

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Re: Petition to Contract)
Tampa Palms Community) CASE NO. 94-6665
Development District)
_____)

HEARING OFFICER'S REPORT AND CONCLUSIONS

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William F. Quattlebaum, held a formal public hearing in the above-styled case on April 26, 1995, in Tampa, Florida.

APPEARANCES

For Petitioner: Michael J. Glazer, Esquire
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Vincent L. Nuccio, Jr.
Macfarlane, Ausley, Ferguson & McMullen
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STATEMENT OF THE ISSUE

Whether the petition of Tampa Palms Community Development District meets the applicable requirements of Section 190.005(1), Florida Statutes.

PRELIMINARY STATEMENT

This proceeding was initiated when Tampa Palms Community Development District (TPCDD) filed a petition with the Secretary of the Florida Land and Water Adjudicatory Commission (FLWAC) on October 31, 1994, seeking to contract by rule the existing Tampa Palms Community Development District. The Secretary forwarded the petition to the Division of Administrative Hearings which assigned a Hearing Officer to conduct the required public hearing and render this report.

Appropriate notice of the public hearing was published in the Tampa Tribune, a daily newspaper in Tampa, Florida, and in the Florida Administrative Weekly as required by Rule 42-1.010(1)(b), Florida Administrative Code. A copy of such notice was served upon the Department of Community Affairs as required by Rule 42-1.011, Florida Administrative Code.

This matter was transferred to the undersigned Hearing Officer on April 24, 1995.

At the public hearing, TPCDD presented the testimony of Gary Moyer, Arthur Merritt, Toxey A. Hall, Denise McCabe, Charles Cook and William Rizzetta. Their names and addresses are attached to this Report as Appendix A and a summary of their testimony is set forth herein. The bound deposition testimony of the witnesses was admitted as Petitioner's Exhibit A.

Petitioner's Exhibits 1-28 were admitted into the record without objection. A list of the exhibits in evidence is attached to this Report as Appendix B. Exhibit 1 is the Tampa Palms Community Development District Petition to Contract and attached exhibits. Exhibits numbered 2-27 were bound and admitted as Petitioner's Exhibit B. Exhibit number 28 is case law and is inserted into the bound volume following exhibit 27.

No persons, other than the Petitioner's witnesses, testified in this cause or entered appearances at the hearing. There is no evidence contrary to that presented at the hearing.

The record of this matter remained open pursuant to Rule 42-1.012(3), Florida Administrative Code, to permit the submission by any affected or interested persons of written statements concerning the petition. No public statements were filed.

A proposed report was submitted by the Petitioner. The proposed findings of fact set forth therein are accepted as modified and incorporated in this Report.

This Report is submitted to the FLWAC pursuant to Sections 190.005(1)(e) and (f), Florida Statutes, and Rule 42-1.013, Florida Administrative Code.

It is noted that the sole purpose of this proceeding is amassing the record for the contraction of the CDD. Any other necessary permits for construction or planning purposes are outside the scope of this proceeding.

FINDINGS OF FACT

1. On October 31, 1994, the Tampa Palms Community Development District (TPCDD) filed a petition with the Secretary of the Florida Land and Water Adjudicatory Commission (FLWAC) seeking to contract by rule the existing Tampa Palms Community Development District.

2. After receiving the petition, the Secretary of FLWAC reviewed the petition and forwarded it to the Division of Administrative Hearings for further proceedings. By transmittal letter, the Secretary certified that the required elements identified in Section 190.005(1)(a), Florida Statutes, are contained in the petition.

3. Appropriate notice of the petition and the Public Hearing was published in Volume 21, No. 13 of the Florida Administrative Weekly (March 31, 1995) including a general description of the petition, affected lands, and economic impact of the contraction proposal.

4. Copies of the Notice of Public Hearing were provided by the Petitioner to the Mayor of Tampa, the Secretary of the Department of Community Affairs (DCA) and the TPCDD Board of Supervisors.

5. Pursuant to Section 190.005(1)(b), Florida Statutes, appropriate notice of the public hearing was published in the Tampa Tribune, a newspaper of general paid circulation in Hillsborough County and of general interest and readership in the community. The notice was published on March 28, and April 4, 11, and 18, 1995. The notice complies with the requirements of the statute. The Petitioner provided copies of the proof of publication within the documents filed at hearing.

6. The petition was reviewed by the DCA, which expressed no objection to the proposal.

7. The proposal was reviewed by the City of Tampa, which expressed no objection to the proposal.

8. A copy of the petition was provided to the Tampa Bay Regional Planning Council which expressed no objection to the proposal.

9. At the Public Hearing on this matter, each witness was appropriately sworn and adopted the prepared testimony given under oath.

10. At the close of the Petitioner's presentation, the Hearing Officer invited public comment. No members of the general public expressed opposition to the proposal either during or after the hearing.

11. The TPCDD was established on June 13, 1982 by Chapter 42C-1, Florida Administrative Code. The TPCDD is generally located southwest of Interstate 75 and County Road 581.

12. The TPCDD presently consists of approximately 5,311 acres located in the City of Tampa, Hillsborough County, Florida.

13. In the Petition for Contraction of the Tampa Palms Community Development District at issue in this proceeding, the TPCDD now seeks to remove a parcel of approximately 1,202 acres (contraction parcel) from the 5,311 within the TPCDD. The TPCDD will be reduced to approximately 4,109 acres.

14. The contraction parcel is also within the boundaries of the Tampa Palms Open Space and Transportation Community Development District (TPOSTCDD).

15. The TPOSTCDD was established by Chapter 42J-1, Florida Administrative Code. The TPOSTCDD consists of approximately 5200 acres generally located on either side of Interstate 75 where it intersects County Road 581.

16. The contraction parcel will remain within the TPOSTCDD. Lennar Homes, Inc., owns approximately 1,166.5 acres of the contraction parcel.

SUMMARIZATION OF TESTIMONY AND EVIDENCE

Gary L. Moyer

17. Gary L. Moyer is a manager of special purpose taxing districts. Mr. Moyer was accepted as an expert in community development district management and other forms of special district management.

18. Mr. Moyer is the manager of the TPCDD and has served in that capacity since the 1985. He is authorized to speak on behalf of the TPCDD.

19. Mr. Moyer is also the manager of the TPOSTCDD, has served in that capacity since the 1994, and is authorized to speak on behalf of the TPOSTCDD.

20. In 1980, Mr. Moyer was involved in the drafting of Chapter 190, Florida Statutes.

21. Mr. Moyer described a community development district as a unit of special purpose government vested with limited powers to provide for construction and maintenance of infrastructure intended to service property within the district. Such infrastructure commonly includes water management, water supply, sewer, roads, bridges and street lighting. Such infrastructure may also include parks and recreation, fire services, security, mosquito control, schools, and waste collection and disposal.

22. Community development districts are subject to zoning and land use regulation and to various "checks and balances" similar to local city and county governments.

23. Districts created pursuant to Chapter 80-407, Laws of Florida, are granted such powers without further action by local general purpose government.

24. Mr. Moyer identified the purpose of the petition as the removal of the contraction parcel from the TPCDD, leaving it solely within the TPOSTCDD.

25. Mr. Moyer described the current state of the TPCDD. The district is generally divided into four parcels known as Areas 1, 2, 3 and 4.

26. Areas 1 and 2 are a heavily developed residential community known as "Tampa Palms." About 6,000 reside in this community. Construction of TPCDD facilities in Areas 1 and 2 is complete.

27. TPCDD provides water management facilities, parks and recreation facilities, security services and landscaped portions of public roads.

28. Areas 3 and 4 are undeveloped land. The contraction parcel consists of Area 4.

29. According to Mr. Moyer, the history and rationale for the inclusion of the contraction parcel in overlapping community development districts is as follows:

30. The TPCDD was formed in 1982. In 1985, a developer acquired the land within the TPCDD as well as some additional adjoining land. In 1990, the developer apparently realized that control over the TPCDD would soon transfer to an elected Board of Supervisors. The developer formed the TPOSTCDD to include the undeveloped portions of the TPCDD and the additional adjoining land, effectively retaining control over the undeveloped part of the original district. The developer is no longer associated with the project. There is no apparent reason for maintaining overlapping jurisdiction over the contraction parcel. Another developer intends to build within Area 4 and adjacent property, both within the TPOSTCDD.

31. Mr. Moyer identified and described the petition and all exhibits attached thereto. He identified the documents providing the specific approval of the TPCDD and the TPOSTCDD governing bodies to the petition. Other documents included within the attachments to the petition identify the members of the governing bodies.

32. Subsequent to filing the petition, the Petitioner discovered that a parcel of approximately two acres is owned by the City of Tampa. The City was notified of the petition and has expressed no objection to the contraction. Although the failure of the Petitioner to obtain written consent by the City of

Tampa is contrary to the requirements set forth by statute, it appears to be irrelevant, given the lack of objection by the city.

33. Other than the City of Tampa, all the owners of the land within the contraction parcel (Lennar Homes, Inc., United Services Automobile Association, 75/275 Corporation, GTE-Florida, Inc., Tampa Palms Community Development District and St. James United Methodist Church of Tampa Palms) have provided written consent to the petition.

34. Mr. Moyer opines that with the correction of the legal description identified herein and the modification related to the City of Tampa parcel which was not identified in the petition, the statements set forth in the petition are true and correct.

35. Lennar Homes, Inc., intends to develop Area 4 and adjacent property. Mr. Moyer opined that having the contraction parcel in two community development districts is inefficient and results in needless duplication. Approval of this petition would be consistent with State Comprehensive Plan goals related to governmental efficiency. There is no evidence that approval of the petition would be inconsistent with any other portion of the State Comprehensive Plan.

36. Following contraction, the TPCDD remains of sufficient size, compactness, and contiguity to be developable as one functionally interrelated community. Areas 1 and 2 already constitute a functional interrelated community which receives services from the TPCDD.

37. Contraction of the TPCDD will eliminate overlapping jurisdictions and provides the best alternative available for delivering community development services and facilities to the area.

38. There is no negative impact on the TPCDD by removal of the contraction district. Outstanding bond indebtedness is being repaid through assessments on the existing development in Areas 1 and 2. There is no development in, and no services are being delivered to, the contraction parcel by the TPCDD. None of the land within the contraction parcel is obligated by any TPCDD outstanding bond debt.

39. There is no evidence to suggest that contraction of the TPCDD will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

40. Even after contraction, the TPCDD remains amenable to separate special-district government.

41. There being no evidence to the contrary, Mr. Moyer's testimony is accepted as being credible on these issues.

Arthur Merritt

42. Arthur W. Merritt is a professional land surveyor and was accepted as an expert in land surveying.

43. Mr. Merritt specifically identified Exhibits A and B to the petition. Exhibit A is a description of the external boundary of the TPCDD after contraction. Exhibit B is a description of the contraction parcel.

44. At the hearing, Mr. Merritt provided Revised Exhibits A and B which correct descriptions in the original exhibits. The corrected versions are found to be accurate.

45. Mr. Merritt also described Exhibit C-2 to the petition which is an ownership and encumbrance report. Mr. Merritt identified the two acre parcel owned by the City of Tampa and referenced elsewhere herein. The city parcel is the cause of the Revised Exhibits A and B.

46. There being no evidence to the contrary, Mr. Merritt's testimony is accepted as being credible on these issues.

Toxey A. Hall

47. Toxey A. Hall is Vice-President and Senior Project Engineer of Heidt & Associates. Mr. Hall was accepted as an expert in civil engineering.

48. Mr. Hall was involved in the preparation of petition exhibits related to master water and sewer plans for Areas 1 and 2. Mr. Hall is familiar with the petition and believes that, with the corrections noted herein, the petition is true and correct.

49. Mr. Hall is familiar with the City of Tampa Comprehensive Plan as it relates to civil engineering services. He is not aware of any provision in the plan which would be applicable to the Petition for Contraction, and as such, believes that the granting of this petition would not be inconsistent with the local plan.

50. Mr. Hall opined that following contraction, the TPCDD remains of sufficient size, compactness, and contiguity to be developable as one functionally interrelated community, especially since Areas 1 and 2 already constitute a functional interrelated community which receives services from the TPCDD.

51. Mr. Hall also opined that from an engineering perspective with regard to future development of Area 4, elimination of the overlapping jurisdictions provides the best alternative available for delivering community development services and facilities.

52. There should be no impact on existing services related to contraction of the TPCDD. Services currently being provided will continue to be provided without alteration.

53. Even after contraction, the TPCDD which is developed and functioning will remain amenable to separate special-district government.

54. There being no evidence to the contrary, Mr. Hall's testimony is accepted as being credible on these issues.

Denise McCabe

55. Denise H. McCabe is a certified planner and member of the American Institute of Certified Planners. She is employed as a planner and legal assistant in the real estate and environmental law department of Johnson, Blakely, Pope, Bokker, Ruppell and Burns, P.A. Ms. McCabe is familiar with Chapter 190, Florida Statutes, the State Comprehensive Plan, The Tampa Bay

Regional Planning Council Comprehensive Regional Policy Plan, and the City of Tampa Comprehensive Plan.

56. Ms. McCabe opined that with the corrections set forth elsewhere herein, the statements within the Petition for Contraction are true and correct.

57. Ms. McCabe reviewed the petition and applicable portions of the State Comprehensive Plan for inconsistencies and found none. Specifically, she examined Goals 16, 18, 20, 21 and 26 of the State Plan.

58. State Comprehensive Plan Goal 16 relates to environmentally acceptable land use and growth. The property at issue in this proceeding is an approved development of regional impact ("DRI") and Areas 1 and 2 are substantially developed. The post-contraction TPCDD will benefit from the infrastructure investment already in place. The TPCDD remains an effective means of financing and maintaining infrastructure.

59. State Comprehensive Plan Goal 18 is directed at existing and future public facilities. Relevant policies under this goal include maximization of existing facilities, allocation of costs based on benefit, encouraging local government financial self sufficiency, implementation of innovative and fiscally sound techniques for financing public facilities, coordinating governmental capital improvement plans, and using stable, growth-responsive revenue sources. The petition is consistent with these policies through elimination of overlap between the TPCDD and the TPOSTCDD and by allocating costs fairly between those who benefit from the installation of public facilities.

60. State Comprehensive Plan Goal 20 relates to transportation. The districts provide a mechanism for construction of transportation infrastructure. Contraction of the TPCDD should have no impact on provision of transportation infrastructure to the contraction parcel.

61. State Comprehensive Plan Goal 21 relates to governmental efficiency. The contraction of the TPCDD eliminates overlapping jurisdiction and potential duplication between the two districts. The contraction also facilitates efficient TPOSTCDD provision of infrastructure to the contraction parcel.

62. State Comprehensive Plan Goal 26 relates to plan implementation. Other than by the elimination of overlapping jurisdiction, there is no impact on plan implementation created by the approval of this petition.

63. Ms. McCabe reviewed the petition and applicable portions of the Tampa Comprehensive Plan as amended, specifically provisions related to future land use, storm water management, transportation, recreation, capital improvements and interlocal coordination. Ms. McCabe concluded that approval of the petition is not inconsistent with the Tampa Comprehensive Plan.

64. Ms. McCabe also reviewed the petition and relevant portions of the Tampa Bay Regional Planning Council Comprehensive Regional Policy Plan. She found nothing in the Petition for Contraction to be inconsistent with the plan.

65. Ms. McCabe defined "functional interrelated community" to be a combination of people, activities and land uses within a specific geographic location, organized in a manner to allow access to activities which are necessary to day-to-day living. Ms. McCabe opined that the existing TPCDD after contraction is of sufficient size, compactness and contiguity to remain developable as a functional interrelated community.

66. The proposed contraction provides the best available means of delivering community development services and facilities to the areas served by the districts. Contraction will eliminate overlapping jurisdiction and the potential for incompatible services being offered within the same area. The TPCDD after contraction remains amenable to special district government.

67. There being no evidence to the contrary, Ms. McCabe's testimony is accepted as being credible on these issues.

Charles Cook

68. Charles Cook is the Vice-President of the land division of Lennar Homes, Inc. Lennar Homes is primarily engaged in home building, real estate investment and financial services in Florida, Texas and Arizona. Mr. Cook is authorized to speak on behalf of Lennar Homes.

69. The Petition for Contraction was filed by the TPCDD at the request of Lennar Homes.

70. Lennar Homes owns 1,166.5 acres in the contraction parcel and approximately 1,033 acres of adjacent land.

71. Lennar Homes intends to construct approximately 484 single family homes, 701 multifamily units and 25 acres of commercial development in Area 4.

72. The infrastructure of Area 4 is being developed by Lennar Homes and TPOSTCDD, which has already approved and is obtaining financing for approximately \$31 million of infrastructure construction.

73. TPOSTCDD will develop all of the collector roads, street lighting, potable water distribution facilities, sewer facilities, landscaping, parks and recreation facilities, maintenance, and security facilities for Area 4. TPCDD is not involved in this development.

74. TPCDD provides no services to Lennar Homes and receives no contribution through taxes or assessments from Lennar Homes.

75. Absent removal of Area 4 from the TPCDD, Lennar Homes and in turn, homeowners in Area 4, are potentially liable for both TPCDD and TPOSTCDD assessments on the increased value of property even though no services are received from the TPCDD.

76. There being no evidence to the contrary, Mr. Cook's testimony is accepted as being credible on these issues.

William J. Rizzetta

77. William J. Rizzetta is president of Rizzetta & Company, a financial consulting firm which provides services to the real estate industry including community development districts. Mr. Rizzetta's firm conducts economic and financial feasibility studies and prepares economic impact statements for districts. Mr. Rizzetta also manages several districts. He was accepted as an expert in preparation of economic analysis for community development districts.

78. Although the 1981 statute under which the TPCDD was organized does not require preparation of an economic impact statement (as do later versions of

Section 190.005, Florida Statutes) the Petitioner offered Mr. Rizzetta's expertise related to the economic impact of the Petition for Contraction and referencing the statutory requirements for such statements.

79. Mr. Rizzetta considered the cost or economic benefit to all persons directly affected by approval of the Petition for Contraction. Currently, the TPCDD effectively consists of the developed Areas 1 and 2. Bonds issued for infrastructure improvements are being repaid by special assessments against Area 1 and 2 property owners because they are the people who benefit from such improvements. Areas 3 and 4 consist of undeveloped agricultural lands, and contribute minimally through ad valorem assessments.

80. The primary landowner within the contraction parcel also owns land within the TPOSTCDD and intends to provide public infrastructure required to develop the property as a functional interrelated community. Approval of the Petition for Contraction will permit the developer to provide infrastructure through the TPOSTCDD financing and management mechanism. Absent approval of the petition, the contraction parcel will remain in both the TPCDD and the TPOSTCDD and subject the property owner to the potential for dual taxation by the districts. This is an inefficient mechanism for providing infrastructure improvements and from an economic standpoint leads to potential confusion regarding taxation and related matters.

81. Approval of the Petition to Contract will have no adverse impact on competition or the open market for employment.

82. Mr. Rizzetta opined that from his perspective as an economic analyst, the area to be served by the TPCDD after contraction remains amenable to separate special district government.

83. There being no evidence to the contrary, Mr. Rizzetta's testimony is accepted as being credible on these issues. Mr. Rizzetta's economic analysis meets the requirements of Rule 42-1.008, Florida Administrative Code.

CONCLUSIONS

84. Having considered the entire record in this cause, and without evidence to the contrary, it is concluded that:

85. Establishment of community development districts is governed by Chapter 190, Florida Statutes. Section 190.004(2), Florida Statutes (1993) provides as follows:

This Act does not affect any community development district or other special district existing on June 29, 1984; and existing community development districts will continue to be subject to the provisions of Chapter 80-407, Laws of Florida.

86. The TPCDD was established in 1982 and is subject to Chapter 80-407, Laws of Florida, as codified in Chapter 190, Florida Statutes (1981).

87. Section 190.046(1), Florida Statutes, (1981) provides for the filing of a petition for contraction of a community development district under the provisions of Section 190.005.

88. The Petition to Contract Tampa Palms Community Development District contains all the elements required by law as set forth at Section 190.005(1)(c), Florida Statutes, (1981) and which provides as follows:

The Florida Land and Water Adjudicatory Commission shall consider the record of the hearing 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 functionally 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 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.

89. All statements contained within the petition have been found to be true and correct.

90. The contraction of the TPCDD is not inconsistent with applicable elements or portions of the state comprehensive plan and the effective local government comprehensive plans.

91. The area of land within the TPCDD after contraction is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

92. The TPCDD after contraction is the best alternative available for delivering community development services and facilities to the area that will be served by the TPCDD.

93. The TPCDD after contraction will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

94. The tract of land that will be served by the TPCDD after contraction is amenable to separate special-district government, in accordance with the provisions of Chapter 190, Florida Statutes.

95. Section 190.005(1)(a)2. requires that the petition shall contain the written consent of 100 percent of the owners of property within the affected area. The TPCDD Petition for Contraction does not contain the written consent

of the City of Tampa, which owns two of the approximately 1,202 acres within the affected parcel. The City of Tampa was provided notice of, and has expressed no objection to, the petition. Further, under these circumstances, the written consent of the city is not necessary. Zedeck v. Indian Trace Community Development District, 428 So.2d 647 (Fla. 1983).

DONE and ISSUED this 12th day of June, 1995, in Tallahassee, Florida.

WILLIAM F. QUATTLEBAUM
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of June, 1995.

COPIES FURNISHED:

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Appendix "A"

NAMES AND ADDRESSES OF WITNESSES

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Toxey A. Hall
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Altamonte Springs, Florida 32714

William Rizzetta
3550 Bushwood Park Drive, Suite 135
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Appendix "B"

LIST OF DOCUMENTARY EVIDENCE

- Exhibit 1: The Tampa Palms Community Development District
Petition to Contract and attached exhibits
- Exhibit 2: Gary Moyer's CDD list
- Exhibit 3: Chapter 42C-1, Florida Administrative Code
- Exhibit 4: Chapter 42J-1, Florida Administrative Code
- Exhibit 5: Chapter 190, Florida Statutes (1981)
- Exhibit 6: Chapter 190, Florida Statutes (1993)
- Exhibit 7: The November 4, 1994 Agreement between TPCDD, Lennar
Homes, Inc., and TPOSTCDD
- Exhibit 8: Minutes of the November 18, 1994 TPOSTCDD meeting
- Exhibit 9: March 21, 1995 TPOSTCDD Resolution 95-22
- Exhibit 10: April 17, 1995 Letter from City of Tampa to
Bricklemeyer, Smolker & Bolves
- Exhibit 11: Current TPCDD Board of Supervisors
- Exhibit 12: October 31, 1994 Letter from Vincent L. Nuccio to
FLWAC
- Exhibit 13: November 11, 1994 Notice of Receipt of petition by
FLWAC
- Exhibit 14: November 28, 1994 Letter from FLWAC to DOAH
- Exhibit 15: Letters of notification regarding public hearing
- Exhibit 16: Vol. 21, No. 13, Florida Administrative Weekly
(March 31, 1995)

Exhibit 17: Tampa Tribune advertisement and proof of publication
Exhibit 18: January 11, 1995 DOAH Notice of Hearing
Exhibit 19: November 28, 1994 Letter from FLWAC to DCA
Exhibit 20: December 15, 1994 Letter from DCA to FLWAC
Exhibit 21: December 2, 1994 Letter from FLWAC to TBRPC
Exhibit 22: Chapter 187, Florida Statutes
Exhibit 23: Revised Exhibit A to the petition
Exhibit 24: Revised Exhibit B to the petition
Exhibit 25: Denise McCabe Resume
Exhibit 26: Rizzetta & Company information
Exhibit 27: Chapter 42-1, Florida Administrative Code
Exhibit 28: Zedeck v. Indian Trace Com. Development Dist.,
428 So.2d 647 (Fla. 1983)