

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE )  
CREATION - LAKEWOOD RANCH )  
COMMUNITY DEVELOPMENT ) Case No. 04-3639  
DISTRICT SEVEN )  
\_\_\_\_\_ )

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

Pursuant to notice, a local public hearing was conducted on Wednesday, November 17, 2004, pursuant to Section 190.005(1)(d), Florida Statutes, in Bradenton, Florida, by Donald R. Alexander, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Michael C. Eckert, Esquire  
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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 to Establish the Lakewood Ranch Community Development District Seven (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 Schroeder-Manatee Ranch, Inc. (Petitioner) on July 30, 2004. It requested that FLWAC adopt a rule which creates the Lakewood Ranch Community Development District Seven in Manatee County, Florida. The Petition included seven exhibits, identified as Petition Exhibits 1 through 7 and 7A. Petition Exhibit 8A, an executed Authorization of Agent, was added at the hearing as a final Petition exhibit.

The FLWAC referred the Petition to DOAH on October 6, 2004, for assignment of an ALJ to conduct a local public hearing pursuant to Section 190.005(1)(d), Florida Statutes. The local public hearing was held at 10:00 a.m., on Wednesday, November 17, 2004, in the Lakewood Ranch Town Hall, 8175 Lakewood Ranch Boulevard, Bradenton, Florida. At the local public hearing, Petitioner presented the testimony of Thomas J. Danahy, president of LWR Communities, L.L.C, a subsidiary of Schroeder-Manatee Ranch, Inc.; John Daugirda, district manager of Severn Trent Environmental Services, Inc.; Brian C. Canin, president of Canin & Associates; and Carey Garland, director of public finance for Fishkind & Associates. Petitioner also introduced seven exhibits, designated as Composite Exhibit A (consisting of Petition Exhibits 1-7, 7R, and 8A), B, C, D, E, F, and G, which are described on pages 3

through 5 of the Transcript of the Record. All exhibits were received in evidence. No one from the public appeared at the hearing. After the public hearing, Petitioner filed a late-filed exhibit, which substituted the original for a copy of the Proof of Publication for the Notice of Public Hearing (Exhibit B).

The one-volume Transcript of the local public hearing was filed on November 30, 2004. On the same date, Petitioner filed a Proposed Report of Findings and Conclusions, which has been considered in the preparation of this Report.

#### SUMMARY OF RECORD

##### A. Petition and Related Matters

1. The Petition was submitted to the FLWAC and to Manatee County.

2. The Petition alleges that the proposed District is located entirely within Manatee County and contains approximately 1,615.22 acres. Petition Exhibit 1 depicts the general location of the project. (The project is located east of Interstate-75, south of State Road 70, and just north of the Manatee-Sarasota County Line.) The metes and bounds description of the external boundaries of the District is found in Petition Exhibit 2. The proposed name of the new District to be established is Lakewood Ranch Community Development District Seven.

3. The Petition alleges that Petitioner either owns or has written consent to establish the District from the owners of 100 percent of the landowners within the District. Documentation of ownership and consent to the establishment of a District by 100 percent of the landowners is contained in Petition Exhibit 3.

4. The existing land uses within and abutting the proposed District are depicted in Petition Exhibit 4. Generally, the property is bounded by University Parkway on the south, religious facilities and Lorraine Road to the west, agricultural lands to the north, and future residential lands to the east. The future residential land to the east is currently zoned agricultural. The lands within the proposed District are largely undeveloped.

5. The future general distribution, location, and extent of the public and private land uses for the lands within the proposed District are shown in Petition Exhibit 4. These proposed land uses are consistent with the effective Manatee County Comprehensive Plan.

6. The Petition alleges that there are no existing major trunk water mains and sewer interceptors on the lands located within the proposed District. Petition Exhibit 5 indicates the major outfall canals and drainage basins for the lands within the proposed District.

7. The Petition further alleges that Petitioner intends for the District to participate in the construction of certain infrastructure improvements. Petition Exhibit 6 describes the type of facilities Petitioner presently expects the District to finance, construct, and install from approximately 2004 through 2010. The estimated costs of construction are also described in Petition Exhibit 6. Actual construction timetables and expenditures will likely vary, due in part to the effects of future changes in the economic conditions upon costs such as labor, services, materials, interest rates, and market conditions.

8. The Petition alleges and incorporates within Petition Exhibit 7 a Statement of Estimated Regulatory Costs (SERC), which is based upon presently available data. The data and methodology used in preparing the SERC are attached to the SERC.

9. The Petition alleges that Petitioner submitted a copy of the Petition with the attached exhibits to the County with the required filing fee for that governmental entity, as required by the statute.

10. The Petition alleges that the District should be established 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 or 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 a sufficient size and is sufficiently compact and contiguous to be developed as one functional and interrelated community.

c. The establishment of the District will prevent the general body of taxpayers in the City 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 provide a perpetual entity capable of making reasonable provisions for the operation and maintenance of the District services and facilities.

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

11. The Petition was filed with the Secretary of FLWAC on July 30, 2004. Prior to that time, a copy of the Petition and its attachments, along with the appropriate filing fee, was provided to Manatee County.

12. Section 190.005(1)(c), Florida Statutes, provides that the county containing all or a portion of the lands within a proposed District has the option to hold a public hearing within forty-five days of the filing of the petition.

Manatee County has elected not to hold such a hearing. At time of the local public hearing in this case, the County had placed the matter on its consent agenda for approval.

13. On October 5, 2004, the Secretary certified that the Petition contained all required elements and forwarded it to DOAH for the purpose of holding a local public hearing required under Section 190.005(1)(d), Florida Statutes. A copy of the Secretary's correspondence to DOAH has been received in evidence as Petitioner's Exhibit C.

14. Section 190.005(1)(d), Florida Statutes, requires Petitioner to publish notice of the local public hearing in a newspaper of general circulation in Manatee County for four consecutive weeks prior to the hearing. The notice was published in a newspaper of general paid circulation in Manatee County for four consecutive weeks, on October 21 and 28 and November 4 and 11, 2004. The Proof of Publication of the Notice of Local Public Hearing has been received in evidence as Petition Exhibit B.

15. A local public hearing on the Petition was noticed and held on November 17, 2004, in the Lakewood Ranch Town

Hall, located at 8175 Lakewood Ranch Boulevard, Bradenton, Florida. Except for the four witnesses presented by Petitioner, no other persons or entities presented any witnesses or exhibits. No members of the public provided any comment.

B. Additional Information from Local Public Hearing

16. Section 190.005(1)(e)1.-5., Florida Statutes, sets forth the factors which must be considered in determining whether to grant or deny a petition to establish a community development district. A summary of the testimony and exhibits offered by Petitioner's witnesses on each of these factors, as well as other requirements imposed by statute or rule, is set forth below.

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

17. Petitioner's Composite Exhibit A was identified for the record as a copy of the Petition and its attachments as filed with the Commission. Witness Danahy testified that he had reviewed the contents of the Petition and approved its findings. He also generally described the attachments to the Petition. Finally, he testified that the Petition and its attachments, as modified, admitted into evidence as Composite Exhibit A, are true and correct to the best of his knowledge.



18. Witness Lombardo testified that he assisted in the preparation of portions of the Petition and its attachments. He generally described the services and facilities the District is expected to provide. Likewise, he opined that the cost estimates provided in the petition are reasonable. Witness Lombardo also testified that the attachments to the Petition, specifically Exhibit 6 to the Petition, was true and correct to the best of his knowledge.

19. Witness Garland, who was accepted as an expert in the field of economic and financial analysis of special districts, testified that his firm had prepared attachments 7 and 7R to the Petition, the SERC and a Revised SERC. Witness Garland also testified that the Revised SERC submitted as Attachment 7R to Petitioner's Composite Exhibit A was true and correct to the best of his knowledge.

20. Witness Danahy testified that the Petition included a true and correct written consent to establish the proposed District from one hundred percent of the owners of the real property located within the lands to be included in the proposed District.

21. Witness Danahy also testified that the Petition included the names of the Board of Supervisors of the proposed District. However, the list was corrected to include the following individuals designated to serve on the Board of

Supervisors: Bob Weber, Thomas J. Danahy, Robert Lane, Harold Wagner, and Roger Hill. Each of these individuals is a citizen of the United States and resides in the State of Florida.

b. Whether the establishment of the District is inconsistent with any applicable element or portion of the State Comprehensive Plan or of the local government comprehensive plan.

22. Witness Canin, who was accepted as an expert in the field of planning, reviewed the proposed District in light of the requirements of the State Comprehensive Plan codified in Chapter 187, Florida Statutes. Witness Canin also reviewed the proposed District in light of the requirements of the effective Manatee County Comprehensive Plan.

23. Witness Canin pointed out that from a planning perspective, two subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District as do the policies supporting those subjects.

24. According to Witness Canin, Subject 15, Land Use, recognizes the importance of enhancing the quality of life in Florida by ensuring that future development is located in areas that have the fiscal ability and service capacity to accommodate growth. Witness Canin also testified that the proposed District will have the fiscal ability to provide services and facilities to the population in the designated growth area and help provide infrastructure in an area which

can accommodate development within the County in a fiscally responsible manner.

25. Witness Canin further discussed Subject 25, Plan Implementation, which requires that systematic planning shall be incorporated into all levels of government throughout the State. This goal encourages intergovernmental coordination. He testified that the proposed District is consistent with this element of the State Comprehensive Plan because the proposed District will systematically plan for the construction, operation, and maintenance of the public improvements and the community facilities authorized under Chapter 190, Florida Statutes, subject to and not inconsistent with the local government comprehensive plan and land development regulations. Additionally, the District meetings are publicly advertised and are open to the public so that all District property owners and residents can be involved in planning for improvements.

26. From an economic perspective, Witness Garland testified that two subject areas of the State Comprehensive Plan are particularly relevant: Subject 17, Public Facilities, and Subject 20, Governmental Efficiency.

27. Subject 17, Public Facilities, aims to protect the substantial investments and public facilities that already exist and plan for the future facilities to serve Florida

residents. According to Witness Garland, the proposed District will provide its improvements and facilities at no capital costs to the County. This allows the County to focus its time and resources on other priorities.

28. Subject 20, Governmental Efficiency, directs Florida governments to economically and efficiently provide the amount and quality of services required by the public. Witness Garland stated that the proposed District will plan, finance, and deliver its own facilities. The County and the District would also be able to form interlocal agreements to address mutually beneficial projects and services.

29. Witness Canin further testified that he reviewed the relevant portions of the effective Manatee County Comprehensive Plan in light of the establishment of the proposed District. He opined that the proposed District is not inconsistent with the local comprehensive plan.

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

30. Testimony concerning this factor was provided by Witnesses Danahy, Lombardo, Canin, and Daugirda. As noted above, the lands that comprise the proposed District will consist of approximately 1,615.22 acres, located entirely within the borders of Manatee County.

31. Witness Danahy testified that all of the land in the

proposed District is part of a planned community included in the University Lakes Development of Regional Impact.

32. Witness Canin testified that a functionally interrelated community is one which provides people with the facilities and services they desire within their community such as roads, parking, drainage, water, sewer, lighting, and similar governmental services. He stated that services and facilities included in relation to the term "functionally interrelated" are, among others, management capability, funding source, and understanding of the size of the community's needs in order to handle growth and development of the community.

33. Witness Canin further testified that from a planning perspective, the District is a sufficient size to accommodate the basic infrastructure facilities and services typical of a functionally interrelated community. He also testified that the proposed facilities can be provided in an efficient, functional, and integrated manner.

34. Witness Canin added that compactness relates to the location in distance between the lands and land uses within a community. The community is sufficiently compact to be developed as a functionally interrelated community. He opined that the compact configuration of the lands will allow the

District to provide for the installation and maintenance of its infrastructure in a long-term, cost-efficient manner.

35. All three witnesses testified that from planning, economics, engineering, and management perspectives, the area of land to be included in the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community.

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

36. The Petition states that Petitioner presently intends for the District to participate in the construction or provision of certain infrastructure improvements as outlined in the Petition.

37. According to Witness Danahy, installation and maintenance of infrastructure systems and services by the District are expected to be paid through the imposition of special assessments. Use of such assessments will ensure that the real property benefiting from District services is the same property which pays for them.

38. Witness Daugirda testified that two types of alternatives to the establishment of the District were identified. First, the County might provide facilities and services from its general fund. Second, facilities and

services might be provided by some private means, with maintenance delegated to a property owners' or home owners' association.

39. Witness Daugirda further indicated that the District will be governed by and managed by its own board thereby allowing greater focus on the needs of the District and its facilities and services.

40. Witness Danahy stated that the District will construct certain infrastructure and community facilities which will be needed by the property owners and residents of the project. Expenses for the operations and maintenance are expected to be paid through maintenance assessments to ensure that the property or person receiving the benefit of the district services is the same property or person to pay for those services.

41. Witness Daugirda testified that only a community development district allows for the independent financing, administration, operations, and maintenance of the land within such a district; that only a community development district allows district residents to completely control the district; and that all of the other alternatives do not have these characteristics.

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

43. Finally, Witness Canin testified that from planning, economic, engineering, and special district management perspectives, the proposed District is the best alternative



available for delivering community development services and facilities to the area that will be served by the District.

e. Whether the community development services and facilities of the proposed district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

44. Witnesses Canin, Lombardo, and Garland each testified that the services and facilities proposed to be provided by the District are not incompatible with uses and existing local and regional facilities and services. They further indicated that the District's facilities and services within the proposed boundaries will not duplicate any existing regional services or facilities which are provided to the lands within the District by another entity. None of the proposed services or facilities are presently being provided by another entity for the lands to be included within the District.

45. Finally, they opined that the community development services and facilities of the proposed district will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

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

46. As stated above, the witnesses have testified that from planning, economics, engineering, and special district management perspectives, the area of land to be included in

the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed and become a functionally interrelated community. The community to be included in the District has need for basic infrastructure systems to be provided.

47. Finally, Petitioner's four witnesses opined that from planning, engineering, economic, and management perspectives, the area that will be served by the amended District is amenable to separate special-district government.

g. Other requirements imposed by statute or rule.

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

49. The FLWAC has certified that the Petition to Establish the Lakewood Ranch Community Development District Seven meets all of the requirements of Section 190.005(1)(a), Florida Statutes.

50. Petition Exhibits 7 and 7A are the SERC and the Revised SERC submitted by Petitioner. The Revised SERC corrects the amount of acreage (1,615.22 acres) encompassed within the proposed District and the proposed number of residential units (751 single-family residential units) to be

included within the proposed District. They also contain an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the District -- the State of Florida and its citizens, the County and its citizens, the City and its citizens, Petitioner, and consumers.

51. Petition Exhibit 7 states that beyond administrative costs related to rule adoption, the State and its citizens will only incur minimal costs from establishing the District.

These costs are related to the incremental costs to various agencies of reviewing one additional local government report.

The proposed District will require no subsidies from the State.

52. The exhibit further provides that administrative costs incurred by the County related to rule adoption should be minimal and are offset by the required filing fee of \$15,000.00. Benefits to the County will include improved planning and coordination of development, without incurring any administrative or maintenance burden for facilities and services within the proposed District except for those it chooses to accept.

53. According to Witness Garland, consumers will pay non-ad valorem or special assessments for the District facilities. Location within the District is voluntary. Generally, District financing will be less expensive than maintenance through a property owners' association or capital improvements financed through developer loans. Benefits to consumers in the area within the District will include a higher level of public services and amenities than might otherwise be available, completion of District-sponsored

improvements to the area on a timely basis, and a larger share of direct control over community development services and facilities within the area. Ultimately the property owners within the District as well as the users of the District facilities choose to accept the Districts costs in trade off for the benefits that the District provides.

54. Section 190.005(1)(a), Florida Statutes, requires the petition to include a SERC which meets the requirements of Section 120.541, Florida Statutes. Witness Garland opined that the Revised SERC meets all requirements of the law.

#### APPLICABLE LAW

55. Section 190.005, Florida Statutes, sets forth the requirements for establishing a community development district. It provides that a petition shall be filed with FLWAC which contains a metes and bounds description of the external boundaries of the district; the written consent to the establishment of the district by all landowners whose real property is to be included in the district; a designation of five persons to be initial members of the board of supervisors; the proposed name of the district; a map showing the major trunk water mains and sewer interceptors and outfalls if in existence; the proposed timetable for construction of the district services and estimated cost; a designation of the future general distribution, location, and

extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan; and a statement of estimated regulatory costs.

56. Section 190.005(1)(d), Florida Statutes, requires that a local public hearing be conducted by an ALJ. The hearing "shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e)."

57. Section 190.005(1)(e), Florida Statutes, provides that the FLWAC shall consider the entire record of the local hearing, the transcript of the hearing, any resolutions adopted by local general-purpose governments as provided in Section 190.005(1)(c), Florida Statutes, and the following factors and make a determination to grant or deny the petition:

1. Whether all statements contained in 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

58. The evidence was that Petitioner satisfied the procedural requirements for the establishment of a District by filing the Petition in the proper form with the required attachments, by tendering the requisite filing fee to the local government, and by publishing statutory notice of the local public hearing.

B. Six Factors of Section 190.005(1)(e)1.-6., Florida Statutes

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

60. The evidence was that the establishment of the District is not inconsistent with any applicable element of portion of the State Comprehensive Plan or the effective Manatee County Comprehensive Plan.

61. 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 functional interrelated community.

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



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

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

#### CONCLUSION

Section 190.005(1)(e), Florida Statutes, 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 to establish the proposed District. For purposes of drafting the amended rule, a metes and bounds description of the boundary of the Lakewood Ranch Community Development District Seven may be found as Petition Exhibit 2.

DONE AND ENTERED this 17th day of December, 2004, in  
Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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