

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INDIAN TRAIL GROVES, LTD.,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 93-0539
)	
FLORIDA LAND AND WATER)	
ADJUDICATORY COMMISSION,)	
)	
Respondent.)	
_____)	

HEARING OFFICER'S REPORT 1/

Pursuant to notice, a local public hearing was conducted in this case on March 19, 1993, in West Palm Beach, Florida, before Stuart M. Lerner, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCE

For Petitioner: Ronald K. Kolins, Esquire
Moyle, Flanigan, Katz,
FitzGerald & Sheehan
Post Office Box 3888
West Palm Beach, Florida 33402

STATEMENT OF THE ISSUE

Whether the petition, as twice amended, to establish the Cypress Grove Community Development District should be granted or denied?

PRELIMINARY STATEMENT

On January 15, 1993, Petitioner filed a petition ("Petition") with the Florida Land and Water Adjudicatory Commission ("FLWAC") seeking rulemaking to establish, pursuant to Chapter 190, Florida Statutes, the Cypress Grove Community Development District ("Proposed District") in a portion of the unincorporated area of central Palm Beach County which is presently used primarily for active citrus cultivation. On that same day, a copy of the Petition, along with a \$15,000.00 filing fee, was submitted to the Clerk of the Palm Beach County Board of County Commissioners.

As required by Section 190.005(1)(a), Florida Statutes, and Rule 42-1.008, Florida Administrative Code, the Petition, which was offered and received into evidence at the aforementioned local public hearing as Petitioner's Exhibit 4A, contained: the name and address of Petitioner; the name of the Proposed District; a location map of the Proposed District; a metes and bounds description of the external boundaries of the Proposed District; the land use designation of the property within the Proposed District on Palm Beach County's future land use map; a copy of the Palm Beach County Comprehensive Plan; the written consent to the establishment of the Proposed District by Adrian R.

Chapman, as Trustee of the A.R. Chapman Palm Beach Trust, Savin Groves, a Florida general partnership, and Irving Cowan, individually and as trustee, they being the other landowners whose property is included within the boundaries of the Proposed District; a designation of five persons to be the initial members of the Proposed District's board of supervisors; a statement that "[a]ll proposed district services and facilities are presently in existence;" and an economic impact statement.

By letter dated January 25, 1993, the Secretary of FLWAC certified that "all required elements, as defined in [S]ection 190.005(1)(a), Florida Statutes (F.S.), are contained in the petition," and he referred the matter to the Division of Administrative Hearings ("Division") to conduct a local public hearing on the Petition. The Secretary's letter was offered and received into evidence at the local public hearing as Petitioner's Exhibit 5.

On February 4, 1993, Petitioner filed an amendment to the Petition. The amendment, which was offered and received into evidence at the local public hearing as Petitioner's Exhibit 4B, revised that portion of the Petition which set forth the land use designation of the property within the Proposed District.

A public hearing on the Petition was held before the Palm Beach County Board of County Commissioners ("Commission") on February 16, 1993. As is reflected by Petitioner's Exhibit 9A, notice of this public hearing was published in the January 28, 1993, issue of The Palm Beach Post, a daily newspaper of general circulation in Palm Beach County. At the conclusion of the public hearing, the Commission passed a resolution supporting the establishment of the Proposed District. The resolution was offered and received into evidence at the Division-conducted local public hearing as Petitioner's Exhibit 9B.

A second amendment to the Petition was filed on February 22, 1993. This second amendment, which was offered and received into evidence at the Division-conducted local public hearing as Petitioner's Exhibit 4C, made the following revisions to the Petition:

1. The approximate size of the land area to be served by the district is 9,540 acres, rather than 9,776 acres as stated in paragraph 2 of the original Petition.
2. The attached Location Map, Exhibit "1"- Amended, is substituted for the Exhibit "1" in the original Petition.
3. The attached Legal Description, Exhibit "2"- Amended, is substituted for the Exhibit "2" in the original Petition.

(The Petition, as so further amended, is hereinafter referred to as the "Amended Petition.")

The March 19, 1993, local public hearing conducted by the Division was held at the Palm Beach County Courthouse. As is reflected by Petitioner's Exhibits 6A and 6B, respectively, notice of this Division-conducted local public hearing was published in the March 5, 1993, issue of Florida Administrative Weekly as required by Rule 42-1.010, Florida Administrative Code, and in the February 19 and 26 and March 5 and 12, 1993, issues of The Palm Beach Post as required by Section 190.005(1)(d), Florida Statutes. The notice published in The Palm Beach Post indicated that the Proposed District "contain[ed] 9776 acres more or less," but otherwise accurately described and depicted the area within the Proposed

District. Copies of this notice were served upon all persons named in the Amended Petition (i.e. prospective members of the board of supervisors of the Proposed District), all affected units of local government (i.e. Palm Beach County) and the Secretary of the Department of Community Affairs as required by Rule 42 and received into evidence as Petitioner's Exhibit 6C.

At the Division-conducted March 19, 1993, local public hearing, Petitioner presented the oral and written testimony of Charles C. Walsey, whose business address is 18230 70th Road North, Loxahatchee, Florida 33470, Howard L. Searcy, P.E., whose business address is 2000 Palm Beach Lakes Boulevard, Suite 702, West Palm Beach, Florida 33409, and Hank Fishkind, Ph.D., whose business address is 12424 Research Parkway, Suite 275, Orlando, Florida 32826.

Walsey is the Secretary of Royal Palm Citrus Management, Inc., the company which operates and manages the property owned by the Petitioner within the Proposed District. He also is a limited partner of Petitioner and its authorized agent in all matters pertaining to the instant proceeding as is reflected by Petitioner's Exhibit 3. As Petitioner's authorized agent, Walsey had ultimate responsibility for the contents of the Amended Petition.

In his oral and written testimony, Walsey identified and described the contents of various exhibits that were offered and received into evidence at the hearing, including the Amended Petition, which, he claimed, is "true and correct." (Subsection (1)(e)1. of Section 190.005, Florida Statutes, provides that, in determining whether to grant or deny a petition for the establishment of a community development district, FLWAC must consider "[w]hether all statements contained within the petition have been found to be true and correct.") Walsey also addressed the following matters in his testimony: his role in the preparation of the Amended Petition; Petitioner's compliance with the procedural requirements of Section 190.005, Florida Statutes; the action taken at the February 16, 1993, Commission-conducted public hearing; the location, boundaries, and existing and future use of the property within the Proposed District; the purpose the Proposed District will serve; the Proposed District's relationship with, and anticipated impact upon, the Indian Trail Water Control District (ITWCD); the resolution passed by the Board of Supervisors of the ITWCD supporting the creation of the Proposed District; whether the Proposed District is the "best alternative available for delivering community development services to the area that will be served by the [Proposed D]istrict," as contemplated by subsection (1)(e)4. of Section 190.005, Florida Statutes; whether the "community development services and facilities of the [Proposed D]istrict will be incompatible with the capacity and uses of the existing local and regional community development services and facilities," within the meaning of subsection (1)(e)5., Florida Statutes; whether the "area that will be served by the [Proposed D]istrict is amenable to special-district government" as required by subsection (1)(e)6. of Section 190.005, Florida Statutes; and the agreement that gives the State of Florida the option to purchase 2,300 acres of land within the Proposed District.

Howard Searcy is a Florida-licensed professional engineer who specializes in wetland, environmental and stormwater management issues. He has extensive experience in the planning, design and permitting of surface water management systems for residential, commercial, industrial, mining and agricultural projects in Florida. Searcy played a significant role in the permitting of the Proposed District's water management system. In addition, he assisted in the preparation of the Amended Petition.

In his oral and written testimony, Searcy, like Walsey, identified and described the contents of various exhibits that were offered and received into evidence, including the Amended Petition, which, he too claimed, is "true and correct." Searcy also addressed the following matters in his testimony: his role in the preparation of the Amended Petition; the location, boundaries, and existing use of the property within the Proposed District; existing infrastructure within the Proposed District; capital improvements that will be needed in the future to serve the area within the Proposed District; the purpose the Proposed District will serve; the Proposed District's relationship with, and anticipated impact upon, the ITWCD; the resolution passed by the Board of Supervisors of the ITWCD supporting the creation of the Proposed District; whether the creation of the Proposed District is "inconsistent with any applicable element or portion of the state comprehensive plan or of the [Palm Beach County C]omprehensive [P]lan," within the meaning of subsection (1)(e)2., Florida Statutes; whether the "area of land within the [P]roposed [D]istrict is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community," as contemplated by subsection (1)(e)3. of Section 190.005, Florida Statutes; whether the Proposed District is the "best alternative available for delivering community development services to the area that will be served by the [Proposed D]istrict;" whether the "community development services and facilities of the [Proposed D]istrict will be incompatible with the capacity and uses of the existing local and regional community development services and facilities;" whether the "area that will be served by the [Proposed D]istrict is amenable to special-district government;" the agreement that gives the State of Florida the option to purchase 2,300 acres of land within the Proposed District; and the permit that authorizes the utilization of this 2,300 acre area ("impoundment area") as an impoundment area for drainage and flooding purposes.

Dr. Hank Fishkind is an economist who has his own consulting and research firm. Fishkind has served as financial advisor and economic consultant to Petitioner. In this capacity, he prepared the economic impact statement that is contained in the Amended Petition. In his oral and written testimony, Fishkind summarized the contents of the economic impact statement, which, he claimed, is "true and correct" and was prepared in accordance with "all of the requirements of Section 120.54, Florida Statutes." Fishkind also addressed the following matters in his testimony: his role in the preparation of the Amended Petition; whether the creation of the Proposed District is "inconsistent with any applicable element or portion of the state comprehensive plan or of the [Palm Beach County C]omprehensive [P]lan"; whether the "area of land within the [P]roposed [D]istrict is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community;" whether the Proposed District is the "best alternative available for delivering community development services to the area that will be served by the [Proposed D]istrict;" whether the "community development services and facilities of the [Proposed D]istrict will be incompatible with the capacity and uses of the existing local and regional community development services and facilities;" whether the "area that will be served by the [Proposed D]istrict is amenable to special-district government;" and the agreement that gives the State of Florida the option to purchase the 2,300 acre impoundment area within the Proposed District.

In addition to the testimony of these witness, Petitioner also offered into evidence 16 exhibits, all of which were admitted by the Hearing Officer. These exhibits were as follows:

Petitioner's Exhibit #	Description
1.....	Written Testimony of Charles C. Walsey.
2.....	Copy of Section 190.005, Florida Statutes.
3.....	Agent's Authorization for Charles C. Walsey
4 (Composite)	
4A.....	Petition for Rulemaking to Establish a Uniform Community Development District, dated January 13, 1993.
	Exhibit 1 - Location Map.
	Exhibit 2 - Metes and Bounds Legal Description of the Proposed District.
	Exhibit 3 - Written Consent of Landowners.
	Exhibit 4 - Copy of Pages 43-LU to 44-LU of the Future Land Use Element of the Palm Beach County Comprehensive Plan Relating to the Agricultural Production Land Use Designation.
	Exhibit 5 - Economic Impact Statement.
4B.....	First Amendment to Petition for Rulemaking.
4C.....	Second Amendment to Petition for Rulemaking.
	Exhibit 1 - Amended Location Map.
	Exhibit 2 - Amended Metes and Bounds Legal Description of the Proposed District.
5.....	Letter from David K. Coburn, Secretary of FLWAC, to Sharyn L. Smith, Director of the Division, dated January 25, 1993.
6 (Composite)	
6A.....	Copy of Notice of Receipt of Petition Published in Florida Administrative Weekly on March 5, 1993.
6B.....	Proof of Publication of Notice of Division-Conducted Local Public Hearing Published in The Palm Beach Post on February 19 and 26, 1993 and March 5 and 12, 1993.
6C	Proof of Mailing of Notice of Local Public Hearing to:
	1. Palm Beach County Commission Chair, Commissioner Mary McCarty
	2. Assistant County Attorney Barbara Alterman
	3. Linda Loomis Shelley, Secretary Department of Community Affairs
	4. Charles C. Walsey
	5. Jerry Mayone
	6. Donald M. Griffith
	7. Raymond Reeves
	8. Martin J. Katz
7 (Composite)	Certified Copies of Deeds to Property of:
7A.....	Petitioner.
7B.....	Savin Groves.
7C.....	Irving Cowan.
7D.....	Adrian Chapman.
8.....	Certified Copy of Resolution of Board of Supervisors of ITWCD in Support of Petition.
9 (Composite)	
9A.....	Certified Copy of Notice of Commission-Conducted Public Hearing.

- 9B.....Certified Copy of Palm Beach County Commission Resolution No. R-93-236 in Support of Petition.
- 10.....Copy of Section 823.14, Florida Statutes, the "Florida Right to Farm Act."
- 11.....Written Testimony of Howard Searcy, P.E.
- 12.....Certified Copy of the Palm Beach County Comprehensive Plan.
- 13.....Map Showing Location of the Proposed District within the ITWCD.
- 14.....Aerial Map of the Proposed District's Boundaries.
- 15.....Property Ownership Map/Map of Existing Facilities.
- 16.....Written Testimony of Dr. Hank Fishkind.

The Hearing Officer also received oral comments from three members of the public: Barbara Alterman, whose business address is 301 North Olive Avenue, West Palm Beach, Florida 33401; Rose Durando of 10308 Heritage Farms, Lake Worth, Florida 33467; and Elaine Usherson of 44 East Court, Royal Palm Beach, Florida 33411.

Alterman is an Assistant County Attorney with the Palm Beach County Attorney's Office. She appeared at the hearing on behalf of the County and, pursuant to Section 190.005(1)(b), Florida Statutes, presented the Commission's resolution of support of the Petition. In presenting this resolution, she stated that "Palm Beach County encourages the continuance and maintenance of agriculture within the county, and that part of the basis of adopting this resolution was . . . the representation of the [P]etitioner that . . . agriculture would be continued and maintained."

Durando stated that she supports the intention of the Petitioner and the other landowners to continue to use their land for agricultural purposes. She indicated, however, that she would be more comfortable with the establishment of the Proposed District if it did not include the impoundment area, which, she pointed out, the State of Florida "has been trying to buy" with CARL funds "for years." She further indicated that she had been told by Colonel Dan Dunford of the Florida Game and Fresh Water Fish Commission that the State would soon be closing on the purchase of the impoundment area and that "in no case would [the impoundment area] be used as a retention area for private purposes." According to Durando, it would be improper for the impoundment area, if purchased by the State, to be used to alleviate "a drainage problem for private purposes." In her comments Durando also noted that "the legal ads [giving notice of the Division-conducted local public hearing] did say there w[ere] 9,776 acres within the Proposed District," rather than 9,450 acres as asserted in the Amended Petition, and she questioned whether this "discrepancy" was of any legal significance. Durando concluded her remarks by asking whether the Proposed District needed legislative approval.

Usherson expressed concern over the creation of the Proposed District because she believed that it would result in undesirable development and growth and loss of agricultural land within the Proposed District. She questioned the need for the establishment of the Proposed District if, in fact, the land is going to remain in agricultural production.

At the conclusion of the evidentiary portion of the hearing on March 19, 1993, on the record, the Hearing Officer advised Petitioner of its right to file a proposed Hearing Officer's report. The Hearing Officer, on the record, also established a deadline for the filing of such a report-- 30 days following the Hearing Officer's receipt of the transcript of the local public hearing.

No written statements in support or opposition to the Amended Petition were filed within ten days after the close of the local public hearing. 2/ On March 31, 1993, however, the Hearing Officer received a letter from Usherson, the body of which read as follows:

On March 19, 1993 I attended the above-mentioned hearing. I expressed my concerns with this proposed Community Development District. (C.D.C.)

The two amendments that were addressed at the hearing were not listed in the Notice of Local Hearing case No. 93-0539, published in the Palm Beach Post on Feb. 19, 26, March 5 and 12, 1993. (Ad. No. 601842).

Therefore, the Legal Ad. did not afford me the opportunity to research the amendments.

DISCREPANCIES in the above-mention[ed] Ad;

1. There is about 320 acre difference from the published acreage of 9776 acres.
2. There was a change of boundaries from the published boundaries.

I am concerned with the legality of the Ad. and or the Local Hearing. I understand that a notice of a Hearing is to fully inform the concerned public. This ad is inconsistent with that process.

I respectfully request a new hearing before deciding the fate of this land at this time.

On April 1, 1993, the Hearing Officer issued an order notifying the parties that he had received Usherson's letter. (A copy of the letter was attached to the order). In his order, the Hearing Officer directed Petitioner to file a response to the letter no later than the deadline for the filing of its proposed Hearing Officer's report.

Petitioner filed its response to the letter on April 9, 1993. In its response, Petitioner advanced the following argument:

For the reasons discussed below, Ms. Usherson's objections are unfounded and/or have no legal consequence.

1. The Notice of Local Hearing as published in this case fully complied with the requirements of Section 190.005(1)(d), Florida Statutes, 3/ and Rule 42-1.011, Florida Administrative Code.
2. The Notice of Local Hearing fully satisfied the purpose of local publication, namely to put the public on notice that a public hearing will be held, and the general

subject of that hearing. It is the function of the hearing, not the Notice . . . to fully explore the totality of the petition and the issues which relate to it. . . .

3. Of the two petition amendments duly filed with the Florida Land and Water Adjudicatory Commission, one merely corrected a partial error in the Comprehensive Plan land use designation reflected for a portion of the involved property, and the other corrected a boundary error in the original petition, an error which was not repeated on the boundary map published in the Notice. Therefore, these amendments did not have the substantive impact on the public consideration of this matter. In any event, the Notice clearly stated that the full text of the petition could be reviewed, copied, or procured from Petitioner's attorney. . . .

4. The statute, while not requiring acreage information in the Notice, does require "a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district." Contrary to Ms. Usherson's allegations, the map in the Notice is completely accurate. The legal description is also completely accurate except for its gratuitous estimate of the number of acres, and, even there, the Notice stated a greater number of acres than is actually estimated to be the case. This therefore could not in any way prejudice a person's ability to determine whether or not he/she would be impacted by the proposed district.

5. The Petitioner rejects Ms. Usherson's assertion that there was a change of boundaries from the published boundaries. As stated in paragraph 3, above, the legal description and the map in the Notice of Local Hearing accurately describe and depict the boundaries of the proposed district.

Petitioner's argument is a persuasive one. Accordingly, Usherson's request that the Division conduct a second local public hearing in this case is hereby DENIED.

On May 10, 1993, Petitioner filed a Proposed Hearing Officer's Report. The proposed findings and conclusions set forth in this pleading have been accepted and incorporated in substance in this Hearing Officer's Report.

FINDINGS OF FACT

Based upon the evidence and testimony adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. The Proposed District will be located in an unincorporated area of central Palm Beach County within the boundaries set forth in the Amended Petition.

2. It will encompass approximately 9,450 acres of land, including the 2,300 acre impoundment area that the State of Florida has an option to purchase.

3. Irving Cowan, individually and as Trustee, Adrian R. Chapman, as Trustee of the A.R. Chapman Palm Beach Groves Trust, Marvin S. Savin and Elaine S. Savin, as general partners of Savin Groves, a Florida general partnership, and Petitioner, a Florida limited partnership, presently own 100 percent of the land to be included within the Proposed District.

4. The property within the District is designated in the Palm Beach County Comprehensive Plan Land Use Element as either Agricultural Production or Rural Residential

5. The land within the Proposed District is located entirely within the boundaries of an inactive unit of development of the ITWCD. Consequently, the owners of the land neither pay taxes to, nor receive benefits from, the ITWCD.

6. Most of the land is currently used for growing citrus fruit. Those areas which do not have citrus groves are used to support grove operations. It is the present intent of the landowners to continue to use the land for such agricultural purposes.

7. The purposes and functions of the ITWCD and the Proposed District will be significantly different. The ITWCD is primarily concerned with providing drainage to an urbanizing, residential area with a "one By contrast, the Proposed District will operate a "two-way" drainage and irrigation system designed for the benefit of active agricultural production.

8. The ITWCD and the Proposed District will be able to operate independently within their respective areas of responsibility.

9. The creation of the Proposed District will have no adverse impact upon the ITWCD.

10. On July 27, 1992, the Board of Supervisors of the ITWCD unanimously adopted a Resolution in support of the establishment of the Proposed District.

11. The existing infrastructure within the Proposed District consists of roadways, drainage and irrigation facilities, pumping stations, and culverts connecting with the L District. There are no existing water mains or existing sewer facilities.

12. Among the potential improvements to the existing infrastructure which could be undertaken by the Proposed District are the construction of central pumping stations to replace the many individual pumps operated by the several property owners within the Proposed District, and the replacement of the outfall

structures into the L-8 canal. In addition, the Proposed District could engage in roadway construction and surfacing of the main fruit hauling routes within the District. 4/

13. The Proposed District provides the best possible mechanism for financing and implementing these improvements.

14. Of the various alternatives in providing infrastructure services for the community, a community development district is superior to any other alternative, including a municipal service taxing unit, the County or a homeowners' association. This is because neither the County nor a municipal service taxing unit would be as responsive to the Proposed District's landowners as would be the Proposed District and because a homeowners' association would be hindered by reason of its inability to issue bonds or effectively collect property assessments.

15. Centralized ownership, management and control of the Proposed District's infrastructure is more efficient and less costly than the current arrangement. Consequently, the establishment of the Proposed District will increase the likelihood that the land within its boundaries will continue to be used for agricultural purposes.

16. The District will be empowered to issue bonds, levy ad valorem taxes and special assessments, and impose user fees and charges. To defray the costs of operation and maintenance of the infrastructure, the District will utilize a variety of taxes, assessments and user charges tailored to the service involved so as to minimize costs while insuring that only those who receive the benefits from a facility pay the costs involved.

Ultimate Findings

17. All statements contained in the Amended Petition, including those contained in the economic impact statement, are true and correct.

18. The creation of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or of the Palm Beach County Comprehensive Plan.

19. The land within the Proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as a functional interrelated community.

20. The Proposed District is the best alternative for delivering community development services and facilities to the area that will be served by the District.

21. The community development services and facilities of the Proposed District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

22. The area that will be served by the Proposed District is amenable to separate special-district government.

CONCLUSIONS OF LAW

23. "The exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more is pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district." Section 190.005(1), Fla. Stat.

24. Before filing such a petition, the petitioner must, as did Petitioner in the instant case, "[p]ay a filing fee of \$15,000 to the county and [where applicable] to the municipality the boundaries of which are contiguous with, or contain all or a portion of, the land within the external boundaries of the district." Section 190.005(1)(b), Fla. Stat.

25. A duly advertised local public hearing on the petition must be "conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act." Section 190.005(1)(d), Fla. Stat. Such a hearing was conducted on the Amended Petition in the instant case.

26. Following the conclusion of the local public hearing and receipt of the transcript of the hearing, the hearing officer is responsible for preparing a written report of "his findings and conclusions," which he then must forward, along with the entire record, to FLWAC.

27. FLWAC thereupon must

consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments as provided in paragraph (c) [of Section 190.005(1), Florida Statutes], and the following factors and make a determination to grant or deny a petition for the establishment of a community development district:

1. Whether all statements contained within the petition have been found to be true and correct.
2. Whether the creation of the district is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.
3. Whether the area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.
4. Whether the district is the best alternative available for delivering community development services and facilities to the area that will be served by the district.

5. Whether the community development services and facilities of the district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

6. Whether the area that will be served by the district is amenable to separate special-district government.

Section 190.005(1)(e), Fla. Stat.

28. It appears, upon examination of the entire record, that the foregoing statutory criteria for establishment of a community development district have been met in the instant case.

29. Accordingly, Petitioner's Amended Petition to establish the Cypress Grove Community Development District by rulemaking should be granted.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that FLWAC enter a final order granting Petitioner's Amended Petition to establish the Cypress Grove Community Development District by rulemaking pursuant to Chapter 190, Florida Statutes.

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 16th day of June, 1993.

STUART M. LERNER
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 1993.

ENDNOTES

1/ This Report is prepared pursuant to Rule 42-1.013, Florida Administrative Code, which provides as follows:

Following termination of the local public hearing and receipt of a transcript of the hearing, the Hearing Officer shall prepare a written report of his findings and conclusions and forward same, along with the record, to the Secretary of the Commission. The report and the record shall:

- (1) Identify and summarize the evidence and oral and written testimony, indicating the particular provisions of Section 190.005(1)(c) [sic] to which such evidence or testimony is material or related.
- (2) Identify, list and attach all documentary evidence.
- (3) Identify, summarize and attach any written orders rendered in any related proceedings.
- (4) List the names and addresses of all persons who present testimony, oral or written at the hearing.
- (5) Conclude whether the evidence supports or meets each of the criteria listed in Section 190.005(1)(c) [sic].

2/ Rule 42-1.012, Florida Administrative Code, provides that any written statements in support of or in opposition to a petition seeking the establishment of a community development district must be filed no later than ten days following the close of the local public hearing.

3/ Section 190.005(1)(d), Florida Statutes, provides in pertinent part as follows:

The petitioner shall cause a notice of hearing to be published in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published a least 5 days a week, unless the only newspaper in the community is published fewer than 5 days a week.

4/ The cost of any such improvements will be borne by Petitioner and the other landowners who have joined in the Amended Petition through the issuance of revenue bonds and the assessment of benefit taxes and user fees. Therefore, only those who receive the benefit of the improvements will pay the costs involved.

COPIES FURNISHED:

David K. Coburn, Secretary
Florida Land and Water
Adjudicatory Commission
Executive Office of the Governor
Carlton Building
Tallahassee, Florida 32301

Ronald K. Kolins, Esquire
Moyle, Flanigan, Katz,
FitzGerald & Sheehan
Post Office Box 3888
West Palm Beach, Florida 33402

Alfred O. Bragg, III, Esquire
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100

Robin Hassler
Assistant General Counsel
Executive Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32301

Elaine Usherson
22 East Court
Royal Palm Beach, Florida 33411

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period of time within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.