



## Legislation Text

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**File #:** 20-0496, **Version:** 1

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### **Agenda Item Name:**

City of Newberry Annexation: Request for Board Direction on Initiation of Appeal Process

### **Presenter:**

Ben Chumley, Senior Planner

### **Description:**

On June 8, 2020, the Newberry City Commission adopted Ordinances 2020-13 and 2020-14 annexing two areas into the City of Newberry. Ordinance 2020-13 raised questions relative to the statutory requirement that areas to be annexed must be "reasonably compact", as detailed in the May 28, 2020 letter from the County Manager to the Newberry City Manager. The purpose of this agenda item is to request the Board's direction on whether to initiate an appeal process as provided in Chapter 171.081, Florida Statutes for the annexation adopted by City ordinance 2020-13. If the Board wishes to initiate the appeal process, it must first initiate and proceed through the local government conflict resolution procedures of Chapter 164, Florida Statutes. The Board may initiate this process by adopting the resolution attached to the agenda item

### **Recommended Action:**

If the County Commission wishes to initiate the appeal process on the annexation adopted by City Ordinance 2020-13, then the Board should approve the attached resolution to initiate the conflict resolution procedures of Chapter 164, Florida Statutes, the "Florida Governmental Conflict Resolution Act".

If the County Commission does not want to appeal this annexation, then no action is required.

### **Prior Board Motions:**

N/A

### **Fiscal Consideration:**

If the Board chooses to appeal the City's annexation, the County will potentially incur costs for litigation, and may incur costs and attorney's fees if not successful. Additional costs will be incurred if the County is not the prevailing party in the annexation appeal, and the County would owe reasonable attorney's fees and costs.

### **Background:**

The County received the initial notice from the City of Newberry on these proposed voluntary annexations on May 1, 2020. County staff reviewed the proposed annexations in coordination with the County Attorney's Office in accordance with the County's regular process for review and comment on municipal annexations. The County Manager sent a letter to the City dated May 28, 2020 (see letter attached to agenda item) which noted that annexation 2020-13 raised questions

relative to the statutory requirement that areas to be annexed must be “reasonably compact”, particularly when viewed in combination with the annexation adopted by City of Newberry Ordinance 2020-10 on April 27, 2020, for which the County Commission previously initiated a conflict resolution process with the City under Chapter 164, Florida Statutes. That conflict resolution process is active and ongoing.

Alachua County has a potential basis for challenging City’s action on this annexation. If the Board chooses to challenge the City’s action, the Board must take steps to preserve its right to pursue a challenge. Section 171.081, Florida Statutes, governs challenges to annexations. Annexation challenges are in the form of a record appeal to the circuit court. To bring an annexation appeal, a party must show that it will suffer material injury by reason of the municipality's failure to comply with the procedures for annexation in Chapter 171, Florida Statutes. The statute provides that, if the challenger is a governmental entity, the challenging governmental entity must first initiate the conflict resolution procedures of Chapter 164, the "Florida Governmental Conflict Resolution Act," by passage of a resolution within 30 days following the passage of an annexation ordinance.

Upon conclusion of the Chapter 164 process without a mutually-acceptable resolution, the challenging government entity may file a petition in circuit court for certiorari review. The challenge may be based on any or all of the following: 1) the municipality failed to follow the correct law (i.e., the "essential requirements of law"); 2) there was no competent substantial evidence to support the municipality's decision; and 3) the municipality failed to provide the plaintiff with due process. In this case, a likely basis would be that the City failed to follow the correct law when it adopted an annexation that was not reasonably compact as defined in the Statute. It is important to note that the prevailing governmental party in an annexation challenge will be awarded reasonable costs and attorney's fees from the non-prevailing governmental party.