

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION of THOMAS J.)
WHITE DEVELOPMENT COMPANY,)
INC., TO ESTABLISH A UNIFORM)
COMMUNITY DEVELOPMENT)
DISTRICT PURSUANT TO)
SECTION 190.005(1), FLORIDA) CASE NO. 89-0072
STATUTES, AND CHAPTER 42-1,)
FLORIDA ADMINISTRATIVE CODE,)
TO BE KNOWN AS THE ST. LUCIE)
WEST SERVICES DISTRICT)
_____)

REPORT AND CONCLUSIONS

This matter was heard by William R. Dorsey, Jr. the Hearing Officer designated by the Division of Administrative Hearings, in Port St. Lucie, Florida, on April 18, 1989. At the request of the Petitioner, the hearing was reconvened by telephone conference call to take additional testimony on July 10, 1989.

APPEARANCES

For Petitioner: E. Lee Worsham, Esquire
Honigman Miller Schwartz and Cohn
1655 Palm Beach Lakes Boulevard, Suite 600
West Palm Beach, Florida 33410

For Respondent: No appearances for any other party

STATEMENT OF THE ISSUES

The issue is whether the application of Thomas J. White Development Company for the establishment of a uniform community development district under Chapter 190, Florida Statutes, and Rule Chapter 42-1, Florida Administrative Code, should be granted.

PROCEDURAL BACKGROUND

This proceeding began when the Thomas J. White Development Company filed a petition with the Secretary of the Florida Land and Water Adjudicatory Commission (Commission) on December 21, 1988, seeking authorization to establish a uniform community development district within a portion of the City of Port St. Lucie, St. Lucie County, Florida. After certifying that all elements of the petition were complete, the Commission's Secretary forwarded the petition to the Division of Administrative Hearings on January 4, 1989. On February 27, 1989, the matter was set for hearing at the city council chambers in Port St. Lucie, Florida. Notice of the date and location of the public hearing was published in a newspaper of general circulation in the Port St. Lucie area on March 22, 29, April 5, and April 12, 1989. Proof of publication was entered in evidence as composite Exhibit 10. In addition, as required by Rule 42- 1.011, Florida Administrative Code (1987), copies of the notice were served on all persons

named in the petition, all affected units of local government (the City of Port St. Lucie, and St. Lucie County), and the Secretary of the Department of Community Affairs. Notice of the hearing was published by the Commission's Secretary in the Florida Administrative Weekly on February 17, 1989 as required by Rule 42-1.010(1)(b), Florida Administrative Code (1987). A copy of that notice also is found in Petitioner's composite Exhibit 10.

The Petitioner filed a copy of the petition with the City of Port St. Lucie on December 16, 1988 and paid the required \$15,000 filing fee. A public hearing was held before the city commission on January 23, 1989, at which the city commission adopted Resolution 89-R6 expressing support for the petition. A copy of the resolution has been received in evidence Petitioner's Exhibit 8.

The Petitioner filed a copy of the petition with the Board of County Commissioners for St. Lucie County on December 16, 1988, and paid the required \$15,000 filing fee to that body. A public hearing before the county commission was held on February 7, 1989. At that meeting the county commission adopted resolution 89-41 expressing support for the petition. The resolution also expressed consent to the inclusion of a county- owned sports complex within the boundaries of the proposed district. (Exhibit 9).

The hearing in this matter was conducted in accordance with the provisions of Section 190.005(1) (d), Florida Statutes, and Rule 42-1.012, Florida Administrative Code. Ample, adequate, and legally sufficient notice of receipt of the petition, as well as the notice of the local public hearing was given, but no other persons sought to participate in this proceeding. The transcripts of the two hearings and all exhibits are forwarded to the commission with this Report and Conclusions. A proposed Report was filed by the Petitioner. Lists of the witnesses and of the exhibits offered in evidence are attached to this Report.

FINDINGS OF FACT

1. The facilities and services that will be provided by the St. Lucie West Services District are the financing, construction, ownership, operation, and maintenance of the surface water management and control system for the area, and necessary bridges and culverts.

2. The land encompassed by the proposed development district is a development of regional impact. The final revised development order for the area was issued on February 27, 1989, by the City of Port St. Lucie. Exhibit 4.

3. The land within the proposed district is composed of approximately 4,600 contiguous acres located in the city. The proposed district is bounded on the north and south by the city. The western and eastern boundaries are Interstate 95 and the Florida Turnpike, respectively. A map showing the location of the area to be serviced by the proposed district is found in Exhibit 2; a metes and bounds legal description of the proposed district is attached to the petition as Exhibit 1. The overall development to be serviced by the district will include a variety of single family and multifamily housing units, as well as commercial, industrial, and educational uses. A portion of the future land use map for the City of Port St. Lucie was received in evidence as Exhibit 3, and shows approved land uses for the St. Lucie West area.

4. In the proceedings leading to the issuance of the development order, the city determined that the St. Lucie West development would be consistent with

all applicable state, regional, and local comprehensive plans and policies. The proposed development of the district is consistent with the City of Port St. Lucie Comprehensive Plan: 1985, as amended. Exhibit 12.

5. Ernest R. Dike, Jr. is the director of development of Thomas J. White Development Company. He is an expert engineer experienced in the planning, construction and management of large scale communities. Mr. Dike has substantial experience as a civil engineer, and holds an advanced academic degree in planning. He served as director of public works and as city engineer for the City of Port St. Lucie for the three years preceding his employment by White. As White's director of development over the last three and a half years, Mr. Dike assisted in the preparation of the petition; he also identified and explained the exhibits which were admitted into evidence. He assisted in crafting the development order for St. Lucie West which was adopted by the City of Port St. Lucie in February, 1987 and amended on February 27, 1989. Dike has been personally involved with the sales of land from White to other developers of property within the proposed district. All the owners of the real property to be included in the district have given their written consent to the establishment of the proposed district.

6. Since the Thomas J. White Development Company purchased the approximately 4,600 acres which became St. Lucie West, Dike has directed the permitting and approval for all aspects of the project. In the design, White Development Company has accommodated the desires of St. Lucie County to obtain a spring training facility for a professional baseball team. White Development Company agreed to give the county 100 acres of land to build a training facility for the New York Mets. A predevelopment order for the stadium was obtained, which permitted the development of certain roads, a bridge over the Florida Turnpike, and an interchange with Interstate 95 which will all provide access to St. Lucie West. These transportation facilities were completed without the use of any state or federal funds. None of these expenses will be born by the proposed district. The establishment of the district would not be inconsistent with any of the elements or provisions of the state comprehensive plan, the regional plan, or the local comprehensive plan. Creation of the district would be the best alternative available for providing water management and control facilities for the land encompassed by the proposed district. The South Florida Water Management District (SFWMD) and the City of Port St. Lucie have concluded that when fully developed, the land would discharge no additional water into the city's stormwater system as compared to the contribution of stormwater by the land made before it was developed by White.

7. Mr. Dike also testified about the debt service required to amortize the debt on any benefit bonds issued by the proposed district, and the cost of operation and maintenance of the surface water control facilities to be constructed by the proposed district. Mr. Dike prepared a spread sheet entitled "Projected Statement of Cash Flow for the Years 1990-2000". (Exhibit 18). The estimated construction costs for water management facilities in the projection are reasonable. Based on White's plans for the district, and utilizing the assumptions for absorption of the residential and commercial space to be constructed, the benefit and maintenance taxes are projected to begin at \$114 per taxable unit per year. These benefit and maintenance taxes will rise to no more than \$170 per taxable unit per year in 1996. These projections are consistent with the testimony of Mr. Dike and of Dr. Henry Fishkind, an economist. All assumptions made in projecting future benefit taxes are reasonable. While these projections do not bind the district, which is not yet formed, and the district's electors could ultimately decide to assume additional responsibilities, the evidence shows that the benefit and maintenance taxes

projected are adequate to pay the debt to be incurred by the proposed construction of surface water management facilities.

8. Lester L. Solin, Jr., testified as an expert in land use planning. He was a planning consultant with the City of Port St. Lucie when the development of St. Lucie West by White Development Company was first under consideration, and worked with the city to formulate the overall development plan. St. Lucie West has been integrated into the future land use map for the City of Port St. Lucie Comprehensive Plan: 1985. Mr. Solin is also familiar with the state comprehensive plan. He has reviewed the application for development approval for the St. Lucie West development of regional impact. The proposed district would be consistent with the state comprehensive plan, Chapter 187 Florida Statutes.

9. Mr. Solin is also familiar with the City of Port St. Lucie Comprehensive Plan: 1985 (Exhibit 12). The creation of the St. Lucie West Services District would not be inconsistent with any of the goals, objectives or policies in that plan.

10. Peter L. Pimentel is the current executive director of the Northern Palm Beach County Water Control District (NPBWD). Mr. Pimentel testified as an expert in special district management, planning, staffing, reporting, and coordination with local governments. As the director of the Northern Palm Beach County Water Control District, he oversees a staff which works with other regulatory agencies on permitting, implementation, planning, construction and operation of water management systems. He coordinates construction with contractors, and engineers, and works with lawyers in carrying out the policies established by the district board of directors. The land encompassed by the NPBWD is approximately 200,000 acres. Mr. Pimentel has substantial experience, having worked as the executive director for two large independent special taxing districts, which are similar in structure and have similar powers as the community development district which White Development Company wishes to establish. Mr. Pimentel's testimony was especially persuasive due to his experience with water control entities. The proposed district is the best alternative available for financing, constructing, owning, operating and maintaining the surface water management and control facility for the area encompassed by the proposed district. It provides a more efficient use of resources, and provides the opportunity for new growth in the district to pay for its own surface water management, rather than imposing that cost on general government. The proposed district would not be incompatible with the capacity or uses of existing local and regional community services and facilities. The area to be served by the proposed district is amenable to separate special-district government.

11. Henry H. Fishkind, Ph.D. testified as an expert economist about the economic consequences of establishing a community development district under Chapter 190, Florida Statutes, the economic consequences of financing the surface water management and control system through the use of tax exempt bonds, and the cost of operating and maintaining those structures by a community development district. Dr. Fishkind prepared the economic impact statement for the proposed district required by Section 120.54, Florida Statutes. The costs to the Florida Land and Water Adjudicatory Commission, and to state and local agencies in reviewing the petition are minimal. The costs to the City of Port St. Lucie and to St. Lucie County have been covered by the \$15,000 filing fee which White paid to each of those governments. The cost to the City of Port St. Lucie once the district is operating would be negligible. The potential debt of the proposed district will not become general obligations or debts of the city

or county governments. The cost of the surface water improvements will be paid by those who benefit from them. The economic impact statement is adequate, and meets the requirements of Section 124.54(2)(b), Florida Statutes.

12. During the first six years, the proposed district would be controlled by Thomas J. White Development Company since White still would be the largest landowner. Tax exempt benefit bonds would be issued to construct the surface water management facilities. Both White and residents of the proposed district would share the burden of amortizing these bonds through benefit taxes. According to Dr. Fishkind, whose opinion is credited, from an economic perspective:

- (1) The creation of the St. Lucie West District is not inconsistent with the state and local comprehensive plan;
- (2) The land to be served by the proposed district is of sufficient size, is sufficiently compact and is sufficiently contiguous to be developed as a functional interrelated community;
- (3) The proposed district is the best alternative for providing surface water management for the community, since other alternatives such as municiple service taking units or homeowners' associations are more expensive or more cumbersome;
- (4) The area to be served by the proposed district is amenable to separate special-district government.

13. All factors which are required to be considered in establishing a community development district under Section 190.005(1)(e), Florida Statutes, were analyzed by the witnesses presented by the Thomas White Development Company. Their testimony was persuasive, and the application meets all requirements of Chapter 190.

CONCLUSIONS

Based on the record made, it is concluded:

14. That all statements contained in the petition are true and correct;
15. The creation of the proposed district is not inconsistent with any applicable element of the state comprehensive plan, or the City of Port St. Lucie Comprehensive Plan;
16. The area in the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as one functional, interrelated community;
17. The district is the best alternative for delivering water management services to the area to be serviced by the district, and would be superior to the creation of a municipal service taxing unit, a homeowner's association, or to providing water management by the general county government of St. Lucie County;
18. The community development services provided by the proposed district will not be incompatible with the capacity or uses of existing local and regional community development services and facilities;

19. The area to be served by the proposed district is amenable to separate special district government.

20. Accordingly it is recommended that the Florida Land and Water Adjudicatory Commission grant the petition of the Thomas J. White Development Company and adopt a rule pursuant to Section 190.005(f), Florida Statutes (1987), establishing the St. Lucie West Services District.

DONE AND ENTERED this 5th day of September, 1989, in Tallahassee, Leon County, Florida.

William R. Dorsey,
Hearing Officer
Division of Administrative Hearings
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(904) 488-9675

Filed with the Clerk of the Division of
Administrative Hearings this 5th day
of September, 1989

APPENDIX A
Case No. 89-0072

Witnesses

1. Earnest R. Dike, Jr., 590 NW Peacock Loop, Port St. Lucie, Florida.
2. Lester L. Solin, Solin and Associates, 901 Douglas Avenue, Suite 207, Altamonte Springs, Florida.
3. Peter Pimentel, 5725 Corporate Way, Suite 203, West Palm Beach Florida.
4. Dr. Henry H. Fishkind, 201 North New York Avenue, Suite 300 Winter Park, Florida.

APPENDIX B
Case No. 89-0072

List of Documentary Evidence

Exhibit 1. Petition for Rulemaking filed by Thomas J. White Development Company, Inc., including seven exhibits.

Exhibit 2. Location Map for the proposed St. Lucie West Services District.

Exhibit 3. Future Land Use Map for the area

Exhibit 4. Resolution 89-R7 of the city council of Port St. Lucie, Florida, which is the development order for the St. Lucie West Development of Regional Impact.

Exhibit 5. Transmittal letter for the Petition for the establishment of the Services District to the City of Port St. Lucie and filing fee, and transmittal letter for the St. Lucie West Development District to the St. Lucie County Board of County Commissioners, and filing fee.

Exhibit 6. Transmittal letter for the Petition for the establishment of St. Lucie West Services District to the Florida Land and Water Adjudicatory Commission.

Exhibit 7. Letter from the staff of the Florida Land and Water Adjudicatory Commission determining that the Petition appears to satisfy the requirements of Section 190.005, Florida Statutes, and Rule 42-1.009 Florida Administrative Code.

Exhibit 8. Resolution 89-R6 from the City of Port St. Lucie, Florida supporting the petition of the Thomas J. White Development Company, Inc. for the establishment of the St. Lucie West Services District.

Exhibit 9. Resolution 89-41 of the Board of County Commissioners of St. Lucie County supporting the petition of Thomas J. White Development Company, Inc. for the establishment of the St. Lucie West Services District.

Exhibit 10. Proof of publication in the local newspapers and in the Florida Administrative Weekly of the Notice of the Hearing on the petition for the establishment of the community development district and notices to other interested persons.

Exhibit 11. Copy of the State Comprehensive Plan Chapter 187, Florida Statutes (1987)

Exhibit 12. Copy of the Comprehensive Plan: 1985 of the City of Port St. Lucie, Ordinance 85-102.

Exhibit 13. Resume of Ernest R. Dike, Jr., P.E.

APPENDIX B CONT.

Case No. 89-0072

Exhibit 14. Permit granted to Thomas J. White Development Company, Inc. by the South Florida Water Management District for the construction and operation of a water management system.

Exhibit 15. The prepared testimony Lester L. Solin, Jr.

Exhibit 16. The resume of Peter L. Pimentel.

Exhibit 17. The prepared testimony of Henry H. Fishkind, Ph.D.

Exhibit 18. The additional prepared testimony of Mr. Dike including the computer generated spread sheet.

COPIES FURNISHED:

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