

MEMORANDUM

TO: Howard Tipton, Town Manager

FROM: Allen Parsons, Planning, Zoning and Building Director
Isaac Brownman, Public Works Director
Susan Smith, Finance Director
Paul Dezzi, Fire Chief
George Turner, Police Chief
Frank Rubino, Deputy Police Chief

REPORT DATE: May 22, 2024

MEETING DATE: June 3, 2024

SUBJECT: Jewfish Key Voluntary Contraction Petition

Background

The Town of Longboat Key, Florida received a Voluntary Contraction¹ Petition (“Petition”) on January 16, 2024, requesting that the island of Jewfish Key be removed from the municipal boundaries of the Town of Longboat Key and that it becomes a part of unincorporated Manatee County. The Petition was submitted by Najmy Thompson, Attorneys at Law, on behalf of the Jewfish Key Preservation Association, Inc.

The Petition states:

“Enclosed you will find a Resolution of the Association dated December 19, 2023. On that date, a vote was conducted, with over 15 percent of the qualified voters on the island of Jewfish Key approving the Association (on behalf of the property owners on Jewfish Key) to submit to a petition for Voluntary Contraction of the island of Jewfish Key from the municipal boundaries of the Town of Longboat Key, Florida (the “Town”).

This letter serves as the Association's voluntary petition for the contraction of the island of Jewfish Key from the municipal boundaries of the Town. We desire that this petition run with the properties located on Jewfish Key and benefit the owners, their heirs, and/or assigns.”

The Voluntary Contraction Petition for Jewfish Key can be found in Attachment A (Available in Town Clerk’s Office).

A map of the Voluntary Contraction Area can be found in Attachment B (Available in Town Clerk’s Office).

The Municipal Annexation or Contraction Act

To provide a framework for consideration of the Petition, it is helpful to briefly review the statutory process and requirements for such petitions. The Florida Legislature has established contraction procedures and criteria for municipal contractions in Florida Statutes Chapter 171, the Municipal Annexation or Contraction Act (“Act”). As stated in F.S. §171.021, the purposes of the Act are to:

¹ “Contraction” means the reversion of real property within municipal boundaries to an unincorporated status.

“... set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place so as to:

- 1) Ensure sound urban development and accommodation to growth.
- 2) Establish uniform legislative standards throughout the state for the adjustment of municipal boundaries.
- 3) Ensure the efficient provision of urban services to areas that become urban in character.
- 4) Ensure that areas are not annexed unless municipal services can be provided to those areas.”

Contraction Procedures

Contraction is codified under Fla. Stat. §171.051. There are two ways to begin the process. First, under Fla. Stat. §171.051(1) the governing body of a municipality may propose an ordinance for contraction of municipal boundaries.

Alternatively, citizens can seek to contract an area out of a municipality by petition and into the applicable unincorporated county. Staff has interpreted the steps of municipal boundary contraction pursuant to Fla. Stat. §171.051; they are outlined below. A process map can be found in Attachment C (Available in Town Clerk’s Office).

Step 1: Contraction of municipal boundaries may be initiated by any municipality by the governing body proposing the contraction of municipal boundaries, by ordinance, and providing an effective date for the contraction. (See Fla. Stat. §171.051 (1)).

Step 2: A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries may propose such an ordinance to the governing body. (See Fla. Stat §171.051 (2)). Pursuant to Fla. Stat §171.051 (2), if a petition proposes such a “contraction ordinance”, the municipality “shall, within 6 months, evaluate the feasibility study of such proposal and either initiate proceedings under subsection (1) by introducing a contraction ordinance or reject the petition as a legislative decision².”

Step 3: Under either Step 1 or 2, identified above, the introduction of a “contraction ordinance” follows the direction of the governing body (See Fla. Stat. § 171.051 (2), (3)). A “contraction ordinance” can only be introduced under Step 1 (See Fla. Stat. §171.051(1)). This is because Step 2 redirects the contraction process to Step 1 if the governing body directs the initiation of such a proceeding under Step 1. (See Fla. Stat. §171.051(2)). **If** a “contraction ordinance” has been introduced under Step 1, Step 3 requires that the meeting for the governing body to consider the “contraction ordinance” be noticed with specific requirements. If contraction proceedings are initiated the statute provides for additional steps to be undertaken.

² Pursuant to Fla. Stat. §171.051(2), the consideration of a contraction petition by a municipality is a legislative decision. A legislative decision involves the creation of law or the formulation of policies that affect the community as a whole.

Feasibility Study

Fla. Stat. §171.031(6) defines a “Feasibility Study”³ as an analysis by qualified staff or consultants of the economic, market, technical, financial, and management feasibility of the proposed annexation or contraction. The Feasibility Study, prepared to fulfill the requirement of Fla. Stat. §171.051(2) (Contraction Procedures), is intended to be used by the Town Commission (“Commission”) to evaluate the feasibility of a requested contraction and to either initiate proceedings to pursue the contraction or to reject the petition as a legislative decision.

Consistent with the statutory definition, the attached Feasibility Study evaluates the “economic, market, technical, financial, and management feasibility” of the proposed contraction by: summarizing the Petition request, providing a brief history of the requested Contraction Area, providing relevant data from Town departments (Finance, Planning, Zoning and Building, Public Works, Police and Fire), and providing a market/economic analysis by Willdan Financial. The Feasibility Study is intended to present objective fact-based findings. It does not provide a recommendation to the Town Commission. Key findings include (but are not limited to) a summary of tax revenue, assessments and debt obligations, public health, safety and welfare and land use related considerations. The Feasibility Study can be found in Attachment D (Available in the Town Clerk’s Office). The Feasibility Study will be presented to the Town Commission at the June 3, 2024 Town Commission meeting.

Staff has included in this Memorandum its recommendation relative to the submitted Petition based upon the compiled data collected in the Feasibility Study and other applicable Florida law governing contraction requests.

Petition Sufficiency

Qualified Voters:

Pursuant to Fla. Stat. §171.051(2), if a municipality receives a petition of at least fifteen (15) percent of the qualified voters⁴ in an area requesting contraction, a feasibility study should immediately be commenced. In the Town of Longboat Key, a voter is qualified to vote in the elections of the town if that person is eligible and registered with the appropriate supervisor of elections.

³ During the 2023 legislative session the legislature added the term Feasibility Study to the Statute and defined the term. See Ch. 2023-305, Laws of Florida. Under the previous version of the Statute a municipality was required to analyze the feasibility of contraction or annexation but the term, “Feasibility” was not defined in the Statute.

⁴ Fla. Stat. §171.031(10) defines a qualified voter as any person who is registered to vote in accordance with law. Under Fla. Stat. §97.041, in order to qualify to vote, a person must be at least eighteen (18) years of age, a citizen of the United States, a legal resident of the State of Florida, a legal resident of the county that the person seeks to be registered and registers pursuant to the Florida Election Code.

As of May 10, 2024, there are three registered voters on Jewfish Key located on La Lenaire Drive. One voter is designated as active while the other two are designated as inactive.⁵

The Petition received by the Town for contraction included a resolution from the Jewfish Key Preservation Association, Inc. that indicates the association's representation of greater than fifteen (15) percent of the qualified voters on the island of Jewfish Key. The Town contacted the Manatee Supervisor of Elections office to confirm the voter status of the voters on Jewfish Key. The Town was advised that there are three registered voters on the island of Jewfish Key (see Attachment E available in Town Clerk's Office). A review of all the qualified voters on Jewfish Key shows that none of them signed the resolution. Further, Jewfish Key Preservation Association, Inc. is itself not a qualified voter.

Therefore, as submitted, the petition currently fails to meet the threshold requirement for consideration of the feasibility study.⁶ Accordingly, the Petition should be rejected on this basis alone unless the deficiency is rectified.

Creation of Enclaves through Contraction:

One of the fundamental components of the "Municipal Annexation or Contraction Act" is an intent not to create what are referred to as, "enclaves⁷."

Enclaves are defined in the statute as isolated unincorporated areas that are entirely surrounded by the territory of a municipality. Essentially, they are isolated pockets of unincorporated county land that have not been annexed into a city and are isolated unincorporated areas within the boundaries of a municipality. This often results in unique governance and administrative challenges for both the county that has jurisdiction over the isolated unincorporated area and the surrounding municipality.

⁵ The distinction between an active and inactive qualified voters is determined based upon election activity of the voter. Under Fla. Stat. §98.065, a voter is mailed an address confirmation final notice if (1) information received by the supervisor of elections indicates that the voter has moved to another state; or (2) or if the voter has not voted in the preceding two general elections or any intervening election and has not requested any update in registration records. If the address confirmation final notice is returned as undeliverable or the voter does not return the form within 30 days, the voter is designated as inactive. An inactive voter will be removed from the registration system if there is no activity for two general election cycles after being placed on the inactive list.

⁶ This deficit could subsequently be rectified; and therefore, the Town Staff has processed this Petition as filed.

⁷ Fla. Stat. §171.031(5) defines "enclave" to mean

- a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

The statute speaks to precluding “any action which would create enclaves” (Fla. Stat. §171.031, Definitions). Fla. Stat. §171.046 encourages existing enclaves to be annexed into municipalities so as to reduce the many administrative challenges. The statute recognizes that enclaves can create significant problems in planning, growth management, and service delivery, and therefore declares that it is the policy of the State to eliminate enclaves⁸.

Fla. Stat. §171.044 (5) provides that, “Land shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves.”

It is staff’s opinion that an enclave would be created by the contraction of Jewfish Key, which Chapter 171, Florida Statutes, emphasizes as being a critically important feature to both eliminate and not create. Staff believes the resulting enclave will pose several governance and administrative challenges for Jewfish Key and the Town, such as: service provision, and jurisdictional complexity relating to land use nuisances, public safety complexities (fire and law enforcement) and code enforcement.

Contraction Considerations

Pursuant to Fla. Stat. §171.051(2), the consideration of a contraction petition by a municipality is a legislative decision. A legislative decision involves the creation of law or the formulation of policies that affect the community as a whole. For legislative actions, the standard of review is “fairly debatable”. The fairly debatable standard of review means that the municipality’s action must be upheld if reasonable minds could differ as to the propriety of the decision reached. *Coastal Dev. of N. Fla., Inc. v. City of Jacksonville Beach*, 788 So. 2d 204, 205 n.1 (Fla. 2001); *Martin County v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997).

Contraction Criteria

In addition to Fla. Stat., § 171.051, outlined above, there is an additional contraction provision found in Fla. Stat., § 171.052, that must be analyzed. Staff acknowledges that the statute is somewhat difficult to interpret. Fla. Stat. §171.052 provides that only those areas which do not meet the criteria for annexation (found in Fla. Stat. §171.043) may be proposed for exclusion (i.e., contraction) by municipal governing bodies. As stated by Twelfth Judicial Circuit Court Judge Hunter Carroll,⁹ who recently interpreted this particular statute: “If the area sought to be contracted qualifies for annexation, under FS 171.043, contraction is not permitted.” Contraction is also not permitted if the contraction would result in a portion of the municipality being non-contiguous with the remainder of the municipality.

If a proposed contraction area meets the criteria that would be applied to incorporate that area from a formerly unincorporated area, then the proposed area would not be eligible for contraction. Accordingly, Florida law requires that each contraction request be analyzed from the perspective of whether the area

⁸ Fla. Stat. §171.046 – Annexation of Enclaves

⁹ See *West Villagers For Responsible Government, et al v. City of North Port, Florida*, Case 2021 CA 002673 SC, Sarasota County Circuit Court, Order Granting Petition for Writ of Certiorari, pg. 8, November 15, 2021.

could be annexed (added to a municipality's boundaries), and if it meets that criteria, then it cannot be contracted.

Staff has provided an Analysis of the annexation provisions (Fla. Stat. §171.043) in Attachment F (Available in Town Clerk's Office). **Staff finds that the proposed Jewfish Key Contraction Area is ineligible for contraction, as the area does meet the criteria for annexation.**

Summary

The findings within this staff memo and attached Feasibility Study (Available in Town Clerk's Office), are briefly summarized below. Refer to the Feasibility Study for more detailed information on each subject area.

Petition Sufficiency: The Petition, as submitted, fails to meet the 15% resident signature threshold requirement for consideration of the feasibility study.

Enclaves: It is staff's opinion that an enclave would be created by the contraction of Jewfish Key. Pursuant to the Florida Legislature, it is the policy of the State to eliminate enclaves.

Contraction Criteria: The Petition meets the Annexation criteria in Fla. Stat., § 171.043, therefore, it is ineligible for Contraction, pursuant to Fla. Stat. § 171.052.

Feasibility Study Departmental/Consultant Reports:

Finance: Properties would not be obligated to incur a payoff amount for general debt obligations. The net loss of revenue from a contraction for general debt obligations would be assumed by all remaining taxable properties within the Town annually until such debt is paid off. Special assessment debt obligations, however, have varying principal pay off balances which are subject to change depending on the payoff date.

Public Works: The initial property development on Jewfish Key was authorized at the urging of the Jewfish Key developers/property owners who advocated for Town building permit approval without connectivity to municipal water/sewer services. Building permit approval was given by the Town and conditioned on properties on Jewfish Key accessing their water through a well, and having septic tanks for wastewater treatment. Similarly, Jewfish Key permit approval was also conditioned on property owners removing their own trash and refuse from the island. Accordingly, Public Works has not historically provided significant services to Jewfish Key. If contraction is granted, it will have little impact on the Public Works department.

Fire and Rescue Emergency Services: The property development on Jewfish Key was authorized at the urging of the Jewfish Key developers/property owner recognizing that there would be a lower level of service for public safety due to the isolated nature of the Jewfish Key. Nevertheless, the Town's Fire Department provides consolidated fire and emergency medical response services that are not provided by a single

agency in Manatee County. Those services include having personnel, equipment (i.e., fire and rescue vessels) and protocols available to respond to both fire and emergency medical calls on the island. The Town's Fire Chief and Fire Marshal have ongoing concerns about the fire hazards on Jewfish Key due to limited water sources, the threat of fire spreading on the island (due to wood structures and vegetation), and the risk of hot embers being carried through the air and landing a distance away causing remote fires. If contraction occurred, at the present time there is not an independent fire district that would have fire and rescue service jurisdiction over Jewfish Key, and Manatee County does not provide fire and rescue services. Due to mutual aid agreements that exist regionally, the Town's Fire Department would likely still have to respond to fire rescue calls under an automatic aid agreement entered into with neighboring jurisdiction. If contraction occurred, Manatee County would have emergency medical service jurisdiction over Jewfish Key and would coordinate emergency medical response with the applicable responding fire department.

Police: If contracted, the Town could still be called to assist Manatee County Sheriff's Office to provide mutual aid assistance as the nearest unit. Responses to such calls could create less Longboat Key officer availability and loss of service on the mainland of Longboat Key depending on the volume, time and nature of calls for assistance on Jewfish Key. The Police Department expressed concern that short term rentals on the island (allowable under Manatee County's Codes) could increase "partying" activities on the island. Based upon the Police Department Officers' experience in other jurisdictions without short term rental restrictions like those that exist in the Town, the Police Department would expect complaints that typically arise in "partying" settings. Due to the Town's Police Department proximity to the Jewfish Key Island, the Town's Police Department could be called upon to assist. If contracted, the Town would continue to be able to regulate and enforce noise complaints on the water within the Town limits (which extend eastward beyond Jewfish Key); however, the Town would be unable to regulate and enforce any noise complaints under the Town's Code of Ordinances emanating from sounds on the island of Jewfish Key. Noise complaints from the island of Jewfish Key would need to be reported to Manatee County and would be subject to Manatee County's noise regulations and enforcement processes.

Planning, Zoning and Building: There are substantive differences in how and where the Town allows and regulates density, residential and tourism uses, and noise compared to unincorporated Manatee County. The Town is a low-density community with significant regulatory protections in the Charter and Comprehensive Plan that restrict growth and the addition of density on the island by requiring referendum approval to increase allotted density limits. Manatee County does not have similar density restriction. The Town has strict land use controls on the tourism and residential land

uses that substantially limit residential properties from engaging in the rental of residential properties and engaging in tourism uses for less than 30 days. Manatee County does not currently restrict tourism uses in residential areas. If Jewfish Key is granted contraction from the Town and became a part of unincorporated Manatee County, this difference, in allowances for tourism and residential uses, may result in a significant change in character in a location with both immediate proximity and potential impact to a longstanding residential area of the Town. The impacts from increased tourism usage on the island will likely create nuisance impacts to the surrounding residences on the north end of Longboat Key within the Village community. The Town has noise ordinance controls that were adopted in part due to nuisance sound levels emanating from the waters surrounding Jewfish Key. Sound and noise level control to prevent unwanted nuisance sounds from disturbing surrounding residential areas is an important regulatory control for the Town. Manatee County does not have the same level of noise ordinance controls. Providing enforcement service on Jewfish Key could present logistical challenges for Manatee County Code Enforcement Officers and may result in a lack of enforcement on the island.

Economic and Market: Due to the remote nature of the island and the limited number of potential future single family housing units, it is not anticipated that the future construction of up to 13 additional homes on Jewfish Key will impact the market value of the Town of Longboat Key's existing housing stock. Accordingly, it is not anticipated that contraction of Jewfish Key would impact the Town's ability to attract and retain businesses. It is not anticipated that future commercial uses would be financially feasible after contraction due to the remote nature and partial conservation designation of the island. However, a shift from owner-occupied to short-term rental use could negatively impact the Town of Longboat Key due to well-documented issues associated with short-term rental activity.

Staff Recommendation

The Town Staff recommends the Commission deny the Petition for the following reasons:

- The filed Petition is legally insufficient and deficient because it did not meet the necessary qualified voter thresholds required by Florida Statutes 171.051(2);
- The request to contract Jewfish Key is ineligible for contraction from the Town of Longboat Key pursuant to Fla. Stat. §171.052 because Jewfish Key meets the annexation criteria set forth in Fla. Stat. §171.043;
- The contraction of Jewfish Key from the Town's municipal boundaries will create an enclave;

- The contraction of Jewfish Key from the Town’s municipal boundaries will result in the loss of land use regulatory protections that restrict growth and prevent density increases on the island by eliminating the Town Charter’s referendum requirement to increase density limits;
- The contraction of Jewfish Key from the Town’s municipal boundaries could result in a significant change in character in a location with both immediate proximity and potential impact to a longstanding residential area of the Town (i.e., the north end Village);
- The contraction of Jewfish Key from the Town’s municipal boundaries could result in increased tourism uses on the island through short-term rentals (less than 30 days) and associated negative impacts associated with increased short-term rentals;
- The contraction of Jewfish Key from the Town’s municipal boundaries could result in increased noise and nuisances as a result of increased tourism through short-term rentals (less than 30 days) on Jewfish Key;
- The contraction of Jewfish Key from the Town’s municipal boundaries will result in the loss of ability to enforce the Town’s local ordinances, and the loss of ability to respond to Town code enforcement violations, which negatively impact residents on Longboat Key;
- The contraction of Jewfish Key from the Town’s municipal boundaries will eliminate consolidated fire and emergency medical response services to the island that are not provided by a single agency in Manatee County;
- The contraction of Jewfish Key would result in the island being outside of the jurisdiction of fire department oversight for purposes of enforcement of the Florida Fire Code and fire response because the contracted island would not default into a fire district’s jurisdiction and Manatee County does not provide fire services;
- The contraction of Jewfish Key does not improve public safety within the Town or on Jewfish Key, rather it creates additional complications for the Town’s public safety forces (police and fire departments) because the Town’s public safety departments will still likely have response obligations to Jewfish Key pursuant to regional interlocal agreements;
- The contraction of Jewfish Key and the reduction in land use controls on the islands would likely increase the frequency of short-term rentals and “party activities” on the island which could result in greater police response needs to address complaints of sexual battery, drug use, and drunken disorderly conduct;

- The contraction of Jewfish Key will eliminate the Town's Police Department's ability to enforce the Town's noise ordinance to sounds emanating from the Jewfish Key Island;
- The contraction of Jewfish Key from the Town's municipal boundaries will result in less environmental control, oversight, protection and management by the Town;
- The contraction of Jewfish Key from the Town's municipal boundaries will result in a loss of ad valorem tax revenue that will need to be assumed by the rest of the Town's tax base;

Denial of the Petition based on one or more of the reasons listed above would be a legislative decision of the Town Commission. A written Denial Order (Attachment G available in Town Clerk's Office) is included for the Town Commission's consideration.

Attachments

- A. Voluntary Contraction Petition for Jewfish Key (Available in Town Clerk's Office)
- B. Voluntary Contraction Area Map (Available in Town Clerk's Office)
- C. Contraction Process Map (Available in Town Clerk's Office)
- D. Feasibility Study for the Voluntary Contraction of Jewfish Key (Available in Town Clerk's Office)
- E. Certified Letter Verification of Registered Voters on Jewfish Key (Available in Town Clerk's Office)
- F. Staff Analysis of Fla. Stat. §171.043 (Available in Town Clerk's Office)
- G. Order of Rejection and Denial of Petition 2024-01 (Available in Town Clerk's Office)
- H. Correspondence (Available in Town Clerk's Office)

End of Agenda Item