



The Florida House of Representatives

Government Accountability Committee

Local, Federal and Veterans Affairs Subcommittee

Rep. Richard Corcoran
Speaker

Rep. Scott Plakon
Subcommittee Chair

September 20, 2017

Brett M. Taylor
Preserve the Lifestyle of The Acreage Now
1149 Royal Palm Beach Boulevard
Royal Palm Beach, FL 33411

Re: The Acreage Municipal Incorporation Feasibility Study Review

Dear Mr. Taylor:

On August 29, 2017, we received the 2018 feasibility study for the proposed municipal incorporation of that area known as The Acreage. This letter summarizes our initial review of the study.

Proposed cities are required by statute to meet certain population, geographic, and legal standards in order to incorporate. If a proposed municipality does not satisfy one or more of these standards, the Legislature must waive each unmet requirement to allow incorporation.

The study for a proposed municipality in The Acreage appears to comply with 12 of the 22 statutory criteria required for incorporation. The study appears to be deficient in the following areas:

1. Section 165.041(1)(b)4, F.S., requires a list of all public agencies whose boundaries overlap with those of the proposed municipality. The study does not provide a list of the courts operating inside the proposed municipality.

Suggested resolution: The courts with jurisdiction over the area proposed for incorporation are the Palm Beach County Court, the Circuit Court for the Fifteenth Judicial Circuit, and the Fourth District Court of Appeal. As these are identifiable by statute, no further response is necessary.

2. Section 165.041(1)(b)5., F.S., requires a listing of current services provided within the proposed incorporation area and their estimated costs.

Suggested resolution: Provide a cost estimate for each service currently provided in the area of the proposed municipality.

3. Section 165.041(1)(b)8.a, F.S., requires the feasibility study to include evidence of fiscal capacity, including information concerning ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate. Section 218.23, F.S., states that a unit of local government is eligible for revenue sharing if that local government levies an ad valorem tax, occupational license tax, and/or utility tax sufficient to produce revenue equivalent a three-mill ad valorem tax in the year of incorporation.

The feasibility study states the proposed municipality does not intend to levy ad valorem taxes for the first three years of operations. The study also states the revenue sharing requirement "will be satisfied by the Palm Beach County Fire Rescue MSTU millage rate" or by anticipated state shared tax and utility tax revenues.

The county would not be eligible for revenue sharing without meeting the requirements of section 218.23, F.S. Section 125.01(q), F.S. states that a county may establish an MSTU to provide municipal services in unincorporated areas of the county. An MSTU may include all or part of the boundaries of a municipality if the governing body of the municipality gives consent by ordinance annually or for a term of years. The provision also authorizes the county to "levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of" the Florida Constitution and states the total millage levied by an MSTU and a municipality may not exceed ten mills. Therefore, ad valorem taxes levied to provide services to the Palm Beach County Fire Rescue MSTU are not a tax imposed by the municipality.

The amount of utility taxes projected by the study appear insufficient to generate revenue equivalent to an ad valorem tax levied at three mills.

Suggested resolution: Clarify how the proposed municipality intends to meet the threshold for revenue sharing and show evidence of fiscal capacity.

4. Section 165.041(1)(b)8.b, F.S., requires a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets. The five-year plan does not discuss building acquisition or construction costs.

Suggested resolution: Clarify how the proposed municipality will provide for necessary building acquisition and/or construction for municipal offices.

5. Section 165.041(1)(b)9, F.S., requires the study provide data and analysis showing that incorporation is necessary and financially feasible, including population projections and density calculations, as well as an explanation concerning the methodologies used for such analysis. The study does not provide analysis and an explanation of the methodologies used for population projections and density calculations.

Suggested resolution: Provide the methodology used for generating the population projections and other demographic information provided on page 7 of the study.

6. Section 165.041(1)(b)11, F.S., requires the study to contain evidence that the proposed municipality meets the requirements for incorporation contained in s. 165.061, F.S. Section 165.061(1)(a), F.S., requires a new municipality to be compact and contiguous and amenable to separate municipal government. The proposed municipality is composed of two discrete areas joined only by what appears to be a canal. Apparently lying between these two areas is a portion of the Town of Westlake. Please clarify how two discrete areas separated by another municipality and joined only by a single canal meet the compact and contiguous requirement of the statute.
7. Section 165.041(1)(b)11, F.S., requires the study to contain evidence that the proposed municipality meets the requirements for incorporation contained in s. 165.061, F.S. Section 165.061(1)(d), F.S., requires any part of the area proposed for incorporation to be separated from the boundaries of any existing municipality within the county by at least two miles or by an extraordinary natural boundary which requires separate municipal government. The proposed municipality is within two miles of two existing municipalities, Westlake and Loxahatchee Groves, apparently with no extraordinary natural boundary requiring separate municipal government.
8. Section 165.041(1)(b)11, F.S., requires the study to contain evidence that the proposed municipality meets the requirements for incorporation contained in s. 165.061, F.S. Section 165.061(1)(e)2., F.S., states that the proposed municipal charter may not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law. While the study states the municipality intends to comply with this statutory provision, it also requests a "variance" from the statute and the proposed charter prohibits the Town Council from levying ad valorem taxes for the first three years following the creation of the town. Please clarify why an exception to the statute is requested.
9. Section 165.041(1)(b)11, F.S., requires the study to contain evidence that the proposed municipality meets the requirements for incorporation contained in s. 165.061, F.S. Section 165.061(1)(f), F.S., requires a new municipality to honor existing solid-waste contracts in the affected area for the lesser of five years or the duration of the contract term. Neither the study nor the proposed charter directly address this requirement.

Suggested resolution: Clarify whether the proposed municipality will honor existing solid-waste contracts in the affected area for the lesser of five years or the duration of the contract term.

10. Section 165.041(1)(c), F.S., requires the study to include information about the county's municipal overlay if one was adopted. The study does not address whether Palm Beach County has adopted a municipal overlay.

Suggested resolution: Clarify whether Palm Beach County has adopted a municipal overlay.

The study also contains a charter for the municipality. In addition to language that reflects deficiencies listed above, the following provisions of the charter merit further attention:

1. The charter places a two-term limit on the office of the mayor and separately provides for a two-term limit for all council members "including the mayor." Is the intent to provide a limit of two terms for either office, or would a candidate be allowed to serve two terms as a council member and two terms as mayor?
2. The charter is unclear about what happens if no candidate receives a majority of votes cast in a council election. Lines 618-622 of the charter state that the candidate who receives the most votes is elected, regardless of whether that candidate received a majority and that a runoff shall be held in the event of a tie. Lines 638-647 state that a runoff shall occur if no candidate receives a majority of the ballots cast and a tie in the runoff shall be settled by the casting of lots.
3. The charter sets the incorporation referendum for November 13, 2018. The date of the 2018 general election is November 6, 2018.
4. The charter allows the town to collect ad valorem tax and gas tax revenues retroactively to October 1, 2018, before the creation of the town is approved by the voters.
5. The charter dissolves the Indian Trail Improvement District as an independent entity and makes it a dependent district of the proposed municipality. However, it appears the Indian Trail Improvement District contains land outside of the boundaries of the proposed municipality.
6. The charter includes language repealing section 6 of section 2 of Chapter 99-425, Laws of Florida. This provision was repealed by Chapter 2006-328, Laws of Florida.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Eric H. Miller, Policy Chief
Board Certified in State & Federal Government & Administrative Practice

cc: The Honorable Representative Rick Roth, w/copy of feasibility study