

## **COUNTY STAFF EVALUATION OF THE COUNTYWIDE VISIONING AND PLANNING COMMITTEE RECOMMENDED MODIFICATIONS TO THE BOUNDARY ADJUSTMENT ACT**

**November 25, 2008**

County staff has evaluated the most significant proposed substantive changes to the Boundary Adjustment Act developed by the Countywide Visioning and Planning Committee (CVPC). The following evaluation focuses on the issues of concern raised by the County Commission on November 18<sup>th</sup> as well as other significant proposed modifications. The concerns raised by the County Commission involve Section 225.04(4) Definition of Contiguous, Section 225.07 Procedure for Amending/Updating Reserve Area Designations and Statements (reserve area update timeframe), Section 225.12 Annexation of Enclaves, and Section 225.13 Prerequisites to Annexation/Urban Services Report. County staff's evaluation attempts to capture the sense of the conversation and debate that took place among the Countywide Visioning and Planning Committee to convey the consensus rationale that led them to their conclusions. The other proposed modifications to the Boundary Adjustment Act not included in County staff's evaluation below are either language updates or the streamlining of processes. County staff determined that these other changes were not significant substantive changes.

### **Significant CVPC Proposed Substantive Changes to the Boundary Adjustment Act**

#### **Section 225.04 – Definitions**

**(4) *Contiguous* means 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. The separation of the territory sought to be annexed from the annexing municipality by a publicly owned county park property; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically. However, nothing herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity.**

The CVPC has proposed a change to the exception to the contiguity requirement for annexation, changing the current Boundary Adjustment Act's exception for "publically owned County park" to "publically owned property". The concern was raised by the County Commission that the existence of "other minor geographical divisions of a similar nature" results in a non contiguous boundary. The consensus position of the CVPC was based in part on the observation that relatively small areas of publically owned property such as Devils Millhopper, or public schools should not be seen as impediments for the annexation of properties immediately adjacent to such publically owned lands. County staff identified concerns that large expanses of publically owned property, such as Paynes Prairie or San Felasco State Preserve could result in a discontinuity of service provision.

These concerns can be evaluated on a case by case basis provided that the application of the definition of contiguous (i.e. "provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with

respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically") is interpreted in a rational manner. This can be accomplished within the requirements for urban services reports.

**Other proposed changes in Section 225.04 include the following:**

- The proposal to amend the definition of "parties affected," consistent with general law, to delete standing to challenge annexation in regard to persons within enclaves. The remainder of the definition in the existing BAA has been consolidated with the one significant difference from general law being that the current and proposed BAA definition provides standing to persons owning property or residing within the municipality or the proposed annexation area (general law omits residence within a proposed annexation area, which is internally and inexplicably inconsistent).
- Minor changes to definition of enclave to conform to general law definition, i.e. instead of "totally enclosed by a ...municipality", say "enclosed on all sides by a ...municipality"

County staff supports these other proposed definition changes in Section 225.04, as they produce consistency between elements within the Boundary Adjustment Act and conform to existing language in General Law.

**Section 225.07 Procedure for Amending/Updating Reserve Area Designations and Statements**

The CVPC has retained Urban Reserve Areas as exclusive areas within which municipality may annex. The two sections of BAA dealing with both original establishment of Reserve Areas and Updates of Reserve Areas have been consolidated to focus on the update of Reserve Areas. As reserve areas have already been established, as outlined in Section 225.05, the CVPC's rationale in consolidating both sections was to focus on the update of the established reserve areas. Section 225.05 Establishment of Reserve Areas has been removed and Section 225.07 has been re-written to incorporate information from Section 225.05 relating to the update of reserve areas.

The most significant change proposed by the CVPC found in Section 225.07(1) is the time period for reserve area updates. The process for the update of reserve areas has been changed from every 5 years to every 10 years, with the next update process commencing on October 1, 2010. Municipalities would have the option of beginning the reserve area update process in 2010 even though it is less than 10 years. County staff has determined that the proposed change to the time period for the update of reserve areas is consistent with the provisions provided in Section 225.06. According to Section 225.06(2), reserve areas designated for a municipality shall not "contain areas which cannot reasonably be foreseen to be provided with the urban services provided by the municipality within the next 10 years" or "contain areas which the municipality cannot reasonably have the capacity or capital facilities within the next 10 years to provide, at a minimum, the level of services provided by the County to the reserve areas". County staff finds 10 years to be a reasonable time horizon for assessing municipal capacity to provide the level of service provided by the County to the reserve area.

Other changes in Section 225.07 include the elimination of the provision in the current BAA that provides for the "next most populous municipality" to take over if the County fails to participate in the reserve area update process, as well as amended language to streamline the update process. Each municipality

commences the reserve area update process and conducts a hearing for input on whether to change the reserve area. The County adopts the final reserve area designation after notice and hearing. County staff is in favor of the streamline and clarification of the process for reserve area updates in Section 225.07, as proposed by the CVPC.

### **Section 225.12 Annexation of Enclaves**

The CVPC has proposed to amend the BAA to add approaches authorized in general annexation law, but unavailable under the current BAA, to eliminate existing enclaves. It is proposed that enclaves may be annexed through interlocal agreement of the municipality and the County, or by municipal ordinance submitted to voters of the area for referendum vote. The proposed changes although based in concept on general law actual provide more flexibility. The annexation of enclaves would apply regardless of size, number of registered voters, or whether the property in the enclave is developed or improved (general law applies only to developed or improved enclaves). Municipalities in the County currently have undeveloped enclaves that general law is not applicable to.

There was a substantial amount of discussion among the CVPC and BAA Task Force members, as well as concern raised by the County Commission as to exactly how these flexible provisions would be applied. County staff recognizes that in the absence of a referendum, the general provision for annexing enclaves requires an interlocal agreement between the County and the effected municipality. Therefore, County staff recommends that issues related to specific size thresholds and urban or rural land use can be worked out on a case by case basis.

### **Section 225.13 Prerequisites to Annexation/Urban Services Report**

The CVPC has decided to retain the urban services report as a prerequisite to annexation. Although some municipalities would like to remove the urban services report, modifications were made to the urban services report requirements in the spirit of compromise. The intent of the CVPC's proposed modifications to the urban services report is a "one size does not fit all" approach to annexations. In addition, the urban services report requirements for referendum and voluntary annexations have been consolidated. Some information included in the urban services report would continue to be required, such as a map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries. Other information that may be included are to what extent services to existing residents would need to be reduced because of annexation, extent taxes would need to be adjusted, and a municipality's plans to provide services and facilities after annexation. The CVPC has created flexibility in the urban service report requirements for smaller annexations that do not require as many services. It is proposed that municipalities will no longer adopt urban services reports by ordinance, but would simply approve the report. By eliminating the ordinance requirement for urban services reports, municipalities are required to now conduct only one public hearing. Urban service reports must be filed with the County for informational purposes at least 60 days before a municipality adopts an ordinance effecting an annexation.

County staff agrees with the CVPC's recommendation that the urban services report should be retained, as it provides imperative information concerning service provisions to property owners affected by a proposed annexation and the County. The flexibility granted for the urban services report requirements is appropriate, as annexations differ in size, and thus require different services on behalf of the municipality or the County.

There were concerns raised by County Commissioners that this flexibility could result in inadequate urban services reports that would not serve the purposes intended by the statute. It is the County staff's opinion that the 60 day filing requirement provides adequate time for County staff and the County Commission, when necessary, to review the urban services report and to take the necessary steps to ensure that a complete and adequate report is provided