

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION - KENDALL CREEK) Case No. 05-4702
COMMUNITY DEVELOPMENT DISTRICT)
_____)

REPORT TO THE FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

Pursuant to Section 190.005(1)(d), Florida Statutes, a local public hearing was held on February 20, 2006, at 10:30 a.m., in the Alzacar Room, City Hall, St. Augustine, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings, for the purpose of taking testimony and public comment and receiving exhibits on the Petition of The St. Joe Company (Petitioner) to establish the Kendall Creek Community Development District (District/proposed District). This report is prepared and submitted to the Florida Land and Water Adjudicatory Commission (Commission) pursuant to Section 190.005, Florida Statutes.

APPEARANCES

For Petitioner: Jonathan T. Johnson, Esquire
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Hopping Green & Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314

Public Attendee: Ellen A. Whitmer, pro se
1178 Natures Hammock Road, South
Fruit Cove, Florida 32259

STATEMENT OF THE ISSUE

The sole issue is whether the Petition to establish the District meets the applicable factors set forth in Section 190.005, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed the Petition to establish the District with the Secretary of the Commission on or about December 15, 2005. Prior to this time, Petitioner provided for delivery of a copy of the Petition and its attachments, along with the requisite filing fee, to St. Johns County, Florida. A copy of the Petition, including its attachments, was received into evidence as Petitioner's Composite Exhibit A.

On or about December 21, 2005, the Secretary of the Commission certified that the Petition contained all required elements and forwarded the Petition to the Division of Administrative Hearings 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 the Division of Administrative Hearings was received into evidence as Petitioner's Exhibit E.

The local public hearing was scheduled in St. Johns County Florida, for Monday, February 20, 2006, at 10:30 a.m. Petitioner published notice of the hearing in accordance with Section 190.005(1)(d), Florida Statutes. The Proof of

Publication of the Notice of Local Public Hearing was received into evidence as Petitioner's Composite Exhibit B.

The land to be included within the proposed District is located entirely within the unincorporated limits of St. Johns County. Section 190.005(1)(c), Florida Statutes, provides that the county has the option to hold a public hearing within 45 days of the filing of the Petition. This matter was taken to the St. Johns County Commission by county staff and the St. Johns County Commission voted not to hold such a hearing.

At the local public hearing on February 20, 2006, Petitioner presented the pre-filed and live testimony of Nick Cassala, VP/Project Manager, St. Joe Company-North Florida Region; Donald Smith, an expert in local and regional comprehensive planning; Lee Alford, with the firm of England, Thims & Miller, Inc., an expert in civil engineering; Henry H. Fishkind, with the firm Fishkind & Associates, an expert in the field of economics and financial analysis, and James A. Perry, with the firm of Government Management Services, LLC, an expert in special district government operation and establishment.

Petitioner offered Petitioner's Exhibits A through N, which were received into evidence at the hearing. A list of all of Petitioner's exhibits is attached to this report as Exhibit "A."

Ellen A. Whitmer attended the hearing and provided oral comments as a member of the public. Mike Veazey and Eleanor

Avery, who are affiliated with Petitioner, also attended the hearing but did not provide testimony or oral comments on the record.

Petitioner caused a transcript of the local public hearing to be prepared by a court reporter who is affiliated with Executive Reporters, 1113 Blackstone Boulevard, Jacksonville, Florida 32202. The transcript, which was filed with the Division of Administrative Hearings on March 29, 2006, is being transmitted to the Commission along with this report.

OVERVIEW

1. Petitioner is seeking the adoption of a rule by the Commission to establish the District, which is proposed to consist of approximately 4,086.6 acres. The proposed District is located entirely within the unincorporated limits of St. Johns County, Florida. There are no out-parcels within the area to be included in the District.

2. The estimated cost of the infrastructure facilities and services, which are presently expected to be provided to the lands within the proposed District, was included in the Petition.

3. The sole purpose of this proceeding was to consider the establishment of the District as proposed by Petitioner. Matters relating to land use approvals, land use changes, the highest and best use of the property proposed to be included in

the District, and environmental permitting matters, are not within the scope of this proceeding. See § 190.002, Fla. Stat.

SUMMARY OF EVIDENCE AND TESTIMONY

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

4. Petitioner's Composite Exhibit A was identified for the record as a copy of the Petition and its attachments as filed with the Commission.

5. Mr. Cassala testified that he had reviewed the contents of the Petition, and to the best of his knowledge, there were no necessary changes to it. Mr. Cassala also testified that he approved the Petition's findings. Mr. Cassala generally described the attachments to the Petition. Finally, Mr. Cassala testified that the contents of the Petition and its attachments, admitted into evidence as Petitioner's Composite Exhibit A, are true and correct to the best of his knowledge.

6. Mr. Alford, a witness qualified as an expert in the field of civil engineering, testified that he had assisted with the preparation of Petition Exhibits 1, and 4-8. Mr. Alford generally described the services and facilities the District is expected to provide. Mr. Alford testified that the attachments to the Petition contained reasonable estimated construction costs based on his experience.

7. Mr. Fishkind, a witness qualified as an expert in economic and financial analysis, testified that his firm had prepared Exhibit 9 to the Petition, the Statement of Estimated Regulatory Costs. Mr. Fishkind also testified that the Statement of Estimated Regulatory Costs, as corrected and submitted as Attachment 9 to Petitioner's Composite Exhibit A, complied with the requirements of Section 120.541(2)(f), Florida Statutes.

8. Mr. Cassala testified 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 lands to be included in the proposed District.

9. Mr. Cassala testified 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 William Petkoski, Scott Parr, Michael Veazy, Harry Waldron, and Michael Davis. Mr. Cassala testified that he does not know Harold Waldron personally. However, Mr. Perry testified that he personally knows Mr. Waldron and that Mr. Waldron is a Florida resident and U.S. citizen. All of the individuals identified for the Board of Supervisors are citizens of the United States and reside in Florida.

10. The Petition and its applicable exhibits, as corrected at the hearing, are true and correct.

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.

11. Mr. Smith, a witness qualified as an expert in the field of local and regional comprehensive planning, reviewed the proposed District in light of the requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes.

12. Mr. Smith testified that he reviewed the Petition and that the establishment of the proposed District is not inconsistent with the State Comprehensive Plan found in Chapter 187, Florida Statutes.

13. According to Mr. Smith, two subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District, as do the policies supporting those subjects.

14. Mr. Smith testified that Subject 16 [sic] ¹, 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 in a fiscally responsible manner.

15. Mr. Smith testified that Subject 26 [sic]², Plan Implementation, requires that systematic planning shall be incorporated into all levels of government throughout the state. This goal encourages intergovernmental coordination. 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 open to the public so that all District property owners and residents can be involved in planning for improvements.

16. Mr. Smith testified he reviewed the relevant portions of the effective local comprehensive plan in light of the establishment of the proposed District. Specifically, he testified that he reviewed the St. Johns County local comprehensive plan. Mr. Smith opined that the establishment of the proposed District is not inconsistent with the St. Johns County local comprehensive plan. Mr. Smith testified that the County has already found the development of Kendall Creek to be consistent, or at least not inconsistent, with the local comprehensive plan.

17. Mr. Smith identified certain aspects of the St. Johns County local comprehensive plan that would be furthered upon the establishment of the proposed District. First, Goal H.1 requires the orderly and efficient provision of infrastructure facilities and services such as sanitary sewer, potable water, drainage, roads, utilities, recreation and open space. The proposed District furthers this provision because it will provide these types of improvements in an efficient and cost-effective manner to the lands within the boundaries of the proposed District.

18. Second, Policy F.1.3.10 requires that DRIs, PUDs, and other large developments shall provide for the dedication of parks and open space. Goal H.1 requires that the County ensure the orderly and efficient provision of the infrastructure facilities and services such as roads, utilities, recreation, and drainage. The community development district (CDD) will serve as an alternative provider of these infrastructure systems and services to meet the needs of the lands within its boundaries.

19. Third Objective H.1.7 requires the County to manage fiscal resources in a manner sufficient to ensure the provision of needed infrastructure. Once established, the proposed District would provide the required infrastructure within its

boundaries without reducing the fiscal resources of the County or decreasing the County's bonding limits.

20. Fourth. Objective G.1.5 directs the County to work cooperatively with other units of government to address issues and concerns. Mechanisms, such as interlocal agreements, can ensure that the proposed District and the County work together and coordinate the construction, maintenance and management of the required improvements.

21. Based on the evidence in the record, the proposed District will not be inconsistent with any applicable element or portion of the state or local comprehensive plans.

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.

22. Testimony on this factor was provided by Messrs. Alford, Fishkind, Smith, and Perry. The lands that comprise the proposed District will consist of approximately 4,086.6 acres, located entirely within the unincorporated limits of St. Johns County, Florida.

23. All of the land in the proposed District is part of an approved DRI and Planned Unit Development (the "PUD").

24. Mr. Alford testified that the proposed District is of sufficient size, compactness and contiguity to be developed as a functionally interrelated community. He also testified that the

necessary infrastructure can be provided by the proposed District in a cost effective manner based on the specific design of the community. Finally, he testified that the use of one overall development plan will ensure proposed improvements are provided in an efficient, functional and integrated manner.

25. The size of the District as proposed is approximately 4,086.6 acres. Mr. Perry testified that this is a sufficient size to constitute a functionally interrelated community. He also testified that the quality of compactness, contiguity, and size relate directly to whether an area can be one functionally interrelated community, and from the standpoint of this provision, the proposed District will be able to successfully maximize the delivery of the infrastructure improvements to the land.

26. Mr. Smith testified that the proposed District has sufficient land area, and is sufficiently compact and contiguous to be developed with infrastructure improvements as one functionally interrelated community. Mr. Smith stated that the area to be included within the proposed District can be expected to succeed as a functional, interrelated community from a planning perspective because the characteristics of the land ensures that services and facilities will not be hampered by significant barriers or spatial problems. Mr. Smith opined that from a planning perspective, the relatively small nature of the

District, its planned community character, and the proposed limited services and facilities make for a good match. Overall, Mr. Smith testified that the foregoing represented a CDD of sufficient size, sufficient compactness and sufficient contiguity to serve as one functionally, interrelated community.

27. From engineering, economic, management and planning 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.

28. It is presently intended that the proposed District will participate in the construction or provision of certain infrastructure improvements as outlined in the Petition.

29. Installation and maintenance of infrastructure systems and services by the proposed District are expected to be paid through the imposition of special assessments, which will be borne only by property owners within the proposed District that benefit from the infrastructure systems. Use of such assessments will ensure that the real property benefiting from proposed District services is the same property which pays for them.

30. Mr. Perry identified two types of alternatives to the establishment of the proposed District for the purpose of installation and maintenance of infrastructure systems. First, St. Johns 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' association (POA) or a home owners' association (HOA).

31. The proposed 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.

32. The proposed District will construct certain infrastructure and community facilities which will be needed by the property owners and residents of the project. The revenue that will repay the bonds issued to meet the construction costs will come from special assessments imposed on the benefiting property.

33. The District has the advantage of being a unit of local government, which has access to the tax exempt bond market. Additionally, the proposed District is a long-term, stable, perpetual entity capable of funding, constructing, and in some cases maintaining facilities over the lifetime of the facilities.

34. From planning, economic, engineering, and 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.

35. The services and facilities proposed to be provided by the District are not incompatible with uses and existing local and regional facilities and services. 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.

36. Therefore, 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.

37. As cited previously, 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 a need for basic infrastructure systems to be provided.

38. From planning, engineering, economic and management perspectives, the area that will be served by the proposed District is amenable to separate special-district government.

G. Other requirements imposed by statute or rule.

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

Elements of the Petition

40. The Commission has certified that the Petition meets all of the requirements of Section 190.005(1)(a), Florida Statutes.

Statement of Estimated Regulatory Costs (SERC)

41. The SERC contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the proposed District--the State of Florida and its citizens, the County and its citizens, Petitioner, and consumers.

42. 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.

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

44. 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.

45. Section 190.005(1)(a), Florida Statutes, requires the Petition to include a SERC, which meets the requirements of Section 120.541, Florida Statutes. The Commission has already certified the sufficiency of the Petition. The Petition

contains a SERC which meets all requirements of Section 120.541, Florida Statutes.

Other Requirements

46. Petitioner has complied with the provisions of Section 190.005(1)(b)1., Florida Statutes, in that St. Johns County was paid the requisite filing fee of \$15,000.

47. Section 190.005(1)(d), Florida Statutes, requires 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 25, 2006, February 1, 2006, February 8, 2006, and February 15, 2006.

Local Government Support
For Establishment of the District

48. Pursuant to the requirements of Section 190.005(1)(b), Florida Statutes, Petitioner filed a copy of the Petition and the \$15,000 filing fee with St. Johns County prior to filing the Petition with the Commission.

49. The St. Johns County Commission did not hold a public hearing on the establishment of the District as permitted by Section 190.005(1)(c), Florida Statutes.

Public Comment Regarding the Establishment of the District

50. Only one member of the public, Ellen A. Whitmer, commented during the public hearing. Many of Ms. Whitmer's comments expressed her personal disagreement with the provisions of Chapter 190, Florida Statutes. The validity of Chapter 190, Florida Statutes, and Ms. Whitmer's disagreement therewith, are not relevant as to whether or not the Petition meets the applicable factors set forth in Section 190.005, Florida Statutes.

51. However, several of the issues raised by Ms. Whitmer were addressed at the hearing. For example, it was explained that the decision for the development to have its utilities serviced by Jacksonville Electric Authority (JEA), as opposed to St. Johns County, was a decision made by St. Johns County and JEA and had nothing to do with Petitioner.

52. There was also an explanation of the structure under which bond funds are held after bonds are issued. Specifically, it was explained that the funds are held in trust and cannot be disbursed without a requisition approved by the District's engineer. Such a requisition certifies that the disbursement is part of the District's capital improvement plan.

53. It is worth noting that none of Ms. Whitmer's comments directly addressed any of the factors set forth in Section 190.005, Florida Statutes. It is also worth noting that

Ms. Whitmer does not live on the property that would make up the proposed District.

COMPARISON OF INFORMATION IN RECORD TO APPLICABLE LAW

54. This proceeding is governed by Chapter 190, Florida Statutes.

55. The proceeding was properly noticed pursuant to Section 190.005, Florida Statutes, by publication of an advertisement in a newspaper of general paid circulation in St. Johns County and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

56. Petitioner has met the requirements of Section 190.005, Florida Statutes, regarding the submission of the Petition and satisfaction of filing fee requirements.

57. Petitioner has met the burden of establishing that the Petition meets the relevant statutory factors set forth in Section 190.005(1)(e), Florida Statutes.

58. All portions of the Petition and other submittals have been completed and filed as required by law.

59. All statements contained within the Petition, as corrected at the hearing, are true and correct.

60. The establishment of the proposed District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the St. Johns County Comprehensive Plan.

61. 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 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 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 area to be served by the proposed District is amenable to a separate special district government.

CONCLUSION

Based upon the record of this proceeding, the Petition meets all statutory requirements, and there appears to be no reason not to grant the Petition and establish the proposed District pursuant to Chapter 190, Florida Statutes.

REPORT SUBMITTED this 28th day of April, 2006, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of April, 2006.

ENDNOTES

^{1/} The correct subject number for Land Use is Subject 15;
however, the content of Mr. Smith's testimony remains accurate.

^{2/} The correct subject number for Plan Implementation is Subject
25; however, the content of Mr. Smith's testimony remains
accurate.

COPIES FURNISHED:

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Exhibit "A"

List of Petitioner's Exhibits

Exhibit A Petition to Establish the Kendall Creek Community
Development District

Exhibit B Proofs of Publication

Exhibit C FLWAC Notice of Hearing

Exhibit D Prefiled Testimony of Nick Cassala

Exhibit E FLWAC Acknowledgement Letter

Exhibit F Department of Community Affairs Sufficiency of
Petition

Exhibit G Land Use Approvals - DRI, PUD

Exhibit H Prefiled testimony of Donald Smith

Exhibit I Florida State Comprehensive Plan

Exhibit J Resume of Lee Alford

Exhibit K Prefiled Testimony of Lee Alford

Exhibit L Resume of Henry H. Fishkind

Exhibit M Prefiled Testimony of Henry H. Fishkind

Exhibit N Prefiled Testimony of James A. Perry