

STATE OF FLORDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE )  
CREATION - VILLAGES OF ) Case No. 03-3658  
WESTPORT COMMUNITY )  
DEVELOPMENT DISTRICT )

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

On January 26, 2004, a local public hearing under Section 190.005(1)(d), Florida Statutes (2003), was conducted in Jacksonville, Florida, by Donald R. Alexander, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jonathan T. Johnson, Esquire  
Roy Van Wyk, Esquire  
Hopping Green & Sams, P.A.  
Post Office Box 6526  
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STATEMENT OF THE ISSUE

The issue before the Florida Land and Water Adjudicatory Commission (FLWAC) in this proceeding is whether to grant the Petition for Establishment of the Villages of Westport Community Development District (Petition), dated September 4, 2003. The local public hearing was for purposes of gathering information in anticipation of rulemaking by FLWAC.

PRELIMINARY STATEMENT

On September 4, 2003, the Petition was filed by Westport Villages, L.L.C. (Petitioner). It requested that FLWAC adopt a rule to establish a uniform community development district, to be called the Villages of Westport Community Development District, on certain property in the City of Jacksonville, Florida (City of Jacksonville). The Petition includes eight exhibits.

FLWAC referred the Petition to DOAH on October 3, 2003, for assignment of an ALJ to conduct a local public hearing under Section 190.005(1)(d), Florida Statutes (2003). The local public hearing before the ALJ was scheduled and was held at 1:00 p.m., on January 26, 2004, in the Jacksonville City Hall at St. James, Committee Room A, First Floor, 117 West Duval Street, Jacksonville, Florida. At the local public hearing, Petitioner presented the testimony of Mark Ambach, Managing Director of Land and Golf Services of ICI Homes, Inc., of Ormond Beach, Florida; Gary R. Walters, President of Gary Walters & Associates, Inc., of Ormond Beach, Florida; Carey Garland, Director of Public Finance, Fishkind & Associates, Inc., of Orlando, Florida; and William E. Schaefer, P.E., Civil Department Head, Greenhorne & O'Mara, Inc., Civil Engineers, of Jacksonville, Florida. Petitioner also introduced eight exhibits, designated Composite Exhibit A through H, which are

described in paragraph 50 of the Summary of the Record, infra. There was one member of the public in attendance at the hearing.

The Transcript of the local public hearing was filed on February 10, 2004. Petitioner filed a Proposed ALJ's Report to FLWAC, which has been considered in the preparation of this Report.

#### SUMMARY OF RECORD

##### A. Petition and Related Matters

1. The Petition was submitted to FLWAC and the City of Jacksonville.

2. The Petition alleges that the land proposed to be included within the District is located in the City of Jacksonville. Petition Exhibit 1 depicts the general location of the District. The proposed District covers approximately 1,340 acres of land. The metes and bounds description of the external boundaries of the District is set forth in Petition Composite Exhibit 2. There is no real property located within the external boundaries of the District that is excluded from the District.

3. Petition Exhibit 3 incorporates the written consents to the establishment of the District by the owners of 100 percent of the real property to be included within the District. Lands to be included within the District are owned by Westport Villages, LLC.

4. The Petition states that the name of the proposed District will be the Villages of Westport Community Development District.

5. The Petition identifies the following names and addresses of those individuals designated as the five initial members of the Board of Supervisors of the District:

| <u>Name</u>     | <u>Address</u>  |
|-----------------|---|
| Nat Hughs       | 1340 Sutton Park Drive South<br>Suite 145, Tampa, Florida 33607 |
| Andy Hagan      | 2359 Beville Road<br>Daytona Beach, Florida 32119               |
| Cindy Jones     | 2359 Beville Road<br>Daytona Beach, Florida 32119               |
| Mark Ambach     | 100 Plantation Bay Drive<br>Ormond Beach, Florida 32174         |
| Maurice Rudolph | 1340 Sutton Park Drive South<br>Suite 145, Tampa, Florida 33607 |

6. Petition Exhibit 4 depicts the future general distribution, location, and extent of the public and private land uses within the District as well as existing land uses abutting the District. The Petition alleges that the lands within the District are located in the City of Jacksonville. The Petition further alleges that lands within the District are currently zoned Multi Use (MU).

7. The Petition alleges that there are currently no major trunk water mains, sewer interceptors, and/or outfalls located

in the area within the District. The major trunk water lines and sewer interceptors adjacent to the lands within the proposed district are illustrated in Petition Exhibit 5.

8. Petition Exhibit 6 indicates the types of facilities and services and the cost of constructing the proposed facilities and services based on available data. This is alleged to be a good faith estimate, but it is not binding on Petitioner or the District and is subject to change.

9. The Petition further alleges, based upon currently available data, that the proposed timetable for the construction of District services and facilities will be between the years 2004 and 2015.

10. The Petition alleges and incorporates in its Exhibit 7 a Statement of Estimated Regulatory Costs (SERC) prepared in accordance with the requirements of Section 120.541, Florida Statutes (2003). Section 4.0 of Exhibit 7 alleges that some of the infrastructure improvements will ultimately be owned by the City of Jacksonville, the Jacksonville Electric Authority, or the District. Maintenance and operation responsibilities will also be shared by the City of Jacksonville, the Jacksonville Electric Authority, and the District.

11. The Petition alleges that the authorized agent of Petitioner is Cindy Jones. An executed copy of the authorization of agent is provided in Petition Exhibit 8.

12. The Petition alleges that Petitioner submitted a copy of the Petition with exhibits to the City of Jacksonville with the required filing fee of \$15,000, in accordance with Section 190.005(2)(b), Florida Statutes (2003).

13. The Petition alleges that establishment of the District should be granted for the following reasons:

a. Establishment of the District and all land uses and services planned within the proposed District are not inconsistent with applicable elements and portions of the effective State Comprehensive Plan or the local Comprehensive Plan.

b. The area of land within the proposed District is part of a planned community. It is of sufficient size and is sufficiently compact and contiguous to be developed as one functional and interrelated community.

c. Establishment of the District will prevent the general body of taxpayers in the City of Jacksonville from bearing the burden for installation of the infrastructure and the maintenance of certain facilities within the development encompassed by the District. The District is the best alternative for delivering community development services and facilities to the proposed community without imposing an additional burden on the general population of the local general-purpose government. Establishment of the District in conjunction with a comprehensively planned community, as proposed, allows for a more efficient use of resources.

d. The community development services and facilities of the District will not be incompatible with the capacity and use of existing local and regional community development services and facilities. In

addition, establishment of the District will provide a perpetual entity capable of making reasonable provisions for the operation and maintenance of District services and facilities.

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

B. Additional Information from Local Public Hearing

14. The local public hearing on the Petition was noticed and held on January 26, 2004, in an accessible location in the Jacksonville City Hall at St. James, Committee Room A, First Floor, 117 West Duval Street, Jacksonville, Florida. Pursuant to Section 190.005(1)(d), Florida Statutes (2003), notice of the public hearing was advertised on December 29, 2003, and January 5, 12, and 19, 2004, in the Florida Times Union, a newspaper of general paid circulation in The City of Jacksonville, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes (2003). The published notices gave the time and place for the hearing; a description of the area to be included within the District, including a map clearly showing the land to be included within the District; and other relevant information. The advertisement was published as a display advertisement, not in the portion of the newspaper where legal notices and classified advertisements appear.

15. The hearing was also noticed in the Florida Administrative Weekly, Volume 30, Number 2, January 9, 2004.

16. The hearing commenced at 1:00 p.m., the time advertised in the published notices. Appearances were made by counsel for Petitioner. Only the four witnesses of Petitioner testified at the hearing. One member of the public was in attendance, but did not ask questions or present testimony or exhibits at any time during the hearing.

17. The first witness for Petitioner was Mark Ambach. Mr. Ambach is employed by ICI Homes, Inc., as Managing Director of Land & Golf Management. Mr. Ambach has a Bachelor of Science Building Construction from the University of Florida and is a licensed general contractor and real estate broker in the State of Florida. Mr. Ambach was one of the members of the development team for the overall project, and he is also the person within Westport Villages, LLC, who is responsible for the Villages of Westport development.

18. Mr. Ambach affirmed his written testimony and testified that if asked the same questions at the public hearing that his answers would be the same as those contained in his written testimony. The written testimony of Mr. Ambach was received into the record.

19. Mr. Ambach testified that 100 percent of the landowners consented to the establishment of the District and



that the proposed District will consist of approximately 1,340 acres. Mr. Ambach stated for the record that there has been no change in ownership of the lands since submission of the Petition. Mr. Ambach testified that the hearing had been noticed in the Florida Times Union, Duval County Edition, and he identified the proof of publication for the record. Mr. Ambach provided the original proof of publication for the public hearing to the court reporter, at which time it was marked as Hearing Exhibit F and received into the record. Mr. Ambach testified that the City of Jacksonville did not hold an optional local public hearing regarding the Petition as authorized by Section 190.005(1)(c), Florida Statutes (2003).

20. Mr. Ambach testified that the Petition and its Exhibits 1 through 8 were prepared by him or under his supervision. Mr. Ambach affirmed that the Petition exhibits were true and correct to the best of his knowledge. The Petition and Petition Exhibits 1 through 8 are identified as Hearing Composite Exhibit A for the record.

21. Mr. Ambach testified that one original and twelve copies of the Petition were filed with the FLWAC and that a copy of the Petition along with the filing fee of \$15,000 was tendered to the City of Jacksonville.

22. Mr. Ambach identified Exhibits MA-1 through MA-4 to his written testimony. Exhibits MA-1 through MA-4 were marked

as Hearing Exhibits B, C, D, and E respectively, and were received into the record.

23. Mr. Ambach testified that each of the persons designated in the Petition as the initial Board members was personally known by him and that they are all residents of the State of Florida and of the United States.

24. Mr. Ambach testified that, as an experienced developer with over 15 years of experience in the north Florida area, a community development district is the best alternative to provide community development services to the area within the proposed district.

25. The next witness for Petitioner was Gary R. Walters. Mr. Walters is president of Gary Walters & Associates, Inc. Mr. Walters testified that his company provides community development management services, financial planning, and community planning services.

26. Mr. Walters affirmed his written testimony and testified that if asked the same questions at the public hearing that his answers would be the same. Mr. Walters written testimony, consisting of 17 pages, was received into the record.

27. Mr. Walters stated that his credentials and education were accurately set forth in his Written Testimony. Mr. Walters has a Bachelor of Science in Urban Planning from Michigan State University and has completed graduate studies in Urban Studies

and Public Administration at the University of Pittsburgh. Based on Mr. Walters' qualifications in the areas of land use planning, special district management, and economical analysis Mr. Walters was qualified as an expert witness.

28. Mr. Walters testified that he was familiar with Hearing Exhibit A and that he had reviewed it.

29. Mr. Walters testified that the land use plan for the proposed District was consistent with the development approvals. Mr. Walters identified Exhibit GRW-1 to his written testimony as a copy of Chapter 187, Florida Statutes (2003), State Comprehensive Plan. The copy of Chapter 187, Florida Statutes (2003), was marked as Hearing Exhibit G and was received into the record. Mr. Walters testified that the proposed District is not inconsistent with any portion or element of the State Comprehensive Plan.

30. Mr. Walters testified that he reviewed the local comprehensive plan adopted pursuant to Chapter 163, Florida Statutes (2003), for the City of Jacksonville, and that based on his experience as a planner, the proposed District is not inconsistent with any portion or element of the local comprehensive plan.

31. Mr. Walters testified that the proposed District is of sufficient size, sufficient compactness, and has sufficient

contiguity to be developable as a functionally interrelated community.

32. Mr. Walters testified that the proposed services and facilities of the proposed district are not incompatible with the capacity and uses of existing local or regional community development services and facilities.

33. Mr. Walters testified that the area identified in the Petition to be included within the proposed District is amenable to being served by a separate special district government.

34. Mr. Walters testified that the proposed District is the best available alternative for delivering community development services and facilities to the area served.

35. Mr. Walters testified that he prepared Petition Exhibit 7, the SERC, and that the economic impact on the City of Jacksonville and the State of Florida will be very small. Mr. Walters further testified that the impact on small business is likely to be beneficial in terms of creation of job opportunities.

36. Mr. Walters testified that as a result of his analysis of the proposed project through preparation of the SERC, that the proposed Villages of Westport Community Development District is the best way to provide for low cost, available financing and the long-term management of the infrastructure facilities being considered.

37. The next witness for Petitioner was Mr. Carey Garland. Mr. Garland is employed by Fishkind & Associates, Inc., as Director of Public Finance. Mr. Garland affirmed his written testimony and testified that if asked the same questions at the public hearing that his answers would be the same. Mr. Garland's written testimony consisting of seven pages was received into the record.

38. Mr. Garland testified that he has a Bachelor of Science in Industrial Engineering from the University of Missouri and a Master of Business Administration, Real Estate, from the University of Michigan. Mr. Garland testified that he has personally served as financial advisor to approximately thirty community development districts and has been qualified as an expert in similar special district establishment hearings. Mr. Garland was then proffered and accepted as an expert in the field of economics and financial analysis.

39. Mr. Garland testified that he reviewed the Petition and provided advice concerning the economic structure of the proposed District. Mr. Garland testified that he is of the opinion that the Villages of Westport Community Development District is expected to be financially viable and feasible.

40. Mr. Garland testified that it is his opinion that the proposed Villages of Westport Community Development District is not incompatible with any applicable element or portion of the

State Comprehensive Plan. Mr. Garland further testified that the proposed District is not inconsistent with any applicable element or portion of the effective local comprehensive plan of the City of Jacksonville.

41. Mr. Garland testified that, based upon his experience working with community development districts, the proposed District is of sufficient size, compactness, and contiguity to be developed as a functionally interrelated community.

42. Mr. Garland testified that the proposed District is the best alternative to provide community development facilities to the area to be served.

43. Mr. Garland testified that the lands within the proposed community development district are sufficiently compact and contiguous so as not to create any economic disincentives to the provision of the infrastructure facilities contemplated in this case.

44. Mr. Garland also testified that in his opinion, the area to be served by the proposed District is amenable to special district governance.

45. The final witness for Petitioner was William E. Schaefer, P.E. Mr. Schaefer is employed by Greenhorne & O'Mara, Inc., as Civil Department Head. Mr. Schaefer received a Bachelor of Science in Civil Engineering from the University of Florida and is a registered professional engineer in the State

of Florida with over 20 years' experience in land development projects. Mr. Schaefer is also a Florida licensed general contractor.

46. Mr. Schaefer affirmed his written testimony and testified that if asked the same questions now that his answers would be the same. Mr. Schaefer's written testimony consisting of four pages was received into the record.

47. Mr. Schaefer identified Exhibit WS-1 to his written testimony as his resume. Mr. Schaefer's resume was received into the record. Mr. Schaefer was then proffered and accepted as an expert in the field of civil engineering and public infrastructure cost estimating.

48. Mr. Schaefer testified that he had reviewed the Petition and that he was familiar with the geographical area, type and scope of the proposed development, and the available services and facilities in the vicinity of the proposed District. Mr. Schaefer testified that he has reviewed Petition Exhibit 6, which describes the estimated construction costs associated with the improvements and facilities contemplated by the development plan, and that in his professional opinion, the costs are reasonable. Mr. Schaefer further testified that he based his opinion on an analysis of the construction costs as compared to other similar projects constructed in northeast Florida.

49. Upon completion of witness testimony, the Petition and Petition Exhibits 1 through 8 (Hearing Composite Exhibit A) were received into the record.

50. As indicated, Petitioner introduced several documents that were accepted into evidence:

Composite Exhibit A

Petition and exhibits that were filed with the FLWAC on September 4, 2003.

Exhibit B

Exhibit MA-1 to Written Testimony of Mr. Ambach consisting of a letter from the office of FLWAC dated October 3, 2003 certifying that all required elements of Section 190.005(1)(a), Florida Statutes (2003), are contained in the Petition. The letter also requests assignment of an ALJ as provided by Florida Administrative Code Rule 42-1.009(1)(b) and that DOAH conduct a local public hearing pursuant to Section 190.005(1)(d), Florida Statutes (2003).

Exhibit C

Exhibit MA-2 to Written Testimony of Mr. Ambach consisting of the Notice of Receipt of Petition to establish the Villages of Westport Community Development District, which was published in the Florida Administrative Weekly in Volume 30, Number 2, on January 9, 2004, page 203. The Notice also provided information regarding the local public hearing to establish the District.

Exhibit D

Exhibit MA-3 to Written Testimony of Mr. Ambach consisting of a letter from the Office of the FLWAC, dated October 3, 2003, to the Department of Community Affairs (DCA) requesting a review of the enclosed Petition to establish the District from the standpoint of the DCA and the requirements of Chapter 190, Florida Statutes (2003).



Exhibit E

Exhibit MA-4 to Written Testimony of Mr. Ambach consisting of a letter from the St. Johns River Water Management District dated January 24, 2003, to Counsel for the Petitioner indicating that a community development district is preferable over a homeowners association for the operation and maintenance of a stormwater management systems.

Exhibit F

Affidavit of Publication from the Florida Times Union newspaper, providing evidence that the public hearing notice for this hearing was published on December 29, 2003, and January 5, 12, and 19, 2004, in accordance with the requirements of Section 190.005(1)(d), Florida Statutes (2003).

Exhibit G

Exhibit GRW-1 to Written Testimony of Gary R. Walters. consisting of a copy of Chapter 187, Florida Statutes (2003), State Comprehensive Plan.

Exhibit H

Exhibit WS-1 to Written Testimony of William E. Schaefer, P.E., consisting of his curriculum vita and his experience in civil engineering design.

APPLICABLE LAW

A. General

51. Section 190.005(1), Florida Statutes (2003), provides that the exclusive and uniform method of establishing a community development district (CDD) of 1,000 acres or more shall be by rule adopted by the FLWAC, granting a petition for the establishment of a CDD.

52. Section 190.005(1)(a), Florida Statutes (2003), requires that an establishment petition be filed by the petitioner with the FLWAC and submitted to the applicable local government entity. The petition must provide a metes and bounds legal description of the boundaries of the District with a specific description of real property to be excluded from the district, if any. The petition must establish that petitioner has received the written consent of the landowners of 100 percent of the real property proposed to be included within the CDD. The petition must designate the name of the CDD and the names of the five initial members of the board of supervisors. The petition must include a map showing current major trunk water mains and sewer interceptors and outfalls, if any.

53. The petition must also contain the proposed timetable for construction of the District services including a good faith estimate of the costs of construction. Finally, the petition must designate the future general distribution, location, and extent of public and private uses of the land for the lands within the district by the future land use plan element of the local comprehensive plan and include a SERC prepared in compliance with Section 120.541, Florida Statutes (2003).

54. Section 190.005(1)(b), Florida Statutes (2003), requires that the petitioner serve a copy of the establishment petition on, and pay a filing fee of \$15,000 to, the county and

to each municipality whose boundary is within or contiguous to the CDD.

55. Section 190.005(1)(c), Florida Statutes (2003), permits the general purpose local governments described in the preceding paragraph to conduct a public hearing on the petition. These local government entities may then present resolutions to the FLWAC either supporting or objecting to the establishment of a CDD on the property identified in the petition.

56. Section 190.005(1)(d), Florida Statutes (2003), requires an ALJ to conduct a local public hearing pursuant to Chapter 120, Florida Statutes (2003). The hearing "shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e)" therein.

57. Section 190.005(1)(d), Florida Statutes (2003), also requires the petitioner to publish notice of the local public hearing once a week for four successive weeks immediately prior to the hearing.

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

58. Pursuant to Section 190.005(1)(e), Florida Statutes (2003), the FLWAC must consider the entire record of the local hearing, the transcript of the hearing, any resolutions adopted by local general-purpose governments as provided in paragraph

(c) therein, and the following factors to make a determination to grant or deny a petition for establishment of a CDD:

1. Whether all statements contained within the petition have been found to be true and correct.

2. Whether the establishment of the district is inconsistent with any applicable element or portion of the state comprehensive plan or 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 to be provided by 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 RECORD TO APPLICABLE LAW

A. Procedural Requirements

59. The evidence was that Petitioner satisfied the procedural requirements for the establishment of the District on the proposed property by filing the Petition with the proper form and with the required attachments, paying the applicable filing fee, and publishing statutory notice of the local public hearing.

B. Six Factors of Section 190.005(1)(e), Florida Statutes (2003)

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

61. The evidence was that establishment of the District on the proposed property is not inconsistent with the State and the City of Jacksonville Comprehensive Plans.

62. The evidence was that the size, compactness, and contiguity of the land proposed to be included within the District are sufficient for it to be developed as "one functional interrelated community."

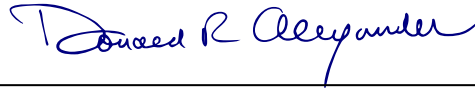
63. The evidence was that the services and facilities provided by the District will be compatible with the capacity and uses of existing local and regional community development services and facilities.

64. The evidence was that the area proposed to be served by the District is amenable to separate special district government.

#### CONCLUSION

Section 190.005(1)(e), Florida Statutes (2003), states that the FLWAC "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. Based on the record evidence, the Petition appears to meet all statutory requirements, and there appears to be no reason not to grant the Petition and establish the proposed Villages of Westport Community Development District by rule. For purposes of drafting such a rule, a metes and bounds description of the proposed Villages of Westport Community Development District may be found as Petition Exhibit 2. Also, the five persons designated to serve as the initial members of the Board of Supervisors of the Villages of Westport Community Development District are identified in paragraph 5 of the Petition and paragraph 5 of the Summary of the Record.

DONE AND ENTERED this 23rd day of February, 2004, in  
Tallahassee, Leon County, Florida.



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DONALD R. ALEXANDER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
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