

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE:)
)
PETITION TO CONTRACT THE TAMPA)
PALMS OPEN SPACE AND TRANSPORTATION) CASE NO. 96-4213
COMMUNITY DEVELOPMENT DISTRICT)
_____)

REPORT AND CONCLUSIONS
OF ADMINISTRATIVE LAW JUDGE

On December 3, 1996, a formal public administrative hearing was held in this case in Tampa, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings. This report and these conclusions are submitted as required by F.A.C. Rule 42-1.013.

APPEARANCES

For Petitioner: Scott I. Steady, Esquire
Williams, Reed, Weinstein,
Schifino & Mangione, P.A.
One Tampa City Center, Suite 2600
Tampa, Florida 33602

STATEMENT OF THE ISSUE

The issue in this case is whether the Petition to Contract the Tampa Palms Open Space and Transportation Community District should be granted.

PRELIMINARY STATEMENT

This proceeding was initiated when Tampa Palms Open Space and Transportation Community Development District (TPOSTCDD) filed a petition with the Secretary of the Florida Land and Water Adjudicatory Commission (FLAWAC) on August 21, 1996, seeking to

contract by rule the existing TPOSTCDD. The Secretary forwarded the petition to the Division of Administrative Hearings (DOAH) on September 5, 1996. On September 11, 1996, DOAH assigned this Administrative Law Judge to conduct the required public hearing and render this report. On October 11, 1996, a Notice of Hearing was issued for December 3, 1996.

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 F.A.C. Rule 42-1.010(1)(b). A copy of such notice was served upon the Department of Community Affairs as required by F.A.C. Rule 42-1.011.

At the hearing, the Petitioner presented the testimony of L.A. "Art" Woodworth, Susan Johnson, and William Rizzetta. In addition, counsel for the Petitioner made certain factual representations for the record. Finally, Bob Doran, a resident of the Tampa Palms Community Development District, located adjacent and directly to the southwest of the TPOSTCDD, made an appearance to ask a question. As a result, the Petitioner called an additional witness, Charles Cook, who was able to answer the question to Mr. Doran's satisfaction. In accordance with F.A.C. Rule 42-1.013(4), the names and addresses of these witnesses are listed in Appendix A to this report. There were no other witnesses at the hearing.

Petitioner's Exhibits 1 through 6 were admitted into the

record without objection. In accordance with F.A.C. Rule 42-1.013(4), the exhibits are listed in Appendix B to this report, and the exhibits themselves are attached to this report. There was no other evidence presented at the hearing.

Pursuant to F.A.C. Rule 42-1.012(3), the record of this matter remained open after the hearing to permit the submission by any affected or interested persons of written statements concerning the petition. No public statements were filed.

At the conclusion of the hearing, the Petitioner ordered the preparation of a transcript and was given ten days after the filing of the transcript in which to file a proposed report. The transcript was filed on December 18, 1996, but the Petitioner declined to file a proposed report.

FINDINGS

1. The Tampa Palms Open Space and Transportation Community Development District (TPOSTCDD) was formed by the adoption of F.A.C. Rules Chapter 42J-1 on January 31, 1990, which followed the issuance of a Recommended Order and Report in Division of Administrative Hearings (DOAH) Case Number 89-3654 on October 18, 1989. As required by F.A.C. Rule 42-1.013(3), a copy of the Recommended Order and Report in DOAH Case Number 89-3654 is attached.

2. At the time of its formation, the TPOSTCDD comprised approximately 5,509 acres and was divided into areas known as Areas 3, 4, 6, 7 and 8. (Areas 1, 2 and 5 were part of a

separate CDD.) These lands were "primarily under one ownership and one master plan." See Finding 14, Recommended Order and Report in DOAH Case Number 89-3654.

3. Since its formation, ownership of the land comprising the TPOSTCDD was split among several owners. Included among these were four primary developers: Lennar Homes, Inc., which owns most of Areas 4 and 8; New Tampa, Inc., which owns most of Area 3; Starwood/Tampa I, L.P., which owns most of Area 6; and Atlantic Gulf Communities, Inc., which owns most of Area 7.

4. It originally was intended that the TPOSTCDD would issue bonds to finance the construction of major infrastructure—power, sewer and water—along County Road 581, also known as Bruce B. Downs Boulevard, which runs from the City of Tampa roughly northeast to and beyond the TPOSTCDD. This "spine" of infrastructure would be accessible to all of the lands in the TPOSTCDD, which are located on either side of County Road 581.

5. As actually developed, the major infrastructure along the County Road 581 "spine" was paid for by the City of Tampa or by another CDD located northeast of the TPOSTCDD. TPOSTCDD financed only infrastructure within the discrete areas of the TPOSTCDD. As a result, the infrastructure financed by the TPOSTCDD provides a special benefits to the owner of the lands in the Area where the infrastructure is located.

6. The petition for contraction filed in this case was initiated because of the desire of Lennar Homes to leave the

TPOSTCDD. The petition seeks to contract the TPOSTCDD by deleting the approximately 2,357 acres making up Areas 4 and 8. The TPOSTCDD is the Petitioner. The petition was signed by Charles Cook, as Chairman, and by Scott I. Steady, Esquire, as attorney, for the TPOSTCDD. (Charles Cook also is the Vice-President of Lennar Homes.)

7. All statements in the petition for contraction have been found to be true and correct. (A copy of the Petition to Contract is attached.)

8. The petition for contraction contains a metes and bounds description of the lands included in the existing TPOSTCDD, the lands included in Areas 4 and 8, and the lands included in the proposed new TPOSTCDD, after contraction (*i.e.*, Areas 3, 6 and 7.) It also identifies the members of the board of supervisors of the existing TPOSTCDD (who presumably are to continue to serve as the initial members of the board of supervisors of the proposed new TPOSTCDD, after contraction, until replaced.) The petition alleges that the proposed new TPOSTCDD, after contraction, will retain its name. The petition also maps current major trunk water mains and sewer interceptors and outfalls that are in existence and a proposed timetable for construction of district services and good faith estimated cost of construction the proposed services. It also designates the future general distribution, location, and extent of public and private uses of land proposed for the area within the proposed

new TPOSTCDD, after contraction, by the future land use plan element of the City of Tampa local government comprehensive plan.

9. The petition for contraction contains the written consent of the owners of all of the real property in Areas 4 and 8 of the TPOSTCDD. It does not, however, contain the written consent of the owners of all of the real property to be included in the new TPOSTCDD, after contraction; nor was there any documentation or other evidence demonstrating that either the TPOSTCDD or those giving their written consent to the contraction have control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the new TPOSTCDD, after contraction.

10. The petition for contraction contains an economic impact statement that not only contains a statement of estimated regulatory costs in accordance with Section 120.541, Fla. Stat. (Supp. 1996), but also contains, in accordance with Section 120.54(2), Fla. Stat. (1995): an estimate of the cost to the TPOSTCDD, the City of Tampa, and Hillsborough County (hardly any, other than the one-time cost of processing the petition for contraction); an estimate of the cost or economic benefit to the owners of land in the TPOSTCDD; an estimate of the impact of the proposed contraction on competition and the open market for employment (none); an analysis of the impact on small business as defined in the Florida Small and Minority Business Assistance Act of 1985; a comparison of the probable costs and benefits of the

proposed contraction to the probable costs and benefits of not contracting; and a determination that no less costly methods, or less intrusive methods, or any other reasonable methods exist for achieving the purpose of the proposed contraction.

11. As pointed out in the Petitioner's economic impact statement, the TPOSTCDD has issued \$3,920,000 of Special Assessment Revenue Bonds, Series 1996, for the Area 7 Project. Proceeds of these bonds are being used to construct public infrastructure which will provide special benefit only to the lands located within Area 7 of the CDD. Therefore, the bonds are being repaid through special assessments levied only on the lands in Area 7.

12. The Petitioner's economic impact statement was updated at the public hearing through the testimony of William Rizzetta that the TPOSTCDD board of supervisors approved a new bond issuance to be used to finance the construction of public infrastructure which will provide special benefit only to the lands located within Area 6 of the CDD. Therefore, the new bonds will be repaid through special assessments levied only on the lands in Area 6. Neither bond issuance has or will have any impact on the owner of lands in the other areas of the CDD regardless of whether the petition for contraction is granted.

13. As also pointed out in the Petitioner's economic impact statement, the TPOSTCDD also assesses lands within its boundaries to fund its operation and maintenance (O & M) budget. Its O & M

budget consists of two parts: administration; and field maintenance. The administration portion of the O & M budget is allocated to each parcel on a pro-rata acreage basis, since it benefits all parcels in the CDD. However, the field maintenance portion of the O & M budget provides special benefit only to those lands within a particular Area where infrastructure improvements have been acquired or constructed within the CDD. Therefore, it has been determined to allocate field maintenance costs to each Area based on the amount of maintenance required by the infrastructure improvements acquired or constructed in each Area. Since all Areas within the TPOSTCDD are accessible from County Road 581, contraction of the existing TPOSTCDD by deletion of Areas 4 and 8 will not make field maintenance appreciably less efficient or more costly. However, as a result of the O & M budget allocation methodology, the owners of lands in Areas 3, 6 and 7 will have to pay approximately \$13.57 per acre more for their O & M budget allocation after contraction by deletion of Areas 4 and 8.

14. It is clear from the evidence that the creation of the proposed TPOSTCDD, after contraction, is consistent with applicable elements and portions of the state comprehensive plan and the effective local government comprehensive plans.

15. It is clear from the evidence that the proposed TPOSTCDD, after contraction, will be of sufficient size, sufficiently compact, and sufficiently contiguous to be

developable as one functional interrelated community.

16. There was no direct evidence that the proposed TPOSTCDD, after contraction, is the best alternative available for delivering community development services and facilities to the area that will be served by it. However, it is found that, due to the existence of the major infrastructure along the spine of County Road 581, and the ownership of Areas 4 and 8 by a different developer, contraction of the TPOSTCDD by deletion of Areas 4 and 8 will have no adverse impact on the issue whether the proposed TPOSTCDD, after contraction, is the best alternative available for delivering community development services and facilities to the area that will be served by it. It was found in the Recommended Order and Report in DOAH Case Number 89-3654 that the existing TPOSTCDD was the best alternative available for delivering community development services and facilities to the area that is served by it.

17. It was clear from the evidence that the proposed TPOSTCDD, after contraction will be compatible with the capacity and uses of existing local and regional community development services and facilities.

18. There was no direct evidence that the proposed TPOSTCDD, after contraction, will be amenable to separate special-district government. However, it is found that, due to the existence of the major infrastructure along the spine of County Road 581, and the ownership of Areas 4 and 8 by a

different developer, contraction of the TPOSTCDD by deletion of Areas 4 and 8 will have no adverse impact on the issue whether the proposed TPOSTCDD, after contraction, will be amenable to separate special-district government. It was found in the Recommended Order and Report in DOAH Case Number 89-3654 that the existing TPOSTCDD was amenable to separate special-district government.

CONCLUSIONS

19. Section 190.046(1), Fla. Stat. (1995), provides for the filing of a petition for contraction of a community development district under the provisions of Section 190.005. Under paragraphs (f) and (g) of Section 190.046(1), petitions to contract a CDD by 2,357 acres "must be considered petitions to establish a new district and shall follow all of the procedures specified in s. 190.005."

20. Under Section 190.005(1)(e), Fla. Stat. (Supp. 1996), the Florida Land and Water Adjudicatory Commission (FLAWAC) must consider the following factors in determining whether to grant or deny a petition for the establishment of a CDD:

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 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.

Factor 1

21. In this case, all statements contained within the petition for contraction have been found to be true and correct. However, as found, the petition for contraction does not contain the written consent of the owners of all of the real property to be included in the new TPOSTCDD, after contraction; nor was there any documentation or other evidence demonstrating that either the TPOSTCDD or those giving their written consent to the contraction have control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the new TPOSTCDD, after contraction. Section 190.005(1)(a)2, Fla. Stat. (Supp. 1996), requires that a petition for establishment of a CDD contain the written consent of the owners of all of the real property to be included in the proposed CDD, or documentation demonstrating that the petitioner has control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the proposed CDD. (Section 190.046(1)(e), Fla. Stat. (1995), requires the written consent of

all landowners whose land is being deleted through contraction, but paragraphs (f)-(g) of Section 190.046(1) would appear to require the petition to contract in this case follow all of the procedures specified in s. 190.005, including the requirement of Section 190.005(1)(a)2, Fla. Stat. (Supp. 1996).)

22. It is noted that the petition for contraction in this case contains an economic impact statement that not only contains a statement of estimated regulatory costs in accordance with Section 120.541, Fla. Stat. (Supp. 1996), but also contains several other estimates of economic impact, in accordance with Section 120.54(2), Fla. Stat. (1995).

Factor 2

23. It was found, *supra*, that the creation of the proposed TPOSTCDD, after contraction, is consistent with applicable elements and portions of the state comprehensive plan and the effective local government comprehensive plans.

Factor 3

24. It was found, *supra*, that the proposed TPOSTCDD, after contraction, will be of sufficient size, sufficiently compact, and sufficiently contiguous to be developable as one functional interrelated community.

Factor 4

25. The evidence in this case was that, due to the existence of the major infrastructure along the spine of County Road 581, and the ownership of Areas 4 and 8 by a different

developer, contraction of the TPOSTCDD by deletion of Areas 4 and 8 will have no adverse impact on the issue whether the proposed TPOSTCDD, after contraction, is the best alternative available for delivering community development services and facilities to the area that will be served by it. It was found in the Recommended Order and Report in DOAH Case Number 89-3654 that the existing TPOSTCDD is the best alternative available for delivering community development services and facilities to the area that is served by it. Presumably, that finding supported the adoption of F.A.C. Rules Chapter 42J-1, which created the existing TPOSTCDD on January 31, 1990. Using the legal principle of *res judicata*, it can be deduced that, since contraction will have no adverse impact on this issue, the proposed TPOSTCDD, after contraction, still is the best alternative available.

Factor 5

26. It was found, *supra*, that the proposed TPOSTCDD, after contraction, will be compatible with the capacity and uses of existing local and regional community development services and facilities.

Factor 6

27. It also can be deduced, using the legal principle of *res judicata*, that the area that will be served by the proposed TPOSTCDD, after contraction, still will be amenable to separate special-district government. The Recommended Order and Report in DOAH Case Number 89-3654 found that the existing TPOSTCDD would

be amenable to separate special-district government. Since the evidence in this case was that contraction will have no adverse impact on this issue, it can be concluded that the proposed TPOSTCDD, after contraction, still will be amenable to separate special-district government.

REPORT AND CONCLUSIONS SUBMITTED this **29th** day of January, 1997, at Tallahassee, Florida.

J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
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this **29th** day of **January**, 1997.

APPENDICES

APPENDIX A

In accordance with F.A.C. Rule 42-1.013(1) and (4), the following is a list of the names and addresses of the witnesses and the findings which their testimony helped support:

1. L.A. "Art" Woodworth, Jr.
President, Florida Technical Services
Nicholas Pointe Office Park
522 West Bearss Avenue
Tampa, Florida 33613

Findings 3-6, 8, 15-18

2. Susan Johnson
DRI and Subdivision Coordinator
City of Tampa
Tampa, Florida

Findings 14, 15, 16

3. William J. Rizzetta
Rizzetta & Company
3550 BuschWood Park Drive, Suite 135
Tampa, Florida 33618

Findings 5-6, 10-13, 15-18

4. Charles E. Cook, P.E.
Vice-President, Land Division
Lennar Homes, Inc.
1110 Douglas Avenue, Suite 2040
Altamonte Springs, Florida 32714

Findings 3,6, 9

APPENDIX B

In accordance with F.A.C. Rule 42-1.013(2), the following is a list of the attached documentary evidence:

Petitioner's Exhibit 1 - Receipt from "Florida Administrative Weekly" and Affidavit from "The Tampa Tribune"

Petitioner's Exhibit 2 - Resume' of L.A. "Art" Woodworth, Jr.

Petitioner's Exhibit 3 - Area Map

Petitioner's Exhibit 4 - Letter from Susan Johnson

Petitioner's Exhibit 5 - Company Profile, Rizzetta & Company, March, 1996

Petitioner's Exhibit 6 - Economic Impact Statement

COPIES FURNISHED:

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