

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: A Rule to Establish            )  
the Lakewood Ranch Community        )  
Development District 2.                )     DOAH CASE NO. 94-7203  
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REPORT OF FINDINGS AND CONCLUSIONS

A local public hearing in this proceeding was held before William R. Cave, Hearing Officer, Division of Administrative Hearings, on February 23, 1995, at the City Council Chambers, City Hall, 500 15th Street West, Bradenton, Florida. The hearing was conducted pursuant to Section 190.005, Florida Statutes, for the purpose of taking testimony and public comment and receiving exhibits on the Petition of SMR Communities (Petitioner) to establish the Lakewood Ranch Community Development District 2 (District).

This Report of Findings and Conclusions (report) is prepared and submitted to the Florida Land and Water Adjudicatory Commission (Commission) pursuant to Section 190.005, Florida Statutes, and Rule 42-1.013, Florida Administrative Code.

STATEMENT OF THE ISSUE

Does the Petition to establish the Lakewood Ranch Community Development District 2 meet the criteria set forth in Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code?

APPEARANCES

For Petitioner: Rhea F. Law, Esquire  
Erin R. McCormick, Esquire  
Fowler, White, Gillen, Boggs, Villareal  
and Banker, P.A.  
Post Office Box 1438  
Tampa, Florida 33601-1438

PRELIMINARY STATEMENT

The Petitioner filed the Petition to establish the Lakewood Ranch Community Development District 2 with the Secretary of the Commission on December 17, 1994. On December 16, 1994, the Petitioner delivered a copy of the Petition, together with the \$15,000 filing fee, to Michael Pendley, Administrator of Community Planning for Manatee County. A copy of the Petition was admitted into evidence as Petitioner's Composite Exhibit 12.

The Secretary of the Commission certified that the Petition contained all required elements and forwarded it to the Division of Administrative Hearings for the assignment of a hearing officer. The Commission published a Notice of Receipt of Petition in the Florida Administrative Weekly on January 20, 1995, as required by Rule 42-1.010, Florida Administrative Code.

By order of the undersigned dated January 5, 1995, the local public hearing was scheduled to be held on Thursday, February 23, 1995, at 9:00 a.m. in Bradenton, Florida. The Petitioner published a Notice of Local Hearing in accordance with Section 190.005 (1)(d), Florida Statutes, and Rule 42-1.011, Florida Administrative Code, and mailed copies of the notice to others as provided in Rule 42- 1.011(1)(b), Florida Administrative Code. As required by the January 5, 1995 order, the Petitioner filed its list of witnesses on January 23, 1995. Also as ordered, the Petitioner filed the prepared testimony of five witnesses, together with attached exhibits, on February 15, 1995. There was no testimony filed in opposition to the Petition.

Manatee County filed a Notice of Intent to be a Party, Notice of Appearance, and List of Preliminary Witnesses, dated January 20, 1995, in accordance with Rules 60Q Code.

Petitioner presented the testimony of Rex Jensen, Vice President, Real Estate, SMR Communities and Vice President, Real Estate, Schroeder-Manatee Ranch, Inc., and agent of the Petitioner in this proceeding; Michael A. Kennedy, an expert in civil engineering with an emphasis in public infrastructure design, permitting, cost estimation, and construction for special districts and community development districts; Betsy Benac, an expert in land use and community planning; Gary L. Moyer, an expert in special-district management and operation; and Henry H. Fishkind, an expert in economics, finance and statistics, including infrastructure financing and the use of community development districts and special taxing districts. The names and addresses of the witnesses are attached to this report as Exhibit 1. Petitioner's Exhibits 1-12, were received as evidence. A list of Petitioner's exhibits in this proceeding is attached to this report as Exhibit 2.

Senior Assistant County Attorney for Manatee County, Mark Barnebey, testified at the hearing. Manatee County's Exhibit 1, a Resolution by the Manatee County Board of County Commissioners in support of the proposed community development district, was received as evidence. The name and address of Counsel appearing on behalf of Manatee County is attached to this report as Exhibit 3. A description of Manatee County's Exhibit 1 is attached to this report as Exhibit 4.

Public comment was received at the hearing from Arun Gade. The name and address for this member of the public who spoke at the hearing is attached to this report as Exhibit 5.

A transcript of the local public hearing was filed by the Court Reporter with the Division of Administrative Hearings on February 28, 1995. A copy of the transcript is being transmitted with this Report of Findings and Conclusions.

Petitioner timely filed a Proposed Report of Findings and Conclusions in accordance with Rule 60Q-2.031, Florida Administrative Code.

#### FINDINGS OF FACT

##### Overview

1. The Petitioner is seeking the adoption of a rule by the Commission to establish a community development district (CDD or District) of approximately 2,080 acres, located entirely within the unincorporated area of Manatee County.

The proposed District will be located generally south of the Braden River, north of the Manatee/Sarasota County line, and east of I-75, within the unincorporated area of Manatee County. The proposed District will be eligible to exercise all powers set forth in Chapter 190, Florida Statutes, including, but not limited to, the ability to finance, own, operate and maintain certain community facilities and services. The special powers set forth in Section 190.012(2) (a-f), Florida Statutes, may be exercised with the consent of Manatee County, and pursuant to an Interlocal Agreement.

2. Currently, the land uses in the area to be included in the proposed district are primarily agricultural (improved pasture). A former borrow pit which has been almost totally reclaimed into a lake also exists on-site. Existing land uses adjacent to the proposed District include: agricultural/shell mining/polo club to the south; vacant/agricultural to the west; a golf course community to the northwest; vacant/agricultural and residential to the north; and asphalt processing plant/agricultural to the east.

3. All of the land to be included in the proposed District is included in either the University Lakes Development of Regional Impact (DRI) or the Cypress Bank DRI, except for approximately fifteen to twenty acres. This additional acreage has been included in the proposed District boundaries to bring that property which will be used as right of way for a future thoroughfare within the District.

4. The existing land uses within the proposed District are consistent with the adopted Manatee County Comprehensive Plan. The future general distribution, location and extent of land uses proposed for the District are included in the Applications for Development Approval for the Cypress Banks DRI and the University Lakes DRI, and generally include residential, recreational, community-serving commercial and business/office uses. The Development Orders for these DRIs indicate that the development within the proposed District is consistent with the Manatee County Comprehensive Plan.

5. The Petitioner currently intends for the District to construct or otherwise provide for a water management and control system; water supply systems; sewer; wastewater management, reclamation and reuse systems; bridges and culverts; district roads and street lighting. With Manatee County's consent, and pursuant to an Interlocal Agreement, the proposed District may also exercise other special powers, as authorized under Section 190.012(2), Florida Statutes, for the purpose of providing parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquito control; waste collection and disposal. Once completed, some of the facilities will be owned, operated, and/or maintained by the District. Some facilities may be dedicated to other governmental entities, which will operate and maintain them.

6. The Petitioner intends for the District to maintain roadways until dedicated to and accepted by Manatee County or some other governmental entity, at which time the County or other governmental entity will assume maintenance responsibility. A non-potable water system to be utilized for irrigation purposes will be owned, operated and maintained by the District.

7. The estimated cost in 1994 dollars for all identified capital improvements is \$58,599,791, with construction scheduled to take place from 1995 through 2003.

8. The Petitioner expects that the District will issue bonds to be used exclusively to provide the capital to construct and to acquire the planned infrastructure. The bonds will be repaid from the proceeds of non-ad valorem assessments on all specifically benefited properties. Funds for District infrastructure operations and maintenance may also be generated through non-ad valorem assessments.

9. The sole purpose of this proceeding was to consider the establishment of the District as proposed by the Petitioner.

#### Summary of Evidence

##### I. Statutory Criteria for the Establishment of the District.

10. Section 190.005 (1)(e), Florida Statutes, requires the Commission to consider six factors in making its determination to grant or deny the Petition to establish the District. The evidence presented on these factors is summarized in the following paragraphs.

A. Whether all statements contained within the Petition have been found to be true and correct.

11. Petitioner's Composite Exhibit 12 was identified for the record as a copy of the Petition and its attachments, as filed with the Commission. Rex Jensen reviewed the contents of the Petition and the attached Exhibits, and approved its filing. Rex Jensen found that no changes or corrections were necessary.

12. Michael Kennedy reviewed Exhibits 1, 2, 5, 6 and Table 1 to Exhibit 7 to the Petition, and found that no changes or corrections were necessary.

13. Betsy Benac reviewed Exhibit 8 to the Petition and determined that there were amendments to Exhibit 8. The amendments to Exhibit 8 were admitted into evidence as Petitioner's Composite Exhibit 8. Petitioner's Composite Exhibit 8, as amended, is true and correct.

14. Henry Fishkind reviewed Exhibit 7, and found it to be true and correct.

15. With the change set forth in the Finding of Fact 13, all statements in the Petition and its attached exhibits were shown to be true and correct.

B. 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.

16. Betsy Benac reviewed the establishment of the proposed District from a planning perspective for consistency with the State Comprehensive Plan, Chapter 187, Florida Statutes, and the Manatee County Comprehensive Plan, adopted pursuant to Chapter 163, Part II, Florida Statutes. In addition, Henry Fishkind reviewed the establishment of the District from an economic perspective for consistency with the State and local comprehensive plans. Gary Moyer reviewed the establishment of the District from a management perspective for consistency with the State Comprehensive Plan.

## State Comprehensive Plan

17. From a planning perspective, Goals 10, 16, 21, and 26 of the State Comprehensive Plan, and the policies supporting these goals are particularly relevant to the establishment of the District. Goals 18 and 21 and the policies supporting those goals are relevant to the establishment of the District from an economic perspective. Goal 21 is also relevant to the establishment of the District from a management perspective.

18. Policy 13 under Goal 10, "Natural Systems and Recreational Lands," encourages the use of public and private financial resources for the development of state and local recreational opportunities. The District may, with the consent of Manatee County, provide community recreational facilities.

19. Goal 16, "Land Use," recognizes the importance of locating development in areas with the fiscal ability and service capacity to accommodate growth. The District will have the fiscal ability and service capacity to efficiently provide an excellent quality and range of facilities and services to development in Manatee County.

20. Goal 18, "Public Facilities," directs the State to protect the investments in public facilities that already exist, and to plan for and finance new facilities to serve residents in a timely and efficient manner. The District will provide facilities and services in a timely and efficient manner to the area within Manatee County to be served by the District, allowing the County to focus its resources outside the District and thus, provide facilities and services to County residents in a timely and efficient manner.

21. The "Governmental Efficiency" goal, Goal 21, requires that Florida governments provide the services required by the public in an economic and efficient manner. The District will have the fiscal capability to provide quality public services to those who benefit from and pay for those services. The size and configuration of the District would allow for the delivery of these facilities in an efficient, cost-effective manner. In addition, because it is a limited-purpose local government, the District can provide focused delivery, management, and maintenance of these services more efficiently than a general-purpose government.

22. Goal 26, "Plan Implementation," encourages the integration of systematic planning into all levels of government, with emphasis on intergovernmental coordination. The development plan for the District contemplates the delivery of improvements in coordination with the general-purpose local governments in the area. In addition, Section 189.415, Florida Statutes, requires the District to file annual Public Facilities Reports with Manatee County, which the County may use and rely on in its Comprehensive Plan. From a planning perspective, all decisions of the District are made at board meetings which are publicly noticed and open to the public, maximizing input from landowners and residents of the District.

23. The establishment of the proposed District is not inconsistent with any applicable goal or policy of the State Comprehensive Plan.

## Local Comprehensive Plan

24. From a planning perspective, the future Land Use Element, the Public facilities Element and the Intergovernmental Coordination Element of the Manatee County Comprehensive Plan relate specifically to the establishment of the

District. From an economic perspective, the Comprehensive Plan generally requires that economic growth not burden other citizens or other units of local government. The proposed District will provide that assurance. The proposed district will provide the focused efficient and effective delivery of specific services to a defined group of county citizens.

25. The Future Land Use Element and supporting policies provide that future land uses should be encouraged to locate in areas suited for such use, as measured by the level of public facility availability and investment. The proposed District will insure the investment necessary to provide the public facilities to handle the approved development potential of the District.

26. The Public Facilities Element and supporting policies require that new growth pay its share of needed capital facilities, including the full cost of installation of all wastewater collection systems and water distribution systems. The proposed CDD will provide the funding for the installation of a wastewater collection system and a potable water system.

27. The Intergovernmental Coordination Element and supporting policies require efficiency in service delivery through a government environment which is conducive to the efficient and effective provision of services to county citizens. The proposed district will provide the focused efficient and effective delivery of specific services to a defined group of county citizens.

28. Nothing in the Local Comprehensive Plan precludes the establishment of a community development district.

29. The establishment of the District is not inconsistent with any of the applicable goals, objectives, and policies of the Manatee County Comprehensive Plan.

- C. Whether the area of land within the District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

30. Testimony on this criterion was provided by Michael Kennedy, Betsy Benac, Gary Moyer, and Henry Fishkind. The lands that comprise the District consist of approximately 2,080 acres, located entirely within unincorporated Manatee County, and generally east of I-75 south of the Braden River, north of the Manatee/Sarasota County line.

31. The land within the proposed District is all currently included within the approved University Lakes DRI and Cypress Banks DRI except for approximately 15 acres, which additional acreage was included in the proposed District boundaries so that property which will be used for right-of-way for a future thoroughfare is located within the District. The land within the proposed District is master planned to be a part of a functional, interrelated community with a balanced mix of uses to support the projected population.

32. The area of land within the proposed District is bounded by major thoroughfare roads and the Braden River, and forms a compact and contiguous area creating a functionally interrelated community.

33. From an engineering perspective, the property is sufficiently contiguous so that the proposed facilities and services can be designed, permitted, constructed, and maintained in a cost efficient, technically-sound

manner. The proposed District is sufficiently contiguous to allow for the efficient, cost-effective, functional and integrated use of infrastructure.

34. From a service delivery standpoint, the proposed District is designed to have sufficient population density and size to require all of the basic facilities and services of a community. The District will provide its residents and landowners the benefits of phasing the District's services over a time frame which takes advantage of the low cost of long-term capital, as well as providing economics of scale.

35. From engineering, planning, economics, and management perspectives, the area of land to be included in the District is of sufficient size and is sufficiently compact and contiguous to be developed as a functional interrelated community.

- D. 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.

36. All five witnesses offered testimony on this criterion. It is presently intended that the District will fund the construction of water management and control systems; water supply; sewer; wastewater management reclamation and reuse systems; bridges and culverts; district roads; and street lighting. It may also, with the approval of the County, and pursuant to the Interlocal Agreement, construct parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquito control; waste collection and disposal. Once completed, certain of these improvements will be dedicated to other governmental entities to own, operate, and/or maintain.

37. The proposed District will maintain roadways until dedicated and accepted by Manatee County or some other governmental entity, at which time that governmental entity will assume maintenance responsibility.

38. It is expected that the District will issue bonds to finance these services and improvements. These bonds will be repaid from the proceeds of special assessments on benefited property within the District. Use of special assessments will ensure that those benefiting from District services help pay for those services.

39. The following five alternatives for providing the necessary facilities and services to this were identified: (1) a municipal service taxing unit (MSTU)/municipal service benefit unit (MSBU) under Chapter 125, Florida Statutes; (2) a special assessment district under Chapter 125 or 189, Florida Statutes; (3) the County; (4) the Developer; or (5) a homeowners' association.

40. In evaluating alternative methods for delivering community development facilities and services, factors to consider include whether an alternative is able to provide the best focused services and facilities; whether the alternative has an entity to manage the delivery of facilities and services; whether the alternative is a stable provider of facilities and services and can provide a long-term perspective; and whether the alternative can secure long-term financing to pay for all facilities and services at a sustained level of quality.

## Public Alternatives

41. A MSTU/MSBU generally focuses on only one service or facility, which is not sufficient to serve the comprehensive development of a new community. It also requires County administration of the operation and maintenance of the infrastructure. Moreover, MSTU/MSBU debt is debt of the County, and MSTU/MSBU taxes count against the County's millage cap. The County would be relieved of direct administrative duties and costs related to the provision of the proposed facilities and services if the proposed District is established. In addition, District debt does not affect the County's borrowing capacity, and District taxes do not count against the County's millage cap.

42. Although a dependent special district may provide more than one service or facility, it would still require County involvement, and dependent special district taxes would count against the County's millage cap. Debts incurred by a dependent special district are debts of the County, as are those of the MSTU/MSBU. In contrast, debts of a CDD are not debts of the County, and CDD taxes do not affect the County millage cap.

43. The County, is not well equipped to address the special services and facility needs of individual communities. The responsibility for planning, financing, implementing and operations of the community would rest on the Board of County Commissioners. The County government is not set up to handle this kind of community-specific, long-range planning. If the County finds it difficult to deal with growth, it may divert attention and resources from existing communities to other areas where development is just starting. It is unlikely the County would be able to provide stable financing and management for facilities and services to the proposed District.

## Private Alternatives

44. The District is also superior to the Developer or a Homeowners' Association in the provision of long-term financing of infrastructure. Neither the Developer nor a homeowner's association would have the power to levy and collect taxes. In contrast, the ability of the proposed District to obtain long-term, fixed rate financing is the least costly method of financing available in the current market. There would be no continuity of management functions. The developer would have responsibility for the planning, financing and implementing of the infrastructure and the homeowners association would manage and operate the infrastructure. This would limit the Developer's incentive to plan for contingencies during the operating and management phases.

45. SMR Communities has experience in working with an existing CDD, and an officer of SMR Communities testified that the Lakewood Ranch CDD 1 has been successful in obtaining financing and constructing infrastructure for the planned residential community. SMR Communities expects that the proposed Lakewood Ranch CDD 2 will similarly benefit its landowners and residents in the years ahead, particularly as SMR Communities ceases to be the major landowner.

46. None of the reasonable public or private alternatives provides the same cost- efficient, focused delivery and long-term maintenance and management of the proposed public facilities as would the District. The District is the best alternative available for delivering community services and facilities to the area.



- E. 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.

47. Testimony on this criterion was provided by Michael Kennedy, Betsy Benac, Gary Moyer and Henry Fishkind.

48. There is no planned duplication of facilities and services. There is a potable water main and a wastewater force main under construction by the County which will serve the proposed District. The District will supply the additional facilities and services necessary for development that are not provided by local general-purpose government or other governmental entities.

49. The facilities to be constructed by the proposed District will be integrated with the existing facilities, and some of these facilities will be dedicated to Manatee County.

50. Manatee County presently does not maintain a stormwater management system servicing the area within the proposed District. Given this area's location within a potable watershed, the long-term maintenance of the stormwater system is a critical component which will be provided by the District.

51. The project infrastructure will be designed and constructed to State or County standards and must be consistent with the local comprehensive plan, building codes, and land development regulations.

52. From engineering, planning, economic, and management perspectives, the services and facilities to be provided by the District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

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

53. Testimony on this criteria was provided by Michael Kennedy, Betsy Benac, Gary Moyer, and Henry Fishkind.

54. From a planning perspective, the area to be served by the District requires basic infrastructure for development to occur. The District is of sufficient size and is sufficiently compact and contiguous to allow infrastructure to be provided and maintained in an efficient and cost effective manner. These services and infrastructure have been carefully planned to avoid duplication of existing local and regional facilities and services and to maximize efficiency of cost and effort to deliver such improvements.

55. From an engineering perspective, having a separate unit of special-purpose government enhances the orderly provision of facilities and their long-term maintenance as well as the ability of the government to respond to the needs of the residents of the District.

56. From a financial perspective, it is expected that the District will levy assessments and fees on the landowners and residents within the District who benefit from the improvements in order to fund the construction and maintenance of the improvements. The District will not be dependent on the County for funding, nor is the County liable for any obligations of the District. Therefore, it is more economically and functionally efficient to have

a separate special-district government to manage the activities related to the improvements to the land within the District.

57. From a management perspective, the proposed District requires basic infrastructure; is consistent with the State Comprehensive Plan; is sufficiently compact and contiguous and of sufficient size to allow for the provision and maintenance of infrastructure in an efficient, cost-effective manner; and is the best alternative for providing public facilities and services; therefore, it is amenable to separate, special-district government.

58. From engineering, planning, economic, and management perspectives, the establishment of the District meets all of the statutory criteria in Section 190.005(1)(e), Florida Statutes.

G. Public Comment on the Petition.

59. Public comment was received at the public hearing. Mr. Arun Gade asked for clarification concerning the repayment of the bonds which the proposed District intends to issue. The bonds will be repaid by special assessments placed on the underlying, benefited property, by the District. The assessments will be paid by the owners of the property.

H. Agency Comment on the Petition.

60. The Secretary of the Commission distributed copies of the Petition to the Department of Community Affairs (DCA) and the Tampa Bay Regional Planning Council (TBRPC) and requested that these agencies review the Petition. By letter dated January 10, 1995, Secretary Linda Shelley of the DCA replied that the Department had completed its review of the Petition and had no objections to the proposed CDD. Secretary Shelley further stated that the development proposed for the area within the District had been reviewed and determined consistent with Chapters 163, Part II and 380.06, Florida Statutes

61. The TBRPC responded to the Commission Secretary's request by letter dated January 6, 1995. The TBRPC stated that it had reviewed the Petition, and found it consistent with the approved Development Orders for the property located within the District.

II. Other requirements imposed by statute or rule.

62. Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code, impose certain specific requirements set forth below regarding the Petition and other information to be submitted to the Commission.

A. Elements of the Petition

63. Section 190.005(1)(a)1., Florida Statutes, requires the Petition to contain a metes and bounds description of the external boundaries of the District. Petitioner's Composite Exhibit 12 contains such a description. This statutory section also requires that any property within the external boundaries of the District which is to be excluded from the District be specifically described. Petitioner's Composite Exhibit 12 includes this information. There is no real property located within the external boundaries of the proposed District which is to be excluded from the District.

64. Section 190.005(1)(a)2., Florida Statutes, requires the Petition to contain the written consent to establishment of the District of the owners of 100 percent of the real property to be included in the District. Petitioner's Composite Exhibit 12 contains the written consent of Schroeder- Manatee Ranch, Inc., the owner of 100 percent of the real property to be included in the proposed District.

65. Section 190.005(1)(a)3., Florida Statutes, requires the Petition to contain the names of the five persons, all residents of the State of Florida and citizens of the United States, who will serve on the initial Board of Supervisors. The five persons designated in the Petition, and their addresses are:

Rex Jensen  
7550 Lorraine Road  
Bradenton, Florida 34202

C. John Clarke  
7550 Lorraine Road  
Bradenton, Florida 34202

Mary Fran Carroll  
7550 Lorraine Road  
Bradenton, Florida 34202

Roger Hill  
7550 Lorraine Road  
Bradenton, Florida 34202

Anthony Chiofalo  
7550 Lorraine Road  
Bradenton, Florida 34202

All of the designees are residents of the State of Florida and citizens of the United States.

66. Section 190.005(1)(a)4., Florida Statutes, requires that the Petition contain the proposed name for the District. The Petition provides that the proposed name of the District to be established is "Lakewood Ranch Community Development District 2".

67. Section 190.005(1)(a)5., Florida Statutes, requires that the Petition show current major trunk water mains and sewer interceptors and outfalls, if in existence. Petitioner's Composite Exhibit 12 contains a map of the proposed District showing information concerning existing and proposed major trunk water mains, sewer interceptors, and outfalls.

68. Section 190.005(1)(a)6., Florida Statutes, requires the Petition to set forth the proposed timetable for construction of services and facilities and the estimated cost for such construction. Petitioner's Composite Exhibit 12 contains this information in a table entitled "Lakewood Ranch Community Development District 2: Proposed Infrastructure Construction Cost Estimate and Timing".

69. Section 190.005(1)(a)7., Florida Statutes, requires the Petition to designate the future general distribution, location and extent of public and private uses of land. This has been designated by the Future Land Use Plan

Element of the Manatee County Comprehensive Plan. Petitioner's Composite Exhibit 12 provides this information. In addition, the future general distribution, location and extent of land uses for the proposed District were identified in the Applications for Development Approval for the Cypress Banks DRI and the University Lakes DRI.

70. The Petition contains all information required by Section 190.005(i)(a)1.-7., Florida Statutes.

B. Economic Impact Statement

71. Section 190.005(1)(a)8., Florida Statutes, requires the Petition to include an economic impact statement (EIS) which meets the requirements of Section 120.54(2), Florida Statutes. The EIS prepared by the Petitioner is attached to Petitioner's Composite Exhibit 12.

72. The Petitioner's EIS meets the requirements of Sections 120.54(2)(c)1. and 120.54(2)(c)2., Florida Statutes, that an EIS include an estimate of the costs and benefits of the establishment of the District to all affected agencies and persons. It concludes that the economic benefits of establishing the District exceed the economic costs to all affected agencies and persons.

73. Beyond administrative costs related to rule adoption and review of reports to be submitted by the District, the State and its citizens will incur no costs from establishment of the District. The District will require no subsidies from the State to fund District improvements. Benefits will include improved planning and coordination of development, as well as long-term professional management and maintenance of District facilities.

74. Costs to Manatee County and its citizens for the establishment and operation of the District will be offset by the \$15,000 filing fee and other fees paid by the Petitioner or the District. The County will not be responsible for the debt service on any bonds used to fund District improvements. Citizens of the County will receive the benefits of planned development, and the County will be relieved of the fiscal and administrative burden of providing the improvements provided by the District.

75. The Petitioner will incur substantial costs to create the District and will pay substantial sums in non-ad valorem assessments as the largest landowner in the District in the initial stages of development. In addition, the Petitioner will provide most rights-of-way and easements. The Petitioner will benefit from the establishment of the District because of a more efficient cost of management of infrastructure, increased flexibility in meeting the demands of the marketplace, and tax exempt financing for infrastructure.

76. Landowners within the District will pay District special assessments or fees for certain facilities; however, these facilities will be required for development regardless of the existence of the District. Benefits to these landowners/consumers will include a higher level of public services and amenities than might otherwise be available, completion of improvements provided by the District on a timely basis, and a share of control over decisions involving community development services and facilities.

77. The EIS also meets the requirements of Sections 120.54(2)(c)3. and 120.54(2)(c)4., Florida Statutes, because the EIS includes an estimate of the impact of the proposed rule on competition, the open market for employment, and on small business, as defined in the Florida Small and Minority Business

Assistance Act of 1985. The implementation of this rule is expected to have a positive impact on competition, and is expected to have only a nominal, positive effect on the open market for employment and small business.

78. The EIS also meets the requirement of Section 120.54(2)(c)5., Florida Statutes, because the statement includes a comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the rule.

79. Where there are reasonable alternative methods for achieving the purpose of the rule which are not precluded by law, Sections 120.54(2)(c)6. and 120.54(2)(c)7., Florida Statutes, require that an EIS describe these alternatives and make a determination of whether any of the alternatives are less costly or less intrusive than the proposed method. Petitioner's EIS meets these requirements and concludes that none of the reasonable public or private alternatives provides the same cost-efficient, focused delivery, and long-term management and maintenance of the public facilities and services to be provided by the District. The District is the preferred alternative because it is a special-purpose unit of local government with a single purpose: the provision of infrastructure and services for planned, new communities.

80. The EIS meets the requirement of Section 120.54(2)(c)8., Florida Statutes, because the EIS includes a detailed statement of the data and methodology used in preparing the analysis.

81. The Petitioner's EIS meets all the requirements of Section 120.54(2), Florida Statutes.

#### C. Other Requirements

82. Petitioner has complied with Section 190.005(1)(b) Florida Statutes, which requires that the Petitioner submit a copy of the Petition and pay a filing fee to the local general-purpose government.

83. Section 190.005(1)(d), Florida Statutes, requires the Petitioner to publish notice of the local public hearing in a newspaper of general paid circulation in Manatee County for four consecutive weeks immediately prior to the hearing. The notice was published in the Bradenton Herald for four consecutive Thursdays, beginning on January 26, 1995.

84. Rule 42-1.010, Florida Administrative Code, requires the Commission to cause to be published a Notice of Receipt of Petition in the Florida Administrative Weekly. This notice was published on January 20, 1995.

85. Rule 42-1.011(1)(a), Florida Administrative Code, requires the Petitioner to furnish proof of publication of the Notice of Local Hearing to the Secretary of the Commission. The Affidavit of Publication was transmitted to the Secretary of the Commission as required on February 21, 1995.

86. Rule 42-1.011(1)(b), Florida Administrative Code, requires the Petitioner to mail a copy of the Notice of Local Hearing to all persons named in the proposed rule, the affected local government, and the Secretary of the Department of Community Affairs. Such individual notices were mailed as required by the rule.

## CONCLUSIONS OF LAW

Based upon the record of this proceeding, it is concluded that:

87. This proceeding is governed by Chapters 190 and 120, Florida Statutes, and Chapter 42-1, Florida Administrative Code.

88. The Petitioner has met the requirements of Section 190.005(1)(b), Florida Statutes, regarding the submission of a copy of the Petition and payment of a filing fee to the local general-purpose government.

89. The proceeding was properly noticed pursuant to Section 190.005(1)(d), Florida Statutes, by publication of an advertisement in a newspaper of general paid circulation in Manatee County and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

90. The requirement of Rule 42-1.010, Florida Administrative Code, that a Notice of Receipt of Petition be published in the Florida Administrative Weekly was also met.

91. The Petitioner has met the requirements of Rule 42-1.011(1)(a), Florida Administrative Code, that the Petitioner furnish proof of publication of the Notice of Local Hearing to the Secretary of the Commission.

92. The Petitioner has also met the requirements of Rule 42-1.011(1)(b), Florida Administrative Code, that the Petitioner mail a copy of the Notice of Local Hearing to specific persons named in the rule.

93. All portions of the Petition and other submittals have been completed and filed as required by law.

94. The Petitioner bears the burden of establishing that the petition meets the relevant statutory criteria set forth in Section 190.005(1)(e), Florida Statutes.

95. The statements contained within the Petition and its attachments as corrected are true and correct.

96. The creation of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective Manatee County Comprehensive Plan.

97. The area of land within the District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional, interrelated community.

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

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

100. The area to be served by the District is amenable to separate special-district government.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, the undersigned recommends that the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, pursuant to Chapters 190 and 120, Florida Statutes, and Chapter 42-1, Administrative Code, establish the Lakewood Ranch Community Development District 2 as requested by the Petitioner by formal adoption of the proposed rule attached to this Report of Findings and Conclusions as Exhibit 6.

Respectfully submitted this 15th day of March, 1995, in Tallahassee, Leon County, Florida.

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WILLIAM R. CAVE  
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 15th day of March, 1995.

COPIES FURNISHED:

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Florida Land and Water  
Adjudicatory Commission  
The Capitol  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Report of Findings and Conclusions. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period 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 Report of Findings and Conclusions. Any exceptions to this Report of Findings and Conclusions should be filed with the agency that will issue the final order in this case.

EXHIBIT 1

Petitioner's Witnesses at Hearing

1. Rex Jensen  
Vice President - Real Estate  
SMR Communities  
7550 Lorraine Road  
Bradenton, Florida 34202
2. Michael A. Kennedy  
Sr. Vice President  
Wilson, Miller, Barton & Peek, Inc.  
133 South McIntosh Road  
Sarasota, Florida 34232
3. Betsy Benac  
Manager of Planning  
Wilson, Miller, Barton & Peek, Inc.  
133 South McIntosh Road  
Sarasota, Florida 34232
4. Gary L. Moyer  
Gary L. Moyer, P.A.  
10300 NW 11th Manor  
Coral Springs, Florida 33065
5. Henry H. Fishkind  
Fishkind & Associates, Inc.  
12424 Research Parkway  
Suite 275  
Orlando, Florida 32820



EXHIBIT 2

List Of Petitioner's Exhibits

1. Letter to Florida Land and Water Adjudicatory Commission (FLWAC) from the Florida Department of Community Affairs concerning the Petition
2. Letter to FLWAC from the Tampa Bay Regional Planning Council concerning the Petition
3. Receipt from Manatee County for \$15,000.00 filing fee for review of Petition and copy of check
4. FLWAC's Notice of Receipt of Petition published in the Florida Administrative Weekly January 20, 1995
5. Individual letters transmitting Notice of Local Hearing to Manatee County, to the Secretary of the Florida Department of Community Affairs and to all persons named in the Petition; copy of published Notice of Local Hearing; and copies of certified mail return receipts
6. Affidavits of Citizenship and Residency for proposed initial members of the Board of Supervisors
7. Bradenton Herald Affidavit of Publication of Notice of Local Hearing
8. Amendments to the codified Manatee County Comprehensive Plan
9. Boundaries of the proposed District depicted on the Manatee County Future Land Use Map
10. Development Orders for Cypress Banks DRI and University Lakes DRI
11. List of districts managed by Gary Moyer and infrastructure provided
12. Petition to Establish the Lakewood Ranch Community Development District 2, and attached exhibits.

EXHIBIT 3

Counsel Appearing on Behalf of Manatee County

Mark P. Barnebey, Esquire  
Sr. Assistant County Attorney  
Fla. Bar No. 370827  
Manatee County Attorney's Office  
P. O. Box 1000  
Bradenton, Florida 34206

EXHIBIT 4

Exhibit of Manatee County

| Number | Description |
|--------|-------------|
|--------|-------------|

|  |   |
|--|---|
|  | Resolution 95-23 by the Manatee County Board of County Commissioners, in Support of the Petition to Establish the Lakewood Ranch Community Development District 2 |
|--|---|

EXHIBIT 5

Member of the Public Who Appeared at Hearing

Arun Gade  
4533 Windsor Court East  
Bradenton, Florida 34203

EXHIBIT 6

THE FULL TEXT OF THE PROPOSED RULE:

42W-1.001 Creation. The Lakewood Ranch Community Development District 2 is hereby created.

Specific Authority 190.005, F.S.

Law Implemented 190.005, F.S.

History--New

42W-1.002 Boundary. The boundaries of the district are as follows: COMMENCE AT THE SECTION CORNER COMMON TO SECTIONS 29, 30, 31 AND 32, TOWNSHIP 35 S., RANGE 19 E.; THENCE S 01°11'37" W, ALONG THE SECTION LINE COMMON TO SECTIONS 31 AND 32, TOWNSHIP 35 S., RANGE 19 E., A DISTANCE OF 221.07 FT. TO THE INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY OF "UPPER MANATEE RIVER ROAD" (A 120 FT. WIDE PUBLIC R/W), FOR A POINT OF BEGINNING; THENCE ALONG THE NORTHERLY AND WESTERLY R/W OF SAID "UPPER MANATEE RIVER ROAD", THE FOLLOWING COURSES: S 75°29'27" W, A DISTANCE OF 399.90 FT. TO THE P.C. OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1960.00 FT.; THENCE RUN SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 40°58'50", A DISTANCE OF 1401.88 FT. TO THE P.T. OF SAID CURVE, THENCE S 34°30'37" W, A DISTANCE OF 319.17 FT. TO THE P.C. OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1610.00 FT.; THENCE RUN SOUTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 57°52'37", A DISTANCE OF 1626.33 FT. TO THE P.T. OF SAID CURVE; THENCE S 23°22'00" E, A DISTANCE OF 320.00 FT. TO THE P.C. OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 860.00 FT.; THENCE RUN SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 62°53'43", A DISTANCE OF 944.05 FT. TO THE P.T. OF SAID CURVE; THENCE S 86°15'43" E. A DISTANCE OF 120.00 FT. TO THE P.C. OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 620.00 FT.; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 86°17'11", A DISTANCE OF 933.71 FT. TO THE P.T. OF SAID CURVE; THENCE S 00°01'28", ALONG SAID WESTERLY R/W OF "UPPER MANATEE RIVER ROAD" AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 1745.06 FT. TO THE INTERSECTION WITH THE SOUTHERLY R/W OF "UNIVERSITY PARKWAY" (A 200.00 FT. WIDE PUBLIC R/W), SAME BEING THE SOUTHERLY LINE OF SECTION 31, TOWNSHIP 35 S., RANGE 19 E (COUNTY LINE); THENCE S 89°58'32" E. ALONG THE SOUTHERLY R/W OF SAID "UNIVERSITY PARKWAY", A DISTANCE OF 120.00 FT. TO THE INTERSECTION WITH THE EASTERLY END OF R/W FOR SAID "UNIVERSITY PARKWAY"; THENCE CONTINUE S 89°58'32" E, ALONG THE SOUTHERLY LINE OF SAID SECTION 31 (COUNTY LINE), A DISTANCE OF 41.80 FT. TO THE SOUTHEAST CORNER OF SAID SECTION 31, SAME BEING THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 35 S., RANGE 19 E.; THENCE 89°58'32" E, ALONG THE SOUTHERLY LINE OF SAID SECTION 32 (COUNTY LINE), A DISTANCE OF 5320.24 FT. TO THE SOUTHEAST CORNER OF SAID SECTION 32, SAME BEING THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 35 S., RANGE 19 E.; THENCE S.89°58'32" E, ALONG THE SOUTHERLY LINE OF SAID SECTION 33 (COUNTY LINE), A DISTANCE OF 5320.24 FT. TO THE SOUTHEAST CORNER OF SAID SECTION 33, SAME BEING THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 35 S, RANGE 19 E.; THENCE S, 89°58'32" E, ALONG THE SOUTHERLY LINE OF SAID SECTION 34 (COUNTY LINE), A DISTANCE OF 678.98 FT. TO THE INTERSECTION WITH THE EASTERLY LINE OF "LORRAINE ROAD", (A 120.0 FT. WIDE ROADWAY); THENCE ALONG THE EASTERLY LINE OF SAID "LORRAINE ROAD", THE FOLLOWING COURSES; N, 00°01'28" E. A DISTANCE OF 1402.77 FT. TO THE P.C. OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 10560.00 FT.; THENCE RUN NORTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 01°56'28", A DISTANCE OF 357.76 FT. TO THE P.T. OF SAID CURVE; THENCE N 01°55'00" W, A DISTANCE OF 2240.90 FT. TO THE P.C. OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 3060.00 FT.; THENCE RUN NORTHWESTERLY, ALONG

THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°28'18", A DISTANCE OF 559.26 FT. TO THE P.T. OF SAID CURVE; THEN N 12°23'18" W, A DISTANCE OF 982.01 FT. TO THE P.C. OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2190.00 FT.; THENCE RUN NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°14'44", A DISTANCE OF 506.28 FT. TO THE P.T. OF SAID CURVE; THENCE N 00°51'27" E, A DISTANCE OF 1.87 FT. TO THE INTERSECTION WITH THE NORTHERLY LINE OF SECTION 34, TOWNSHIP 35 S, RANGE 19E, SAME BEING THE SOUTHERLY LINE OF SECTION 27, TOWNSHIP 35 S, RANGE 19 E; THENCE S 89°57'56" W, ALONG THE SECTION LINE COMMON TO SAID SECTIONS 27 AND 34, A DISTANCE OF 120.02 FT. TO THE SECTION CORNER COMMON TO SECTIONS 27, 28, 33 AND 34, TOWNSHIP 35 S, RANGE 19 E; THENCE N 89°30'25" W, ALONG THE SECTION LINE COMMON TO SAID SECTIONS 28 AND 33, A DISTANCE OF 2662.03 FT. TO THE SOUTHEAST CORNER OF THE WEST 1/2 OF SAID SECTION 28; THENCE N 00°45'47" E, ALONG THE EASTERLY LINE OF THE WEST 1/2 OF SAID SECTION 28, A DISTANCE OF 5314.17 FT. TO THE NORTHEAST CORNER OF THE WEST 1/2 OF SAID SECTION 28, SAME BEING THE SOUTH 1/4 CORNER SECTION 21, TOWNSHIP 35 S., RANGE 19 E; THENCE S 89°31'21" E, ALONG THE SECTION LINE COMMON TO SECTIONS 21 AND 28, TOWNSHIP 35 S., RANGE 19 E, A DISTANCE OF 2670.79 FT. TO THE NORTHEAST CORNER OF SAID SECTION 28, SAME BEING THE SOUTHEAST CORNER OF SAID SECTION 21; THENCE N 00°30'20" E. ALONG THE EASTERLY LINE OF SAID SECTION 21, A DISTANCE OF 243.17 FT. MORE OR LESS, TO THE INTERSECTION WITH THE CENTERLINE OF THE "BRADEN RIVER", SAID POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE RUN IN A GENERALLY NORTHWESTERLY DIRECTION, ALONG THE SINUOSITIES OF THE CENTERLINE OF THE "BRADEN RIVER", 5332 FT. MORE OR LESS TO A POINT HEREINAFTER REFERRED TO AS POINT "B", SAID POINT LYING N. 73°19'40" W, A DISTANCE OF 3962.56 FT. FROM POINT "A" PREVIOUSLY DESCRIBED; THENCE S 45°40'07" W, A DISTANCE OF 2166.37 FT. TO THE INTERSECTION WITH THE WESTERLY LINE OF SECTION 28, TOWNSHIP 35 S., RANGE 19 E.; THENCE S 00°40'07" W.

ALONG THE WESTERLY LINE OF SAID SECTION 28, A DISTANCE OF 5135.03 FT. TO THE SECTION CORNER COMMON TO SECTIONS 28, 29, 32 AND 33, TOWNSHIP 35 S, RANGE 19 E; THENCE N 89°30'25" W, ALONG THE NORTHERLY LINE OF SAID SECTION 32, A DISTANCE OF 4003.06 FT. TO THE INTERSECTION WITH THE WESTERLY LINE OF THAT CERTAIN BOUNDARY AGREEMENT LINE AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1323, PAGE 1534, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; THENCE N 00°29'12" E, ALONG THE WESTERLY LINE OF SAID BOUNDARY AGREEMENT LINE, A DISTANCE OF 829.46 FT. TO THE INTERSECTION WITH THE EASTERLY R/W OF AFOREMENTIONED "UPPER MANATEE RIVER ROAD", SAID POINT BEING ON THE ARC OF A CURVE WHOSE RADIUS POINT LIES N 89°30'48" W, 1060.00 FT.; THENCE RUN SOUTHWESTERLY, ALONG SAID EASTERLY R/W AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 75°00'15", A DISTANCE OF 1387.61 FT. TO THE P.T. OF SAID CURVE; THENCE S 75°29'27" W, ALONG SAID SOUTHERLY R/W 259.49 FT.; THENCE N 10°30'33" W. A DISTANCE OF 120.29 FT. TO THE INTERSECTION WITH THE NORTHERLY R/W OF SAID "UPPER MANATEE RIVER ROAD"; THENCE S 75°29'27" W, ALONG SAID NORTHERLY R/W, A DISTANCE OF 287.54 FT. TO THE POINT OF BEGINNING, BEING AN LYING IN SECTIONS 21, 27, 28, 29, 31, 32, 33 AND 34, TOWNSHIP 35 S, RANGE 19 E; MANATEE COUNTY, FLORIDA.

LESS:

R/W FOR "UPPER MANATEE RIVER ROAD" AND LESS R/W FOR THAT PART OF "UNIVERSITY PARKWAY" LYING WEST OF THE EAST LINE OF "UPPER MANATEE RIVER ROAD".

CONTAINING 2080.59 ACRES MORE OR LESS.

SUBJECT TO SOVEREIGNTY RIGHTS, IF ANY, FOR THE "BRADEN RIVER".

Specific Authority 190.005, F.S.

Law Implemented 190.005(1)(f)1., F.S.

History-- New.

42W-1.003 Supervisors. The following five persons are designated as the initial members of the Board of Supervisors; Rex Jeneen, C. John Clarke, Mary Fran Carroll, Roger Hill and Anthony Chiofalo.  
Specific Authority 120.53(1), 190.005, F.S.  
Law Implemented 190.005(1)(f)2., F.S.  
History--New.