

## **Estero's Governance Alternatives**

Since Bonita Springs became a City about 18 months ago, there has been much public debate about what form of governance Estero should seek. We have three options:

- Stay unincorporated under the jurisdiction of the Lee County Board of Commissioners; or
- Be annexed by the City of Bonita Springs; or
- Become a municipality

In this issue we begin to provide some factual information that we hope will help inform the citizens of Estero about each of these options so that they can effectively participate in this important debate. We expect to address many other important Estero governance questions in the months to come.

### **Procedures for Annexation of All or Part of Estero by Bonita Springs---**

the Charter of the City of Bonita Springs includes a moratorium that prohibits the City from annexing any property included in the Estero Fire Rescue district until December 31, 2004.

Chapter 171 of the Florida Statutes establishes the legal procedures that the City of Bonita Springs and all other Florida municipalities must satisfy in order to annex any statutorily defined "qualifying property" (contiguous, reasonably compact, urban or land between two urban areas) into its boundaries. The governing body of the annexing municipality decides what properties it wants to annex when it drafts its annexation ordinance. Most, if not all, of Estero except for the undeveloped land east of Wildcat Run would appear to satisfy these standards.

Step 1: Florida law requires that the governing body of an annexing municipality shall, prior to commencing the annexation process; prepare a report setting forth the plans for providing urban services to the area to be annexed. This report must include:

- A map showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls and the general land use in the area to be annexed;
- A statement certifying that the area satisfies the statutory qualification standards mentioned above;
- A statement setting forth the plans of the municipality for extending to the area to be annexed each municipal service performed within the municipality at the time of annexation...on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation...and the method for financing extension of services into the area to be annexed.

The requirements of this report, no doubt, will have some influence upon the municipality's decisions regarding what properties it would seek to annex.

Step 2: This report must also be filed with the Board of County Commissioners prior to beginning the annexation process.

Step 3: An ordinance proposing the annexation may then be filed with the governing body of the municipality.

Step 4: The local governing body must hold at least two advertised public hearings concerning the annexation ordinance.

Step 5: The local governing body votes to adopt the annexation ordinance.

Step 6: The local governing body shall schedule an annexation referendum at the expense of the municipality. The referendum shall be at the next regularly scheduled election or at a special election called for the purpose of holding the referendum, but may, in no event, be less than 30 days after the adoption of the annexation ordinance. The municipality shall publish two newspaper notices concerning the referendum prior to the referendum itself.

In the referendum the ordinance must be submitted to a vote of the registered electors of the area to be annexed. The governing body of the municipality may, however, also choose to submit the ordinance of annexation to a separate vote of the registered voters of the municipality.

If the referendum is held only in the area proposed for annexation and the ordinance receives a majority vote of the voters of that area, the ordinance of annexation will become effective on the effective date specified in the ordinance.

If the referendum is submitted to a separate vote of the registered voters of the annexing municipality and the area to be annexed and a majority of the voters in each area support the ordinance, the ordinance of annexation will become effective on the effective date specified in the ordinance.

If there is any majority vote against annexation, the ordinance shall not become effective, and the area proposed to be annexed shall not be the subject of an annexation ordinance by that municipality for a period of two years.

### **Voluntary Annexation to Bonita Springs by Estero Residents---**

Section 171.044 of the Florida Statutes provides procedures for citizens of a reasonably compact unincorporated area that is contiguous to a municipality to petition the governing body of the municipality to be annexed to the municipality.

Larger areas would have great difficulty satisfying this requirement which states as follows: "Upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property." Such unanimous support makes this procedure impractical except for areas with few petitioners.

## Procedures Required for Estero to Become a Municipality---

In 1974 the Florida Legislature enacted the Formation of Municipalities Act (Chapter 165, Florida Statutes) to provide, for the first time, state standards governing municipal incorporation. This law provides that a charter for incorporation of a municipality shall be adopted only by a special act of the Legislature upon determination that the standards included in the law are satisfied.

Five standards are specified in the law:

- 1) It must be compact and contiguous and amenable to separate municipal government;
- 2) It must have a total permanent population ...of at least 5,000 people in counties with a population of more than 75,000;
- 3) It must have an average permanent population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density;
- 4) It must have a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least 2 miles or have an extraordinary natural boundary which requires separate municipal government;
- 5) It must have a proposed municipal charter which:
  - prescribes the form of government and defines the responsibilities of the executive and legislative functions, and
  - specifies that the legislative body of the municipality cannot be prohibited from exercising its powers to levy any tax authorized by the constitution or general law.

According to Legislative Committee on Intergovernmental Relations (LCIR) staff, one of the agencies designated by the Legislature to review all incorporation proposals, the minimum distance and density standards have often been waived by the Legislature.

The incorporation process is initiated by the citizens of or organizations located in the community that wants to become a municipality. The other steps discussed here all follow from that initiative.

Since 1996 the Formation of Municipalities Act has required that a feasibility study be completed and submitted to the Legislature in conjunction with the incorporation legislation at least 90 days before the first day of the regular session of the Legislature during which the municipal charter would be enacted. In 1999 the law was amended to provide eleven specific elements to be included in the feasibility study. According to LCIR staff these requirements were not enforced for incorporations considered during the 2000 session of the Legislature but they expect incorporation initiatives considered in 2001 and beyond will be required to satisfy the 1999 changes.

The following list briefly summarizes the statutorily required contents of the feasibility study:

- The general location of the area and a map,
- The major reasons for the proposal,

- Characteristics of the area including its current land use designations, zoning, land use characteristics of the area and a description of the development planned for the area with a schedule of expected starting dates,
- A list of the public bodies serving all or part of the area,
- A list of the current services being provided to the area and the estimated cost of each,
- A list of proposed services to be provided to the area and the estimated cost of each,
- Names and addresses of three persons submitting the proposal,
- Evidence of fiscal capacity and a 5 year organizational plan for the area,
- Data and analysis to support the conclusions that incorporation is necessary and financially feasible,
- Evaluation of the alternatives available to the area to address its policy concerns, and
- Evidence that the proposed municipality meets the statutory standards for a municipality listed earlier.

Elements of this study can and should be used on a comparative basis for evaluating any annexation proposal that Bonita Springs might propose.

The statute does not require a referendum for a municipality to be incorporated because the Legislature wants to reserve the right to create a municipality without a referendum if it should ever be necessary. But legislative staff reports that all special acts establishing a municipality in memory have included a provision requiring the measure to be approved by the eligible voters within the area proposed for incorporation through referendum.

Typically each year the Florida Legislature convenes in March. Thus the feasibility study and the draft incorporation bill must be completed and submitted to the Legislature by November or December of the preceding year. Legislative staff suggests that earlier submission is advisable. To be available at this time the feasibility study, due to the new expanded requirements, should be initiated no later than the beginning of the year prior to enactment, or about one and one-half years before the bill becomes law. After the Legislature has acted the referendum may be scheduled and conducted. Lee County pays the cost of the referendum.

Chapter 165 of the Florida Statutes also includes procedures for the merger of two or more municipalities and associated unincorporated areas. Under these provisions the municipalities must adopt concurrent ordinances followed by a majority vote of approval by the qualified voters of each affected unit or area.

### **The Estero Community Plan and Annexation by Bonita Springs---**

Now that the Board of County Commissioners has voted to send the Estero Community Plan to Tallahassee for review by the State Department of Community Development, we anticipate that final approval by the Lee County Board should occur early in 2002. Once it is approved and becomes part of the Lee Plan, Section 171.062 of the Florida Statutes specifies its effectiveness should all or part of Estero be annexed by Bonita Springs:

"(2) If the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area."

Thus the Estero Community Plan will be fully effective until Bonita Springs amends its comprehensive plan and the Estero Community Plan provisions would, at the least, have to be considered by the Bonita City Council when it amends its comprehensive plan.

### **The Estero Community Plan and Incorporation of Estero as a Municipality--**

According to a recent report of the Legislative Committee on Intergovernmental Relations "When a community incorporates, the comprehensive plan of the county is the controlling document until the municipality adopts its own comprehensive plan pursuant to Ch. 163, Part II, Florida Statutes, and it is approved by the state."

Thus if Estero should incorporate, the Estero Community Plan, once adopted, will continue in full force and effect until the City of Estero amends its comprehensive plan and it is approved by the state. This process usually takes several years. The City of Bonita Springs is nearly two years old and it has yet to forward its comprehensive plan to the state for approval.