



Fellsmere

MEMORANDUM

TO: Dylan Reingold, County Attorney

FROM: Warren Dill and Johnathan Rhodeback

DATE: May 27, 2020

RE: **Annexation of enclaves along or near 89th Street by Interlocal Agreement**

The City of Fellsmere is seeking to annex certain real property along or near N. 89th Street, which is located in the unincorporated area of Indian River County. For reference, the real property is identified as follows:

Owner	Property Address	Parcel ID
1 Zamarripa, Jesus & Silvia	8875 130 th Ave, Fellsmere	31370000011193800001.0
2 Zamarripa, Ruben & Ofelia	13055 S 89 th St, Fellsmere	31370000011193800002.0
3 Almanza, Pablo	305 S Lime St, Fellsmere	31370000011193800016.0
4 Hernandez, Sergio	300 S. Lime St, Fellsmere	31370000011193700001.0
5 Mojica, Homar	13125 89 th St, Fellsmere	31370000011193700002.0
6 Stone, Barbara	315 S. Lime St, Fellsmere	31370000011193800014.0

Said properties are enclosed within and bounded: (i) on all sides by the City, or (ii) by the City and a manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the City of Fellsmere. *See* §171.031(13), Fla. Stat. Therefore, as long as the property is “improved” or “developed,” the City can annex the property by entering into an interlocal agreement with the County under Section 171.046, Florida Statutes. *See* §§ 171.031(13) & 171.046(2)-(3), Fla. Stat.

Parcels 1, 3 and 4 contain a single-family residential structure, which should alleviate any concerns with annexing these properties into the City by agreement with the County. Parcels 2, 5, and 6, however, are vacant. Neither “undeveloped property” nor “unimproved property” is defined in Chapter 713, Florida Statutes. “When a word is not

defined by statute, [courts] normally construe it in accord with its ordinary or natural meaning." *See Smith v. United States*, 508 U.S. 223, 228, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993); *see also Smalbein v. Volusia Cty. Sch. Bd.*, 801 So. 2d 169, 170 (Fla. 5th DCA 2001) ("Where a term is not defined by the Legislature, courts should construe the term to give effect to both the literal and usual meanings of the word as well as the meaning which would give effect to the objectives and purpose of the statute.").

Improved or developed property has numerous definitions. Some secondary sources define it as land on which residential or commercial structures have been built. *See, e.g., Business Dictionary. "Improved Real Estate."* <http://www.businessdictionary.com/definition/improved-real-estate.html>; New York City Bar. "Definition of Real Property." <https://www.nycbar.org/get-legal-help/article/real-property-law/definition-real-property/>. Others do not define it so narrowly. For instance, Black's Law Dictionary defines an improvement to real property as "one that increases its value or utility or that enhances its appearance." This is similar to the Florida Supreme Court's definition, to wit: "[a] valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement of waste, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes." *See Hillsboro Island House Condo. Apts., Inc. v. Town of Hillsboro Beach*, 263 So.2d 209, 213 (Fla. 1972). In said case, the Florida Supreme Court held that the dumping of sand in connection with the Town of Hillsborough Beach's beach erosion project was an improvement to real property. *Town of Hillsborough Beach*, 263 S.2d at 212-213.

Here, parcels 2, 5, and 6 have access to certain utilities and neighboring roadways. Although they are vacant, it does not necessarily mean that they are unimproved or undeveloped. Valuable additions have been made to these properties amounting to more than mere repairs or replacement of waste. Given the vacant properties' access to roadways and utility services, the County and City agreed that such property was "improved" or "developed" within the meaning of Section 171.046, Florida Statutes. This is consistent with previous annexation agreements between the County and the City. For instance, several years ago the County entered into an interlocal agreement with the City to annex certain vacant property located in Lincoln Park.

I hope that the above information alleviates any concerns you have with the County entering into an annexation agreement with the City. Please let us know if you have any questions or concerns.