

**MANATEE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

1/27/98 35

SUBJECT	CITY OF PALMETTO/ANNEXATION ORDINANCES NO. 610 AND 611	TYPE AGENDA ITEM	REGULAR - ADD ON
DATE REQUESTED	FEBRUARY 24, 1998	DATE SUBMITTED/REVISED	FEBRUARY 23, 1998
BRIEFINGS/WHO?	NONE	SEQUENCES IF DEFERRED	
DEPARTMENT/DIVISION	COUNTY ADMINISTRATOR	AUTHORIZED BY TITLE	ERNE PADGETT COUNTY ADMINISTRATOR
CONTACT PERSON TELEPHONE/EXTENSION	DAVE ROTHFUSS 3722	PRESENTER/TITLE TELEPHONE/EXTENSION	ERNE PADGETT 3783
ADMINISTRATIVE APPROVAL	<i>[Signature]</i>		

ACTION DESIRED

INDICATE WHETHER "REPORT OR "DISCUSSION, "FORM OF MOTION, OR "OTHER ACTION REQUIRED.

DETERMINATION BY THE BOARD OF COUNTY COMMISSIONERS AS TO WHETHER IT SHOULD CHALLENGE CITY OF PALMETTO VOLUNTARY ANNEXATION ORDINANCES NO. 610 AND 611, ON THE BASIS THAT ENCLAVES OF UNINCORPORATED PROPERTY WILL BE CREATED.

ENABLING/REGULATING AUTHORITY

FEDERAL/STATE LAW(S), ADMINISTRATIVE RULING(S), MANATEE COUNTY COMP PLAN/LAND DEVELOPMENT CODE, ORDINANCES, RESOLUTIONS, POLICY.

SECTION 171-044(5) F.S., PROVIDES THAT, "LAND SHALL NOT BE ANNEXED THROUGH VOLUNTARY ANNEXATION WHEN SUCH ANNEXATION RESULTS IN THE CREATION OF ENCLAVES."

BACKGROUND/DISCUSSION

- ATTACHED HEREWITH IS A COPY OF THE FEBRUARY 17, 1998, MEMORANDUM FROM SENIOR ASSISTANT COUNTY ATTORNEY MINIX TO THE BOARD OF COUNTY COMMISSIONERS AND MYSELF RELATING TO THE ABOVE IDENTIFIED MATTER
- AS RECOMMENDED BY MR. MINIX, I HAVE ASKED THE PLANNING DEPARTMENT TO REVIEW AND EVALUATE THE SUBJECT VOLUNTARY ANNEXATIONS. AS A RESULT OF ITS REVIEW, PLANNING DEPARTMENT STAFF HAVE CONCLUDED THAT ENCLAVES WILL BE CREATED, AS DEFINED AT SECTION 171-031(B), F.S., I.E.,
 - (A) "ANY UNINCORPORATED 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 MANMADE OBSTACLE THAT ALLOWS THE PASSAGE OF VEHICULAR TRAFFIC TO THAT UNINCORPORATED AREA ONLY THROUGH THE MUNICIPALITY" (EMP. ASIS ADDED).
- STAFF FROM THE COUNTY ATTORNEY'S OFFICE AND THE PLANNING DEPARTMENT WILL BE IN ATTENDANCE DURING THE COMMISSION'S DISCUSSION OF THIS MATTER

TEDDY N. WILLIAMS, JR., COUNTY ATTORNEY
JAMES A. MINIX, SENIOR ASSISTANT COUNTY ATTORNEY
CAROL CLARKE, DIRECTOR, PLANNING DEPARTMENT

specific No action required - EPC not to challenge.

REF: A098-20120>

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HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? INDICATE "NO" OR "YES" @ RIGHT. (IF "NO," PROCEED TO 1) BELOW; AND IF "YES," PROCEED TO 2) BELOW) YES

1) IF "NO" TO ABOVE

A) PLEASE EXPLAIN BELOW: (SEE ALSO FOLLOWING SECTION 1B) RE: CONTRACT, AGREEMENT, LEASE, ETC.

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT: N/A

2) IF "YES" TO FIRST QUESTION IN THIS SECTION,

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION?
ENTIRE MATTER HAS BEEN REVIEWED

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER **MUST BE ATTACHED** (IF COMMENTS WERE VERBAL, SO INDICATE.)

MEMORANDUM FROM SENIOR ASSISTANT COUNTY ATTORNEY MINIX IS ATTACHED HERETO

ATTACHMENTS: (LIST IN ORDER AS ATTACHED) MEMORANDUM FROM ATTORNEY MINIX DATED 2/17/93	INSTRUCTIONS TO BOARD RECORDS:
COST	SOURCE (ACCT# & NAME)
COMMENTS	AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)



Office of
**MANATEE COUNTY
ATTORNEY**

* Board Certified City, County & Local Government Law
† Board Certified Civil Trial

Teddy N. Williams, Jr., County Attorney
Mark P. Burnaby, Chief Assistant County Attorney*
Paul G. Bangel, Senior Assistant County Attorney*
William C. Howell, Senior Assistant County Attorney for Risk Management
Patricia McVoy, Senior Assistant County Attorney
James A. Minix, Senior Assistant County Attorney †
Mitchell O. Palmer, Senior Assistant County Attorney
Jeffrey N. Steinsnyder, Senior Assistant County Attorney*

MEMORANDUM

DATE: February 17, 1998
TO: Board of County Commissioners and
Ernie Padgett, County Administrator
THRU: Teddy N. Williams, Jr., County Attorney *JTW 2/17/98*
FROM: James A. Minix, Senior Assistant County Attorney *JAM*
RE: **City of Palmetto -- Annexation Ordinances; RLS-98-47
CAO File No. 170**

RECEIVED
FEB 18 1998
COUNTY ADMINISTRATOR
MANATEE COUNTY

This matter was sent to me for review on an urgent basis in light of Ordinance Nos. 610 and 611, which were enacted by the City of Palmetto on February 2, 1998. After reviewing the ordinances, and the applicable law, I have formulated an appropriate question and response setting forth the legal remedies available to the County.

QUESTION PRESENTED

May the City of Palmetto voluntarily annex unincorporated property if that annexation results in the creation of enclaves of unincorporated property within the City of Palmetto?

ANSWER

The City of Palmetto may not voluntarily annex unincorporated property if that property is not reasonably compact, and if it creates enclaves of unincorporated territory within the newly annexed municipal territory.

NOTE:

Legal action required by March 4, 1998, if the BCC decides to challenge these ordinances. The last scheduled BCC meeting is February 24, 1998, and a decision would have to be made no later

than that meeting in order that the CAO has sufficient time to prepare and file a petition with the Circuit Court.

DISCUSSION:

Section 171.044, Florida Statutes (1997), authorizes owners of real property in an unincorporated area of a county, which is contiguous to a municipality and reasonably compact, to petition the municipality for annexation. Upon determining that all of the property owners in the area to be annexed have consented, the city may adopt an annexation ordinance at a regular meeting of the governing body. Under this voluntary annexation procedure, the only limitations prescribed are that the property be contiguous, reasonably compact, and that it does not create enclaves.¹

The statute 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. Section 171.031(13).

The statute further defines "compactness" to mean the "concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area will be reasonably compact."

The issue now becomes whether or not the City of Palmetto's actions in annexing the subject property complied with the statute in that the annexed property was (a) reasonably compact and (b) did not create enclaves of unincorporated property within the boundaries of the city.

The property set forth in the Notice of Proposed Annexation needs to be carefully reviewed to ensure both compactness and that no enclave is created. A review of the map attached to Ordinance No. 610 appears to show that an enclave is created in at least a portion of the property.

¹Section 171.044(5): "Land shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves."

While the annexed property itself is compact, it isolates the western portion of the unincorporated property on all sides with the exception of an intersection access between 24th Avenue West and 21st Street West. The property annexed also isolates the larger unincorporated parcel to the east as well. Both parcels appear to be surrounded by the municipality, thereby meeting the definition of "enclave."

Ordinance No. 611 also appears to isolate the County park on all four sides with municipal property.

The site maps attached to both ordinances are attached to this memo.

The case law construing this statute is very fact specific. In *City of Sunrise v. Broward County*, 473 So 2d 1387 (Fla. 4th DCA 1985), the Fourth District upheld the lower court's ruling that the annexation ordinance violated Ch. 171 since the area annexed was not reasonably compact and created enclaves contrary to the statute. The annexed land consisted of 800 acres in a development whose owners wanted to join the *City of Sunrise*. The court observed that the annexation left the county with several enclaves of unincorporated territory within the newly annexed municipal territory with no access since the municipality also annexed the roadways.

In contrast, the court, in *City of Sanford v. Seminole County*, 538 So 2d 113 (Fla. 5th DCA 1989), upheld the annexation of a parcel of property into the *City of Sanford* belonging to Seminole County. The court upheld the annexation finding that the subject parcel was reasonably compact and contiguous for municipal property.

Interestingly, neither of these two appellate decisions contain a site map of the parcels that would permit the reader to confirm the factual basis for either decision. We are simply left to conjecture what each questioned parcel actually looked like, and its location in juxtaposition to the municipal boundaries.

CONCLUSION

I therefore conclude that the County has a right of action against the City of Palmetto to void its voluntary annexation of unincorporated property resulting in the creation of isolated enclaves of unincorporated property. To confirm that the annexation of the City of Palmetto actually creates enclaves, I would recommend that the County Administrator direct the Planning Department to review the parcels with official city and county maps before a decision on this is made by BCC.

Section 171.081, Florida Statutes, requires that the County file an appropriate action

Board of County Commissioners and
Ernie Padgett, County Administrator
Re: CAO File No. 170
February 17, 1998
Page No. 4

challenging the ordinances within thirty days of the date of enactment of the challenged ordinances. In this case, both ordinances were enacted on February 2, 1998, thereby making any legal action we may desire to take due on or before March 4, 1998. The County would need a decision by the BCC to challenge Ordinances 610 and 611 of the City of Palmetto by February 24, 1998 in order to prepare and timely file an appropriate petition in Circuit Court. Accordingly, I would strongly recommend that the County Commission make a determination as to whether or not it should challenge Ordinance Nos. 610 and 611 from the City of Palmetto as soon as possible, thereby allowing the County Attorney's Office sufficient time to prepare and file an action in the circuit court.

JAM/dr

Attachments

cc: Carol B. Clarke, Director, Planning Department

Notice of Proposed Annexation

The City of Palmetto has received a petition for annexation of lands within the area shown in the map below and more generally described as:

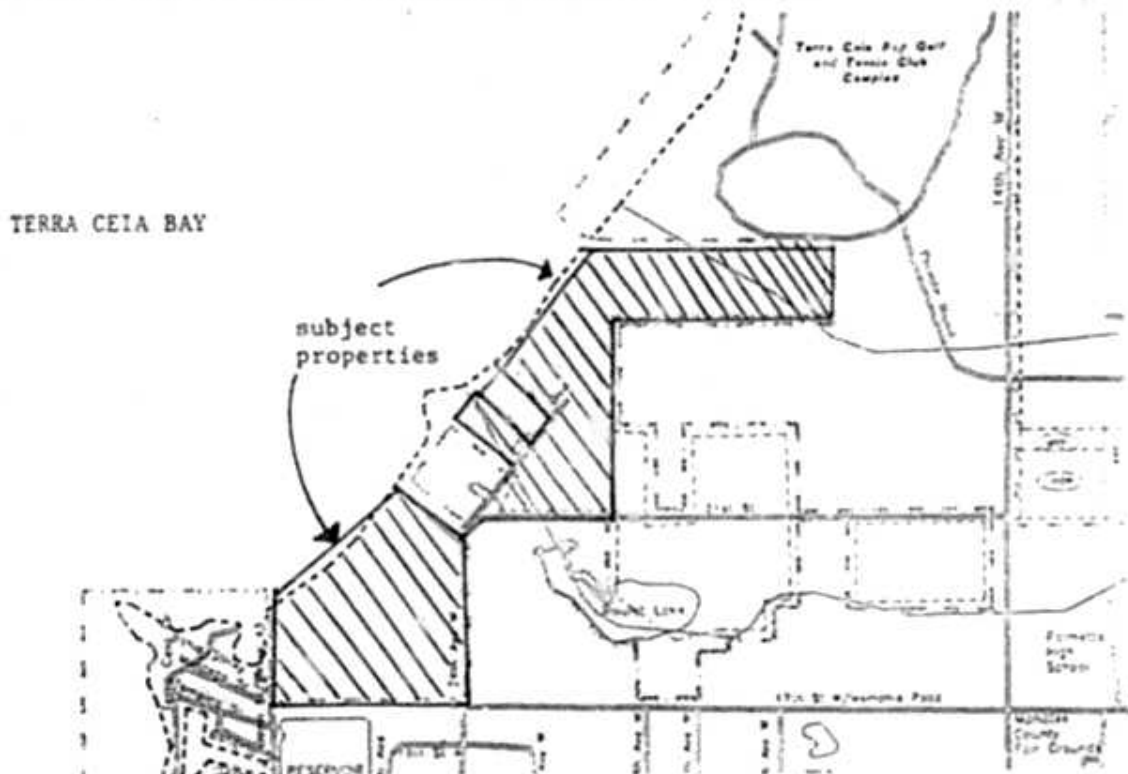
Property located north of 21st Street West and south of Terra Ceia Golf & Tennis Club between 20th Avenue West and Terra Ceia Bay and north of 17th Street West and south of 21st Street West between 24th Avenue West and Terra Ceia Bay; containing approximately 78 acres (AX9801/MFC/ORD610).

Proposed Ordinance No. 610 has been prepared incorporating the complete legal descriptions by metes and bounds or lot and block and is available in the Office of the City Clerk of the city of Palmetto during normal office hours (F.S. 171.044 (2)).

A Public Hearing on the petition and the proposed ordinance will be conducted by the City Council during its regular meeting on Monday, February 2, 1998, beginning at 7:00 p.m. in the Council Chambers, 516 8th Avenue W., Palmetto, Florida.

If any person desires to appeal any decision of the City Council or of any other board or commission of the City, that person will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

The City of Palmetto does not discriminate on the basis of race, color, national origin, sex, religion, age or handicapped status in employment or in the provision of services. Handicapped individuals may receive special accommodation in services on one working day's notice.



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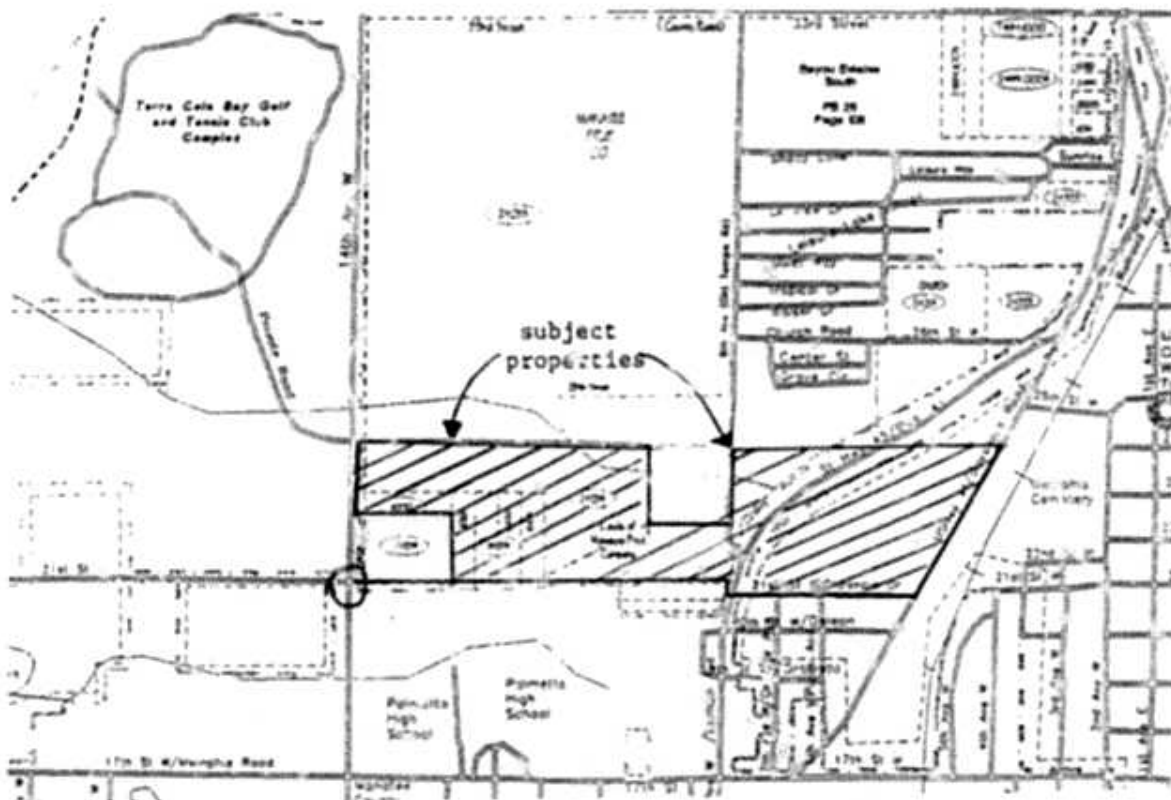
Property located north of 21st Street West and south of 24th Street West (extended) between 14th Avenue West and Bayshore Road; containing approximately 92 acres (AX9802/MFC/ORD611).

Proposed Ordinance No. 611 has been prepared incorporating the complete legal descriptions by metes and bounds or lot and block and is available in the Office of the City Clerk of the city of Palmetto during normal office hours (F.S. 171.044 (2)).

A Public Hearing on the petition and the proposed ordinance will be conducted by the City Council during its regular meeting on Monday, February 2, 1998, beginning at 7:00 p.m. in the Council Chambers, 516 8th Avenue W., Palmetto, Florida.

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February 24, 1998

*Ref. Agenda Update
item # 35*

TO: Board of County Commissioners

Re: Manatee Fruit Company Annexations

Please read the following statement into the record:

The City of Palmetto is voluntarily annexing two parcels of property owned by Manatee Fruit Company, one located north of Blackstone Park. Blackstone Park is contiguous to the City limits on the south and west. The City approached the Board of County Commissioners and County staff regarding annexation of Blackstone Park. To date, this annexation has not occurred, through no fault of the City. It is the City's position that Blackstone Park, as developed, would receive a benefit from being in the City. However, that decision is a policy matter for the Board of County Commissioners. Nevertheless, the annexation of the Manatee Fruit Company property and construction of the east/west road does not adversely affect the Park or the County as the entity owning the Park. The only negative would be the delay or elimination of the east/west road project. This is not in the public's best interest, whether they are in the County or City. The City would request that the Board of County Commissioners not act adversely regarding the voluntary annexations.

Pat Whitesel, Mayor
City of Palmetto

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February 24, 1998

*Ref. Agenda Update
item # 35*

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Pat Whitesel, Mayor
City of Palmetto

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City of Palmetto Proposed Annexations

Manatee County, FL

Legend

Unincorporated
Manatee County

Palmetto City Limits

Subject Property

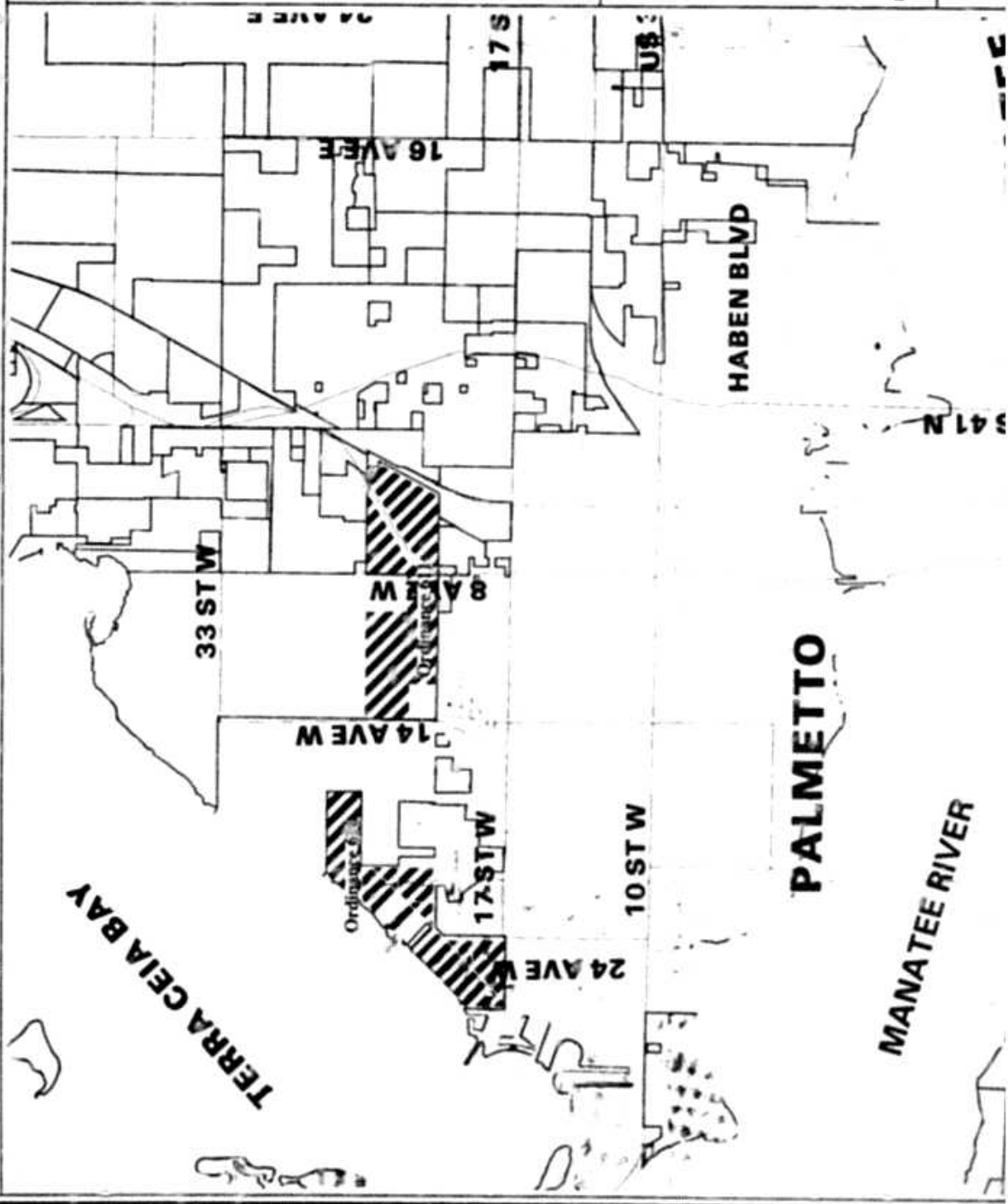


Scale 1" = 100 Feet



Map Prepared February 11, 1998

Manatee County Engineering Department
1000 1st Street, Palmetto, FL 34224
Phone: 813-937-2000
Fax: 813-937-2001



City of Palmetto Proposed Annexations

Manatee County, FL

Legend

- Unincorporated Manatee County
- Palmetto City Limits



Subject Property

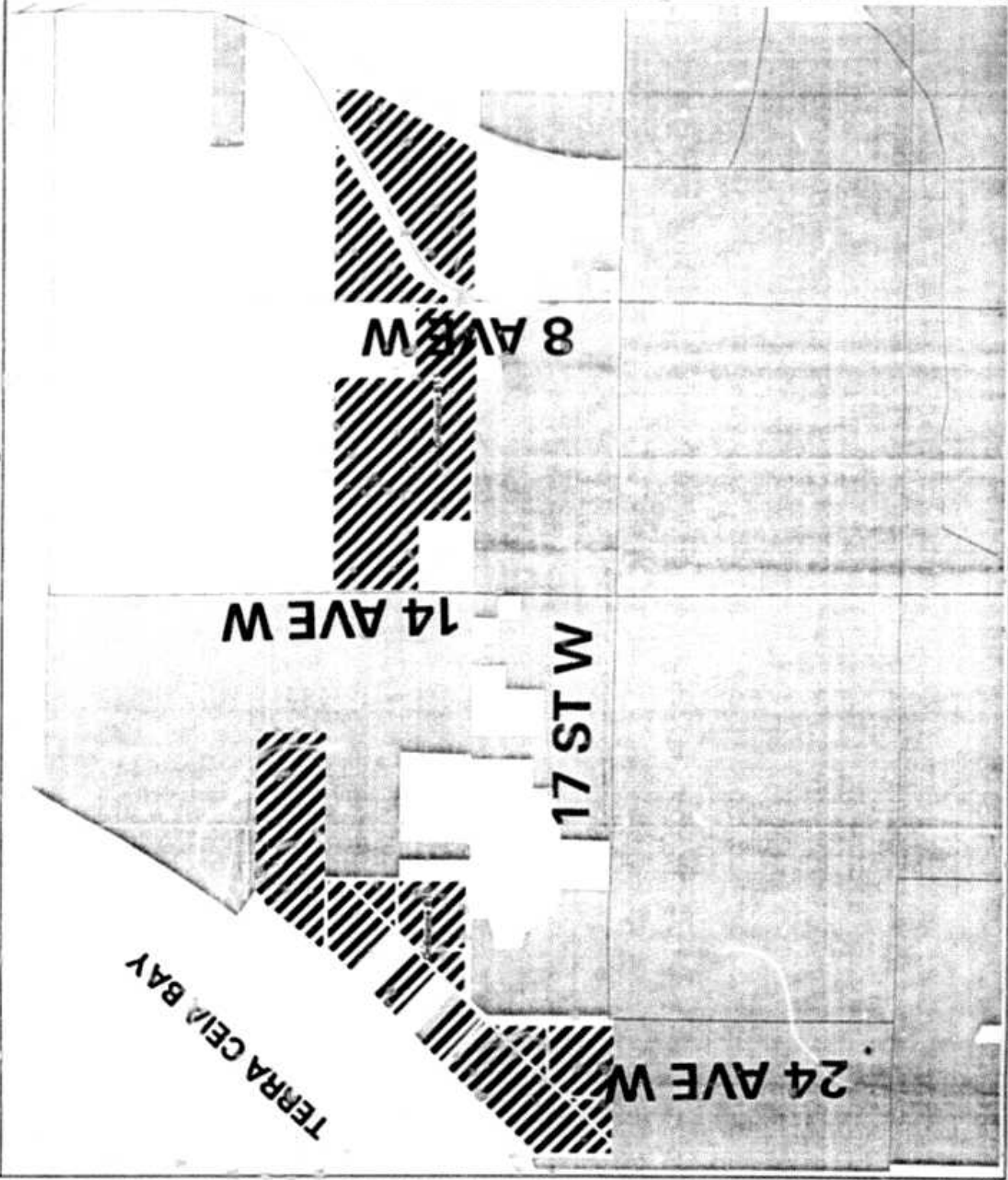
Site Location



Manatee County Florida



Map prepared by Palmetto City Planning Department
Map No. 17-0000000-0000000-0000000
Date: 11/11/2011 10:00:00 AM





CITY OF PALMETTO ANNEXATION
ORDINANCE 610

APPROXIMATE BOUNDARY

MANATEE COUNTY
FLORIDA



CITY OF PALMETTO ANNEXATION
ORDINANCE 611

APPROXIMATE BOUNDARY

MANATEE COUNTY
FLORIDA

MANATEE COUNTY
FLORIDA