

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO CONTRACT)	
LAKWOOD RANCH COMMUNITY)	Case No. 00-3949
DEVELOPMENT DISTRICT 2)	
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IN RE: PETITION TO ESTABLISH RULE)	
FOR LAKWOOD RANCH)	
COMMUNITY DEVELOPMENT)	Case No. 00-3950
DISTRICT 5)	
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REPORT AND CONCLUSIONS
OF ADMINISTRATIVE LAW JUDGE

On December 20, 2000, a local public hearing was held in these cases in Bradenton, Florida, before J. Lawrence Johnston, Administrative Law Judge (ALJ), Division of Administrative Hearings, under the authority of Section 190.005(1)(d), Florida Statutes. This report and these conclusions are submitted to the Florida Land and Water Adjudicatory Commission (FLAWAC) in accordance with Sections 190.005 and 190.046, Florida Statutes.

APPEARANCES

For Petitioner: Erin McCormick Larrinaga, Esquire
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STATEMENT OF THE ISSUES

The issues in these cases are whether two community development district petitions should be granted: the first,

a Petition to Contract Lakewood Ranch Community Development District 2; and the second, a Petition to Establish Rule [sic] for Lakewood Ranch Community Development District 5.

PRELIMINARY STATEMENT

The Petition to Contract Lakewood Ranch Community Development District 2 and the Petition to Establish Rule [sic] for Lakewood Ranch Community Development District 5 were both filed with FLAWAC's Secretary on September 6, 2000. The former petition was filed by Lakewood Ranch Community Development District 2 (District 2); the latter was filed by SMR Communities Joint Venture (SMR). FLAWAC's Secretary forwarded the petitions to the Division of Administrative Hearings (DOAH) on September 25, 2000, for assignment of ALJs to conduct local public hearings and issue the required reports. On the same day, DOAH assigned Case No. 00-3949 to the first petition and Case No. 00-3950 to the second petition; entered an Initial Order; and assigned an ALJ for both cases.

On October 3, 2000, the ALJ granted a request to consolidate the petitions, and a Notice of Hearing was issued for November 14, 2000, in Bradenton, Florida. However, a Motion to Continue Hearing was filed on October 27, 2000, and the hearing was continued to November 21, 2000. Then, a

Motion to Reset Hearing was filed on November 15, 2000, and the hearing was rescheduled for December 20, 2000.

Appropriate notice of the local public hearing was published in the Bradenton Herald, a daily newspaper in Manatee County, Florida, as required by Section 190.005(1)(d), Florida Statutes (2000), and in the Florida Administrative Weekly, as required by Florida Administrative Code Rule 42-1.010(1)(b). Direct testimony of witnesses was pre-filed on December 14, 2000.

At the consolidated local public hearing on December 20, 2000, District 2 and SMR presented the testimony of the following witnesses: Rex Jensen, who is Vice President of SMR, Vice President (Real Estate) of Schroeder-Manatee Ranch, Inc., Chairman of the Board of Supervisors of District 2, and agent of both SMR and District 2 in this proceeding; Gary Moyer, an expert in special district and community development district management and operation; Michael A. Kennedy, an expert in civil engineering, specializing 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; and Henry Fishkind, an expert in economics, finance and statistics, including the financing and the use of community development districts and special taxing districts.

SMR and District 2 also offered Petitioners' Exhibits A through K, N and O, which were admitted into evidence at the hearing. (It should be noted that the same document--the Manatee County Comprehensive Plan--serves both as Attachment 9 to Composite Exhibit A and as Attachment 8 to Composite Exhibit B.)

Interested members of the public in attendance at the hearing were given an opportunity to read the pre-filed direct testimony and ask questions of the witnesses after adoption of the pre-filed testimony. Public comment also was received. As required by Florida Administrative Code Rule 42-1.012(3), the record remained open after the hearing to permit the submission of written statements and responses, but no post-hearing statements were filed.

The Transcript of the hearing was filed on December 22, 2000. Petitioners' Proposed Report of Findings and Conclusions was filed on January 4, 2001, and has been considered.

FINDINGS

1. In Case No. 00-3949, Lakewood Ranch Community Development District 2 is seeking the adoption of a rule to contract District 2 by approximately 706 acres. (Comp. Ex. A) District 2 is located entirely within unincorporated Manatee County. (Comp. Ex. A, p. 1) District 2, after contraction,

will consist of approximately 1,374 acres. (Comp. Ex. A, pp. 1-2) Upon contraction, District 2 will continue to exercise the 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.

2. In Case No. 00-3950, SMR Communities Joint Venture is seeking the adoption of a rule to establish Lakewood Ranch Community Development District 5, consisting of approximately 1,173 acres. (Comp. Ex. B) The proposed District 5 will consist of the 706 acres contracted out of District 2, plus an additional 467 acres. (Ex. E, P. 13; Ex. O, p. 9) All of the approximately 1,173 acres which comprise the proposed District 5 are currently owned by Schroeder-Manatee Ranch, Inc. (Comp. Ex. A, Att. 3 and 4)

3. Substantially all of the public infrastructure facilities which will serve the remaining 1,374 acres within District 2, after contraction, including roads, street lighting, water, sewer, water management, and landscaping, already have been completed. (Tr. 13, 30; Ex. E, p. 18; Ex. F, p. 5)

4. The proposed District 5 is master-planned for development to include a future golf course and residential community. (Tr. 13; Ex. E, p. 13; Ex O, p. 9) Much of the

infrastructure and facilities to serve the approximately 1,173 acres within proposed District 5 has not yet been developed. (Ex. F, pp. 30-31). SMR currently intends that District 5 will construct or otherwise provide for roads and street lighting, utilities, stormwater management, irrigation and landscaping. (Comp. Ex. B, Att. 6)

5. Development within District 2, as contracted, and within proposed District 5 will be in compliance with development orders approved by Manatee County. (Exs. I and J)

6. With Manatee County's consent, and pursuant to Interlocal Agreements, both District 2, as contracted, and District 5, as proposed, 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 recreation, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquito control; waste collection and disposal. (Exs. I and J) Upon completion, some of the facilities will be owned, operated, and/or maintained by Districts 2 and 5. Some facilities may be dedicated to other governmental entities, which will operate and maintain them. (Comp. Ex. A, Att. 8, p. 6; Comp. Ex. B, Att. 7, p. 6)

7. The estimated cost in 2000 dollars for additional capital improvements for District 2, following the proposed contraction, is \$4,622,085, with construction scheduled to take place from 2001 through 2005. (Comp. Ex. A, Att. 7) Total capital costs for District 2, after contraction, including financing, are estimated to be \$31,720,000. (Comp. Ex. A, Att. 8, p. 7)

8. The estimated cost in 2000 dollars for capital improvements for proposed District 5 is \$13,851,835. (Comp. Ex. B, Att. 6) Total capital costs for proposed District 5, including financing, are estimated to be \$22,115,000. (Comp. Ex. B, Att. 7, p. 7)

9. SMR expects that proposed District 5 will issue bonds to be used 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 2 and District 5 infrastructure operations and maintenance may also be generated via non-ad valorem assessments. (Comp. Ex. A, Att. 8, p. 8; Comp. Ex. B, Att. 7, p. 8).

Allegations in Petitions

10. Some statements in the original petition to contract District 2 were not true and correct and had to be revised. As revised, all statements in the petition were shown by the

evidence to be true and correct. All statements in the petition to establish District 5 were shown by the evidence to be true and correct. (Tr. 29, 37, 45; Ex. O, pp. 4-7)

11. The petition to contract District 2, as revised, contains a metes and bounds description of the boundaries of District 2, after the proposed contraction. (Comp. Ex. A, Att. 1) The petition to establish District 5 contains a metes and bounds description of the boundaries of proposed District 5. (Comp. Ex. B, Att. 1)

12. The petition to contract District 2 was executed and filed by the Board of Supervisors of District 2. (Comp. Ex. A) Resolution 00-06, dated August 29, 2000, and adopted by the Board of Supervisors, authorized the filing of the petition to contract District 2. (T. 17; Ex. O, Att. RJ-1) In addition, the petition to contract District 2 contains the written consent and joinder of Schroeder-Manatee Ranch, Inc., the owner of 100 percent of the real property proposed to be contracted out of District 2. (Comp. Ex. A, Att 4)

13. The petition to establish District 5 contains the written consent of Schroeder-Manatee Ranch, Inc., the owner of 100 percent of the real property to be included in proposed District 5. (Comp. Ex. B, p. 2 and Att. 3)

14. The petition to contract District 2 contains the names of the five persons, all residents of the State of

Florida and citizens of the United States, who currently serve and will continue to serve on the Board of Supervisors for District 2: Rex Jensen, C. John Clarke, Mary Fran Carroll, Roger Hill, and Anthony Chiofalo. (Comp. Ex. A, p. 2) The petition to establish District 5 contains the names of the five persons, all residents of the State of Florida and citizens of the United States, who are designated to serve on the Board of Supervisors for District 5: Rex Jensen, C. John Clarke, Mary Fran Carroll, Roger Hill, and Anthony Chiofalo. (Comp. Ex. B, p. 2)

15. The petition to contract District 2 provides that the name of District 2, after contraction, will continue to be Lakewood Ranch Community Development District 2. (Comp. Ex. A, p. 2) The petition to establish District 5 provides that the name of District 5 will be Lakewood Ranch Community Development District 5. (Comp. Ex. B, p. 3)

16. The petition to contract District 2, as revised, contains a map of the current major trunk water mains, sewer interceptors and outfalls for District 2, after contraction. (Comp. Ex. A, Att. 6) The petition to establish District 5 contains a map of the current major trunk water mains, sewer interceptors and outfalls for proposed District 5. (Comp. Ex. B, Att. 5)

17. The petition to contract District 2 contains the estimated costs and timetable for future District 2 facilities and services. (Comp. Ex. A, Att. 7) The petition to establish District 5 contains the estimated costs and timetable for proposed District 5 facilities and services. (Comp. Ex. B, Att. 6)

18. Both the petition to contract District 2 and the petition to establish District 5 contain a copy of the Manatee County Comprehensive Plan. (Comp. Ex. A, Att. 9; Comp. Ex. B, Att. 8) The Future Land Use Plan Element of the Manatee County Comprehensive Plan designates the future general distribution, location and extent of public and private uses of land.

Consistency with Comprehensive Plans

19. From a planning perspective, Goals, 16, 18, and 26 of the State Comprehensive Plan, and the policies supporting these goals are particularly relevant to the contraction of District 2 and the establishment of the District 5. (Ex. G, pp. 5-6) Goal 21 of the State Comprehensive Plan, and Policy 2 thereunder, are also relevant to the contraction of District 2 and the establishment of District 5 from a management perspective. (Ex. E, pp. 19-21)

20. Goal 16, "Land Use", recognizes the importance of locating development in areas with the fiscal ability and

service capacity to accommodate growth. Community development districts (CDDs) are intended to provide infrastructure and facilities in a fiscally responsible manner to areas to accommodate growth. The evidence was that District 2, after contraction, will continue to have the fiscal ability and service-capacity to efficiently provide an excellent quality and range of facilities and services to development in Manatee County. The evidence was that District 5, as proposed, will also have the fiscal ability and service-capacity to provide an excellent quality and range of facilities and services to development of Manatee County. (Ex. G, p. 5)

21. Goal 18, "Public Facilities", directs the State to: (i) protect the investments in public facilities that already exist; (ii) plan for and finance new facilities to serve residents in a timely and efficient manner; (iii) allocate the costs of new public facilities on the basis of benefits received by new residents; (iv) implement innovative but fiscally sound techniques for financing public facilities; and (v) identify and use stable revenue sources for financing public facilities. The evidence was that both District 2, as proposed to be contracted, and proposed District 5 will provide both facilities and services in a timely and efficient manner to the areas within Manatee County to be served by them, allowing the County to focus its resources elsewhere in

the County and, thus, provide facilities and services to County residents in a timely and efficient manner. (Ex. G, p. 6)

22. The "Governmental Efficiency" goal, Goal 21, requires that Florida governments provide the amount and quality of services required by the public in an economic and efficient manner. The evidence was that proposed District 5 will have, and District 2 will continue to have, the fiscal capability to provide quality public services to those who benefit from and pay for those services. With input from their respective constituents, the boards of supervisors of Districts 2 and 5, as proposed, will determine the quality and quantity of services. This is an economic and efficient way to provide services. (Ex. E, pp. 19-21)

23. Goal 26, "Plan Implementation", encourages the integration of systemic planning into all levels of government, with emphasis on intergovernmental coordination and maximizing citizen involvement. The development plans for Districts 2 and 5, as proposed, contemplate the delivery of improvements in coordination with the general-purpose local government. From a planning perspective, all decisions of Districts 2 and 5, as proposed, will be made at board meetings which are publicly noticed and open to the public, maximizing input from landowners and residents. (Ex. G, pp. 5-6)

24. The evidence was that the proposed contraction of District 2 and establishment of District 5 are not inconsistent with any applicable goal or policy of the State Comprehensive Plan. (Ex. E, pp. 19-21; Ex. G, pp. 5-6).

25. From a planning perspective, Objective 10.1.10 of the Capital Improvements Element of the Manatee County Comprehensive Plan relates specifically to the proposed contraction of District 2 and establishment of District 5. This Objective requires the County to utilize funding derived from growth to offset costs for provision of public facilities which serve new growth. (Ex. G, p. 7)

26. Policy 10.1.10.1 of Manatee County Comprehensive Plan specifically references the establishment of CDDs as funding mechanisms to recapture the costs for providing facilities and services to new growth. (Ex. G, p. 7)

27. The evidence was that the proposed contraction of District 2 and establishment of District 5 is not inconsistent with any of the applicable goals, objectives, and policies of the Manatee County Comprehensive Plan. (Ex. G, p. 7)

Size, Compactness, and Contiguity

28. The land that currently comprises District 2 consists 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. (Comp. Ex. A, Att. 1) The petition to contract District 2 proposes to contract approximately 706 acres out of District 2. (Comp. Ex. A, Att. 2) District 2, after contraction, will consist of approximately 1,374 acres. (Comp. Ex. A, Att. 3) Physically, the land comprising District 2, after contraction, will be compact and contiguous.

29. The petition for a rule to establish District 5 proposes to establish a CDD consisting of approximately 1,173 acres, including the 706 acres contracted out of District 2. (Comp. Ex. B, Att. 2; Ex. E, p. 13; Ex. O, p. 9) The area of land within proposed District 5 is bounded by major thoroughfare roads, the Braden River, and existing community development districts. (Comp. Ex. A, Att. 2) Physically, the land comprising District 5 will be compact and contiguous.

30. From an engineering perspective, the property within CDDs must be sufficiently contiguous so that the proposed facilities and services can be designed, permitted, constructed, and maintained in a cost efficient, technically-sound manner. The property must be sufficiently contiguous to allow for the efficient, cost-effective, functional and integrated use of infrastructure. Most of the facilities and services for District 2, as contracted, have already been designed, permitted, constructed, and are being maintained in a cost effective, technically sound manner. The facilities

and services to be provided to proposed District 5 can be designed, permitted, constructed or acquired, and maintained in an efficient, cost effective, functional, and integrated manner. (Ex. F, p. 5)

31. District 2, after contraction, is comprised of land uses typical of a planned community. From a district management standpoint, this land has been planned and developed as a functional, interrelated community. It will continue to function that way. (Ex. E, pp. 14-15) District 5 is also planned to function as an homogeneous residential community developed around a future golf course. (Ex. E, p. 15)

32. The evidence was that, from engineering, planning, and management perspectives, the area of land to be included in District 2, as proposed to be contracted, and District 5, as proposed, is of sufficient size and is sufficiently compact and contiguous to be developed as a function interrelated community. (Ex. E, pp. 14-15; Ex. F, p. 5; Ex. G, p. 8)

Best Alternative Available

33. District 2 currently operates and maintains the common infrastructure, facilities and amenities for the property which will remain in District 2, after contraction. Facilities which have been constructed by District 2 include roads, street lighting, water and sewer systems, stormwater

management, irrigation, landscape and recreational facilities. Contracting the District 2 boundaries, as proposed, will have no adverse impact on the ability of District 2 to continue to provide these facilities and services. (Ex. E, pp. 15-16)

34. The property proposed to be contracted out of District 2, approximately 706 acres, is intended for development in conjunction with an additional 467 acres currently owned by Schroeder-Manatee Ranch, Inc. Collectively, this property is planned for development as a future homogeneous community developed around a future golf course. (Ex. O, pp. 9-10; Ex. E, pp. 15-16; Ex. G, pp. 9-10)

35. It is intended that District 5 will fund the construction of roads, streetlights, utilities, stormwater management, irrigation and landscape facilities. It may also, with the approval of Manatee County, and pursuant to an 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. (Exs. I and J)

36. It is expected that proposed District 5 will issue bonds to finance these services and improvements. These bonds will be repaid from the proceeds of special assessments on benefited property within proposed District 5. Use of special

assessments will ensure that those benefiting from District 5 services help pay for those services. (Comp. Ex. B, Att. 7, pp. 8-9)

37. Alternatives to the use of Districts 2 and 5, as proposed, include the use of a dependent special district for the area, such as a municipal service benefit unit (MSBU) or special taxing district under Chapter 170, Florida Statute. Another alternative is for the developer to provide the infrastructure for the 467 acres not currently located within a CDD, and for a property owner' association (POA) to operate and maintain the community facilities and services. (Comp. Ex. A, Att. 8, p. 10; Comp. Ex. B, Att. 7, p. 10)

38. The evidence was that proposed Districts 2 and 5 are preferable to an MSBU or special taxing district under Chapter 170, Florida Statutes, because these alternatives would require Manatee County to continue to administer the project and its facilities and services. Unlike CDDs, debts of an MSBU or dependent special district are debts of the County; therefore, the costs of these services and facilities are not necessarily allocated to the land directly benefiting from them. CDDs are also a better alternative from a government accountability perspective because residents have a focused unit of government, ultimately under residential control, with limited responsibilities, and responsive to residents' needs.

39. The evidence was that CDDs are preferable to POAs because CDDs can impose, collect, and enforce assessments like other property taxes. (Comp. Ex. A, Att. 8, p. 10; Comp. Ex. B, Att. 7, p. 10) As a result, there is greater certainty of assuring needed funds are available. Furthermore, CDDs, unlike POAs, are subject to the same statutes and regulations applicable to other local governments. These statutes include Chapters 119 and 286, Florida Statutes. Compliance with these laws ensures the ability of residents, landowners, and the general public to participate in decision-making processes. (Comp. Ex. A, Att. 8, p. 9; Comp. Ex. B, Att. 7, p. 9; Ex. E, p. 8)

40. SMR has experience in working with existing Lakewood Ranch CDDs. An officer of SMR testified that the Lakewood Ranch CDDs have obtained long-term, fixed rate financing, thereby ensuring that commitments to the residents and County are met, and benefiting the landowners and residents within the CDDs. (Ex. O, p. 9)

41. The evidence also was that contracting District 2 and establishing District 5 is a better alternative than leaving the boundaries of District 2 as they currently exist. The evidence was that, when District 2 was established, the 467 acres now proposed to be combined with the 706 acres contracted out of District 2 to form proposed District 5 was

not available for inclusion in District 2. Now that the land is available, Chapter 190, Florida Statutes, precludes the addition of the 467 acres to District 2. The evidence was that, since the 1,173 acres to be included in proposed District 5 will be developed as an homogeneous community, sharing infrastructure, facilities and services, the best alternative is to contract District 2 and establish District 5. (Ex. O, pp. 8-10; Ex. E, pp. 15-17) The evidence was that, from perspectives of engineering, long-term management, and maintenance of facilities and services, contracting District 2 and establishing District 5 is the best alternative for providing long-term, stable entities offering continuity of management functions and capable of maintaining the respective facilities over their lives. (Ex. F, p. 6)

Compatibility with Existing Services and Facilities

42. The petitions do not contemplate any planned duplication of facilities or services. With respect to District 2, after contraction, most of the facilities and services have already been constructed, and they do not duplicate County, or regional facilities or services. The facilities and services to be provided by proposed District 5 will not duplicate any facilities and services provided by the County or region. District 5 will supply the additional facilities and services necessary for development that are not

provided by local general-purpose government or other governmental entities. (Ex. F, pp. 607; Ex. H, pp. 7-8)

43. Some of the facilities which have been constructed by District 2, have been dedicated to Manatee County. Some of the facilities which will be constructed by District 5 also will be dedicated to Manatee County. (Comp. Ex. A, Att. 8, p. 6; Comp. Ex. B, Att. 7, p. 6)

44. All project infrastructure must comply with County standards and must be consistent with the local comprehensive plan and local land development regulations. (Ex. F, pp. 6-7)

45. The evidence was that, from engineering, planning, economic, and management perspectives, the services and facilities to be provided by the proposed Districts 2 and 5 will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. (Ex. E, pp. 17-18; Ex. F, pp. 6-7; Ex. G, p. 8; Ex. H, pp. 7-8)

Amenability to Special District Government

46. District 2 has been in existence since 1995, and is already providing the infrastructure facilities to the property which will remain in District 2 after the contraction. The evidence was that, from a management perspective, the land area within District 2, after contraction, is sufficiently sized, compact and contiguous to

allow District 2 to provide facilities and services which will benefit the residents and property owners within District 2. District 2, after contraction, will continue to be amenable to separate, special district government.

47. The evidence was that, from a management perspective, the land area within proposed District 5 will benefit from the planned infrastructure to be provided. The size, compactness and contiguity of proposed District 5 also make it amenable to separate, special district governance. (T. 24; Ex. E, pp. 18-19)

48. The evidence was that, from an engineering perspective, contracting District 2 and establishing District 5, so that there are two separate units of government, will facilitate the orderly provision of facilities, and their long-term maintenance. With respect to service delivery, both areas are amenable to being served by separate, special districts.

49. From a professional economic perspective, it is expected that proposed District 5 will levy assessments and fees on the landowners and residents within District 5 who benefit from the improvements in order to fund the construction of the planned improvements. Both District 2, after contraction, and proposed District 5 will levy non-ad valorem assessments to fund operations and maintenance of

facilities and services. Districts 2 and 5 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 with the District.

50. It is estimated that the contraction of District 2 will result in a 2.4 percent reduction in the costs per equivalent residential unit (ERU) for operations and maintenance. Estimated maintenance assessments would decrease from \$1,062 per year to \$1,036 per year per ERU in District 2, after contraction. (Tr. 41) This is because some of the landscape maintenance costs currently benefiting District 2 will be shared with additional units planned for District 5. (Comp. Ex. A, Att. 8, p. 7; Comp. Ex. B, Att. 7, p. 7) Capital assessments for District 2, after contraction, would not increase, but it cannot be determined at this time if capital assessments would be lowered. (Tr. 41)

Agency Comment on the Petition

51. FLAWAC's Secretary distributed copies of both petitions to the Department of Community Affairs (DCA) and to the Tampa Bay Regional Planning Council (TBRPC) and requested that these agencies review the petitions.

52. The TBRPC responded by letters dated October 3, 2000. The TBRPC stated that it had reviewed the petitions, and had no questions or concerns regarding either one. (Comp. Ex. K)

53. District 2 paid Manatee County a \$15,000 filing fee for processing the petition to contract District 2. SMR paid the County a \$15,000 filing fee for processing the petition to establish District 5.

54. On October 24, 2000, Manatee County adopted Resolution R-00-232 supporting the petition to contract District 2 and Resolution R-00-233 supporting the petition to establish District 5. The resolutions were based on the representations in the petitions, which were believed to be true and correct. The County's support of the petitions was subject only to the limitation that separate consent would be required for the exercise of special powers in Section 190.012(2), Florida Statutes.

CONCLUSIONS

55. Under Section 190.003(6), Florida Statutes (2000), 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." (All of the following statutory citations are to the year 2000 codification of the Florida Statutes.)

56. Sections 190.006 through 190.046 constitute the uniform general law charter of all CDDs, which can be amended only by the Florida Legislature.

57. Section 190.011 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.

58. Section 190.012 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, facilities, and basic infrastructures for: water management; water supply, sewer, and wastewater management; needed bridges and culverts; CDD roads meeting minimum county specifications, street lights,

and certain mass transit facilities; investigation and remediation costs associated with cleanup of environmental contamination; conservation, mitigation, and wildlife habitat areas; 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.

59. Section 190.046(1) provides for the filing of a petition for contraction of a CDD. Under paragraphs (f) and (g) of Section 190.046(1), petitions to contract a CDD by more than 250 acres "shall be considered petitions to establish a new district and shall follow all of the procedures specified in s. 190.005."

60. Section 190.005(1)(a) 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. Both the petition to contract District 2 and the petition to establish District 5 meet those requirements.

61. 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. Both the petition to contract District 2 and the petition to establish District 5 meet those requirements.

62. 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). District 2 and SMR have done so.

63. Section 190.005(1)(b) 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. District 2 and SMR have met those requirements.

64. Section 190.005(1)(c) 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. Manatee County has exercised this option and has adopted a resolution in support of the contraction of District 2 and establishment of District 5.

65. Section 190.005(1)(d) 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. District 2 and SMR have met those requirements.

66. Under Section 190.005(1)(e), 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

67. Some statements in the original petition to contract District 2 were not true and correct and had to be revised. As revised, all statements in the petition were shown by the evidence to be true and correct. All statements in the petition to establish District 5 were shown by the evidence to be true and correct. There was no evidence to the contrary.

Factor 2

68. In these cases, the evidence was that the proposed contraction of District 2 and establishment of District 5 are not inconsistent with any applicable element or portion of the state comprehensive plan or of the local government comprehensive plan. There was no evidence to the contrary.

69. (A different and more detailed review is required to determine that future development within the proposed CDDs

will be consistent with all applicable laws and local ordinances and the Manatee County Comprehensive Plan. Establishment of a 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.)

Factor 3

70. In these cases, the evidence was that the areas of land within District 2, as proposed to be contracted, and within proposed District 5 are of sufficient size, are sufficiently compact, and are sufficiently contiguous for each proposed CDD to be developable as a functional, interrelated community. There was no evidence to the contrary.

Factor 4

71. In these cases, the evidence was that District 2, as proposed to be contracted, and proposed District 5 are the best alternatives available for delivering community development services and facilities to the areas that will be served by those two proposed CDDs. There was no evidence to the contrary.

Factor 5

72. In these cases, the evidence was 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. There was no evidence to the contrary.

Factor 6

73. In these cases, the evidence was that the areas to be served by District 2, as proposed to be contracted, and proposed District 5 are amenable to separate special-district government. There was no evidence to the contrary.

REPORT AND CONCLUSIONS SUBMITTED this 22nd day of January, 2001, in Tallahassee, Leon County, Florida.

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