

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: )  
 )  
BROOKS OF BONITA SPRINGS II )  
PETITION TO ESTABLISH ) Case No. 99-1973  
UNIFORM COMMUNITY DEVELOPMENT )  
DISTRICT. )  
\_\_\_\_\_ )

REPORT AND CONCLUSIONS  
OF ADMINISTRATIVE LAW JUDGE

On July 28, 1999, a local public hearing was held in this case in Bonita Springs, Florida, before J. Lawrence Johnston, Administrative Law Judge (ALJ), Division of Administrative Hearings, under the authority of Section 190.005(1)(d), Florida Statutes (Supp. 1998).

APPEARANCES

For Petitioner: Ken van Assenderp, Esquire  
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For Respondent: Patrick White, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether the Brooks of Bonita Springs II Petition to Establish a Uniform Community Development District [By Rule] (the Petition) should be granted.

PRELIMINARY STATEMENT

The Petition was filed with the Secretary of the Florida Land and Water Adjudicatory Commission (FLAWAC) on April 14,

1999. The Secretary forwarded the Petition to the Division of Administrative Hearings (DOAH) on April 29, 1999. On May 3, 1999, DOAH assigned the ALJ to conduct the required public hearing and render this report. On June 3, 1999, a Notice of Hearing was issued for July 28, 1999, in Bonita Springs, Florida.

Appropriate notice of the public hearing was published in the Fort Myers News-Press, a daily newspaper in Lee County, Florida, as required by Section 190.005(1)(d), Florida Statutes (Supp. 1998), and in the Florida Administrative Weekly, as required by Florida Administrative Code Rule 42-1.010(1)(b).

At the hearing, the Petitioner and Lee County filed a joint Prehearing Stipulation (with Prehearing Stipulation Exhibits A through L) and had the Prehearing Stipulation with exhibits admitted as their joint hearing exhibit. Although a copy of the Prehearing Stipulation was made available for review by members of the public, and some of the exhibits were enlarged and displayed for all participants and the three members of the public in attendance (other than representatives of the Petitioner or Lee County) to see, it was requested that the proponents of pre-filed testimony in the Prehearing Stipulation be sworn to adopt their pre-filed testimony and answer questions of the ALJ and members of the public regarding their testimony. (Only one member of the public had any questions for the witnesses.) In addition, the Fire Chief for the Estero Fire Protection and Rescue Service gave sworn testimony.

At the conclusion of the hearing, the Petitioner ordered a hearing transcript, and the request of the Petitioner and Lee County to have until August 20, 1999, to file the transcript and their joint proposed report and conclusions was granted.

Pursuant to Florida Administrative Code 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.

#### FINDINGS

1. The Petitioner, Long Bay Partners, Inc., is a limited liability corporation, which owns or has control over the property proposed for establishment of the state created District.

2. Lee County is the affected local general purpose government, a political subdivision of Florida, within whose jurisdiction, in the unincorporated area of the county, the proposed land is located.

3. The Petition proposes the establishment by rule of The Brooks of Bonita Springs II Community Development District (The Brooks II CDD) on certain proposed real property in the unincorporated area of Lee County. (The uniform statutory charter for all established community development districts (CDDs) is found in Sections 190.006 through 190.046, Florida

Statutes (Supp. 1998), as amended by Chapter 99-378, Laws of Florida (1999). See Conclusions, infra.)

4. The Petition alleges that the proposed land to be served by The Brooks II CDD consists of approximately 1,222.85 acres bounded on the north by Corkscrew Woodlands, Williams Road, and various parcels of property; on the east by Interstate 75; on the west by Seminole Gulf Railroad and by undeveloped parcels of property west of the railroad; and on the south by The Brooks of Bonita Springs Community Development District (The Brooks I CDD). A map purporting to show the location of the land areas to be served by the CDD was attached as Exhibit 1 to the Petition (Petition Exhibit 1).

5. As proposed, The Brooks II CDD contains no enclaves; the land is contiguous and will be separated only by roads, streets, or other similar, small barriers.

6. The Petition alleges that the metes and bounds legal description of the property is contained in Petition Exhibit 2.

7. The Petition alleges that Petition Exhibit 3 constitutes documentation that the owners of all the real property proposed to be included in The Brooks II CDD have given written consent to the establishment of the CDD on the proposed property.

8. The Petition names the five persons to serve on the initial Board of Supervisors upon establishment of the CDD by rule.

9. The Petition identifies, and depicts in Petition Exhibit 4, the main trunk waterlines, sewer interceptors, and outfalls on the property proposed to be served by the CDD.

10. The Petition sets forth in Petition Exhibit 5 the proposed timetable and schedule of estimated costs for the construction of the proposed facilities. Construction between the years 1999 through 2007 involves roadways; utilities; water management and control; roadway lighting; wetland mitigation and restoration; offsite improvements; right of way acquisitions; wetland and lake acquisitions; security; landscaping; and professional fees.

11. The Petition alleges that the Lee County Local Government Comprehensive Plan is an effective local government comprehensive plan which is in compliance with state law. It also alleges that the Lee County future land use map (FLUM) designates the land proposed to be within The Brooks II CDD as "Suburban Rural (Planned Development District Option) and wetlands"; Petition Exhibit 6-A is a copy of Lee County's current FLUM.

12. The Petition alleges that Petition Exhibit 7 is a Statement of Estimated Regulatory Costs.

13. The Petition alleges that the Petitioner paid \$15,000 to Lee County on April 8, 1999, for the required filing and processing fees.

14. Based on the evidence, all statements contained within the Petition are found to be true and correct. See Prehearing Stipulation; testimony of Bill Wier, General Manager of Community Operations for The Brooks; testimony of Petitioner's land use planner, Barbara Barnes-Buchanan, AICP; testimony of Petitioner's engineer, Stephen A. Means, P.E.; and testimony of Petitioner's economist, Carey Garland.

15. The underlying community development anticipated to be served by the CDD is described in Section 1.0 of the Statement of Estimated Regulatory Costs and in the testimony of Bill Wier. It will be consistent with and similar to the development in The Brooks I CDD--an upscale, residential community with full amenities. Development in The Brooks II CDD is expected to include approximately 1,587 single and multifamily residential dwelling units, passive recreational areas, up to 36 holes of golf, a golf clubhouse, and a network of trails and parks. The anticipated development is depicted in the official Notices of Hearing reproduced in Prehearing Stipulation Exhibits H-1 through H-5, and the location of the underlying development to be served by the CDD is set forth in Prehearing Stipulation Exhibits A-1 through A-3. Development in The Brooks II CDD is to proceed under the development order for the Brooks of Bonita Springs development of regional impact (DRI).

16. The evidence (especially the testimony of Barbara Barnes-Buchanan, AICP) indicates that establishment of The Brooks

II CDD will not be inconsistent with any applicable element or portion of the state comprehensive plan or of the Lee County Comprehensive Plan. There was no evidence to the contrary.

17. The evidence points out that a different and more detailed review is required before it is determined that development within The Brooks II CDD is consistent with all applicable laws and local ordinances and the Lee County Comprehensive Plan. The Petitioner and Lee County acknowledge that establishment of The Brooks II CDD does not constitute and should not be construed as a development order or any other kind of approval of the development anticipated in the CDD. Such determinations are made in other proceedings.

18. The evidence indicates that the area of land within the proposed CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community. See testimony of Barbara Barnes-Buchanan, AICP, and Stephen A. Means, P.E. There was no evidence to the contrary.

19. The evidence indicates that the CDD is the best alternative available for delivering community development services and facilities to the area that will be served by the CDD. See testimony of Barbara Barnes-Buchanan, AICP, and Stephen A. Means, P.E. There was no evidence to the contrary.

20. The DRI governing development in The Brooks II CDD requires the development to be part of the Bonita Springs

Utilities water supply and central wastewater treatment systems. The evidence indicates that the CDD's services and facilities will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. See testimony of Barbara Barnes-Buchanan, AICP, and Stephen A. Means, P.E. There was no evidence to the contrary.

21. Dennis Merrifield, Fire Chief for the Estero Fire Protection and Rescue Service (the Fire District), testified and described the Fire District and its history. Chief Merrifield stated that the Fire District is not opposed to the establishment of the CDD on the proposed property, but he wanted to make sure that the Petitioner was not seeking consent to provide fire protection and control services. Chief Merrifield pointed out the Fire District's policy to oppose vigorously any alteration or amendment of the Fire District's service boundaries. However, it became clear on cross examination by counsel for Lee County that Chief Merrifield's concern was based on a misreading of the Notice of Hearing. The Notice of Hearing included a statement that fire prevention and control would be one of the special CDD powers that would require consent by the Board of County Commissioners. But there is no plan for The Brooks II CDD to exercise that power; the plan is for fire services to be provided by the Fire District. The Petitioner's intentions were disclosed to the members of the Board of County Commissioners at the optional hearing on July 28, 1999. When all of this was

explained to him, Chief Merrifield made it clear and expressed on the record that the Fire District welcomes and appreciates the CDD's efforts to provide systems, facilities, and services and looks forward to being able to partner with the CDD in the exercise of these powers.

22. The evidence was that the area to be served by The Brooks II CDD is amenable to separate special-district government. See testimony of Barbara Barnes-Buchanan, AICP, and Stephen A. Means, P.E. There was no evidence to the contrary.

23. Lee County held an optional public hearing on the Petition, which resulted in the County's adoption of a resolution supporting the Petition and establishment of The Brooks II CDD.

#### CONCLUSIONS

24. Under Section 190.003(6), Florida Statutes (1997), a "community development district" (CDD) is "a local unit of special-purpose government which is created pursuant to this act and limited to the performance of those specialized functions authorized by this act; the boundaries of which are contained wholly within a single county; the governing head of which is a body created, organized, and constituted and authorized to function specifically as prescribed in this act for the delivery of urban community development services; and the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law."

25. Sections 190.006 through 190.046, Florida Statutes (1997) and (Supp. 1998), as amended by Section 35 of Chapter 99-378, Laws of Florida (1999), constitute the uniform general law charter of all CDDs, which can be amended only by the Florida Legislature.

26. Section 190.011, Florida Statutes (1997), enumerates the general powers of CDDs. These powers include the power of eminent domain inside the district and, with the approval of the governing body of the applicable county or municipality, outside the district for purposes related solely to water, sewer, district roads, and water management.

27. Section 190.012, Florida Statutes (Supp. 1998), as amended by Section 35 of Chapter 99-378, Laws of Florida (1999), lists special powers of CDDs. Subject to the regulatory power of all applicable government agencies, CDDs may plan, finance, acquire, construct, enlarge, operate, and maintain systems and facilities for water management; water supply, sewer, and wastewater management; CDD roads meeting minimum county specifications; and certain projects within or without the CDD pursuant to development orders from local governments. After obtaining the consent of the applicable local government, a CDD may have the same powers with respect to the following "additional" systems and facilities: parks and recreation; fire prevention; school buildings; security; mosquito control; and waste collection and disposal.

28. Section 190.005(1)(a), Florida Statutes (Supp. 1998), requires that the petition to establish a CDD be filed with FLAWAC and submitted to the County. The petition must describe by metes and bounds the proposed area to be serviced by the CDD with a specific description of real property to be excluded from the district. The petition must set forth that the petitioner has the written consent of the owners of all of the proposed real property in the CDD, or has control by "deed, trust agreement, contract or option" of all of the proposed real property. The petition must designate the five initial members of the Board of Supervisors of the CDD and the district's name. The petition must contain a map showing current major trunk water mains and sewer interceptors and outfalls, if any. The Petition in this case meets all of those requirements.

29. Section 190.005(1)(a) also requires that the petition propose a timetable for construction and an estimate of construction costs. The petition must designate future general distribution, location, and extent of public and private uses of land in the future land-use element of the appropriate local government. The petition must also contain a Statement of Estimated Regulatory Cost. The Petition in this case meets all of those requirements.

30. Section 190.005(1)(a) also requires the petitioner to provide a copy of the local government's growth management plan

(the local government comprehensive plan). The Petitioner in this case has done so.

31. Section 190.005(1)(b), Florida Statutes (Supp. 1998), requires that the petitioner pay a filing fee of \$15,000 to the county and to each municipality whose boundaries are within or contiguous to the CDD. The petitioner must serve a copy of the petition on those local governments as well. The Petitioner in this case has met those requirements.

32. Section 190.005(1)(c), Florida Statutes (Supp. 1998), permits the county and each municipality described in the preceding paragraph to conduct an optional public hearing on the petition. Such local governments may then present resolutions to FLAWAC as to the proposed property for the CDD. Lee County has exercised this option and has adopted a resolution in support of establishment of The Brooks II CDD.

33. Section 190.005(1)(d), Florida Statutes (Supp. 1998), requires a DOAH ALJ to conduct a local public hearing pursuant to Chapter 120, Florida Statutes. The hearing "shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e)." Section 190.005(1)(d) specifies that the petitioner must publish notice of the local public hearing once a week for the four successive weeks immediately prior to the hearing. The Petitioner has met those requirements.

34. Under Section 190.005(1)(e), Florida Statutes (Supp. 1998), as amended by Section 35 of Chapter 99-378, Laws of

Florida (1999), 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 establishment 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

35. In this case, all statements contained within the Petition have been found to be true and correct.

Factor 2

36. In this case, it was found that the establishment of The Brooks II CDD is not inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.

Factor 3

37. In this case, it was found that the area of land within the proposed CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

Factor 4

38. In this case, it was found that The Brooks II CDD is the best alternative available for delivering community development services and facilities to the area that will be served by the CDD.

Factor 5

39. In this case, it was found that the proposed community development services and facilities will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

Factor 6

40. In this case, it was found that the area to be served by The Brooks II CDD is amenable to separate special-district government.

REPORT AND CONCLUSIONS SUBMITTED this 2nd day of September,  
1999, in Tallahassee, Leon County, Florida.

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