land uses have been authorized by the City but have not yet been constructed. Those are: 92 acres of institutional commercial uses, 1000 acres of mixed use residential, and 570 acres of residential with the density of 4+ residents per acre.

The City of North Port currently owns and operates infrastructure located in the annexed area and is delivering water, wastewater, and sewer services to the residents and businesses in Wellen Park. These assets were conveyed to the City from the developer by the 2019 utilities agreement. Through a contractual arrangement, the City will pay the developers through a schedule of reduced impact fees over a span of 25 years. The City of North Port owns and operates the security buildings on Preto Blvd. and provides fire protection, emergency medical services, and police protection to the residents of the area. Through a contractual

arrangement, the City will reimburse the developer for these assets in return for reduced impact fees.

Substantial land has already been developed for urban purposes: a shopping plaza containing retail shops, restaurants, and other businesses are already operating; a downtown retail commercial area is scheduled to open in early 2023; and an ancillary government building is planned to provide City services to the residents of the annexed area.

There is no path to transfer the proposed area to the county from the City of North Port because of the lack of land use codes on the part of the county, the lack of urban service boundaries, and mobility and impact fees proven in testimony by Attorney Scott Steady and Vice President of Wellen Park, Rick Severence.

Contraction is economically impossible per the testimony and evidence provided by Dr. Fishkind." carried on the following vote:

Yes: 5 - Mayor Emrich, Vice Mayor Langdon, Commissioner Luke, Commissioner McDowell and Commissioner White

4. PUBLIC COMMENT:

There was no public comment.

5. ADJOURNMENT:

Mayor Emrich adjourned the meeting at 1:16 p.m.

City of North Port, Florida

By: _____
Mayor

Attest: _____
Heather Faust, City Clerk

These minutes were approved on the ____ day of _____, 20__.