

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION-TERN BAY COMMUNITY) Case No. 04-0106
DEVELOPMENT DISTRICT)
_____)

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

On March 24, 2004, a local public hearing under Section 190.005(1)(d), Florida Statutes (2003), was conducted in Punta Gorda, Florida, by Charles A. Stampelos, Administrative Law Judge (ALJ) of the Division of Administrative Hearing (DOAH).

APPEARANCES

For Petitioner: Pamela D. Keller, Esquire
Geri L. Waksler, Esquire
Moore and Waksler, P.L.
1107 West Marion Avenue, Suite 112
Punta Gorda, Florida 33950

STATEMENT OF THE ISSUE

The issue before the Florida Land and Water Adjudicatory Commission (FLWAC) in this proceeding is whether to grant the Petition to Establish the Tern Bay Community Development District (Petition), dated December 18, 2003. The local public hearing was conducted for the purpose of gathering information in anticipation of rulemaking by FLWAC.

PRELIMINARY STATEMENT

The Petition was filed by Tern Bay Development Co., LLC (Petitioner), on December 18, 2003. Petitioner requested that

FLWAC adopt a rule to establish a uniform Community Development District (CDD), to be called the Tern Bay Community Development District, on certain property located in Charlotte County, Florida. The Petition included 10 exhibits.

FLWAC referred the Petition to DOAH on January 12, 2004, 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 9:00 a.m. on March 24, 2004, in the Charlotte County Justice Center, Court Room 4C, 350 East Marion Avenue, Punta Gorda, Charlotte County, Florida.

At the local public hearing, Petitioner presented the testimony of David Nash, president of IME Group, Inc., of Punta Gorda, Florida; John H. McKay, of Rizzetta & Company, Inc., of Tampa, Florida; Dana Gourley, of Dana Gourley, AICP, of Punta Gorda, Florida; and Joseph S. Menen, P.E./P.S.M., president of Charlotte Engineering and Surveying, Inc., of Punta Gorda, Florida. Petitioner also introduced 17 exhibits, designated Exhibits 1 through 17, which are described in paragraph 64 of the Summary of the Record, infra.

The Transcript of the local public hearing was filed on April 12, 2004. Petitioner filed a Proposed Administrative Law Judge's Report to FLWAC, which has been considered in the

preparation of this Report. Throughout this Report, the term CDD refers to a Community Development District, Petitioner refers to Tern Bay Development Co., LLC, "Petition Exhibit" refers to the specified exhibits attached to and filed with the Petition and "Petitioner's Exhibit" refers to those documents offered and admitted into evidence at the public hearing conducted in March 24, 2004.

SUMMARY OF THE RECORD

A. Petition and Related Matters

1. The Petition was submitted to FLWAC, and Charlotte County, Florida.

2. The Petition alleges that the land proposed to be included within the District is located in unincorporated Charlotte County, Florida. The proposed District covers approximately 1,778 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 located within the external boundaries of the District that is excluded from the District. Petition Exhibit 3 is the CDD Boundary.

3. Petition Exhibit 4 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 entirely by Tern Bay Development, Co., LLC, but for 40 acres which are owned by John DiGiacomo, Trustee, who has consented to the inclusion of same within the proposed District.

4. The Petition states that the name of the proposed District will be the Tern Bay Community Development District.

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

<u>Name</u>	<u>Address</u>
John Reisman	The Jack Parker Corporation 9001 Daniels Parkway, Suite 200 Fort Myers, Florida 33912
Ken Weiner	The Weiner Companies 1642 Medical Lane, Suite B Fort Myers, Florida 33907
David Knizner	The Jack Parker Corporation 9001 Daniels Parkway, Suite 200 Fort Myers, Florida 33912
Maureen Nash	3485 Anglin Drive, Suite A Sarasota, Florida 34242
Dana Gourley	Post Office Box 20563 Sarasota, Florida 34276

6. Petition Exhibit 5 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 unincorporated area of Charlotte County. The Petition further alleges that lands within the District are currently designated Mixed Use Development of Regional Impact (DRI) on the Charlotte County Future Land Use Map.

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, as well as the waste water treatment plant, adjacent to the lands within the proposed District are illustrated in Petition Exhibit 7.

8. Petition Exhibit 8 alleges that the infrastructure improvements will ultimately be owned by both Charlotte County and the District. Maintenance and operation responsibilities will also be shared by the District and Charlotte County or, in some cases, be the sole responsibility of either Charlotte County or the District.

9. The types of facilities and services to be constructed are set out in Exhibit 9. The proposed timetable for the construction of District services and facilities, and the estimated costs of constructing the proposed facilities and services are based upon currently available data. This information is alleged to be a good faith estimate, but it is

not binding on Petitioner or the District and is subject to change.

10. The Petition alleges and incorporates in its Exhibit 10 a Statement of Estimated Regulatory Costs (SERC) prepared in accordance with the requirements of Section 120.541, Florida Statutes (2003).

11. The Petition alleges that Petitioner submitted a copy of the Petition with Exhibits to Charlotte County with the required filing fee of \$15,000, in accordance with Section 190.005(1)(b)1, Florida Statutes (2003).

12. 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 an approved Development of Regional Impact. 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 Charlotte County 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

13. The local public hearing on the Petition was noticed and held on March 24, 2004, in the Charlotte County Justice Center, Courtroom 4C, 350 East Marion Avenue, Punta Gorda, Florida, an accessible location in Punta Gorda, Charlotte County, Florida. Pursuant to Section 190.005(1)(d), Florida Statutes (2003), notice of the public hearing was advertised on February 25, on March 3, 10, and 17, 2004, in the Charlotte Sun, a newspaper of general paid circulation in Charlotte County, and of general interest and readership in the community, not one of limited subject matter, in accordance with Chapter 50, Florida Statutes (2003). The published notices provided the time and place for the hearing, a description of the area to be included within the District, including a map 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.

14. The hearing was also noticed in the Florida Administrative Weekly, Volume 30, Number 10, March 5, 2004.

15. The hearing commenced at 9:00 a.m., the time advertised in the published notice. Counsel for Petitioner made appearances. Four witnesses were presented on behalf of Petitioner. Several members of the public were present and questioned Petitioner's witnesses. Two members of the public offered sworn testimony.

16. The first witness for the Petitioner was Mr. David Nash. Mr. Nash is employed as President and Treasurer of IME Group, Inc., a company involved in the development of real property in the State of Florida.

17. Mr. Nash identified the Petition and the exhibits thereto and confirmed that the information contained therein was true and accurate and that there were no changes or corrections required to same. The Petition and exhibits were admitted into evidence as Petitioner's Exhibit 1.

18. Mr. Nash affirmed his filing of written testimony prior to the hearing and testified that there were no changes, additions or corrections required. The written testimony of Mr. Nash and exhibits were admitted into evidence as Petitioner's Exhibit 2.

19. Mr. Nash testified that the name of the proposed District is the Tern Bay Community Development District. The size is approximately 1,778 acres, and the land proposed to lie within the District is all located within Charlotte County.

20. Mr. Nash stated that the owners of 100 percent of the land within the proposed District, i.e., Tern Bay Development Co., LLC, as to 1,738 acres, and John DiGiacomo, Trustee, as to 40 acres, consented to the implementation of a CDD.

21. Mr. Nash 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 were tendered to Charlotte County all in accordance with Section 190.005(1)(b)1, Florida Statutes. According to Mr. Nash, FLWAC approved the Petition as complete as evidenced by Petitioner's Exhibit 6.

22. Mr. Nash testified that a public hearing was conducted on January 27, 2004, before the Board of County Commissioners of Charlotte County, Florida, with regard to this Petition, and in accordance with Section 190.005(1)(c), Florida Statutes. The hearing was noticed in the form provided as Petitioner's Exhibit 7.

23. As a result of the public hearing, the Charlotte County Board of Commissioners unanimously adopted Resolution No. 2004-017 approving the plan for the proposed District. A copy of the Resolution was admitted into evidence as Petitioner's Exhibit 8.

24. Mr. Nash further described the additional proceedings conducted by the County on March 9, 2004, to consider the Notice of Proposed Change to the original Caliente Springs DRI, which, he testified, was renamed the Tern Bay DRI. By unanimous vote the Charlotte County Board of Commissioners adopted Resolution No. 2004-050 approving the Notice of Proposed Change as reflected in Petitioner's Exhibit 9.

25. With respect to the instant proceedings, Mr. Nash testified that the hearing was properly noticed pursuant to Section 190.005(1)(d), Florida Statutes, in the Charlotte Sun, a newspaper of general paid circulation, general interest and readership in the community, not one of limited subject matter. The advertisement was not published as a display advertisement and was not placed in the portion of the newspaper where the legal notices or the classified advertisements appear. Petitioner's Exhibit 10 affirmed the placement and dates of the advertisement.

26. The public hearing was noticed in Volume 30, Number 10 of the Florida Administrative Weekly dated March 5, 2004, as testified to by Mr. Nash and as reflected in Petitioner's Exhibit 11.

27. To assist the undersigned and the members of the public who were present, Mr. Nash referred to Petitioner's Exhibit 12, also known as Revised Map H, the Tern Bay Master Development Plan, which depicts the various and mixed uses proposed within the District.

28. Mr. Nash testified that there are no existing utility facilities that serve the District at the present time. Mr. Nash testified that presently, the closest utility service lines to the proposed District are approximately 2.7 miles to the south and are owned and operated by Charlotte County Utilities. Mr. Nash further testified that the proposed District will provide the financing required to connect the off-site major trunk water mains and sewers and re-use lines to the proposed District. Mr. Nash stated that Petition Exhibit 8 describes the type of facilities that the Petitioner expects the District to finance, construct, and install and the proposed timing to complete that endeavor. Mr. Nash testified that the infrastructure improvements on site will be comprised of roads, bridges, sewer collection,

water distribution lines, irrigation, re-use lines, landscaping to common areas, exercise trails, footways, park and picnic areas and conservation areas, together with associated management programs.

29. Petitioner's Exhibit 13 reflects continuing communication between the Petitioner and Charlotte County Utilities (CCU). Mr. Nash testified that there are adequate facilities proposed to connect to Charlotte County Utilities to service the development and that the process is presently under review with Charlotte County.

30. Mr. Nash testified that Petition Exhibit 9 represents the estimated costs of construction which were prepared based on costs derived from a number of historical projects. Mr. Nash testified that the detailed engineering is now being completed enabling the project engineers to produce accurate quantities of materials necessary to construct the facilities for the District. Mr. Nash testified that he was confident that the exhibit is a fair and accurate estimate of the costs of construction based upon his development experience and in accordance with the expertise of the engineers hired for this project, Charlotte Engineering & Surveying, Inc.

31. Mr. Nash testified that each of the persons designated in the Petition as the initial Board members are personally known by him and that they are all residents of the State of Florida.

32. Mr. Nash testified that the proposed CDD is the best alternative to provide community development services to the area to be served within the proposed District because it will enable the District to effect an orderly transition from the conventional developer role into a District that has the financing capabilities that a homeowners' or property association does not. Mr. Nash also testified that the CDD also enables the procurement of funds for the provision of infrastructure both for on-site and off-site facilities in a way which does not create a burden on the taxpayers at large, and ensures that uniform maintenance responsibilities will be carried out in perpetuity.

33. Mr. Nash testified that the owner of the infrastructure improvements will be the Tern Bay Community Development District and Charlotte County; that the general responsibility for maintenance and operation of the proposed facilities within the District will be either Tern Bay Development Community Development District or Charlotte County; and that the County will be responsible at a later

date for the provision of a link to off-site utilities, however, the costs of same would be paid for by the District.

34. Questions of Mr. Nash from the public, namely from Marilyn Kaye, Curtis Gehling, and Earl DeWeese, concerned the road leading to the proposed District, known as Burnt Store Road. In particular, they were concerned with the existing traffic congestion and accidents occurring on this road and future impacts to the road as a result of the CDD.

35. The Petitioner has initiated discussions with Charlotte County to examine the long-term effects of traffic on Burnt Store Road, and Mr. Nash testified that the Petitioner will be undertaking its own monitoring of the roadway segments and the intersections to ensure that appropriate improvements and rights-of-way continue to serve the entire community. Mr. Nash offered to meet with the concerned citizens and disseminate the information gathered in Tern Bay's study of this issue to anyone who desires to review same.

36. The next witness for Petitioner was John H. McKay (referred to in the Transcript of the proceedings as Don McKay). Mr. McKay is employed by Rizzetta & Company, Inc. Mr. McKay testified that his company assisted the Petitioner in

assembling the Petition to establish the CDD, and in preparing the SERC. Mr. McKay testified that his company provides services to Petitioners who are seeking to establish community development districts. In addition, his company provides management and financial consulting services to existing CDDs.

37. Mr. McKay provided a summary of his educational and employment background and his qualifications and credentials.

Based upon Mr. McKay's background, he was qualified as an expert witness in the areas of management and financial consulting.

38. Mr. McKay affirmed his written testimony and testified that no corrections or additions were required to same. He stated that a firm brochure, annexed to his pre-filed testimony, provided additional information regarding the type of work he performed for clients such as the Petitioner.

His pre-filed testimony and exhibit were admitted into the evidence as Petitioner's Exhibit 3.

39. Mr. McKay testified that his firm prepared Petition Exhibit 10, the SERC, and he had evaluated the validity of the proposed District from an economic and management perspective.

Mr. McKay testified that everything in the documents is accurate and correct.

40. Mr. McKay testified that in his opinion, the proposed District is of sufficient size, compactness and contiguity to be developed as a functionally interrelated community and that the land area in the CDD is well-suited to the provision of services and facilities. His basis for that opinion was that the overall site plan and proposed plan of the development shows the area to be contiguous and compact. The road systems and all the improvements fit nicely into this one area. The acreage of the development supports the number of residential units that are proposed for the District or for the development. There are no parcels of land that are either detached or away from the main development area. There are no enclaves or cutouts within the development that are not part of the District, and the proposed improvement plan does support this particular development.

41. Mr. McKay testified that from an economic perspective the proposed District is the best alternative to provide the proposed services and facilities because it will provide the most effective and efficient management and maintenance of the proposed services and facilities and will have the ability to assure long-term and low-cost term financing. In arriving at that opinion, Mr. McKay testified that from a financing standpoint, it is the best of the

alternatives for financing as compared with private and County options.

42. Mr. McKay also testified within a reasonable degree of certainty from an economic analysis perspective that the services and facilities to be provided by the proposed District will not be incompatible with the uses and existing local and regional services and facilities.

43. Mr. McKay further testified that within a reasonable degree of certainty from an economic analysis perspective the area which is to be served by this CDD is amenable to this special-district form of government.

44. Upon questioning from Ms. Kaye, Mr. McKay testified that, once the District has been established and has had its first organizational meeting, the books and records of the District will be present at the District office. Further, the cost of bringing the external existing water and sewer lines from Charlotte County Utilities into Tern Bay will be paid by Tern Bay. This concluded the testimony of John McKay.

45. Next to testify was Dana L. Gourley, AICP, a certified land use planner. She had submitted written testimony in advance of the hearing which she testified was accurate and required no correction. Attached to her pre-filed testimony was an exhibit describing her credentials, certifications, and degrees. Ms. Gourley's pre-filed

testimony was admitted into evidence as Petitioner's Exhibit
4. Also, following a description of

Ms. Gourley's background, education and experience, Ms. Gourley was accepted as an expert in the field of land use planning.

46. Ms. Gourley testified that she was retained by the Petitioner in this matter to provide land use planning services specifically with regard to the establishment of this proposed District. In the course of her duties, Ms. Gourley reviewed the state and local comprehensive plans in order to assess the potential impact of the District on the state and local comprehensive plans for this region.

47. Ms. Gourley testified that in the course of her duties for the Petitioner, she became familiar with the Petition, the exhibits thereto, and the DRI for Caliente Springs that was originally proposed and accepted in 1992. She was also involved in the procedure leading to the Notice of Proposed Change of the Caliente Springs DRI to the Tern Bay DRI which was unanimously accepted by the Board of County Commissioners on March 9, 2004, as described in Petitioner's Exhibit 9.

48. Ms. Gourley gave her opinion, with reasonable certainty, that the proposed CDD is not incompatible with any provision of Chapter 187, Florida Statutes, regarding the state comprehensive plan and, in fact, it is consistent with

the state plan. Additionally, according to Ms. Gourley, the proposed CDD is consistent with the local Charlotte County Comprehensive Plan.

49. Ms. Gourley testified that in her opinion the proposed CDD is of sufficient size, compactness, and contiguity to develop as a functionally interrelated community to require some management structure. It is a compact, mixed-use development.

It is a discrete development adjacent to Burnt Store Road. In Ms. Gourley's opinion, the design compliments the area.

50. Further, Ms. Gourley opined that the proposed CDD is the best alternative to provide the proposed services and facilities and is amenable to this special form of government. The CDD provides an opportunity for secured financing for the needed infrastructure, provides for efficient extension and service of infrastructure such as utilities, avoids deficiency and provides some stability and assurance of adequate capacity for infrastructure and services. The proposed CDD also provides Sunshine (open government) protection for the residents, noticed open meetings, and upgraded improvements that are paid for over time. Ms. Gourley also stated there would be no duplication of services by Charlotte County government, and there would not be any additional financial burden to the taxpayers of Charlotte County.

51. It was Ms. Gourley's opinion that the services and facilities to be provided by the proposed CDD will not be

incompatible with the uses and existing local and regional services and facilities. Ms. Gourley opined that this CDD will provide a logical and efficient extension of the existing systems and that the CDD is consistent with the County's long-term plan for this urban service area. The proposed District will be compatible within the local and state planning horizons.

52. Ms. Kaye questioned Ms. Gourley about the dimensions of the conservation areas and green belt. In response, Ms. Gourley testified that as depicted on Revised Map H, the master development plan, "there is a coastal conservation area that would involve 865 acres and it will be conveyed through the protection of these lands to the CDD and ultimately to the State of Florida." This completed Ms. Gourley's testimony.

53. The Petitioner's last witness was Joseph S. Menen, P.E./P.S.M., a civil engineer and President of Charlotte Engineering & Surveying, Inc. Mr. Menen identified his pre-filed testimony and the exhibit thereto, describing his business and testified that there was no need for any change or correction thereto. Mr. Menen's pre-filed testimony was admitted into evidence as Petitioner's Exhibit 5.

54. Following a review of Mr. Menen's background, education, professional experience, and certifications, Mr.

Menen was accepted as an expert in the field of civil engineering, and he provided opinions regarding his experience and role in the engineering aspects of the Tern Bay CDD.

55. Based upon Mr. Menen's familiarity with the geographical locale, the type and scope of this proposed CDD and the available services and facilities in the area, and review of and involvement with the Petition and the exhibits in this matter, Mr. Menen confirmed that within the land comprising this District, there are no existing facilities or services, no major water mains, sewer interceptors, or outfalls to serve the proposed residents and businesses.

56. Mr. Menen testified that he was involved in preparing the estimate of the quantities, i.e., linear feet for pipe for storm water, set forth in Petition Exhibit 9. Through this information, the Petitioner was able to develop the cost estimate of the infrastructure required for this development. Mr. Menen agreed that the cost estimates were reasonable and in line with local industry standards. They are based on good faith estimates not intended to bind the District at this time. Petitioner's Exhibit 17, a copy of the proposed construction timetable and cost estimates, was admitted into evidence.

57. Mr. Menen gave his opinion that the proposed CDD is of sufficient size, compactness, and contiguity to be developed as a functionally interrelated community regarding the infrastructure

that will serve this District and that all the land is contained within one boundary.

58. Mr. Menen further opined that the proposed CDD is the best alternative to provide these services and facilities based on his past experience as being the engineer of record of another CDD, and working on other types of developments in Florida.

59. Mr. Menen provided his opinion that the services and facilities proposed for this CDD will not be incompatible with the uses and existing local and regional services and facilities. This opinion was derived from his meetings with Charlotte County Utilities, his development of preliminary plans to extend water use, water, and waste water services to the site.

60. Lastly, Mr. Menen gave his opinion from an engineering perspective and based upon his experience, that the area to be served by the proposed CDD is amenable to this special district form of government due to its size, in part, and the facilities and services and infrastructure to be provided, as well as the ease of financing arrangements that are going to be undertaken.

61. Upon questioning from Ms. Kaye, Mr. Menen testified that with the assistance of Charlotte County Utilities, the issue of impact upon water and sewer services currently being provided to other nearby properties is being examined to

ensure that other members of the public will not be adversely affected by the provision of such services within the Tern Bay CDD. Ms. Waksler, counsel for Petitioner, with the permission of the undersigned, elaborated that the CDD allows the Petitioner to procure the financing to implement the infrastructure, following appropriate local and state review and approval.

62. Following the presentation by the Petitioner, members of the public offered sworn testimony. Harold DeWeese testified that he had nothing against the development. However, he felt that it was the wrong time to implement the plan due to his perception that Charlotte County had been dragging their feet on the Burnt Store Road improvements. He was concerned about the amount of additional traffic the proposed District would provide given the additional residents and businesses which are planned. It was his personal desire that the implementation of the proposed District be delayed until Charlotte County proves to the other residents along the road that it will make Burnt Store Road a four-lane highway "to help defer the traffic that is on there now."

63. Ms. Kaye, who previously inquired of several witnesses, testified that the population residing along Burnt Store Road is elderly. She does not want to see another death

or another person hurt. Trucks speed by. She expressed her support of Mr. DeWeese's concerns about Burnt Store Road. She also requested that the Petitioner consider constructing the entrances into Tern Bay to run the full length of its road frontage (8,000 feet) along Burnt Store Road. Further, she requested that someone take into consideration the paving of Zemel Road to provide an alternate route for trucks going in and out of Tern Bay so as to alleviate the traffic on Burnt Store Road.

64. Petitioner introduced several documents which were admitted into evidence. They were as follows:

1. Petition to Establish the Tern Bay Community Development District and exhibits thereto;
2. Pre-filed Testimony of David Nash and exhibits;
3. Pre-filed Expert Testimony of John H. McKay of Rizzetta and Company and exhibits;
4. Pre-filed Expert Testimony of Dana L. Gourley and exhibits;
5. Pre-filed Expert Testimony of Joseph S. Menen, P.E./P.S.M. and exhibits;
6. Florida Land and Water Adjudicatory Commission correspondence dated January 12, 2004 re: Petition for Rule Creation - Tern Bay Community Development District (FLWAC Case No. CDD-03-022);
7. Charlotte County Board of County Commissioners Agenda Item Summary and Notice to Set Public Hearing for January

- 27, 2004 at 10:00 a.m.;
8. Charlotte County Resolution 2004-017 dated January 27, 2004;
9. Charlotte County Resolution 2004-050 dated March 9, 2004;
10. March 17, 2004, Proof of Publication of March 24, 2004 Public Hearing - Charlotte Sun- a local newspaper;
11. Proof of Publication of March 24, 2004 Public Hearing - Florida Administrative Weekly, Volume 30, Number 10, March 10, 2004;
12. Revised Map H - Tern Bay Country Club Resort Land Uses;
13. Correspondence from IME Group, Inc., dated November 5, 2003, addressed to Charlotte County Utilities and response from Charlotte County Utilities dated November 17, 2003 to IME Group, Inc.;
14. Statement of Estimated Regulatory Costs for Tern Bay Community Development District prepared by Rizzetta & Company, Inc. December 9, 2003;
15. Notice of Final Agency Action for Approval by the Southwest Florida Water Management District for Permit No. 43026119.000, Tern Bay Resort;
16. Notice of Final Agency Action for Approval by the Southwest Florida Water Management District for Permit No. 43026119.001, Tern Bay Resort Phase 1;
17. Tern Bay Community Development District - Proposed Construction Timetable and Costs Estimates.

APPLICABLE LAW

A. General

65. Section 190.005(1), Florida Statutes (2003), provides that the sole means of establishing a CDD of 1,000 or more shall be by rule adopted by the FLWAC, in granting a petition for the establishment of a CDD.

66. Section 190.005(1)(a), Florida Statutes (2003), requires that the petition be filed with 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 set forth that petitioner has received the written consent of the owners 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.

67. The petition must also contain the proposed timetable for construction of the District services including a good faith estimate of the costs of construction. § 190.005(1)(a)6., Fla. Stat. (2003). 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).

68. Section 190.005(1)(b)1., Florida Statutes (2003), requires that 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 proposed boundary is within or contiguous to the CDD.

69. 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.

70. 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. See In Re: Petition for Rule Creation - Pine Island Community Development

District, Case No. 03-3892, 2004 WL 112814, at *8 n.1 (DOAH Jan. 22, 2004).

71. 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

72. 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 subparagraph (1)(e), 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 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 to be provided by the district will be compatible 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

73. The evidence was that Petitioner satisfied the procedural requirements for the establishment of the District on the proposed property by filing the Petition in 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)

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

75. The evidence was that establishment of the District on the proposed property is not inconsistent with the State and the Charlotte County Comprehensive Plans.

76. The evidence was that the area of land within the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functionally interrelated community.

77. The evidence was that the District is the best alternative available for delivering community development services and facilities to the area that will be served by the District.

78. 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.

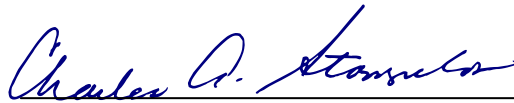
79. The evidence was that the area proposed to be served by the District is amenable to separate special-District government.

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

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



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