

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION - PINE ISLAND) Case No. 03-3892
COMMUNITY DEVELOPMENT DISTRICT.)
_____)

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

On December 8, 2003, a local public hearing under Section 190.005(1)(d), Florida Statutes, was conducted in Tavares, Florida, by J. Lawrence Johnston, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Thomas F. Lang, Esquire
Allen, Lang, Carpenter & Reed, P.A.
14 East Washington Street, Suite 600
Orlando, Florida 32801

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 Pine Island Community Development District (Petition), dated September 9, 2003. The local public hearing was for purposes of gathering information in anticipation of quasi-legislative rulemaking by FLWAC.¹

PRELIMINARY STATEMENT

The Petition was filed by GINN-LA Pine Island LTD., LLLP, a Georgia limited partnership (Petitioner), on September 24, 2003.

It requested that FLWAC adopt a rule to establish a state-chartered uniform community development district, to be called the Pine Island Community Development District, on certain property in Lake County, Florida. The Petition includes six exhibits.

FLWAC referred the Petition to DOAH on October 17, 2003, for assignment of an ALJ to conduct a local public hearing under Section 190.005(1)(d), Florida Statutes. The local public hearing before the ALJ was scheduled and was held at 1:00 p.m., on December 8, 2003, in the Tavares City Hall, in Tavares, Lake County, Florida. At the local public hearing, Petitioner presented the testimony of Thomas McCarthy, employed by Ginn Development Company, of Celebration, Florida; and Geoffrey Summit, a civil engineer employed by Miller Einhouse Rymer & Boyd, in Maitland, Florida. Petitioner also introduced seven exhibits, which are described in paragraph 24 of the Summary of Record, infra. One other person, who resides next to the proposed CDD, also testified briefly during the hearing.

The Transcript of the local public hearing was filed on December 30, 2003. Petitioner filed a Proposed ALJ's Report to FLWAC, which has been considered in the preparation of this Report. References in the Report to "Tr." are to the cited page of the Transcript. References to hearing exhibits are to exhibits introduced during the local public hearing. The

exhibits attached to the Petition are referred to as Petition Exhibits.

SUMMARY OF RECORD

A. Petition and Related Matters

1. The Petition was submitted to FLWAC and Lake County and the City of Montverde, Florida.

2. The Petition alleges that the land for the District is located within Lake County. Petition Exhibit 1 depicts the general location of the District. The proposed District covers approximately 1,805 acres of land. The metes and bounds description of the external boundaries of the District is set forth in Petition Exhibit 2. There is no real property 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 in the District; the sole owner of the real property is GINN-LA Pine Island Ltd., LLLP.

4. The Petition identifies the names and addresses of those designated to be the five initial members of the Board of Supervisors of the District are as follows:

<u>Name</u>	<u>Address</u>
Thomas McCarthy	851 Gran Paseo Drive Orlando, Florida 32825

Kyle Meyers	1601 Pine Bluff Avenue Orlando, Florida 32806
W. Wade Smith	535 Canary Island Court Orlando, Florida 32828
Thomas Britt	3853 Winderlakes Drive Orlando, Florida 32835
James Cooper	1100 North New York Avenue Winter Park, Florida 32789

5. The Petition states that the name of the proposed District will be the "Pine Island Community Development District."

6. The Petition alleges that there are currently no major trunk water mains, sewer interceptors and/or outfalls in the area of the proposed District.

7. The Petition alleges that, based upon currently available data, the proposed timetable for the construction of the District services and the estimated cost of constructing the proposed services, based on available data, is shown on Petition Exhibit 4. This is alleged to be a good faith estimate but it is not binding on Petitioner or the District and is subject to change.

8. The Petition alleges that all of the land within the proposed District is presently vacant. Petitioner is currently in the process of obtaining the required permitting for developing multiple phases of single-family residential subdivision(s), with an anticipated total of 785 single-family

residents. The proposed land uses within the District are residential and recreational. The proposed uses for the land included within the District are consistent with the Lake County Comprehensive Land Use Plan (the "County Plan"). The County Plan designates the land contained within the proposed District for (1) residential uses at densities which permit the development of the District with up to 868 residential lots with public and private recreation areas; however, proposed development (which plan is subject to change) currently calls for construction of 785 total residential lots; and (2) recreational uses including a golf course, a clubhouse with a restaurant, swimming facilities, playgrounds, a community boat ramp, and an equestrian facility with a restaurant. The current, proposed future general distribution, location and extent of public and private uses within the District (which are subject to change) are shown in Petition Exhibit 5.

9. The Petition alleges and incorporates in its Exhibit 6 a Statement of Estimated Regulatory Costs prepared in accordance with the requirements of Section 120.541, Florida Statutes.

10. The Petition alleges that the District is seeking the right to exercise "all powers provided for in Section 190.012(1), Florida Statutes, and Sections 190.012(2)(a) and (d), Florida Statutes." (Powers under paragraph (2)(a) (parks and facilities for recreational, cultural, and educational uses)

and (d) (security) may be exercise only after consent is obtained from the applicable local general-purpose government.)

11. The Petition alleges that the Petitioner is: GINN-LA PINE ISLAND LTD., LLLP, whose address is 215 Celebration Place, Suite 200, Celebration, Florida 34747.

12. The Petition alleges that the property within the District is amendable to operating as an independent special district for the following reasons:

a. The testimony submitted verified that all statements contained in the Petition are true and correct;

b. The District and all land uses and services planned therein are not inconsistent with applicable elements or portions of the effective Lake County Comprehensive Land Use Plan, as amended;

c. The area of land within the District is part of a unified plan of development for which a development plan has been or will be approved by Lake County as part of the two Planned Unit Developments (the Hillcrest PUD and the Pine Island PUD) which were each approved by Lake County. The land encompassing the District is of sufficient size and is sufficiently compact and contiguous (a tunnel under C.R. 455 will connect the two areas of the development) to be developed as one functional interrelated community;

d. The proposed District is the best alternative available for delivery community development services to the area to be served because the District provides a governmental entity for delivery those services and facilities in a manner that does not financially impact persons residing

outside the District and provides a responsible perpetual public entity capable of making reasonable provisions for the operation and maintenance of the District services and facilities in the future;

e. The community development services and facilities of the District will be compatible with the capacity and use of existing local and regional community development services and facilities;

13. Copies of the Petition, together with filing fees of \$15,000, were sent to Lake County and to the City of Montverde on September 9, 2003. Hearing Exhibit 5.

B. Additional Information from Local Public Hearing

14. The local public hearing on the Petition was noticed for and was held on December 8, 2003, in the Tavares City Hall, an accessible location, in Tavares, Lake County, Florida. Notice of the hearing was advertised on November 13, 20, 27, and December 4, 2003, in The Orlando Sentinel, the Lake County edition, a newspaper of general paid circulation in the county, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. Hearing Exhibit 1. The published notices gave the time and place for the hearing; a description of the area to be included in the CDD, including a map showing clearly the area to be covered by the CDD; and other relevant information. The advertisements were not placed in that portion of the newspaper where legal notices and classified advertisements appear.

15. The hearing commenced 23 minutes after the noticed and scheduled time in order to give any persons who wanted to attend ample time to do so (Tr. 1). Appearances were made by counsel for the petitioning CDD. The only witness, other than the Petitioner's two witnesses, was Mr. Donald Duncan, a resident of Lake County, Florida, who asked to be noticed of future hearings. (Tr. 30-31.)

16. The first witness for the Petitioner was Thomas McCarthy. (Tr. 10-23.) Mr. McCarthy is employed by the Ginn Development Company, as the senior vice president for construction development. (Tr. 11.) Mr. McCarthy has a bachelor's of science degree in civil engineering, from the University of South Florida, and a master's degree in business administration from the University of Miami. He has about 22 years' worth of experience in real estate development, approximately 15 years working with CDD's for various employers and about four years working as a consultant and civil engineer. (Tr. 12.) Mr. McCarthy was one of the members of the development team for the overall project and he is also the person within the Ginn Organization who is responsible for forming community development districts and managing their ongoing operations. Mr. McCarthy testified that 100 percent of the landowners consented to the establishment of the proposed CDD and that the proposed CDD will consist of approximately

1,804 to 1,805 acres. (Tr. 13.) Mr. McCarthy also testified as to the accuracy of the legal description for the proposed CDD. (Tr. 14.)

17. Mr. McCarthy stated that the land with the proposed CDD will be subdivided to single family lots, varying in size from quarter-acre lots up to two acres in size, and the development is currently planned for 785 lots with a maximum density approval of 868 residential units or residential lots. Mr. McCarthy stated that this equates to a maximum per person density of one per 2.08 acres on the gross acreage. (Tr. 16-18.)

18. Mr. McCarthy also testified that an 18-hole golf course with clubhouse and restaurant, swimming facilities, community boat ramps, horseback riding facilities, playgrounds and play fields are planned for the development. Id.

19. Mr. McCarthy testified that all proposed uses are allowed by the Lake county comprehensive plan and land use plan and the State comprehensive plan. Id.

20. Mr. McCarthy stated that the Ginn Company anticipates using the proposed CDD as a method of financing, and also for the perpetual operation of maintenance of the facilities that the district constructs. This project in particular requires a water treatment plan facility and a wastewater treatment plant facility; the Ginn Company has found that simply constructing

those types of facilities and turning them over to the homeowner's association for ongoing maintenance is not the best thing to do. Using the CDD as a method of putting a structured management system in place for the ongoing operation of maintenance of those facilities has been found to be a much better system. Id. Mr. McCarthy also testified that Lake County has no water or wastewater facilities available to service this development (Tr. 17.)

21. Mr. McCarthy testified that the initial board of supervisors will consist of Kyle Myers, Wade Smith, Thomas Britt, Jim Cooper, and himself (Thomas McCarthy). Mr. McCarthy testified that construction is estimated to take three years to complete and that the estimated regulatory costs statement included in the Petition is true and accurate. (Tr. 18.) Mr. McCarthy stated that all allegations in the Petition are true and accurate and that the proposed CDD is seeking powers normally granted to CDDs under Chapter 190, Florida Statutes, as well as the special powers available to a CDD. (Tr. 18.)

22. The next witness for the Petitioner was Geoffrey Summitt. Mr. Summitt is employed by Miller Einhouse Rymer & Boyd as a civil engineer, where he serves as "project engineer/project manager" for land development projects. He is currently licensed as a professional engineer in the State of Florida. Mr. Summitt's firm has experience with CDDs and

currently serves as the district engineer for Harmony CDD and Reunion East and Reunion West CDD. Mr. Summitt testified that he is familiar with the proposed CDD, as he is the project engineer and project manager. Mr. Summitt stated that the proposed CDD will build all the infrastructure, roads, drainage, water distribution, and wastewater collection systems necessary for the proposed project. Mr. Summitt testified that the CDD provides the best alternative for capital financing, as well as overall management of the facilities after construction is completed. (Tr. 23-28.)

23. Mr. Summitt testified that the proposed uses are consistent with the Lake County Plan and the State Comprehensive Plan and further, that the Pine Island project was permitted in two halves, Pine Island One and Pine Island Two. The Pine Island I PUD has been completely approved through Lake County and all required governmental agencies, and the Pine Island II PUD has been approved by all agencies with the exception of Lake County, where it is currently awaiting final stamping approval for construction plans. Mr. Summitt testified that he concurs with the Statement of Regulatory Costs attached to the Petition and all the allegations of the Petition are true and accurate. Id. Mr. Summitt further testified that the CDD is the best alternative for providing community development services and facilities to the land involved and that the area that will be

served by the proposed CDD is amendable to a separate special district government. (Tr. 28.)

24. Petitioner introduced several documents which were accepted into evidence:

Exhibit 1

Notice from the Orlando Sentinel newspaper, providing evidence that they published a public hearing notice for this hearing on November 13, 20, 27, and December 4, 2003 in a section of the newspaper that was not the legal notice section. (Tr. 4.)

Exhibit 2

Statement from Jimmy Don Crawford, a representative of the Gray Robinson law firm indicating the proposed CDD can be legally developed, and that it will not be inconsistent with applicable permits, plans, orders and agreements, nor will it be inconsistent with the capacity and use of the existing or planned services and facilities. (Tr. 5.)

Exhibit 3

Statement from Brett Sealy, a representative of Prager, Sealy & Company, indicating that it is his opinion that using a community development district to finance the infrastructure improvements is an efficient and advisable option that he would recommend to the county and to the State. It is further his opinion that the utilization of the community development district for providing the infrastructure for this proposed development is an efficient and appropriate financing strategy. (Tr. 6.)

Exhibit 4

Statement of Gary Moyer, the proposed manager of the Pine Island Community Development District. He has reviewed the petition with exhibits including the statement of estimated regulatory costs. Based upon his review of the petition, and based upon his experience, it is his opinion that creating the proposed district is the best available alternative for delivering the infrastructure to the area proposed to be included in the district. He is also of the opinion that the district is of sufficient size, is sufficiently compact, and sufficiently contiguous to be developed as a community developed district. He is also of the opinion that the area to be served by the proposed district is amendable to separate special districts of government. (Tr. 7.)

Exhibit 5

Statement of Jan Albanese Carpenter, an attorney with Allen, Lang, Carpenter & Peed, P.A., attaching copies of the letters that were sent to the county and sent to the adjacent cities asking if they wanted to hold local hearings, and then their responses saying that they were not going to hold any hearings. (Tr. 8.)

Exhibit 6

Statement of Geoffrey Summitt of Miller Einhouse Rymer & Boyd. He is of the opinion that the community development district as proposed can be legally developed, and that it will not be inconsistent with any of the aforementioned permits, plans, orders, and agreements, nor will it be inconsistent with the capacity and use of existing or planned services and facilities. He is further of the opinion that the proposed district is of sufficient size and is sufficiently contiguous to allow the development as

planned. He is further of the opinion that the proposed district can be utilized for the purposes recited in the petition, and that utilizing the projected proceeds of the described bonds and bond anticipation notes, the planned infrastructure can be constructed.

Exhibit 7

Legal Description of the proposed CDD.

25. The last witness was a member of the public, Mr. Donald Duncan of 16208 County Road 455, Montverde, Florida 34756. He requested that he be given notice of any hearings relating to the development. He stated that he liked the proposed CDD project and that it means "a great deal to our neighborhood." (Tr. 30.)

APPLICABLE LAW

A. General

26. 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 in granting a petition for the establishment of a CDD. (Section 190.005(2) 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.)

27. 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.

28. 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.

29. 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.

30. 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. No such public hearing was held on the Petition in this case.

31. 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) specifies that the petitioner 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

32. Section 190.005(1)(e), Florida Statutes, provides that FLWAC 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), 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 RECORD TO APPLICABLE LAW

A. Procedural Requirements

33. 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

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

35. The evidence was that establishment of the proposed CDD on the proposed property is not inconsistent with the State and Lake County Comprehensive Plans.

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

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

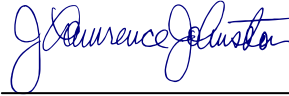
38. The evidence was that the services and facilities provided by the proposed CDD will be compatible with the capacity and uses of existing local and regional community development services and facilities.

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

CONCLUSION

Section 190.005(1)(e), Florida Statutes, states that 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 Pine Island Community Development District by rule. For purposes of drafting such a rule, a metes and bounds description of the proposed Pine Island CDD may be found both in Petition Exhibit 2 and in Hearing Exhibit 7; and the five persons designated to serve as the initial members of the Board of Supervisors of the Pine Island CDD are identified both in paragraph 3 of the Petition and in paragraph 4 of the Summary of Record, supra.

DONE AND ENTERED this 22nd day of January, 2004, in
Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of January, 2004.

ENDNOTE

1/ 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, for resolution of factual disputes. Rather, it is a quasi-legislative, information-gathering hearing that is part of the rulemaking process. Section 120.54(8), Florida Statutes, describes the Rulemaking Record as including: "(c) A written summary of hearings on the proposed rule." For these reasons, a recommended order with findings of fact and conclusions of law 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.

COPIES FURNISHED:

Michael P. Hansen, 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

Raquel Rodriguez, General Counsel
Office of the Governor
The Capitol, Room 209
Tallahassee, Florida 32399-1001

Thomas F. Lang, Esquire
Allen, Lang, Carpenter & Reed, P.A.
14 East Washington Street, Suite 600
Orlando, Florida 32801

Heidi Hughes, General Counsel
Department of Community Affairs
2555 Shumard Oak Boulevard, Room 325
Tallahassee, Florida 32399-2100