

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION - SPLIT PINE COMMUNITY) Case No. 03-4660
DEVELOPMENT DISTRICT.)
_____)

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

On February 19, 2004, a local public hearing under Section 190.005(1)(d), Florida Statutes, was conducted in Jacksonville, Florida, before J. Lawrence Johnston, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Cheryl G. Stuart, Esquire
Jonathan T. Johnson, Esquire
Hopping, Green & Sams, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301-1517

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 Split Pine Community Development District (Petition). The local public hearing was for the purpose of gathering information in anticipation of rulemaking by FLWAC.

PRELIMINARY STATEMENT

The Petition was filed by SONOC Company, LLC, a Delaware limited liability company (Petitioner), on December 2, 2003. It requested that FLWAC adopt a rule to establish a community development district, to be called the Split Pine Community Development District, on certain property in the City of Jacksonville, Duval County, Florida. The Petition includes thirteen exhibits.

FLWAC referred the Petition to DOAH on December 8, 2003, for assignment of an ALJ to conduct a local public hearing under Section 190.005(1)(d), Florida Statutes. (All statutory references are to the 2003 codification of the Florida Statutes.) Notice of the public hearing was published in The Florida Times-Union on January 22 and 29, 2004, and February 5 and 12, 2004, in accordance with Section 190.005(1)(d), Florida Statutes. The local public hearing was held at 1:00 p.m., on Thursday, February 19, 2004, at the Residence Inn at Butler Boulevard, Conference Room, 10551 Deerwood Park Boulevard, in the City of Jacksonville, Duval County, Florida.

At the local public hearing, Petitioner presented the testimony of Gregory J. Barbour, employed by The PARC Group, of Jacksonville, Florida; Douglas C. Miller, employed by England-Thims & Miller, Inc., of Jacksonville, Florida; Carey Garland, employed by Fishkind & Associates, Inc., of Orlando, Florida;

and Gary R. Walters, employed by Gary Walters and Associates, of Ormond Beach, Florida. Petitioner introduced nine lettered exhibits, A through I, which are identified on page 3 of the Transcript of Record. No members of the public testified during the hearing. (Tr. 106.)

The Transcript of the local public hearing was filed on March 12, 2004. Petitioner filed a "Proposed Administrative Law Judge's Report to Florida Land and Water Adjudicatory Commission," which has been considered and largely adopted 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 the FLWAC, the City of Jacksonville, Duval County, Florida, and St. Johns County, Florida. (Tr. 17-18.)

2. The land for the District is located within the City of Jacksonville, Duval County, Florida. Petition Exhibit 1 depicts the general location of the District. The proposed District covers approximately 2,015 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. A more detailed map showing the location of the District is provided in Petition Exhibit 3.

3. Petition Exhibit 4 incorporates the written consent to the establishment of the District by the owner of 100 percent of the real property to be included in the District. The sole owner of the real property is SONOC Company, LLC.

4. The proposed District will be named the "Split Pine Community Development District."

5. 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>
Gregory J. Barbour	4314 Pablo Oaks Court Jacksonville, Florida 32224
John S. Hewins	4314 Pablo Oaks Court Jacksonville, Florida 32224
Anne T. Klinepeter	4314 Pablo Oaks Court Jacksonville, Florida 32224
Arden A. Tomczak	4314 Pablo Oaks Court Jacksonville, Florida 32224
Lauren A. O'Steen	4314 Pablo Oaks Court Jacksonville, Florida 32224

6. The designated initial members of the Board of Supervisors are all citizens of the United States and residents of the State of Florida. (Tr. 19.)

7. Petition Exhibit 5 depicts the existing land uses within and abutting the District. The property to be included within the District is presently largely undeveloped and is bounded by agricultural uses.

8. The future general distribution, location, and extent of the public and private land use proposed within the District by the future land use element of the applicable comprehensive plan are shown on Petition Exhibit 6. These proposed land uses are consistent with the effective City of Jacksonville Comprehensive Plan. (Tr. 104.) All land within the District is subject to the Nocatee Development of Regional Impact (DRI) Development Order adopted by City of Jacksonville Ordinance 2001-13-E on February 27, 2001. (Hearing Composite Exhibit F; Hearing Exhibit D.)

9. The proposed development plan for the lands within the District is shown in Petition Exhibit 8. Based upon currently available data, construction of the proposed District facilities and services is expected to occur over a twenty-four year period. (Petition Exhibit 11.)

10. Petition Exhibit 9 shows the existing major trunk water mains, sewer interceptors, major outfall canals, and

drainage basins for the lands to be included within the District.

11. Petition Exhibit 10 describes the proposed timetable for the construction of the District improvements and the type of facilities and services that Petitioner presently expects the District to finance, construct, and install.

12. Based upon currently available data, Petition Exhibit 11 outlines the estimated cost of constructing the proposed District improvements. This is a good faith estimate, but it is not binding on Petitioner or the District and is subject to change.

13. Petition Exhibit 12 is a Statement of Estimated Regulatory Costs (SERC) prepared in accordance with the requirements of Section 120.541(b), Florida Statutes. The SERC meets all of the requirements of Section 120.541(b), Florida Statutes.

14. Prior to the filing of this Petition, Petitioner submitted a copy of the Petition with Petition Exhibits and paid the required filing fee of \$15,000 to the City of Jacksonville in accordance with Section 190.005(1)(b), Florida Statutes.

B. Additional Information from Local Public Hearing

15. The local public hearing on the Petition was noticed for and was held on February 19, 2004, in the conference room of the Residence Inn at Butler Boulevard, an accessible location,

at 10551 Deerwood Park Boulevard, in the City of Jacksonville, Duval County, Florida. (Tr. 1.) Notice of the hearing was advertised on January 22 and 29, 2004, and February 5 and 12, 2004, in The Florida Times-Union, a newspaper of general paid circulation in Duval County, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. (Hearing Exhibit E.) The published notices gave the time and place for the hearing, a description of the area to be included in the community development district (CDD), including a map showing clearly the area to be covered by the CDD and other relevant information. (Hearing Exhibit E.) The advertisements were not placed in that portion of the newspaper where legal notices and classified advertisements appear. (Hearing Exhibit E.)

16. The hearing commenced 10 minutes after the noticed and scheduled time in order to give any persons who wanted to attend ample time to do so. (Tr. 4.) Appearances were made by counsel for Petitioner. (Tr. 4.) No other members of the public spoke at the hearing. (Tr. 114.) No party has formally intervened in this administrative proceeding. (Tr. 6.)

17. The first witness for Petitioner was Gregory J. Barbour. Mr. Barbour is President of The PARC Group. (Tr. 8.)

18. Mr. Barbour identified a letter, dated December 19, 2003, that had been sent by Charles Gauthier, the Chief

Comprehensive Planner with the Department of Community Affairs (DCA) to Michael Hansen of the FLWAC. (Tr. 26-27; Hearing Exhibit D.) The letter states that the public and private land uses proposed within the District are consistent with the applicable City of Jacksonville Comprehensive Plan, and the DCA has identified no potential inconsistency with Chapter 163, Florida Statutes. (Hearing Exhibit D.)

19. The development in which the District will be established is called Nocatee. (Tr. 28.) Mr. Barbour testified that the land within the Nocatee development is geographically located in Duval and St. Johns Counties, so there is a need for two CDDs. (Tr. 19-20, 28.) A petition to establish the "Tolomato Community Development District" has been filed for the remaining land within the Nocatee development located in St. Johns County, Florida. (Tr. 19-20.) Mr. Barbour testified that development will occur over an extended period, and a CDD is the best alternative to provide the long-term stability needed for the construction and maintenance of the major infrastructure that will serve the residents within the development, in his opinion. (Tr. 29.) Mr. Barbour also testified that the CDD has the ability to efficiently finance the major infrastructure earlier than might otherwise be possible. (Tr. 29.)

20. Mr. Barbour identified City of Jacksonville Ordinance No. 2001-13-E and St. Johns County Resolution 2001-30 as the

Nocatee Development of Regional Impact Development Orders for the entire project. (Tr. 29-30.) These approvals were marked as Composite Exhibit F and admitted into evidence. (Tr. 30.)

21. Mr. Barbour testified that as of the date of the hearing, Petitioner, SONOC Company, LLC, is still the sole landowner within the District. (Tr. 14-15, 30.)

22. The next witness for Petitioner was Douglas C. Miller. Mr. Miller is Chief Executive Officer of England-Thims & Miller. (Tr. 31-32.) Based upon his qualifications, education, and other credentials, Mr. Miller was accepted as an expert in the field of civil engineering on the provision of public infrastructure. (Tr. 32-33.)

23. Mr. Miller testified that the Nocatee DRI development orders assess the specific and unique impacts caused by this particular project. (Tr. 110.) In his view, it is appropriate for the costs of the impacts associated with the project to be borne by the residents and landowners within the District. (Tr. 110-111.) For this reason, Mr. Miller testified that, in his expert opinion, the District is the preferred alternative to provide the infrastructure because it is the most efficient means for growth to pay for itself. (Tr. 111.)

24. Mr. Miller also testified that the combination of the District and its sister district, the Tolomato Community Development District, encompass all of the area within the

Nocatee development. (Tr. 48-49.) Mr. Miller noted that both development orders contemplate the establishment of CDDs to provide the infrastructure and long-term operation and maintenance for the development. (Tr. 111-112; Composite Hearing Exhibit F: Ordinance No. 2001-13-E of City Council of the City of Jacksonville, Duval County, Florida, pp. 46-47; and Resolution No. 2001-30 of the Board of County Commissioners of St. Johns County, Florida, pp. 54-56.)

25. Mr. Miller testified that the costs to provide the joint master infrastructure, which will benefit the residents and landowners in both CDDs, will be allocated between the districts based on the benefits received. (Tr. 108.) These two districts are expected to enter into interlocal agreements to provide the joint master infrastructure, including the significant regional roadway improvements that are required. (Tr. 108-110.) The infrastructure improvements that benefit only individual residents, such as neighborhood parks and infrastructure, will be apportioned to the land within that district. (Tr. 109.)

26. The next witness for Petitioner was Carey Garland. Mr. Garland is employed by Fishkind & Associates, as Director of Public Finance. (Tr. 52.) Based upon his qualifications, education, and other credentials, Mr. Garland was accepted as an

expert in the field of economic and financial analysis.

(Tr. 53.)

27. Mr. Garland testified that he prepared SERC. (Tr. 55-56.) Mr. Garland testified that, in his expert opinion, the District is expected to be financially viable and feasible.

(Tr. 63-64.)

28. Mr. Garland opined that the establishment of the District is not inconsistent with the state comprehensive plan for several reasons. (Tr. 73.) Establishment of the District is consistent with Subject Number 17 and Subject Number 20 of the State Comprehensive Plan. (Tr. 65.) The goal of Subject Number 17 is the protection of existing public facilities and the planning and financing of new facilities to serve residents in a timely, orderly, and efficient manner. (Tr. 65.) The District will provide its improvements and facilities at no capital cost to the City of Jacksonville, which allows the City to focus its resources on public facilities outside of the District. (Tr. 65.)

29. Policy 3 of Subject Number 17 of the State Comprehensive Plan supports the allocation of the costs of new public facilities on the basis of benefits received by existing and future residents. (Tr. 65.) The District is being established for the specific purpose of serving the future residents within its boundaries, whose landowners and residents

will receive the benefits of the new public facilities. (Tr. 65-66.) It is these landowners and residents who will directly bear the costs associated with the construction, operation, and maintenance of the improvements. (Tr. 66.)

30. Policy 6 of Subject Number 17 provides for the identification and implementation of innovative, fiscally sound, and cost-effective methods for financing public facilities. (Tr. 66.) The District is the best alternative to finance the delivery of public services because it brings the cost of managing and financing public facilities down to a level of government closest to its beneficiaries and connects those who pay for facilities with those who directly benefit from those facilities and services. (Tr. 66.) The District provides a consistent, innovative, and fiscally sound alternative for financing public facilities. (Tr. 66.)

31. The goal of Subject Number 20 is for Florida government to economically and efficiently provide the amount and quality of services required by the public. (Tr. 67.) The District would finance and deliver its own public facilities and cooperate with its sister community development district, the Tolomato Community Development District, to efficiently provide some of the master infrastructure. (Tr. 67.)

32. Policy 2 of Subject Number 20 permits the establishment of independent special taxing districts with

uniform general law standards and procedures that do not overburden other governments and their taxpayers. (Tr. 67.) The District is established pursuant to Chapter 190, Florida Statutes; it is professionally managed, financed, and governed by those whose property directly receives the benefits of the improvements; and the District does not burden the general taxpayer within the City of Jacksonville with the cost to provide improvements within the District. (Tr. 68.)

33. Mr. Garland also opined that, from an economic perspective, the CDD is the best alternative to deliver the infrastructure to the community. (Tr. 69-72.) Establishment of a CDD permits the community to make provisions for its own infrastructure needs by generally allocating costs to those persons who obtain a benefit from the services provided. (Tr. 70.) There are no other alternatives as effective and efficient as a CDD to provide for such a financial structure. (Tr. 70.)

34. The last witness for Petitioner was Gary Walters. Mr. Walters is employed by Gary Walters and Associates, as President. (Tr. 74.) Based upon his qualifications, education and other credentials, Mr. Walters was accepted as an expert in the field of planning, specifically comprehensive planning, and district management. (Tr. 75.)

35. Mr. Walters testified that, in his expert opinion, the area of land to be included in the District is amenable to special district governance and that the District is the best alternative to provide the proposed facilities and services that the District will need. (Tr. 100-101.) The District is better than other available alternatives, such as the City of Jacksonville or private means with maintenance delegated to a property owners association, because the District is better able to focus attention on when, where, and how the next system of infrastructure will be required. (Tr. 101-102.) This results in a full utilization of existing facilities before new facilities are constructed, which reduces the delivered cost to the citizens being served. (Tr. 102.)

36. Only a community development district allows for the independent financing, administration, operation, and maintenance of the land within the District. (Tr. 103.) Only a community development district allows district residents to ultimately control the district board and, through this representation, the district improvements. (Tr. 103.)

37. Mr. Walters testified that, in his expert opinion, the facilities and services to be provided by the District will be compatible with the capacity and uses of existing local and regional community development services and facilities. (Tr. 99-100.) There is no duplication of the improvements and

services anticipated to be provided by the District. (Tr. 100.) No other entity has planned to provide the improvements and services contemplated by the District. (Tr. 100.) The District improvements and services to be provided by the District are a logical and efficient extension of existing systems into the targeted development area within the District. (Tr. 99-100.)

38. Mr. Walters testified that, in his expert opinion, the area to be included within the District is of a sufficient size and is sufficiently compact and contiguous to be developed as one functional interrelated community. (Tr. 97-99.) From a planning perspective, functional interrelation means that each community purpose has a mutual reinforcing relationship to other community purposes. (Tr. 98.) Each function must be designed to contribute to the development or maintenance of the community as a whole. (Tr. 98.)

39. The District is sufficient in size to constitute a functionally interrelated community with a range of improvements and services to be provided. (Tr. 98.) The District will have sufficient population density and property size to require all the basic facilities and services of a community. (Tr. 98.) The compact configuration of the land allows the District to deliver the proposed construction and perpetual maintenance of any District improvements in a long-term and cost-efficient manner. (Tr. 99.)

APPLICABLE LAW

A. General

40. Section 190.005(1), Florida Statutes, provides that the sole means for establishing a CDD of 1,000 acres or more shall be by rule adopted by the FLWAC in granting a petition for the establishment of a CDD.

41. Section 190.005(1)(a), Florida Statutes, requires that the petition be filed with the FLWAC. The petition must contain various elements as set forth in Section 190.005(1)(a), Florida Statutes. The petitioner must also meet certain procedural requirements as set forth in Section 190.005(1)(b), Florida Statutes.

42. Section 190.005(1)(c), Florida Statutes, permits the county and each municipality whose proposed boundaries are within or contiguous to the CDD to conduct an optional public hearing to consider the petition. Such local, general-purpose governments may then present resolutions to the FLWAC as to the establishment of a CDD on the property proposed in the petition. No such public hearing was held by the City of Jacksonville to consider the Petition in this case.

43. 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)." The petitioner must 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

44. Section 190.005(1)(e), Florida Statutes, provides that the 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 or portion of the state comprehensive plan or of the effective local government comprehensive plan.

3. Whether the area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

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

5. Whether the community development services and facilities 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

45. The evidence reflects that Petitioner has satisfied the procedural requirements for the establishment of the District 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

46. The evidence is that the statements in the Petition and its attachments are true and correct. See Tr. 14-17 (Barbour); Tr. 38 (Miller); Tr. 56 (Garland).

47. The evidence is that establishment of the District on the proposed property is not inconsistent with the State Plan

and City of Jacksonville Comprehensive Plan. See Tr. 64-68 (Garland); Tr. 88-97 (Walters); Hearing Exhibit D.

48. The evidence is that the size, compactness, and contiguity of the proposed land area are sufficient for the area to be developed as "one functional interrelated community." See Tr. 41-42 (Miller); Tr. 97-99 (Walters).

49. The evidence is that the District is the best alternative presently available for delivering community development systems, facilities, and services to the proposed land area. See Tr. 29 (Barbour); Tr. 44-47 (Miller); Tr. 69-72 (Garland); Tr. 101-103 (Walters).

50. The evidence is 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. See Tr. 42-43 (Miller); Tr. 99-100 (Walters).

51. The evidence is that the proposed area to be served by the District is amenable to separate special-district government. See Tr. 43-44 (Miller); Tr. 68-69 (Garland); Tr. 100-101 (Walters).

CONCLUSION

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 Split Pine

Community Development District by rule. For purposes of drafting such a rule, a metes and bounds description of the proposed Split Pine Community Development District may be found in Petition Exhibit 2. Also, the five persons designated to serve as the initial members of the Board of Supervisors of the Split Pine Community Development District are identified in paragraph 5 of the Petition.

DONE AND ENTERED this 29th day of March, 2004, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 29th day of March, 2004.

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