

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION - TWIN CREEKS)
COMMUNITY DEVELOPMENT DISTRICT.) Case No. 05-4017
_____)

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

Pursuant to Section 190.005(1)(d), Florida Statutes,^{1/} a local public hearing was conducted on February 13, 2006, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), at the St. Johns County Library in St. Johns County, Florida.

The hearing was conducted for the purpose of taking testimony and public comments and receiving exhibits on the Petition of EH/Transeastern, LLC (Petitioner), to establish the Twin Creeks Community Development District (District). This Report of the public hearing and the hearing record is made for the consideration of the Florida Land and Water Adjudicatory Commission (Commission) in its determination whether to adopt a rule to establish the District.

STATEMENT OF THE ISSUES

The issues to be addressed are whether the Petition to establish the District meets the criteria set forth in Section 190.005, Florida Statutes, and whether the hearing process has

been conducted in accordance with the requirements of Section 190.005, Florida Statutes, and Florida Administrative Code Rule Chapter 42-1.

APPEARANCES

For the Petitioner:

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PRELIMINARY STATEMENT

On October 13, 2005, the Petitioner filed its Petition to establish the District with the Secretary of the Commission. The Petitioner provided a copy of the Petition and its attachments, along with the requisite filing fee, to St. Johns County. A copy of the Petition, including its attachments, was received into evidence as Petitioner's Composite Exhibit A.

On October 26, 2005, the Secretary of the Commission certified that the Petition contained all required elements and forwarded the Petition to DOAH for the purpose of holding the public hearing required under Section 190.005(1)(d), Florida Statutes. A copy of the Secretary's certification as to the completeness of the Petition and referral to DOAH was received into evidence as Petitioner's Supplemental Exhibit E.

The Petitioner published notice of the local public hearing in accordance with Section 190.005(1)(d), Florida Statutes. The

proofs of publication were received into evidence as Petitioner's Composite Exhibit C.

The land to be included within the proposed District is located entirely within the boundaries of unincorporated St. Johns County. Section 190.005(1)(c), Florida Statutes, provides that the County and the municipality containing all or a portion of the lands within the proposed District has the option to hold a public hearing within 45 days of the filing of a petition. St. Johns County opted not to hold a hearing.

At the local public hearing held on February 13, 2006, the Petitioner presented the testimony of Wayne R. Janzik, President of EH/Transeastern, LLC; Douglas Davis, Jr., an expert in civil engineering; Donald V. Fullerton, an expert in state and local comprehensive planning; and James A. Perry, an expert in economic analysis and special district government. The Petitioner's Exhibits A through C were received into evidence at the hearing, and Exhibits D through G were admitted as supplemental filings to the record.

Other than the Petitioner's counsel and witnesses, only three unidentified persons attended the public hearing. None wished to make an oral or written statement for the record.

After the close of the public hearing, the record was left open for ten days for submittal of written comments from the public in support of or in opposition to the Petition, as

allowed by Florida Administrative Code Rule 42-1.012. No written statements were submitted to DOAH.

The one-volume Transcript of the local public hearing was filed with DOAH on March 7, 2006. The Petitioner timely submitted a proposed report which was considered in the preparation of this Report.

SUMMARY OF THE HEARING AND RECORD

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

1. Witness Janzik stated that he had reviewed the contents of the Petition, as modified at the hearing, and approved its findings. He also generally described the attachments to the Petition. Witness Janzik stated that the Petition and its attachments, as modified and admitted into evidence as Composite Exhibit A, are true and correct to the best of his knowledge.

2. Witness Janzik provided two additional consents from new landowners who purchased a portion of the property proposed to be included in the District. Witness Janzik stated that the Petition included true and correct written consents to establish the proposed District from 100 percent of the owners of the real property located within the boundaries of the proposed District.

3. Witness Janzik stated the Petition included the names of the Board of Supervisors of the proposed District. The five persons designated to serve as the initial Board of Supervisors

are Paul Leikert, Jason Eisner, Robert Krief, Mark Newton, and Wayne Janzik. Each of these individuals is a citizen of the United States and resides in the State of Florida.

4. Witness Davis, an expert in civil engineering, stated that he had assisted with the preparation of the Petition and its attachments. Witness Davis generally described the services and facilities the proposed District is expected to provide and stated that he approved the Petition's findings.

5. Witness Perry, an expert in the field of economic analysis and special district government, stated that he was familiar with the Petition and its attachments. Witness Perry stated that Exhibit 8 to the Petition, the Statement of Estimated Regulatory Costs, was true and correct to the best of his knowledge.

6. The Petitioner has demonstrated that the statements contained within the Petition and its applicable exhibits, as modified, are true and correct. No statement within the Petition or its attachments was disputed.

B. 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.

7. Witness Fullerton, an expert in the field of state and local comprehensive planning, reviewed the proposed District in light of the requirements of the State Comprehensive Plan,

Chapter 187, Florida Statutes. He stated that there are two subjects of the State Comprehensive Plan that directly apply to the establishment of the proposed District, as well as the policies supporting those subjects. He identified some errors in his pre-filed testimony regarding the numbering of the referenced policies of the State Comprehensive Plan, and he corrected the errors on the record.

8. 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. 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 area in a fiscally responsible manner.

9. Subject 25, "Plan Implementation," requires that systematic planning be incorporated into all levels of government throughout the State. 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, 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.

10. Witness Perry stated that from an economic perspective, three subject areas of the State Comprehensive Plan are particularly relevant: Subject 15, "Land Use"; Subject 17, "Public Facilities"; and Subject 20, "Governmental Efficiency."

11. He echoed the opinion of Witness Fullerton that, with regard to Subject 15, "Land Use," the proposed District can accomplish the State land use goal of guiding development to areas which have the service capacity to accommodate growth.

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

13. Subject 20, "Governmental Efficiency," directs Florida governments to economically and efficiently provide the amount and quality of services required by the public. The proposed District will plan, finance, and deliver its own facilities. The proposed District will be professionally managed, financed, and governed by those whose property directly receives the

benefits of the services and facilities provided. Further, the development of the property does not burden the general taxpayer with the costs for services or facilities provided within the District.

14. Witness Fullerton stated he reviewed the proposed District in light of the relevant portions of the St. Johns County Comprehensive Plan. It was his opinion that the proposed District will serve as an alternative provider of the required infrastructure systems and services to meet the needs of the lands within its boundaries. He believes the District will provide needed infrastructure facilities and services without burdening the fiscal resources of the County. He also opined that the establishment of the District is consistent with and will further the applicable policies and objectives of the St. Johns County Comprehensive Plan.

15. The Petitioner has demonstrated that the proposed District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan or the St. Johns County Comprehensive Plan.

16. Witness Davis stated that the establishment of the proposed District would not be inconsistent with the Twin Creeks Development of Regional Impact Development Order.

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.

17. Testimony on this factor was provided by witnesses Davis, Fullerton, and Perry. The approximately 3,050 acres that comprise the proposed District are contiguous. There are no out-parcels. All of the land in the proposed District is part of the Twin Creeks Development of Regional Impact.

18. The lands to be included within the proposed District have sufficient infrastructure needs to be developable as a functionally interrelated community. The necessary infrastructure can be provided by the proposed District in a cost-effective manner based on the specific design of the community.

19. The size of the proposed District is sufficient to accommodate the basic infrastructure facilities and services typical of a functionally interrelated community. The proposed facilities can be provided in an efficient, functional and integrated manner. Witness Fullerton stated that the stormwater management and utility systems are designed and being permitted as one interrelated, linked system.

20. 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. 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-effective manner.

21. The Petitioner has demonstrated that the 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 District.

22. Installation and maintenance of infrastructure systems and services by the proposed 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.

23. Two alternatives to the establishment of the District were identified. The planned facilities and services could be provided by St. Johns County, either directly or through an municipal services benefit unit; or could be provided by the developer through a property owner's association or a homeowner's association. However, the developer does not have the ability to finance the facilities and services, and the St. Johns River Water Management District prefers community

development districts over homeowner's associations as operating entities.

24. The proposed District would be governed by and managed by its own board, thereby allowing greater focus on the needs of the residents of the District and its facilities and services.

25. The costs for the operation and maintenance of the proposed District's facilities are expected to be paid through assessments to ensure that the property or person receiving the benefit of district services will pay for the services.

26. From an engineering perspective, the proposed District is the best alternative to provide the proposed community 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.

27. The Petitioner has demonstrated 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.

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.

28. The proposed District's facilities and services to be provided within the boundaries of the District will not duplicate any existing regional services or facilities which are

provided by another entity, because none of the proposed services or facilities is presently being provided by another entity.

29. The Petitioner has demonstrated 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 proposed District is amenable to separate special-district government.

30. As stated previously, from the perspectives of planning, economics, engineering, and special-district management, 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 functionally interrelated community. The community that would be served by the District's facilities needs basic infrastructure systems to be provided.

31. The Petitioner has demonstrated that the proposed District is amenable to separate special-district government.

G. Other requirements imposed by statute or rule.

32. The Commission certified that the Petition to Establish the Twin Creeks Community Development District contains all the information required by Section 190.005(1)(a),

Florida Statutes. The undersigned also finds that the Petition contains all required information.

33. Section 190.005(1)(a), Florida Statutes, requires the Petition to include a Statement of Estimated Regulatory Costs in accordance with the requirements of Section 120.541, Florida Statutes. The Statement of Estimated Regulatory Costs in the Petition contains 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 Petitioner, and consumers.

34. 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.

35. Administrative costs incurred by the County related to rule adoption should be minimal and are offset by the required filing fee of \$15,000 to St. Johns County. 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 the County chooses to accept.

36. Consumers will pay non-ad valorem or special assessments for the District's facilities. 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 greater control over community development services and facilities within the area.

37. Section 190.005(1)(d), Florida Statutes, requires the Petitioner to publish notice of the local public hearing in a newspaper of general circulation in St. Johns County for four consecutive weeks prior to the hearing. The notice was published in the St. Augustine Record, a newspaper of general paid circulation in St. Johns County, for four consecutive weeks on January 16, January 23, January 30, and February 6, 2006.

H. Public comment regarding the establishment of the District.

38. No member of the public offered an oral or written statement at the public hearing, and no written statements were submitted after the hearing.

CONCLUSIONS OF LAW

39. This proceeding is governed by Chapter 190, Florida Statutes, which establishes an exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more, and the rules of the Commission.

40. The Petition contained all the information required by Section 190.005(1), Florida Statutes, and St. Johns County was paid the required filing fee.

41. The local public hearing was properly noticed by newspaper publications in St. Johns County as required by Section 190.005(1)(d), Florida Statutes.

42. The required local public hearing was held and affected units of general-purpose local government and the general public were afforded an opportunity to comment on the proposed District as required by Section 190.005(1)(d), Florida Statutes, and Florida Administrative Code Rule 42-1.012.

43. The Petition contains a Statement of Estimated Regulatory Costs in accordance with the requirements of Section 120.541, Florida Statutes.

44. The Petitioner demonstrated that the Petition favorably addresses all the factors set forth in Section 190.005(1)(e), Florida Statutes.

CONCLUSION

Section 190.005(1)(e), Florida Statutes, states that the Commission "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, as corrected and supplemented, the Petition meets all statutory requirements, and there appears no reason not to grant the Petition to establish by rule the proposed Twin Creeks Community Development District.

DONE AND ENTERED this 24th day of March, 2006, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 24th day of March, 2006.

ENDNOTE

^{1/} All references are to Florida Statutes (2005).

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