

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE )  
CREATION - TOMOKA COMMUNITY )  
DEVELOPMENT DISTRICT. ) Case No. 03-0908  
\_\_\_\_\_ )

ADMINISTRATIVE LAW JUDGE'S REPORT TO  
THE FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

Pursuant to Section 190.005(1)(d), Florida Statutes,  
J. Lawrence Johnston, Administrative Law Judge (ALJ) of the  
Division of Administrative Hearings (DOAH), conducted a local  
public hearing, in Palm Coast, Florida, on May 23, 2003.

APPEARANCES

For Petitioner: Jonathan T. Johnson, Esquire  
Roy Van Wyk, Esquire  
Hopping Green & Sams, P.A.  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314

STATEMENT OF THE ISSUE

At issue in this hearing was the Petition to Establish the  
Tomoka Community Development District filed on February 28, 2003  
(Petition). The Petition, filed by ICI Homes, Inc., requested  
that the Florida Land and Water Adjudicatory Commission (FLWAC)  
adopt a rule to establish a state-chartered uniform community  
development district, to be called the Tomoka Community  
Development District, on certain property in Flagler County,

Florida. The hearing was for purposes of gathering information in anticipation of quasi-legislative rulemaking by FLWAC.

PRELIMINARY STATEMENT

On March 13, 2003, FLWAC's Secretary certified that the Petition contained all required elements and forwarded it to DOAH for the purpose of holding the public hearing required under Section 190.005(1)(d), Florida Statutes.

FLWAC published a Notice of Receipt of Petition in the Florida Administrative Weekly on May 2, 2003.

The land to be included within the proposed District is contained wholly within the boundaries of unincorporated Flagler County. (Pet. Comp. Ex. A, page 1, Att. 1, Att. 2 and Att. 4) The land within the external boundaries of the proposed District is neither contained within nor contiguous to the boundaries of any municipality or other county. (Pet. Comp. Ex. A, Att. 1, Att. 2 and Att. 4) Section 190.005(1)(c), Florida Statutes, provides that the county containing all or a portion of the lands within the proposed District has the option to hold a public hearing within forty-five (45) days of the filing of the petition. Flagler County held its optional public hearing on April 7, 2003, and passed a resolution in support of the creation of the District. A copy of the Flagler County Resolution supporting the creation of the District was received

into evidence as Petitioner's Exhibit I. (Tr. page 15, lines 1-12)

A local public hearing was duly scheduled, noticed, advertised, and held in Palm Coast, Flagler County, Florida, on May 23, 2003. At the hearing, Petitioner presented three witnesses, whose names and addresses are listed in Appendix A to this Report, and had Petitioner's Exhibits A-K, described in Appendix B to this Report, admitted into evidence.

The Transcript of the local public hearing was filed on June 9, 2003. Petitioner filed a Proposed Report to FLWAC, which is essentially adopted and incorporated into this Report. References in the report to "Tr." are to the cited page of the transcript. References in the report to "Pt." are to the cited page of the pre-filed testimony of the identified witnesses, which was entered into the record as though read.

#### SUMMARY OF THE RECORD

1. The Petitioner is seeking the adoption of a rule by the Commission to establish a community development district proposed to consist of approximately 2,100 acres located entirely within the boundaries of unincorporated Flagler County. (Pet. Comp. Ex. A, page 1 and Att. 2; Ambach Pt. page 5, lines 27-30) Flagler County has jurisdiction over all of the lands which comprise the proposed Tomoka Community Development District. (Pet. Comp. Ex. A, page 1 and Att. 2; Ambach Pt.

page 5, lines 27-30) The name for the proposed District is the Tomoka Community Development District. (Pet. Comp. Ex. A, page 2; Ambach Pt. page 2, lines 8-10)

2. There are two parcels of land within the external boundaries of the proposed District which are to be excluded from the District. These parcels include a school site and agricultural land, neither of which is included in the DRI. (Pet. Comp. Ex. A, page 1 and Att. 2)

3. The estimated cost of the infrastructure facilities and services which are presently expected to be provided to the lands within the District was included in the Petition. (Pet. Comp. Ex. A, Att. 9)

#### Summary of the Evidence and Testimony

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

4. Petitioner's Composite Exhibit A consists of the Petition and its attachments as filed with the Commission. Mr. Ambach testified that he had reviewed the contents of the Petition and approved its findings. (Ambach Pt. page 2, lines 30-42) Mr. Ambach also generally described certain of the attachments to the Petition. (Ambach Pt. page 2, line 43, through page 3, line 32) Finally, Mr. Ambach testified that the Petition and its attachments were true and correct to the best

of his knowledge. (Tr. page 8, lines 14-17; Ambach Pt. page 3, line 35, through page 5, line 21)

5. Mr. Ambach testified that the Petition and its attachments, with the exception of the statement of regulatory costs, were prepared by his office or under his supervision. (Ambach Pt. page 3, lines 35-38; page 32, lines 3-8) (Tr. page 32, lines 12-15)

6. Mr. Walters testified that he had prepared exhibit 9 to the Petition, the Statement of Estimated Regulatory Costs. Mr. Walters also testified that the Statement of Estimated Regulatory Costs submitted as Attachment 9 to Petitioner's Composite Exhibit A was true and correct to the best of his knowledge. (Walters Pt. page 12, line 40 through page 41, line 6)

7. The Petition included written consent to establish the District from the owners of one hundred percent (100%) of the real property located within the lands to be included in the proposed District. (Pet. Comp. Ex. 1, Att. 4) Mr. Ambach testified that at the time of the filing of the Petition, the Petitioner was the sole owner of the property to be included within the proposed District. He further stated that, since the filing of the Petition, ICI Homes, Inc., had sold some lots and that each buyer has executed a Consent and Joinder to become part of the proposed District. A copy of each Consent and

Joinder was entered into the record as Petitioner's Composite Exhibit H. (Tr. page 9, line 19 through page 10, line 21) The Petition and its exhibits are true and correct.

8. The Petition includes the identity of the five persons designated to serve as the initial members of the Board of Supervisors of the Tomoka CDD.

B. 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.

9. Mr. Walters reviewed the proposed District in light of the requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes (2002). (Walters Pt. page 6, lines 37-41) Mr. Walters also reviewed the proposed District in light of the requirements of the Flagler County Comprehensive Plan. (Walters Pt. page 6, lines 26-30) A copy of the State Comprehensive Plan, Chapter 187 was entered into the record as Petitioner's Exhibit J. (Tr. page 15, lines 13-20)

10. The State Comprehensive Plan "provides long-range policy guidance for the orderly social, economic and physical growth of the State" by way of twenty-six subjects, and numerous goals and policies. (Walters Pt. page 7, lines 6-12) From a planning perspective, two subjects of the State Comprehensive Plan apply directly to the establishment of the proposed

District as do the policies supporting those subjects. (Walters Pt. page 7, lines 12-14)

11. Subject 15, Land Use, recognizes the importance of enhancing the quality of life in the state of Florida by locating development in areas with the fiscal ability and service capacity to accommodate growth. (Walters Pt. page 7, lines 19-21) The proposed District will have the fiscal ability to provide services and facilities and help provide infrastructure in a fiscally responsible manner in an area which can accommodate development within Flagler County. (Walters Pt. page 7, lines 21-25)

12. Policy 1 of Subject 15 promotes efficient development activities in areas that have the capacity to serve new populations and growth. "The proposed District will be a vehicle to provide high quality services in an efficient and focused manner over the long term." (Walters Pt. page 7, lines 12-14)

13. Subject 25, Plan Implementation, provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination. (Walters Pt. page 7, lines 36-39) The proposed District is consistent with this element of the State Comprehensive Plan because the proposed District will operate through a Board of Supervisors that will systematically plan for the construction,

operation and maintenance of the public improvements and the community facilities authorized under Chapter 190, Florida Statutes (2002), subject to and not inconsistent with the local government comprehensive plan and land development regulations.

(Walters Pt. page 7, line 39 through page 8, line 1)

Additionally, the District meetings are publicly advertised and are open to the public so that all District property owners and residents can be involved in planning for improvements.

(Walters Pt. page 8, lines 1-2)

14. Policy 2 of Subject 25 seeks to ensure that every level of government is provided the appropriate level of authority to implement the policy directives of the plan. Community Development Districts are provided such authority under Chapter 190, Florida Statutes (2002), to deliver basic community services and infrastructure. (Walters Pt. page 8, lines 6-9)

15. Policy 3 of Subject 25 provides that effective monitoring enforcement and incentive capabilities be provided. Section 189.415, Florida Statutes (2002), requires the District to file annual public facilities reports with the County, which they may rely upon in any revisions to the local comprehensive plan and to effectively monitor the proposed Tomoka Community Development District. (Walters Pt. page 8, lines 11-15)



16. Policy 6 of Subject 25 encourages public participation at all levels of policy development, planning and operations. Districts of this size created under Chapter 190, Florida Statutes, require that after six years and after 250 electors reside in the District, residents begin to transition onto the Board of Supervisors. This requirement encourages citizen participation in government at the most basic level. (Walters Pt. page 8, lines 17-21)

17. Based on the testimony and exhibits in the record, the proposed District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan. (Walters Pt. page 7, lines 3-4)

18. The Flagler County Comprehensive Plan contains various elements which are supported by numerous goals and objectives. Mr. Walters testified that portions of three of these elements were relevant when determining whether or not the proposed District was inconsistent with the local comprehensive plan. (Walters Pt. page 9, lines 4-6)

19. Within the Future Land Use Element are Goals and Objectives which are targeted to "achieve orderly, harmonious, and judicious use of land" by effectively distributing compatible land uses to foster new and existing communities, and by maintaining the agricultural and natural environments of the county. The proposed District is within the County's Planned

Urban Area and is consistent with this plan element. The development within the proposed District is part of a Chapter 380, Florida Statutes, development order (an order granting the development permit), which is vested on the County Land Use Plan. The proposed District is a recognized vehicle to provide the necessary services and facilities to the lands within the boundaries of the proposed District consistent with the Flagler County Comprehensive Plan's objective of coordinating Land Uses with Urban Services Delivery. (Walters Pt. page 9, lines 8-14)

20. The goal of the Intergovernmental Coordination Element is to achieve consistency among governmental units by coordinating policies and plans "to improve the delivery of services, enhance the quality of life, and protect the natural environment." The proposed District will assist in the coordination process by providing and maintaining community infrastructure in a way that is not inconsistent with the plans and activities of related public and private agencies. (Walters Pt. page 9, lines 16-21)

21. The Capital Improvements Element is intended to provide all the residents of Flagler County with the necessary infrastructure within the County's adopted level of service standards. The proposed District will expand the areas within Flagler County that receive infrastructure, in a manner consistent with the Development Order, without any detrimental

impact to existing levels of service. (Walters Pt. page 9, lines 13-27)

22. Chapter 190, Florida Statutes (2002), prohibits the proposed District from acting in any way inconsistent with the Flagler County Comprehensive Plan. (Walters Pt. page 9, lines 17-21) The exercise of District powers does not make it inconsistent with the Flagler County Comprehensive Plan. (Walters Pt. page 9, lines 29-34)

23. The Florida Department of Community Affairs ("DCA") was notified of the Petition and reviewed it for compliance with its various programs and responsibilities. A copy of the notice to DCA was entered into the record as Petitioner's Exhibit D. (Tr. page 8, lines 6-19; Ambach Pt. page 7, lines 13-14) After conducting a review of the Petition for consistency with the approved development order and the approved comprehensive plan, DCA requested additional information regarding the DRI (as hereinafter defined) which was provided to them. (Ambach Pt. page 7, lines 14-16) A copy of Petitioner's response letter was entered into the record as Petitioner's Exhibit E. (Tr. page 8, lines 6-19) No further communication was received from DCA at the time of the hearing.

24. Based on the evidence in the record, the proposed District will not be inconsistent with any applicable element or

portion of the Local Comprehensive Plan, and will in fact further the goals provided.

C. 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.

25. Testimony on these factors was provided Mr. Ambach and Mr. Walters. The proposed District will include approximately 2,100 acres, located entirely within the boundary of unincorporated Flagler County, Florida. (Pet. Comp. Ex. A, page 1)

26. All of the land in the proposed District is part of a planned community included in the Plantation Bay Development of Regional Impact ("DRI"). (Ambach Pt. page 7, lines 4-8)

27. The term "functional interrelated" essentially means that from a planning perspective all the governmental functions provided to a community are integrated into a long-range plan to evaluate the future needs of the community. (Walters Pt. page 10, lines 13-14) Each function requires a management capability, funding source, and an understanding of the size of the community's needs so as to handle the growth and development of the community. (Walters Pt. page 10, lines 14-16) Functional interrelation means that each community purpose has a mutual reinforcing relationship to one another. Each function must be designed to contribute to the development or the

maintenance of the community. (Walters Pt. page 10, lines 16-19)

28. The size of the District as proposed is approximately 2,100 acres. (Pet. Comp. Ex. A, page 1 and Att. 2; Ambach Pt. page 5, lines 29-30) From a planning perspective, this is a sufficient size to accommodate the basic infrastructure facilities and services typical of a functionally interrelated community. The proposed facilities can be provided in an efficient, functional and integrated manner. (Walters Pt. page 10, lines 25-30)

29. Compactness relates to the location in distance between the lands and land uses within a community. The community is sufficiently compact to be developed as a functionally interrelated community. The compact configuration of the lands will allow the District to deliver the proposed construction and perpetual maintenance of any District improvements or facilities in a long-term, cost-efficient manner. (Walters Pt. page 10, lines 35-39)

30. Petitioner is developing all of the lands within the District as a single, master-planned community. All of these lands are governed by the Plantation Bay Development of Regional Impact Development Approval issued by Flagler and Volusia Counties. Only lands in Flagler County are within the proposed

Tomoka Community Development District. (Ambach Pt. page 7, lines 4-8)

31. From planning, economic, and management perspectives, the area of land to be included in the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community. (Walters Pt. page 10, lines 2-4)

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

32. It is presently intended that the District will construct or provide certain infrastructure improvements as outlined in the petition. (Pet. Comp. Ex. A, page 3, Att. 8 and Att. 9)

33. Installation and maintenance of infrastructure systems and services by the proposed District are expected to be paid through the sale of tax-exempt bonds. (Ambach Pt. page 8, lines 32-33) The debt will be retired by "non-ad valorem" or "special assessments" imposed on benefited property within the proposed District. (Ambach Pt. page 8, lines 33-35; Walters Pt. page 15, lines 41-44) Maintenance and operational activities are expected to be funded by maintenance assessments. (Ambach Pt. page 8, lines 35-36; Walters Pt. page 15, line 44 through page 16, line 2)

34. Two alternatives to the use of the District were identified. First, Flagler County might provide facilities and services from its general fund thus allocating costs to all residents not just those benefited. (Walters Pt. page 16, lines 4-15) Second, facilities and services might be provided by some private means, with maintenance delegated to a property owners' association (POA) or a home owners' association (HOA), neither of which has the statutory powers of a Community Development District. (Walters Pt. page 16, lines 17-23)

35. From an economic perspective, the District is preferable to these alternatives because it provides lower costs to landowners, homeowners, and county residents at large. (Walters Pt. page 16 lines 27-29)

36. The District will construct certain infrastructure and community facilities which will be needed by the property owners and residents of the project. (Ambach Pt. page 8, lines 4-8) The proposed District would be more effective than a typical POA or HOA attempting to work with a general purpose government. Neither entity has the ability to finance the infrastructure contemplated here as a community development district does. (Ambach Pt. page 10, lines 3-7) A community development district has the ability to efficiently and effectively manage the financing, construction, and acquisition of this public

infrastructure. (Ambach Pt. page 9, line 41 through page 10, line 7)

37. Only a community development district allows for the long-term, stable, perpetual entity capable of funding, constructing, and in some cases maintaining the facilities over their lifetime. (Ambach Pt. page 10, lines 7-9)

38. From planning, economic, and special district management perspectives, the proposed District is the best alternative available for delivering community development services and facilities to the area that will be served by the District. (Ambach Pt. page 9, lines 36-37; Walters Pt. page 15, lines 32-35)

E. Whether the community development services and facilities of the proposed District will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

39. The services and facilities proposed to be provided by the District are not incompatible with the capacity and uses of existing local and regional community development facilities and services. The District's facilities and services provide a logical, efficient extension of existing systems into targeted development areas. (Walters Pt. page 11, lines 8-11)

40. There is no duplication of the proposed District's anticipated improvements and services contemplated by the



proposed District under the Petition. (Walters Pt. page 11, lines 15-17)

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

41. As cited previously, from planning, economic, and special district management perspectives, the area of land to be included in the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed and become a functionally interrelated community. Following an evaluation of the area to be located within the proposed District, it was determined that the proposed community does warrant a separate special district government to oversee the installation of these improvements. (Walters Pt. page 11, lines 28-36)

42. From planning, engineering, economic and management perspectives, the area that will be served by the District is amenable to separate special-district government.

G. Other requirements imposed by statute or rule.

43. FLWAC has certified that the Petition to Establish the Tomoka Community Development District meets all of the requirements of Section 190.005(1)(a), Florida Statutes. (Pet. Ex. B)

44. The Petition contains a Statement of Estimated Regulatory Costs ("SERC"). (Pet. Comp. Ex. A, Att. 9) The SERC

in the Petition contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the District. These include the State of Florida and its citizens, the county and its citizens, the Petitioner, and other consumers. (Pet. Comp. Ex. A, Att. 9)

45. Beyond administrative costs related to rule adoption, the State and its citizens will only incur minimal costs from establishing the District. These costs are related to the incremental costs to various agencies of reviewing one additional local government report. The proposed District will require no subsidies from the State. (Pet. Comp. Ex. A, Att. 9, page 3) Benefits will include improved planning and coordination of development, which is difficult to quantify but nonetheless significant.

46. Administrative costs incurred by the County related to rule adoption will be modest. These modest costs are offset by the \$15,000 filing fee required to accompany the Petition to Flagler County. (Pet. Comp. Ex. A, Att. 9, pages 3 and 4)

47. Future landowners in the District will pay non-ad valorem or special assessments for certain facilities. Generally, District financing will be less expensive than maintenance through a POA or capital improvements financed through developer loans. Benefits to consumers in the area within the community development district will include a higher

level of public services and amenities than might otherwise be available, completion of District-sponsored improvements to the area on a timely basis, and a larger share of direct control over community development services and facilities within the area. (Pet. Comp. Ex. A, Att. 9, page 5)

Other Requirements

48. Flagler County was provided three copies of the Petition and was paid the requisite filing fee. (Ambach Pt. page 5, lines 35-39)

49. Petitioner published notice of the local public hearing in a newspaper of general paid circulation in Flagler County (Daytona Beach News-Journal) for four consecutive weeks, on April 25, 2003, May 2, 2003, May 9, 2003, and May 16, 2003. (Pet. Ex. G; Tr. page 15, line 22 through page 16, line 21)

APPLICABLE LAW

A. General

50. Under Section 190.003(6), Florida Statutes, a "community development district" 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.

51. Section 190.011, Florida Statutes, enumerates the general powers of CDDs. These general powers are to enable the District to exercise its single specialized narrow growth management purpose. State v. Frontier Acres Community Development District, 472 So. 2d 455 (Fla. 1985). They include the powers to organize itself, to hire contract with consultants, to have a seal, to sue and be sued, and related governmental powers.

52. Section 190.012, Florida Statutes, 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; district roads meeting minimum county specifications; and certain projects within or without the district pursuant to development orders from local governments. After obtaining the consent of the applicable local general purpose government, a CDD may have the same powers with respect to using the following "optional" systems, facilities, and services already granted to the District by its general law

charter: parks and recreation, fire prevention, school buildings, security, mosquito control, and waste collection and disposal.

53. Section 190.005(1), Florida Statutes, provides that the sole means for establishing a community development district of 1,000 acres or more shall be by rule adopted by FLWAC granting a petition for the establishment of a CDD. (Section 190.005(2), Florida Statutes, provides that, for CDDs on proposed property of less than 1,000 acres, the county in which the proposed CDD is to be situated may establish a CDD under the same requirements discussed below.)

54. Section 190.005(1)(a), Florida Statutes, requires that the petition be filed with FLWAC and submitted to the County. The petition must describe by metes and bounds the 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 real property proposed to be in the CDD, or has control by "deed, trust agreement, contract or option" of all of the 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.

55. Section 190.005(1)(a), Florida Statutes, 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 general purpose local government. The petition must contain a Statement of Estimated Regulatory Costs meeting the requirements of Section 120.541, Florida Statutes.

56. Section 190.005(1)(b), Florida Statutes, requires that the petitioner pay a filing fee of \$15,000 to the county and to each municipality whose proposed boundaries are within or contiguous to the CDD. The petitioner also must serve a copy of the petition on those local, general-purpose governments.

57. Section 190.005(1)(c), Florida Statutes, permits the county and each municipality described in the preceding paragraph to conduct a public hearing on the petition. Such local, general-purpose governments may then present resolutions to FLWAC as to the establishment of a CDD on the property proposed in the Petition.

58. Section 190.005(1)(d), Florida Statutes, requires an 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), Florida Statutes,

specifies that the petitioner publish notice of the local public hearing once a week for the four successive weeks immediately prior to the hearing.

B. Factors by Law to be Considered for Granting or Denying Petition

59. Section 190.005(1)(e), Florida Statutes, provides that FLWAC consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments as provided in paragraph (c), and the following factors and make a determination to grant or deny a petition for the establishment of a community development district:

1. Whether all statements contained within the petition have been found to be true and correct.
2. Whether the establishment of the district is inconsistent with any applicable element of the effective local government comprehensive plan.
3. 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.
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 of the district 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.

COMPARISON OF INFORMATION IN THE RECORD TO APPLICABLE LAW

A. Procedural Requirements

60. The evidence was that Petitioner satisfied the procedural requirements for the establishment of a CDD on the proposed property by paying the \$15,000 filing fee, filing a Petition in the proper form and with the required attachments, and publishing statutory notice of the local public hearing.

B. Six Factors of Section 190.005(1)(e), Florida Statutes

61. The evidence was that the statements in the Petition and its attachments are true and correct.

62. The evidence was that establishment by rule of the District on the proposed property in the Petition is not inconsistent with the State and Flagler County Comprehensive Plans. (Usually, through efficient provision of certain infrastructure, typically concurrent with the impacts of development, a properly-established CDD serves several provisions of comprehensive plans.)

63. The evidence was that the size, compactness, and contiguity of the proposed land area are sufficient for it to be developable as one functional interrelated community.



64. The evidence was that the CDD is the best alternative presently available for delivering community development systems, facilities, and services to the proposed land area.

65. The evidence was that the services and facilities provided by the CDD will be compatible with the capacity and uses of existing local and regional community development services and facilities.

66. The evidence was that the proposed area to be served by the state-chartered CDD is amenable to separate special-district government.

#### CONCLUSION

Based on the record evidence, the Petition meets all statutory requirements, and there appears to be no reason not to grant the Petition and establish the proposed Tomoka Community Development District by rule. For purposes of drafting such a rule, Petitioner's proposed rule, with a metes and bounds description of the proposed Tomoka CDD, is included in Appendix C attached to this Report, along with a proposed rule listing the names of the five persons designated in the Petition to serve as the initial members of the Board of Supervisors of the Tomoka CDD (which was omitted from Petitioner's proposal).

DONE AND ENTERED this 18th day of June, 2003, in  
Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of June, 2003.

COPIES FURNISHED:

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APPENDIX A

WITNESSES

Mark S. Ambach  
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Ormond Beach, Florida 32174

Gary R. Walters  
12 Crooked Tree Trail  
Ormond Beach, Florida 32174

William E. Schaefer  
4417 Beach Boulevard  
Jacksonville, Florida 32207

APPENDIX B

PETITIONER'S LIST OF EXHIBITS

Composite Exhibit A:

Copy of the original petition filed with the Florida Land and Water Adjudicatory Commission (FLAWAC). Inclusive of attachments 1-9.

Exhibit B: Correspondence from the Secretary of FLAWAC stating that the Petition was complete and transmitting it to DOAH for a hearing.

Exhibit C: Copy of notice of receipt of the Petition and notice of local public hearing published in the Florida Administrative Weekly May 2, 2003.

Exhibit D: Correspondence from the Secretary of FLAWAC transmitting a copy of the Petition to the Department of Community Affairs (DCA).

Exhibit E: Copy of response letter from Petitioner to DCA regarding additional information on the Petition.

Exhibit F: Copy of correspondence from St. Johns River Water Management District to Petitioner's Counsel regarding the preference of CDD's over HOA for the operation and maintenance of a stormwater system.

Exhibit G: Proof of publication of notice of hearing in the Daytona Beach News-Journal.

Revised Exhibit G:

Revised proof of publication of notice of hearing in the Daytona Beach News-Journal indicating publication in both Volusia and Flagler Counties.

Composite Exhibit H:

Consent and Joinder of additional land owners to inclusion of property into the Proposed Tomoka Community Development District (CDD).

Exhibit I: Copy of Resolution 2003-58 of the Board of County Commissioners of Flagler County supporting the establishment of the Tomoka CDD.

Exhibit J: Certified copy of Chapter 187, Florida Statutes (2002), State Comprehensive Plan.

Exhibit K: Resume of William Earnest Schaefer, P.E.

APPENDIX C

Text of Proposed Rule

Chapter 42 \_\_\_\_ -1

TOMOKA COMMUNITY DEVELOPMENT DISTRICT

- 42 \_\_\_\_ - 1.001            Establishment.
- 42 \_\_\_\_ - 1.002            Boundary.
- 42 \_\_\_\_ - 1.003            Supervisors.

42 \_\_\_\_ - 1.001 Creation. The Tomoka Community Development District is hereby established.

42 \_\_\_\_ - 1.002 Boundary. The boundaries of the District are as follows:

A portion of sections, 3, 4, 5, 8, 9, 10, 15, 16, 21, and 22, Township 13 south, range 31 east, Flagler County, Florida, and a portion of Bunnell Development Company Subdivision, as recorded in plat book 1, page 1, of the Public Records of Flagler County, Florida, and a portion of sections 14, 22 and 23, Township 13 south, range 31 east, Volusia County, Florida, described as follows:

From the southwest corner of said section 3, run north 01 degrees 46 minutes 36 seconds west along the west line of said section 3 a distance of 451.12 feet to the point of beginning; thence continue north 01 degrees 46 minutes 36 seconds west along said link a distance of 535.72 feet; thence departing said line, run north 87 degrees 27 minutes 53 seconds east a distance of 150.00 feet; thence north 01 degree 46 minutes 33 seconds west a distance of 1287.05 feet to the southerly right of way line of Old Dixie Highway, a 66 foot right of way; thence north 89 degrees 28 minutes 05 seconds east along said right of way line a distance of 1181.54 feet; thence departing said right of way line, run south 01 degree 48 minutes 15 seconds east along the east line of lot 4, block C, section 3, said Bunnell Development Company subdivision a distance of 1287.00 feet; thence north 89 degrees 28 minutes 22 seconds east along the north line of lot 10, block C, section 3, said Bunnell Development Company subdivision a distance of 110.00 feet; thence departing said line, run south 01 degree 48 minutes 15 seconds east along the easterly line of a 110 foot Florida Power & Light Company easement as recorded in deed book 116, page 128,

of the Public Records of Flagler County, Florida, and the boundary of Plantation Bay phase I A, as recorded in plat book 29, pages 40-48, of the Public Records of Flagler County, Florida, a distance of 782.92 feet; thence departing said line, run south 89 degrees 35 minutes 22 seconds west a distance of 236.07 feet; thence north 01 degree 48 minutes 15 seconds west a distance of 399.99 feet; thence south 82 degrees 12 minutes 14 seconds west a distance of 1212.70 feet to the point of beginning.

Together with the following:

From the southwest corner of said section 3, as the point of beginning, run south 02 degrees 08 minutes 04 seconds east along the east line of said section 9 a distance of 473.67 feet; thence departing said link, run south 62 degrees 28 minutes 42 seconds west a distance of 334.23 feet to a point on the arc of a curve, concave westerly, having a radius of 1380.00 feet, central angle of 40 degrees 46 minutes 36 seconds, and a chord bearing of south 06 degrees 49 minutes 43 seconds west; thence run southerly along the arc of said curve a distance of 982.13 feet; thence south 27 degrees 13 minutes 01 seconds west a distance of 704.67 feet to the p.c. of a curve, concave easterly, having a radius of 571.65 feet and a central angle of 34 degrees 23 minutes 14 seconds; thence run southerly along the arc of said curve a distance of 343.09 feet to the p.r.c. of a curve, concave northwest, having a radius of 658.75 feet and a central angle of 32 degrees 59 minutes 14 seconds; thence run southerly along the arc of said curve a distance of 379.27 feet; thence south 25 degrees 49 minutes 00 seconds west a distance of 502.83 feet to the p.c. of a curve, concave southeast, having a radius of 670.00 feet and a central angle of 39 degrees 19 minutes 27 seconds; thence run southerly along the arc of said curve a distance of 459.84 feet; thence south 33 degrees 30 minutes 26 seconds east a distance of 180.63 feet to the p.c. of a curve, concave northeast, having a radius of 25.00 feet and a central angle of 88 degrees 29 minutes 15 seconds; thence run easterly along the arc of said curve a distance of 38.61 feet to the p.r.c. of a curve, concave southwest, having a radius of 2058.75 feet, central angle of 33 degrees 31 minutes 32 seconds, and a chord bearing of south 85 degrees 13 minutes 55 seconds east; thence run easterly along the arc of said curve a distance of 1204.64 feet; thence south 02 degrees 08 minutes 04 seconds east along the east line of said section 9 a distance of 1175.28 feet to the southeast corner thereof; thence south 02 degrees 02 minutes 03 seconds east along the east link of said section 16 a distance of 3104.20 feet; thence departing said link, run north



87 degrees 57 minutes 57 seconds east a distance of 860.71 feet to a point to be reference as point "A"; thence south 13 degrees 56 minutes 20 seconds west a distance of 973.88 feet to the p.c. of a curve, concave easterly, having a radius of 2550.00 feet and a central angle of 31 degrees 08 minutes 05 seconds; thence run southerly along the arc of said curve a distance of 1385.68 feet; thence south 17 degrees 11 minutes 45 seconds east a distance of 731.09 feet to the p.c. of a curve, concave northwest, having a radius of 625.00 feet and a central angle of 61 degrees 22 minutes 11 seconds; thence run westerly along the arc of said curve a distance of 669.44 feet; thence south 44 degrees 10 minutes 26 seconds west a distance of 234.53 feet to the p.c. of a curve, concave northerly, having a radius of 25.00 feet, central angle of 90 degrees 16 minutes 05 seconds, and a chord bearing of south 89 degrees 33 minutes 29 seconds west; thence run northerly along the arc of said curve a distance 39.61 feet to the p.c.c. of a curve, concave northeast, having a radius of 5619.59 feet, central angle of 03 degrees 58 minutes 40 seconds, and a chord bearing of north 43 degrees 04 minutes 09 seconds west; said point being on the easterly right of way line of U.S. Highway No. 1, a 160 foot right of way; thence northerly along said right of way line and the arc of said curve a distance of 390.13 feet; thence north 48 degrees 55 minutes 11 seconds east a distance of 35.00 feet to a point on the arc of a curve, concave northeast, having a radius of 5584.59 feet, central angle of 1 degree 40 minutes 40 seconds, a chord bearing of north 40 degrees 14 minutes 29 seconds west; thence run northerly along the arc of said curve a distance of 163.53 feet; thence north 39 degrees 24 minutes 09 seconds west a distance of 276.47 feet; thence south 50 degrees 35 minutes 51 seconds west a distance of 35.00 feet; thence north 39 degrees 24 minutes 09 seconds west a distance of 7995.87 feet; thence departing said right of way line, run north 89 degrees 11 minutes 58 seconds east along the south line of lots 8 and 9, block C, section 9, said Bunnell Development Company subdivision, a distance of 999.49 feet; thence north 02 degrees 00 minutes 32.5 seconds west along the east line of lot 9, block C, said section 9 a distance of 1320.83 feet; thence north 89 degrees 12 minutes 05 seconds east along the north line of lots 10 and 12, block C, said section 9 a distance of 1325.60 feet; thence north 02 degrees 04 minutes 45 seconds west along the west line of lots 5 and 6, block D, said section 9 a distance of 1320.83 feet; thence south 89 degrees 12 minutes 11 seconds west along the south line of lots 10 and 11, block B, said section 9 a distance of 1323.99 feet; thence south 02 degrees 00 minutes 32.5 seconds east along the east line of lot 4, block C, said section 9 a distance of 1320.83 feet; thence south 89 degrees 12 minutes 05

seconds west along the south link of lot 4, block C, said section 9 a distance of 662.80 feet; thence north 01 degree 58 minutes 26 seconds west along the west line of lot 4, block C, and lot 9, block D, said section 9 a distance of 1781.25 feet; thence south 89 degrees 12 minutes 14 seconds west along the south line of lot 7, block B, said section 9, and the south line of lot 12, block A, said section 8 and the westerly extension thereof, a distance of 1396.16 feet; thence north 07 degrees 21 minutes 09.5 seconds west a distance of 442.07 feet; thence south 72 degrees 34 minutes 37 seconds west a distance of 267.61 feet to the easterly right of way line of said U.S. Highway No. 1; thence north 17 degrees 23 minutes 09 seconds west along said right of way line a distance of 311.39 feet; thence departing said line, run north 89 degrees 14 minutes 31 seconds east along the northerly line of lot 12, block A, said section 8, and the westerly extension thereof a distance of 310.90 feet; thence north 17 degrees 18 minutes 16 seconds west a distance of 690.36 feet; thence north 01 degree 07 minutes 55 seconds west a distance of 235.10 feet; thence south 89 degrees 19 minutes 05 seconds west a distance of 280.00 feet; thence north 01 degree 07 minutes 55 seconds west a distance of 425.00 feet to the north line of said section 8; thence south 89 degrees 19 minutes 05 seconds west along said north line a distance of 152.45 feet; thence north 01 degree 02 minutes 20 seconds west along the west line of lots 3 and 10, block D, said section 5, a distance of 2338.83 feet; thence north 89 degrees 18 minutes 57 seconds east along the north line of lots 2 and 3, block D, said section 5 a distance of 1328.19 feet; thence north 89 degrees 33 minutes 19 seconds east along the north line of lot 5, block C, said section 4 a distance of 668.21 feet; thence south 02 degrees 54 minutes 51 seconds east along the east line of lot 5, block C, said section 4 a distance of 660.00 feet; thence south 89 degrees 33 minutes 49 seconds west along the south line of lot 5, block C, said section 4 a distance of 666.05 feet; thence south 03 degrees 06 minutes 06 seconds east along the east line of lots 1, 11 and 12, block D, said section 5, being the east line of said section 5, a distance of 1680.93 feet; thence north 89 degrees 09 minutes 34 seconds east along the north line of lots 4 and 5, block B, said section 9, being the north line of said section 9, a distance of 1320.73 feet; thence north 02 degrees 43 minutes 34 seconds west along the west line of lot 10, block C, said section 4, a distance of 1011.14 feet; thence north 89 degrees 33 minutes 56 seconds east along the north line of lots 10 and 12, block C, and lots 7 and 9, block D, said section 4 a distance of 2657.49 feet; thence south 02 degrees 04 minutes 00 seconds east along the east line of lot 9, block D, said section 4 a distance of 994.19 feet; thence north 89

degrees 15 minutes 13 seconds east along the north line of lots 2 and 3, block A, said section 9, being the north line of said section 9, a distance of 1324.71 feet to the point of beginning.

Together with the following:

From previously reference point "A", run south 84 degrees 30 minutes 42 seconds east a distance of 101.10 feet to the point of beginning; thence north 87 degrees 57 minutes 57 seconds east a distance of 2815.27 feet to a point on the boundary of Eagle Rock Ranch subdivision, as recorded in map book 26, pages 51 and 52, of the Public Records of Flagler County, Florida; thence south 40 degrees 11 minutes 55 seconds west along said boundary a distance of 640.75 feet; thence south 88 degrees 27 minutes 37 seconds west along said boundary a distance of 45.18 feet; thence south 40 degrees 11 minutes 55 seconds west along said boundary a distance of 2189.93 feet; thence south 49 degrees 47 minutes 54 seconds east along said boundary a distance of 1171.20 feet; thence south 40 degrees 14 minutes 04 seconds west along said boundary a distance of 2222.60 feet to the easterly right of way line of U.S. Highway No. 1; thence along said right of way line, run north 49 degrees 47 minutes 21 seconds west a distance of 637.20 feet to the p.c. of a curve, concave northeast, having a radius of 5619.59 feet and a central angle of 3 degrees 11 minutes 42 seconds; thence run northerly along the arc of said curve a distance of 373.37 feet to the p.c.c. of a curve, concave southeast, having a radius of 25.00 feet and a central angle of 90 degrees 46 minutes 05 seconds; thence departing said right of way line, run easterly along the arc of said curve a distance of 39.61 feet; thence north 44 degrees 10 minutes 26 seconds east a distance of 234.53 feet to the p.c. of a curve, concave northwest, having a radius of 725.00 feet and a central angle of 61 degrees 22 minutes 11 seconds; thence run northerly along the arc of said curve a distance of 776.55 feet; thence north 17 degrees 11 minutes 45 seconds west a distance of 731.09 feet to the p.c. of a curve, concave southeast, having a radius of 2450.00 feet and a central angle of 31 degrees 08 minutes 05 seconds; thence run northerly along the arc of said curve a distance of 1331.34 feet; thence north 13 degrees 56 minutes 20 seconds east a distance of 163.86 feet to the point of beginning.

Together with the following:

From the southeast corner of said section 22, run south 89 degrees 26 minutes 56 seconds west along the south line of said section 22 a distance of 757.21 feet to the easterly right of

way line of U.S. Highway No. 1, a 160 foot right of way, thence north 49 degrees 48 minutes 44 seconds west along said right of way line a distance of 509.05 feet to the point of beginning; thence continue along said right of way line north 49 degrees 46 minutes 07 seconds west a distance of 100.10 feet; thence departing said right of way line, run north 42 degrees 47 minutes 46 seconds east, parallel with the southerly line of Eagle Rock Ranch subdivision, as recorded in map book 26, pages 51 & 52 of the Public Records of Flagler County, Florida, a distance of 2222.97 feet; thence north 49 degrees 46 minutes 12 seconds west a distance of 428.53 feet; thence north 40 degrees 11 minutes 55 seconds east a distance of 5473.32 feet to the westerly right of way line of Interstate No. 95, a 300 foot right of way; thence south 20 degrees 43 minutes 11 seconds east along said right of way line a distance of 5003.89 feet to the east line of said section 23; thence south 01 degree 50 minutes 39 seconds east along said east line a distance of 1773.40 feet to the southeast corner of said section 23; thence south 89 degrees 46 minutes 01 seconds west along the south line of said section 23 a distance of 2661.49 feet; thence departing said line, run north 49 degrees 46 minutes 12 seconds west a distance of 3006.16 feet; thence south 42 degrees 47 minutes 46 seconds west a distance of 2222.97 feet to the point of beginning.

Excepting therefrom the plat of Plantation Bay School site, as recorded in plat book 29, page 49 of the Public Records of Flagler County, Florida.

And excepting the following:

A portion of section 9 and 16, Township 13 south, range 31 east, Flagler County, Florida, described as follows; from the northeast corner of said section 16, run south 89 degrees 11 minutes 50 seconds west along the north line of said section 16, a distance of 4981.16 feet to the east right of way line of U.S. 1, a 160 foot right of way; thence south 39 degrees 24 minutes 09 seconds east, along said right of way line a distance of 1525.00 feet to and the p.c. of a curve, concave northerly, having a radius of 25.00 feet and a central angle of 90 degrees 00 minutes 00 seconds; thence departing said right of way line, run easterly along the arc of said curve a distance of 39.27 feet; thence north 50 degrees 35 minutes 51 seconds east a distance of 353.91 feet to the p.c. of a curve, concave southeast, having a radius of 425.24 feet, central angle of 37 degrees 57 minutes 36 seconds, and a chord bearing of north 69 degrees 34 minutes 39 second east; thence run easterly along the arc of said curve a distance of 281.73 feet to the P.R.C. of a

curve, concave northerly, having a radius of 390.67 feet and a central angle of 54 degrees 14 minutes 32 seconds; thence run easterly along the arc of said curve a distance of 369.83 feet to the P.C.C. of a curve, concave northerly, having a radius of 2818.85 feet, central angle of 2 degrees 04 minutes 29 seconds; and a chord bearing of north 33 degrees 16 minutes 41 second east; thence run easterly along the arc of said curve a distance of 102.00 feet; thence south 49 degrees 15 minutes 56 second east a distance of 142.40 feet to the P.C. of a curve, concave easterly, having a radius of 25.00 feet, central angle of 80 degrees 21 minutes 26 seconds, and a chord bearing of north 08 degrees 00 minutes 29 seconds west, thence run northerly along the arc of said curve a distance of 35.06 feet to the P.R.C. of a curve, concave northwest, having a radius of 2938.85 feet, central angle of 8 degrees 19 minutes 23 seconds, and a chord bearing of north 28 degrees 00 minutes 33 second east; thence run northerly along the arc of said curve a distance of 126.91 feet; thence north 23 degrees 50 minutes 51 seconds east a distance of 125.00 feet; to the point of beginning; thence continue north 23 degrees 50 minutes 51 seconds east a distance of 227.35 feet to the north line of said section 16; thence continue north 23 degrees 50 minutes 51 seconds east a distance of 123.65 feet; thence south 76 degrees 52 minutes 06 seconds was a distance of 462.98 feet to the north line of said section 16; thence continue south 76 degrees 52 minutes 06 seconds east a distance of 216.11 feet; thence south 48 degrees 20 minutes 31 seconds east a distance of 1737.34 feet; thence south 04 degrees 12 minutes 29 seconds east a distance of 450.94 feet; thence north 60 degrees 12 minutes 29 seconds west a distance of 698.75 feet; thence north 79 degrees 12 minutes 29 seconds west a distance of 393.78 feet; thence north 31 degrees 58 minutes 15 seconds west a distance of 463.90 feet; thence north 64 degrees 20 minutes 47 seconds west a distance of 474.24 feet; thence north 48 degrees 09 minutes 28 seconds west a distance of 628.10 feet to the point of beginning.

Also less and except the property described in Official Records Book 561, page 358; Official Records Book 318, page 1002, 1007; Official Records Book 276, page 61; Official Records Book 595, page 196; and Official Records Book 600, page 52, all of the public records of Flagler County, Florida.

42 \_\_\_\_ - 1.002 Supervisors. The following five persons are designated as the initial members of the Board of Supervisors: Mark Ambach; Doug Ross; Andy Hagen; Dick Smith; and Jean Trinder.