

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION DURBIN CROSSING) Case No. 03-1485
COMMUNITY DEVELOPMENT DISTRICT)
_____)

REPORT TO THE FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

Pursuant to Section 190.005(1)(d), Florida Statutes, Richard A. Hixson, Administrative Law Judge, conducted a public hearing on Wednesday, June 18, 2003, at 1:00 p.m., in St. Augustine, St. Johns County, for the purpose of taking testimony and public comment and receiving exhibits on the Petition of SouthStar Development Partners, Inc., to establish the Durbin Crossing Community Development District. For the purpose of conducting the public hearing only, this matter was consolidated with IN RE: PETITION FOR RULE CREATION - ABERDEEN COMMUNITY DEVELOPMENT DISTRICT (DOAH Case No. 03-1486, FLWAC Case No. CDD-03-007).

STATEMENT OF THE ISSUE

The sole issue to be addressed is whether the Petition to establish the Durbin Crossing Community Development District meets the applicable criteria set forth in Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code.

APPEARANCES

For Petitioner SouthStar Development Partners, Inc.

Cheryl G. Stuart, Esquire
Brian A. Crumbaker, Esquire
Hopping Green & Sams, P.A.
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

In attendance for St. Johns County:

Isabelle Lopez, Esquire
Bruce Ford, Planner
County Attorney's Office
4020 Lewis Speedway
St. Augustine, Florida 32095

Public Attendees:

See Exhibit 3 of this Report

PRELIMINARY STATEMENT

1. On April 18, 2003, the Petitioner, SouthStar Development Partners, Inc. (Petitioner), filed a Petition to Establish the Durbin Crossing Community Development District with the Secretary of the Florida Land and Water Adjudicatory Commission (Commission). Prior to filing with the Commission, the Petitioner delivered six copies of the Petition and its attachments, along with the requisite filing fee, to the Clerk of the Court for St. Johns County. A copy of the Petition, including its attachments, was received into evidence as Petitioner's Composite Exhibit B.

2. On April 23, 2003, the Secretary of the Commission certified that the Petition contained all required elements and

forwarded the Petition to the Division of Administrative Hearings (DOAH) for the purpose of holding the local public hearing required under Section 190.005(1)(d), Florida Statutes. The Secretary requested that DOAH combine the local public hearing in this matter with the local public hearing for the proposed Aberdeen Community Development District because both proposals have been submitted by the same Petitioner, are traveling the same process path, and are located in close proximity to each other in St. Johns County. A copy of the Secretary's correspondence to DOAH was received into evidence as Petitioner's Exhibit F.

3. The Commission published a Notice of Receipt of Petition in the Florida Administrative Weekly on May 30, 2003. A copy of the Notice of Receipt of Petition was received into evidence as Petitioner's Exhibit D.

4. The local public hearing was scheduled in St. Augustine, St. Johns County, Florida, for Wednesday, June 18, 2003, at 1:00 p.m. The Petitioner published notice of the hearing in accordance with Section 190.005(1)(d), Florida Statutes. The Proof of Publication of the Notice of Local Public Hearing was received into evidence as Petitioner's Exhibit N.

5. The land to be included within the proposed District is contained wholly within the boundaries of St. Johns County, Florida. The land within the external boundaries of the proposed

District is neither contained within nor contiguous to the boundaries of any other municipality or county.

6. 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. The Board of County Commissioners for St. Johns County, Florida, did not hold such a hearing.

7. At the local public hearing on June 18, 2003, the Petitioner presented the testimony of: J. Thomas Gillette, III, Regional Manager for North Florida for SouthStar Development Partners, Inc.; Douglas E. Miller, P.E., a civil engineer with England, Thims and Miller, Inc., and an expert in civil engineering and the provision of public infrastructure; Gary R. Walters, President of Gary Walters and Associates, a community planning and management consulting firm, and an expert in planning and community development district management; and Carey Garland, Director of Public Finance for Fishkind & Associates, Inc., and an expert in economic and financial analysis. The full names and addresses of the Petitioner's witnesses are attached to this Report as Exhibit 1. The Petitioner offered Petitioner's Exhibits A through P, which were received into evidence at the hearing. Of the exhibits received into evidence, Petitioner's Exhibits B, D, F, H, I, K, L, N, O, and P are relevant to the

establishment of the Durbin Crossing Community Development District. A full list of the Petitioner's Exhibits in this proceeding is attached to this report as Exhibit 2.

8. Six members of the public and two persons from St. Johns County were present for the local public hearing. Five members of the public testified during the course of the public hearing and Public Exhibits One through Six were received. The full names and addresses of members of the public who attended the hearing and a list of the Public Exhibits received are attached to this report as Exhibit 3. None of the public attendees at the hearing are residents of or landowners within the boundaries of the proposed District.

9. The Petitioner caused a transcript of the local public hearing to be prepared which was filed with DOAH on July 3, 2003. A copy of the one-volume transcript along with the hearing exhibits is being transmitted with this Report to the Commission. On July 3, 2003, the Petitioner filed a Proposed Report of Findings and Conclusions, which has been fully considered in the preparation of this Report to the Commission.

SUMMARY OF HEARING

Overview

10. The Petitioner seeks the adoption of a rule by the Commission to establish a community development district proposed to consist of approximately 2,047 acres located within the

boundaries of unincorporated St. Johns County. The suggested name for the proposed District is the Durbin Crossing Community Development District.

11. There is one parcel within the external boundaries of the proposed District which is to be excluded from the District. This out-parcel consists of a Jacksonville Electric Authority (JEA) owned mitigation parcel of 1.15 acres, more or less, that will not be adversely impacted by the establishment of the District.

12. As certified by the Commission, the Petition contains all of the information required by statute, including the names of five persons who are residents of Florida and citizens of the United States to serve as the initial members of the Board of Supervisors. The Petitioner intends for the proposed District to provide a variety of infrastructure and services, including off-site and on-site roadway improvements, water and sewer facilities, landscaping, drainage, and recreational amenities. 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, as well as the timetable for construction. The Petitioner has identified who it expects will own, operate, and maintain each of these facilities.

13. The Petitioner also anticipates that the District will, in cooperation with the St. Johns County School Board (School

Board), finance and construct a new school to be located within the boundaries of the proposed Durbin Crossing Community Development District. A Memorandum of Understanding regarding this plan has been entered into by and between the Petitioner and the School Board. Pursuant to the Memorandum of Understanding, the underlying real property will be donated by the Petitioner. The Memorandum of Understanding also contemplates that the District and the School Board will enter into a lease-purchase agreement for the facility, which agreement will serve as security for any bonds issued by the District to finance the school. The school facilities are expected to be constructed in sufficient time to open when projections by the School Board indicate that the school will be occupied by at least 450 students.

14. The sole purpose of this proceeding was to consider the establishment of the proposed District over the land area identified as proposed by the Petitioner.

Summary of Evidence and Testimony

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

15. The Petitioner's Composite Exhibit B was identified for the record as a copy of the Petition and its attachments as filed with the Commission.

16. J. Thomas Gillette, III, Petitioner's Regional Manager for North Florida, testified that he had reviewed the contents of

the Petition and approved its findings. Mr. Gillette also generally described certain of the attachments to the Petition. Finally, Mr. Gillette testified that the Petition and its attachments, as admitted into evidence as Petitioner's Exhibit B, are true and correct to the best of his knowledge.

17. Douglas E. Miller, a civil engineer with England, Thims, and Miller, Inc., testified that he had assisted in the preparation of portions of the Petition and its attachments. Mr. Miller also generally described certain of the attachments to the Petition which he or his office had prepared. Finally, Mr. Miller testified that the attachments to the Petition prepared by England, Thims & Miller, Inc., and admitted into evidence as part of Petitioner's Exhibit B, are true and correct to the best of his knowledge.

18. Cary Garland, Director of Public Finance for Fishkind & Associates, Inc., testified that he had prepared Attachment 13 to Exhibit B, the Statement of Estimated Regulatory Costs (SERC). Mr. Garland also testified that the SERC submitted as Attachment 13 to the Petitioner's Composite Exhibit B is true and correct to the best of his knowledge.

19. The Petition included written consent to establish the District from the owners of 100 percent of the real property located within the lands to be included in the proposed District. Mr. Gillette testified that the ownership of the lands to be

included within the proposed District had not changed since the filing of the Petition.

20. Based upon the foregoing, the Petition and its exhibits are true and correct.

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.

21. This criterion requires an analysis of whether the establishment of the proposed District is inconsistent with various provisions of applicable comprehensive plans. In this regard, Section 190.002(2)(d), Florida Statutes, provides in pertinent part, that the establishment of a district shall "be based only on factors material to managing and financing of the service delivery function of the district, so that any matter concerning permitting or planning of the development is not material or relevant." The statute further provides that the acts of a community development district must be consistent with all applicable environmental and land use permitting and land use requirements. Section 190.004(3), Florida Statutes. In light of these statutory provisions, review of this criterion by the witnesses at hearing focused on whether establishing the proposed District to provide specified services and facilities was inconsistent with provisions of the comprehensive plans.

22. Gary R. Walters, President of Gary Waters and Associates, an expert witness qualified in planning and development district management, reviewed the proposed District in light of the requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes. Mr. Walters also reviewed the proposed District in light of the requirements of the St. Johns County 2015 EAR Based Comprehensive Plan Amendment. Mr. Walters opined that the proposed District was not inconsistent with any applicable provisions of the comprehensive plans, as set forth below.

23. The State Comprehensive Plan provides long-range policy guidance for the orderly social, economic and physical growth of the State by way of twenty-five subjects, and numerous goals and policies. See Chapter 187, Florida Statutes. 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.

24. Subject 15, Land Use, recognizes the importance of locating development in areas with the fiscal ability and service capacity to accommodate growth. The proposed District will have the fiscal ability to provide services and facilities and to help provide infrastructure in a fiscally responsible manner in an area which can accommodate development within St. Johns County.

25. Subject 25, Plan Implementation, provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination. The proposed District is consistent with this element of the State Comprehensive Plan because the proposed District will plan for the construction, operation and maintenance of the public improvements and the community facilities authorized under Chapter 190, Florida Statutes, subject to and not inconsistent with the local government comprehensive plan and land development regulations. 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. Finally, Section 189.415, Florida Statutes, requires the District to file and update public facilities reports with the County or City, which they may rely upon in any revisions to the local comprehensive plan.

26. In addition, the school facility that the Petitioner expects to be constructed within the District is the subject of a Memorandum of Understanding that contemplates an interlocal agreement between the School Board and the District. The interlocal agreement will govern the financing, construction, ownership and maintenance of the school facilities. The interlocal agreement will be the subject of final review and approval by the Board of Supervisors for the District and the

School Board during meetings open to the public. This arrangement between two governmental bodies is consistent with this subject in the State Comprehensive Plan.

27. Mr. Garland reviewed the proposed District in light of the fiscal requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes. From a financial perspective, two subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District, as do the policies supporting those subjects.

28. Subject 17, Public Facilities, provides that the state shall protect substantial investments in public facilities and plan for and finance new facilities to serve residents in a timely, orderly and efficient manner. Mr. Garland testified that the proposed District will be consistent with this element because the District: will plan and finance the infrastructure systems and facilities needed for the development of lands within the District; be a stable, perpetual unit of local government and be able to maintain the infrastructure servicing the lands within the District; and allow growth within the District to pay for itself at no cost to St. Johns County.

29. Subject 20, Governmental Efficiency, provides that governments shall economically and efficiently provide the amount and quality of services required by the public. Mr. Garland testified that the proposed District will be consistent with this

element because the proposed District will economically and efficiently finance and deliver those public services and facilities as needed by the District's residents and property owners. Mr. Garland also testified that the proposed District will be professionally managed, financed and governed by those whose property directly receives the benefits of the services and the facilities provided and that creating the proposed District does not burden the general taxpayer with the costs for the services or facilities inside the proposed District.

30. 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.

31. The St. Johns County Comprehensive Plan contains various elements which are supported by numerous goals and objectives. Mr. Walters testified that the establishment of the proposed District was not inconsistent with the relevant portions of the local comprehensive plan and that portions of the St. Johns County Comprehensive Plan are supportive of the establishment of the proposed District. From a planning and economic perspective two portions of the local comprehensive plan are relevant.

32. Within the Capital Improvements Element of the St. Johns County Comprehensive Plan, Goal H.1 and the Objectives therein seek to ensure the orderly and efficient provision of

infrastructure facilities and services such as sanitary sewer, potable water, drainage, roads, utilities, and recreation/open space. Mr. Walters testified that establishment of the proposed District is consistent with this goal of the St. Johns County Comprehensive Plan because the District will serve as an alternative provider of infrastructure, thereby meeting the needs of the lands within it. In addition, the provision of infrastructure by the District will not reduce the fiscal resources or the bonding capacity of St. Johns County.

33. Mr. Walters testified that establishment of the District is also consistent with Goal H.1 because a community development district is capable of knowing when, where and how infrastructure improvements will be needed to service projected development within the District. This results in the full utilization of existing facilities before new facilities are constructed or services are provided, even if the land uses within the District and the specific nature and type of infrastructure are altered.

34. Within the Intergovernmental Coordination Element, Goal G-1 calls for St. Johns County to work cooperatively with other units of government to address issues and concerns. Mr. Walters testified that the proposed District and St. Johns County will be able to enter into interlocal agreements which will foster efficient and cooperative approaches to the resolution of

external issues. In addition, the Memorandum of Understanding entered into by the St. Johns County School Board and the Petitioner contemplates an interlocal agreement between the District and the School Board which will govern the financing, construction, ownership and maintenance of the school facilities. Mr. Garland testified that it is anticipated that the interlocal agreement will implement a creative financing plan, resulting in the educational facility's being available for use earlier than would typically be the case.

35. The proposed development within the District is the subject of a Chapter 380, Florida Statutes, Development Order approved by St. Johns County. The Development Order itself specifically notes that a community development district may be established to finance, fund, plan, establish, acquire, construct and reconstruct, enlarge or extend, equip, operate and maintain projects, systems and facilities for the purposes described in Section 190.012, Florida Statutes, including the public school facilities.

36. On June 17, 2003, the day prior to the local public hearing, a letter was filed with DOAH by Mr. Terrell K. Arline, Esquire, (Public Exhibit 6), taking the position that the District should not be established because a comprehensive plan amendment and the Development Order adopted by St. Johns County were not in effect. While amendments to the St. Johns County

Comprehensive Plan have been adopted by St. Johns County and transmitted to the Department of Community Affairs, the amendments are not yet effective. Mr. Arline stated that he represented individuals who were in the process of challenging the amendments as inconsistent with and not being in compliance with certain provisions of Chapter 163, Florida Statutes, and Rule 9J-5, Florida Administrative Code. Mr. Arline stated in his letter that he was unable to attend the local public hearing, and did not appear at hearing.

37. Under Chapter 190, Florida Statutes, the statutory requirements for processing the Petition to Establish a Community Development District do not mandate development order approval or effectiveness prior to considering the establishment of a proposed district. The status of the St. Johns County Comprehensive Plan amendments do not adversely impact the proposed establishment of the Durbin Crossing Community Development District. Mr. Walters testified that the comprehensive plan amendments adopted by the Board of County Commissioners for St. Johns County will have no effect on the portions of the St. Johns County Comprehensive Plan relevant to this proceeding. Mr. Walters testified that establishment of the District is based upon those factors material to managing and financing the service-delivery function of the District; matters concerning permitting or planning of the development are not

material or relevant. Section 190.002(2)(d), Florida Statutes. A petitioner is only required to provide a good faith estimate of the timing and cost of district services and infrastructure. Section 190.005(1)(a)6., Florida Statutes. The statute acknowledges that the level and type of services ultimately provided may change. The factors to be considered when determining whether to establish a community development district are explicitly set forth in Section 190.005(1)(e), Florida Statutes. The establishment of a community development district is not a development order within the meaning of Chapter 380, Florida Statutes, and does not in any way impact or change the applicability of any governmental planning, environmental and land development laws, regulations, or ordinances. Section 190.004(3), Florida Statutes. Finally, Mr. Walters testified that the proposed District cannot take any action that is inconsistent with the comprehensive plan, code of ordinances, or regulations of St. Johns County.

38. Based on the record, establishment of the proposed District will not be inconsistent with any applicable element or portion of the Local Comprehensive Plan, and will further the goals identified.

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.

39. Testimony on this criterion was provided by Messrs. Miller, Walters, and Garland. The proposed District will include approximately 2,047 acres, located within the borders of St. Johns County, Florida.

40. All of the land in the proposed District is part of a planned community included in the Durbin Crossing Development of Regional Impact (the DRI).

41. Mr. Walters testified that functional interrelation means that each community purpose has a mutual reinforcing relationship with each of the community's other purposes. 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. Each function must be designed to contribute to the development or the maintenance of the community.

42. The size of the District as proposed is approximately 2,047 acres. From a planning perspective, this is a sufficient size to accommodate the basic infrastructure facilities and services typical of a functionally interrelated community. Mr. Walters testified that the proposed facilities can be provided in an efficient, functional and integrated manner.

43. 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 inter-related community. The compact configuration of the lands will allow the District to provide for the installation and maintenance of its infrastructure in a long-term, cost efficient manner.

44. Mr. Gillette testified that the Petitioner is developing all of the lands within the District as a single master planned community.

45. From planning, economics, engineering 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.

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.

46. It is presently intended that the District will construct or provide a variety of infrastructure and services, including off-site and on-site roadway improvements, water and sewer facilities, landscaping, drainage, educational facilities and recreational amenities as outlined in the Petition.

47. With the exception of the School Facility, installation and maintenance of infrastructure systems and services by the proposed District are expected to be paid through the imposition of special assessments. Use of such assessments will ensure that

the real property benefiting from District services is the same property which pays for them.

48. Mr. Gillette testified that with regard to the School Facility proposed for Durbin Crossing, the Petitioner anticipates that the District will issue tax exempt bonds for construction. A lease-purchase agreement is expected to provide for lease payments to the District that will be used to secure the bonds. The lease payments will be subject to an annual appropriation by the School Board, but it is expected that impact fees generated from development, as well as any increase in ad valorem tax revenues received by the School Board as a result of development, will provide significant sources of new revenue to make the payments. Mr. Gillette testified that the Petitioner does not anticipate that assessments paid by the homeowners will be used to finance the school.

49. Two alternatives to the use of the District were identified. First, St. Johns County might provide facilities and services from its general fund. Second, facilities and services might be provided by some private means, with maintenance delegated to a property owners' association or a homeowners' association.

50. Mr. Walters testified that the District is preferable to these other two alternatives at focusing attention on when, where and how the next system of infrastructure will be required. The ability of the District to focus on planning of the system of infrastructure results in a full utilization of existing

facilities before new facilities are constructed and reduces the delivered cost to the citizens being served.

51. The District will construct certain infrastructure and community facilities which will be needed by the property owners and residents of the project. Expenses for the operation and maintenance of the facilities the District retains are expected to be paid through maintenance assessments to ensure that the property receiving the benefit of the district services is the same property paying for those services.

52. Mr. Walters testified that only a community development district allows for the independent financing, administration, operation and maintenance of the land within such a district. Only a community development district allows district residents to ultimately completely control the district. The other alternatives do not have these characteristics.

53. A property owners' or homeowners' association does not have the authority to finance and construct school buildings and related structures, which may be leased, sold, or donated to the School Board. The proposed District has such authority subject to approval by local government. In addition, the proposed District will have the authority to enter into an interlocal agreement with the School Board which will govern the financing, construction, and short-term and long-term ownership and maintenance of the school facilities. Such intergovernmental cooperation is a benefit to residents within and without the boundaries of the District.

54. Mr. Miller testified that from an engineering perspective, the proposed District is the best alternative to provide the proposed community development services and facilities to the land included in the proposed District because it is a long-term, stable, perpetual entity capable of maintaining the facilities over their expected life.

55. From planning, economic, engineering, 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.

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.

56. The services and facilities proposed to be provided by the District are not incompatible with the uses and the capacity of existing local and regional facilities and services. The District's facilities and services will not duplicate any existing regional services or facilities. None of the proposed services or facilities are presently being provided by another entity for the lands to be included within the District. The proposed District is expected to enhance the capacity of existing county roads.

57. The community development services and facilities of the proposed District will not be incompatible with the capacity

and uses of existing local and regional community development services and facilities.

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

58. As cited previously, from planning, economics, engineering, 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. The community to be included in the District has need for certain basic infrastructure systems and the proposed District provides for an efficient mechanism to oversee the installation of these improvements.

59. 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.

60. Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code, impose specific requirements regarding the petition and other information to be submitted to the Commission.

Elements of the Petition

61. As reflected in the Petitioner's Exhibit F, the Commission has certified that the Petition to Establish the

Durbin Crossing Community Development District meets all of the requirements of Section 190.005(1)(a), Florida Statutes.

Statement of Estimated Regulatory Costs

62. The Statement of Estimated Regulatory Costs (the SERC), attached to the Petition contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the District, i.e., the State of Florida and its citizens, the County and its citizens, the Petitioner, and consumers.

63. Beyond administrative costs related to rule adoption, the State and its citizens will only incur minimal costs from establishing the proposed 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. Benefits will include improved planning and coordination of development, which is difficult to quantify but nonetheless substantial.

64. 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 the St. Johns County. The County incurred no costs associated with the optional local hearing because it elected not to conduct one.

65. Consumers will pay non-ad valorem or special assessments for certain facilities, and locating within the proposed District is voluntary. Generally, the proposed District's financing will be less expensive than maintenance

through a property owners' association 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.

66. Section 190.005(1)(a), Florida Statutes, requires the petition to include a SERC which meets the requirements of Section 120.541, Florida Statutes. The Petition contains a SERC. It meets all requirements of Section 120.541, Florida Statutes.

Other Requirements

67. Petitioner has complied with the provisions of Section 190.005(1)(b)1., Florida Statutes, in that St. Johns County was provided six copies of the Petition and was paid the requisite filing fee.

68. Section 190.005(1)(d), Florida Statutes, requires the Petitioner to publish notice of the local public hearing in a newspaper of general circulation in St. Johns County for four (4) consecutive weeks prior to the hearing. As evidenced by Petitioner's Exhibit N, the notice was published in a newspaper of general paid circulation in St. Johns County (The St. Augustine Record) for four consecutive weeks, on May 21, 2003, May 28, 2003, June 4, 2003, and June 11, 2003.

Public Comment During the Hearing

69. Five members of the public presented comments at the hearing. The public comments addressed a wide range of issues, including the recitation of personal negative experiences with other community development districts. The public comments generally focused on dissatisfaction with Chapter 190, Florida Statutes, and the statutory authorization for the creation of community development districts. Two speakers requested earlier and more detailed disclosures of the impact on residents of living in a community development district. The majority of the public comments addressed statutory revision matters better presented to the legislature. Several comments, however, which are not directly tied to the statutory criteria, are briefly addressed here.

70. Two speakers expressed concern about a request filed with St. Johns County by the Petitioner seeking the County's consent for the District to exercise the power of eminent domain outside the boundaries of the District. A community development district has such authority within and without the boundaries of the district pursuant to Section 190.011(11), Florida Statutes. A community development district may exercise its eminent domain power within the district only for the uses and purposes of the district relating solely to water, sewer, district roads, and water management. Before exercising of the power of eminent domain beyond the boundaries of a community development district, the governing body of the county (if the taking will occur in an

unincorporated area) or a municipality (if the taking will occur within an incorporated area) must grant prior approval by resolution. Id. Accordingly, it is apparent from the language of Section 190.011(11), Florida Statutes, that the issue of whether a community development district may exercise the power of eminent domain is not an issue to be considered by the Florida Land and Water Adjudicatory Commission when determining whether to establish the District. In this case, a grant of such authority for this proposed District could only come from St. Johns County. As explained in Public Exhibit 3 and by Petitioner's counsel at hearing, the request relates to the possible construction of offsite county roads in right of way not presently owned by either the county or the Petitioner. This is not a matter to be resolved in an establishment hearing. Moreover, the law contains no time limit for the request of such authority by a district. Thus, a district could seek this consent at any point in its lifetime.

71. Another comment was made regarding the use of ad valorem taxing authority by a community development district. A community development district, once established, may impose ad valorem taxes on the lands within the district provided that prior to the exercise of that power, the board of the district must be composed of registered voters living in the district who have been elected by voters in the district. Section 190.021(1), Florida Statutes. Accordingly, a district can only exercise that power if the voters within the district choose to tax themselves;

a board composed of landowner-elected members cannot impose those taxes. The Petitioner is not proposing to ask the District to exercise this power.

72. Finally, a member of the public questioned the constitutionality of Chapter 190, Florida Statutes. The constitutionality of a statute is not properly raised in an administrative proceeding before the Division of Administrative Hearings. See Butler v. State of Florida, Department of Insurance, 680 So. 2d 1103 (Fla. 1st DCA 1996). Moreover, it should be noted that the Florida Supreme Court has previously addressed the constitutionality of Chapter 190, Florida Statutes, in State v. Frontier Acres Community Development District, 472 So. 2d 455 (Fla. 1985), in which the Court held Chapter 190, Florida Statutes, constitutional.

COMPARISON OF INFORMATION IN RECORD TO APPLICABLE LAW

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

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

75. The Petitioner has met the requirements of Section 190.005, Florida Statutes, regarding the submission of the Petition and satisfaction of filing fee requirements.

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

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

78. All statements contained within the Petition as corrected and supplemented at the hearing are true and correct.

79. The establishment of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective St. Johns County Comprehensive Plan.

80. 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.

81. 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.

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

83. The area to be served by the proposed District is amenable to separate special district government.

CONCLUSION

84. Section 190.005(1)(d), Florida Statutes, provides that the local public hearing "shall be conducted . . . in conformance with the applicable requirements and procedures of the Administrative Procedure Act." However, this is not a quasi-judicial, adversarial proceeding under Sections 120.569 and 120.57, Florida Statutes. Rather, it is a quasi-legislative, information-gathering hearing that is part of the rulemaking process. Section 120.54(8)(c), Florida Statutes, describes the Rulemaking Record as including: "A written summary of hearings on the proposed rule." For these reasons, a recommended order is not appropriate. Instead, the ALJ files a report which constitutes the hearing summary portion of the rulemaking record under Section 120.54(8)(c), Florida Statutes. Section 190.005(1)(e), Florida Statutes, states that the Commission "shall consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments," and the factors listed in that subparagraph.

REPORT SUBMITTED this 11th day of July, 2003, in
Tallahassee, Leon County, Florida.



RICHARD A. HIXSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of July, 2003.

COPIES FURNISHED:

Donna Arduin, Secretary
Florida Land and Water Adjudicatory Commission
The Capitol, Room 2105
Tallahassee, Florida 32399-0001

Barbara Leighty, Clerk
Growth Management and Strategic Planning
The Capitol, Room 2105
Tallahassee, Florida 32399-0001

Cheryl G. Stuart, Esquire
Hopping Green & Sams, P.A.
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Isabelle Lopez, Esquire
Bruce Ford, Planner
County Attorney's Office
4020 Lewis Speedway
St. Augustine, Florida 32095

Exhibit 1

Names and Addresses of Petitioner's Witnesses

1. J. Thomas Gillette, III
SouthStar Development Partners
4720 Salisbury Road, Suite 125
Jacksonville, Florida 32256
2. Douglas C. Miller
England-Thims & Miller, Inc.
14775 St. Augustine Road
Jacksonville, Florida 32258
3. Carey Garland
Fishkind & Associates, Inc.
11869 High Tech Avenue
Orlando, Florida 32817
4. Gary R. Walters
Gary Walters & Associates, Inc.
12 Crooked Tree Trail
Ormond Beach, Florida 32174

Exhibit 2

List of Petitioner's Exhibits:

Exhibit A: Petition to Establish the Aberdeen Community Development District

Exhibit B: Petition to Establish the Durbin Crossing Community Development District

Exhibit C: Notice of Receipt of Petition (Aberdeen)

Exhibit D: Notice of Receipt of Petition (Durbin Crossing)

Exhibit E: Referral Letter to the Division of Administrative Hearings (Aberdeen)

Exhibit F: Referral Letter to the Division of Administrative Hearings (Durbin Crossing)

Exhibit G: Referral Letter to the Department of Community Affairs (Aberdeen)

Exhibit H: Referral Letter to the Department of Community Affairs (Durbin Crossing)

Exhibit I: Petition Filing Letter and Receipt From St. Johns County

Exhibit J: Resolution 2003-62 (Development Order for Aberdeen)

Exhibit K: Resolution 2003-61 (Development Order for Durbin Crossing)

Exhibit L: Memorandum of Understanding (SouthStar and the School Board)

Exhibit M: Four Notices filed with St. Augustine Record announcing the Aberdeen Community Development District hearings

Exhibit N: Four Notices filed with St. Augustine Record announcing the Durbin Crossing Community Development District hearings

Exhibit O: General location of the two Community Development Districts

Exhibit P: Chapter 187 State Comp Plan

Exhibit 3

SECTION I: Members of the Public Who Attended

1. Don Beattle
808 Mill Pond Court
Jacksonville, Florida 32259
2. Louise Thrower
288 Orange Avenue
Fruit Cove, Florida 32259
3. Ellen A. Whitmer
1178 Natures Hammock Road, South
Fruit Cove, Florida 32259
4. Phyllis Abbatiello
1133 River Birch Road
Fruit Cove, Florida 32259
5. Frances Ziolkowski
260 Bell Branch Lane
Fruit Cove, Florida 32259
6. Jenny Henningsen
161 County Road 13, South
St. Augustine, Florida 32092

SECTION II: List of the Public Exhibits Received

Public Exhibit 1: List of Public Attendees.

Public Exhibit 2: "Taxes: Districts are not governments, judge says," The Florida Times Union.

Public Exhibit 3: Correspondence from Cheryl G. Stuart to Mr. Bruce Ford, Chief Planner for St. Johns County, dated April 18, 2003.

Public Exhibit 4: Statement before the Florida Land and Water Adjudicatory Commission, dated June 18, 2003.

Public Exhibit 5: How do they do this? accompanied by Community Development Districts, Taxation without Representation?

Public Exhibit 6: Correspondence from Terrell K. Arline to Mr. Donald R. Alexander, Administrative Law Judge, with attachments, dated June 17, 2003.