

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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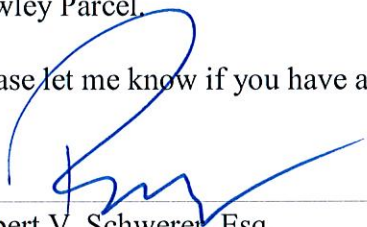
**M E M O R A N D U M**

**TO:** Robert J. Bradshaw, City Manager (*via email*)  
**FROM:** Robert V. Schwerer, City Attorney  
**SUBJECT:** Annexation Issues – Oak Alley Subdivision  
**DATE:** December 3, 2014

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It is my understanding the City Commission requested an update and status of annexation issues involving the Oak Alley subdivision to be discussed at the City Manager's Conference Agenda of December 8, 2014. Accordingly, please find attached a detailed memorandum issued by this office back on August 19. This memorandum sets out the most comprehensive outline of the Oak Alley subdivision issues, and in particular, the Rowley Parcel.

Please let me know if you have any questions concerning the attached.



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Robert V. Schwerer, Esq.  
City Attorney

/mlp

Attachment

cc: Fort Pierce Mayor and Commissioners (*via email*)  
Nicholas Mimms, Deputy City Manager (*via email*)  
Rebecca Grohall, Planning Manager (*via email*)

THIS MEMORANDUM IS A COMMUNICATION FROM COUNSEL TO AGENTS AND REPRESENTATIVES OF THE CITY OF FORT PIERCE IN AN ATTORNEY/CLIENT RELATIONSHIP AND IS THEREFORE CONFIDENTIAL AND IS FURTHER PROTECTED BY FLORIDA STATUTE SECTION 119.07 AS IT CONTAINS WORK PRODUCT OF THE ATTORNEY PREPARED IN ANTICIPATION OF, OR IN CONNECTION WITH, POTENTIAL OR PENDING ADVERSARIAL ADMINISTRATIVE PROCEEDINGS AND/OR CIVIL LITIGATION.

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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**M E M O R A N D U M**

**TO:** Robert J. Bradshaw, City Manager (*via email*)

**FROM:** Robert V. Schwerer, City Attorney

**SUBJECT:** Annexation of Rowley Parcel – Oak Alley Subdivision

**DATE:** August 19, 2014

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Robert, please accept this memorandum as an update report concerning the above. As you are aware, Staff has been engaged in a legal debate with Mr. Sowerby and his clients over this issue for many months. The matter does appear at impasse. That is, Staff is steadfast in its position the Rowley's parcel was not annexed by "mistake", is properly within the City limits, and should not be de-annexed as the same would violate municipal contraction law set out in Florida Statue 171.052. The Rowleys, on the other hand, are equally steadfast in their position that they should not have been annexed because the annexation agreement was not signed by the developer, but rather the POA, the latter not being the record title owner of the lot at the time.

To be clear, we do not believe the issue of who may or may not have signed the annexation agreement is dispositive. Even if a legal action were to be filed on such grounds, we are confident the City would prevail in requesting a reformation of the agreement as a result of what is clearly a scrivener's error.

Notwithstanding, it is further believed any legal action now filed by the Rowleys would unlikely survive a motion to dismiss. Florida Statute 171.081(a) is quite clear that a property owner must appeal the adoption of the City's annexation ordinance annexing

this property within thirty (30) days after its effective date or forever be barred. The time to file such action is long since passed. In this regard, the statute specifically provides:

Florida Statute 171.081(a)(1). Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. The action may be initiated at the party's option within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in subsection (2). In any action instituted pursuant to this subsection, the complainant, should he or she prevail shall be entitled to reasonable costs and attorney's fees.

In the case of *SCA Services of Florida, Inc. v. City of Tallahassee*, 393 So.2d 35 (Fla. 1<sup>st</sup> DCA 1981), the Court specifically held that a complaint seeking to invalidate annexation, which was filed more than 30 days following the passage of the annexation ordinance by the City of Tallahassee, was untimely. In essence, the statute is to be interpreted as a statute of limitations for one to bring legal action challenging a municipal annexation ordinance.

Besides the legal bar to the Rowleys now challenging the City's ordinance, there is also a statutory prohibition which would invalidate any attempted contraction or de-annexation process. In the attached email from Planning staff, you will note the specific criteria stated in Florida Statute 171.052 which must be strictly followed in order to enact a valid contraction ordinance. Here, the Rowley parcel fails to meet the criteria for contraction because an "enclave" would be created.

Planning staff also researched the PUD approval granted by St. Lucie County before the entire Oak Alley Subdivision was approved. The Rowley's lot is of course a platted lot within this subdivision. According to the County's records, County approval of the subdivision of the plat was specifically conditioned upon the following:

"Prior to, or in conjunction with, the recording of the first plats or any portion of the project known as Oak Alley, the Developer, or his assigns, shall have completed the execution of a final utility service agreement with the Fort Pierce Utilities Authority, indicating all developer obligations, including schedules, associated with servicing the site."

The approved PUD and subsequent plat of Oak Alley would be invalidated if the Rowley's parcel had been "excluded" from the FPUA service and required annexation agreements. According to Staff, the action of recording the plat (which includes the Rowley's lot) validates the water and wastewater concurrency requirement imposed by St. Lucie County, not to mention validating the Developer's intent that the Rowley's lot would be subject to an annexation agreement the same as all other lots in the subdivision. Thus, it would therefore have been legally impossible for the developer to have "intentionally excluded" the Rowley's lot (or any other lot within the platted subdivision) from being part of an annexation agreement, also supporting and documenting such annexation was no "mistake".

In addition to the above, please let me also supplement the factual and legal basis for the City's position that the Rowley's annexation was proper, and their property should remain within the City, to wit:

- ❖ The Rowley's lot IS a PLATTED LOT within Oak Alley Subdivision.
- ❖ St. Lucie County specifically CONDITIONED the PUD and Plat approvals on the Developer entering into an FPUA Service Agreement for the ENTIRE subdivision.
- ❖ The FPUA Service Agreement encompasses the ENTIRE subdivision.
- ❖ City Code and FPUA Policy require an annexation agreement for ALL property covered by a Service Agreement; we do not PIECEMEAL annexations of subdivisions.
- ❖ There was a clear INTENT on the part of the Developer to INCLUDE the Rowley's lot in the Oak Alley Subdivision.
- ❖ Staff has been presented with NOTHING either verbally or in writing from the Developer suggesting that the Rowley's lot was never intended to be a part of Oak Alley Subdivision.
- ❖ For unexplained reasons, the annexation agreement was PREPARED by the Developer's engineers who are responsible for the SCRIVENER'S ERROR in listing the Rowley's lot in the document that was mistakenly signed by the POA instead of the Developer.
- ❖ The POA and the Developer entities were both OWNED and CONTROLLED by the same individuals who ironically also own and control the engineering company who prepared the annexation agreements.
- ❖ The Rowley's property was annexed by ORDINANCE duly ADVERTISED and NOTICED to all property owners whose property was the subject of the annexation ordinance.
- ❖ The Rowley's claim to have CALLED some yet to be identified individual at the City who allegedly told them the annexation ordinance was a "mistake", but such statement, assuming it was even made, is NOT BINDING on the City nor do we

Robert J. Bradshaw, City Manager  
August 19, 2014  
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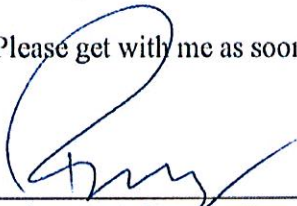
- believe it legally excuses the Rowleys from filing certiorari appeal within 30 days of the effective date of the ordinance.
- ❖ Municipal contraction (de-annexing the property) is NOT legally in conformance with Florida law because it would create an ENCLAVE.
  - ❖ UTILITY SERVICE is AVAILABLE to the Rowley's lot the SAME as any other lot within the subdivision.

Based on the above and other grounds, we are advising Management and Staff there is a legal and factual basis for the annexation. Moreover, the request by the Rowleys and their attorney to de-annex the property would not meet the legal requirements of Florida Statute 171.052, which statute must be strictly followed in order to enact a valid contraction ordinance.

Unless you feel differently, I would not recommend we conduct a hypothetical "trial by letters", or spend time preparing a detailed letter in rebuttal to Mr. Sowerby's August 8 letter. There is no reason to engage in that process since such letters would serve no purpose at this late juncture. We would support, however, scheduling a pre-suit mediation as Mr. Sowerby suggests if that is agreeable to you.

Finally, I would suggest that we involve FPUA in any pre-suit mediation since they are an integral part of both the problem and the solution herein faced by the City.

Please get with me as soon as convenient to discuss this further.



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Robert V. Schworer, Esq.  
City Attorney


/mlp

Attachments

cc: Fort Pierce Mayor and Commissioners (*via email*)  
Rebecca Grohall, Planning Manager (*via email*)



Re: SETTLEMENT PRIVILEGED COMMUNICATION - Rowley Annexation

<Watchdog: Virus checked> 

Rebecca Grohall to: Mary Lou Peregrin

08/07/2014 11:15 AM

Cc: icholas Mimms, Robert Bradshaw

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I believe during the meeting that David indicated that revising the Ordinance or de-annexation would not create an enclave, I've attached a graphic (zoning layer) showing that the property is surrounded on all sides by property that has been annexed, and therefore - would create an enclave. In fact, the annexation of Oak Alley further reduced the existing enclave on Christensen Road (shown in white) currently around 17 acres over six lots.



Rowley zoning surrounding.pdf

**171.052 Criteria for contraction of municipal boundaries.--**

(1) Only those areas which do not meet the criteria for annexation in s. 171.043 may be proposed for exclusion by municipal governing bodies. If the area proposed to be excluded does not meet the criteria of s. 171.043, but such exclusion would result in a portion of the municipality becoming noncontiguous with the rest of the municipality, then such exclusion shall not be allowed.

(2) The ordinance shall make provision for apportionment of any prior existing debt and property.

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Mary Lou Peregrin Please see attached. Mary Lou Piro, Legal Assis...

08/06/2014 04:38:11 PM

From: Mary Lou Peregrin/cfp  
To: DSowerby@melvillesowerby.com,  
Cc: Robert Bradshaw/cfp@cfp, Nicholas Mimms/cfp@cfp, Rebecca Grohall/cfp@cfp,  
bthiess@fpua.com, koblegardlaw@aol.com  
Date: 08/06/2014 04:38 PM  
Subject: SETTLEMENT PRIVILEGED COMMUNICATION - Rowley Annexation <Watchdog: Virus checked>

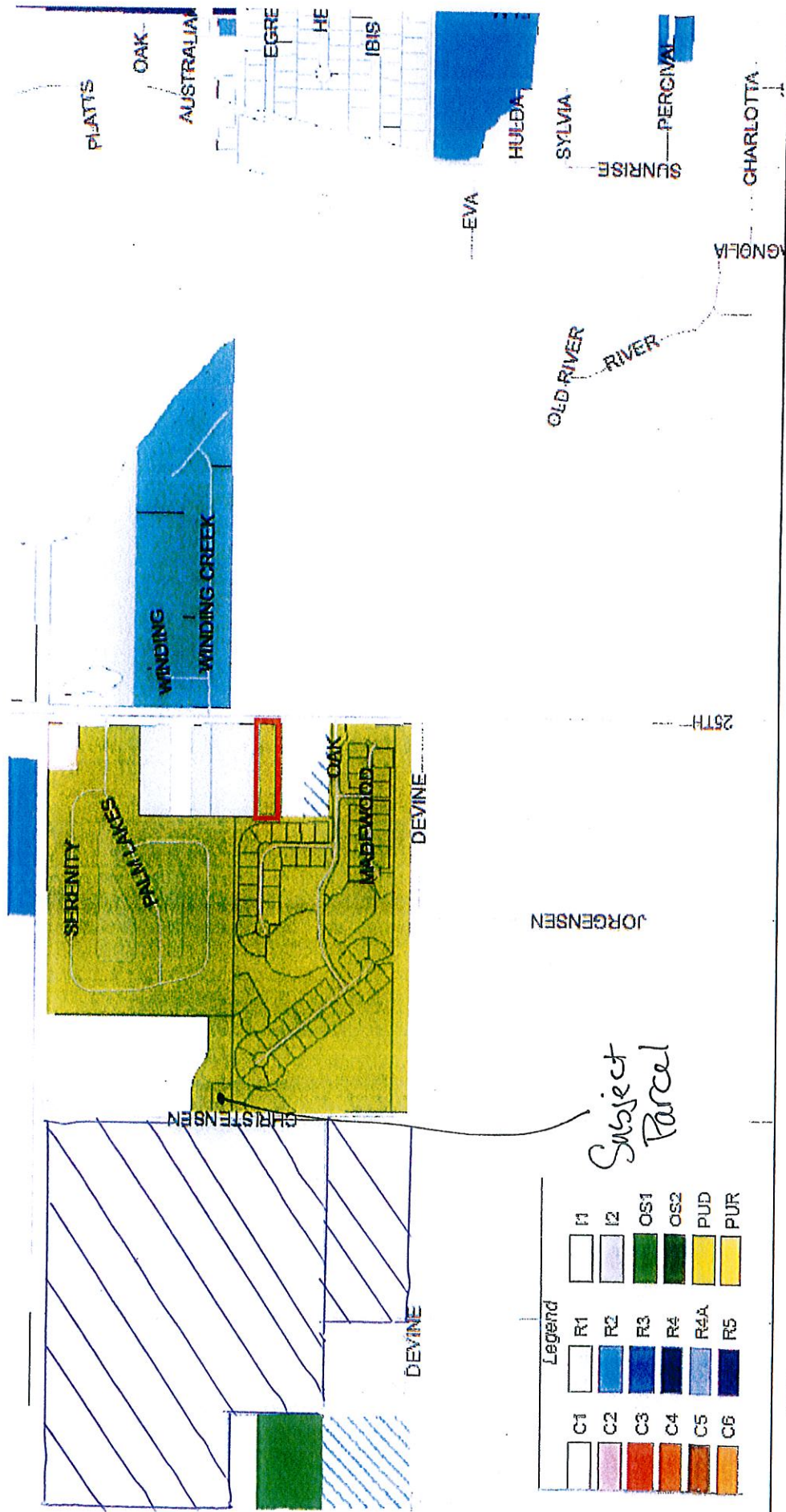
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*Please see attached.*



Rowley\_RVS\_Sowerby\_08.06.14.pdf

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Legend

C1	R1	I1
C2	R2	I2
C3	R3	OS1
C4	R4	OS2
C5	R4A	PUD
C6	R5	PUR

*Subject Parcel*



# Zoning Map

