

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE )  
CREATION-SIX MILE CREEK ) Case No. 06-1666  
COMMUNITY DEVELOPMENT DISTRICT )  
\_\_\_\_\_ )

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

Pursuant to Section 190.005(1)(d), Florida Statutes,<sup>1</sup> a local public hearing was conducted on July 19, 2006, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), at City Hall in St. Augustine, Florida.

The hearing was conducted for the purpose of taking testimony and public comments and receiving exhibits on the Petition of Six Mile Creek Ventures, LLC (Petitioner), to establish the Six Mile Creek 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.

APPEARANCES

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

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 Chapter 42-1.

PRELIMINARY STATEMENT

On April 27, 2006, 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 May 9, 2006, 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 included in Margaret

Jennesse's prefiled testimony, received into evidence as Exhibit F.

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 G.

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 have 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 July 19, 2006, the Petitioner presented the testimony of Margaret Jennesse, regional manager of LandMar Group, LLC, the managing entity of Six Mile Creek Ventures, LLC; Scott Wild, an expert in civil engineering; Donald Smith, 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 J were received into evidence at the hearing.

In addition to the Petitioner's counsel and witnesses, three persons, Mary Lou Thomas and Ellen Whitmer, members of the

public, and James Whitehouse, a representative of St. Johns County, attended and made comments during the public hearing.

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 August 15, 2006. The Petitioner timely submitted a proposed report which was considered in the preparation of this Report.

#### SUMMARY OF THE HEARING AND RECORD

A summary of the evidence presented in this matter is outlined below using as headings the factors that the Legislature has directed the Commission to consider in making a determination whether to grant or deny a petition to establish a community development district.

§ 190.005(1)(e), Fla. Stat.

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

1. Witness Jenness stated that she had reviewed the contents of the Petition and generally described the attachments to the Petition. She 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 her knowledge.

2. Ms. Jenness stated that Exhibit 3 to the Petition was a true and correct copy of the consent and joinder form that was executed by the owner of the lands within the proposed District. She further noted that there is one excluded parcel within the boundaries of the proposed District, which is owned by Richard A. and Velma Horton at 5405 State Road 16, St. Augustine, Florida 32092. According to Ms. Jenness, there are no anticipated impacts on the excluded parcel as a result of the establishment of the proposed District.

3. Witness Wild, an expert in civil engineering, stated that he had assisted with the preparation of the Petition and Petition Exhibits 1, 2, 4, 6, 7, and 8. Mr. Wild testified that Petition Exhibits 1, 2, 4, 6, 7, and 8, as revised, are true and correct.

4. Witness Perry, an expert in the field of economic analysis and special district government, stated that he reviewed the Petition and its attachments. Mr. Perry stated that Petition Exhibit 9, the Statement of Estimated Regulatory Costs, was true and correct to the best of his knowledge.

5. No statement within the Petition or its attachments was disputed.

6. The Petitioner has demonstrated that the statements contained within the Petition and its exhibits 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.

7. Witness Smith, an expert in the field of state and local comprehensive planning, reviewed provisions of the State Comprehensive Plan, Chapter 187, Florida Statutes, which relate to the establishment of a community development district. Mr. Smith addressed two subjects of the State Comprehensive Plan that directly apply to the establishment of the proposed District.

8. According to Mr. Smith, 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. Mr. Smith 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 area in a fiscally responsible manner.

9. Mr. Smith stated further that 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. Mr. Perry stated that from an economic perspective, four subject areas of the State Comprehensive Plan are particularly relevant: Subject 15, "Land Use"; Subject 17, "Public Facilities"; Subject 20, "Governmental Efficiency"; and Subject 25, "Plan Implementation."

11. Mr. Perry echoed the opinion of Mr. Smith 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.

According to Mr. Perry, the proposed District will further Subject 17's goals and policies.

13. Subject 20, "Governmental Efficiency," directs Florida governments to economically and efficiently provide the amount and quality of services required by the public. Consistent with Subject 20, the proposed District will: (1) cooperate with other levels of Florida government; (2) be established under uniform general law standards as specified in Chapter 190, Florida Statutes; (3) be professionally managed, financed, and governed by those whose property directly receives the benefits; (4) not burden the general taxpayer with costs for services or facilities inside the proposed District; and (5) plan and implement cost-efficient solutions for the required public infrastructure and assure delivery of selected services to residents.

14. Subject 25, "Plan Implementation," calls for systematic planning capabilities to be integrated into all levels of government throughout the state. According to Mr. Perry, the proposed District is consistent with this element of the State Comprehensive Plan.

15. Mr. Smith testified that the establishment of the proposed District is not inconsistent with any applicable element or portion of the St. Johns County Comprehensive Plan. According to Mr. Smith, the proposed District will: (1) finance



the construction of, and ultimately own community parks and facilities; (2) potentially enter into interlocal agreements with the County to provide enhanced maintenance; (3) serve as an alternative provider of infrastructure systems and services to meet the needs of the lands within its boundaries; and (4) provide the infrastructure facilities and services needed for its lands without burdening the fiscal resources of the County. In completing the above-referenced actions, the proposed District furthers Policy F.1.3.10, Objective G.1.5, Goal H.1, and Objective H.1.7, of the St. Johns County Comprehensive Plan.

16. The Department of Community Affairs reviewed the Petition for consistency with the State Comprehensive Plan and the St. Johns County Comprehensive Plan. In a letter dated May 30, 2006, the Department informed the Petitioner that it had identified no potential inconsistency. The Department's letter is included in the prefiled testimony of Ms. Jenness.

17. 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.

- 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.

18. Testimony on this factor was provided by Witnesses Wild, Smith, and Perry. According to Mr. Perry, the proposed District has sufficient land area and is sufficiently compact and contiguous to be developed, with the roadway improvements, surface water drainage, water and sewer and other infrastructure, facilities, and services contemplated. Mr. Perry further elaborated that the proposed District will operate as one functionally interrelated community.

19. According to Mr. Wild, the lands to be included within the proposed District have sufficient infrastructure needs to be developable as a functionally interrelated community. Mr. Wild further explained that the specific design of the community allows infrastructure to be provided in a cost-effective manner. Mr. Wild concluded that the provision of services and facilities through the use of one development plan provides a contiguous and homogenous method of providing services to lands throughout the District.

20. Mr. Smith noted that St. Johns County has already found that the area within the Six Mile Creek PUD is a community and that the lands that make up the proposed District are a portion of that PUD. Mr. Smith further noted that, from a

planning perspective, the relatively small nature of the proposed District, its planned community character, and the proposed limited services and facilities are a good match. Mr. Smith concluded that the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to serve as one functional, interrelated community.

21. Compactness relates to the location in distance between the lands and land uses within a community. According to Mr. Perry, in his opinion as a financial advisor, the project is compact with land use typical of a planned community. Mr. Perry further opined that the development of the land has been planned to be a functional interrelated community.

22. 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.

23. Mr. Perry noted that the proposed District can access the tax-exempt public capital markets and thereby fund the District's proposed facilities at a lower cost than the alternative of developer funding. He further noted that, unlike a homeowners' association, the proposed District will have the

power to assess property and collect those assessments along with other property taxes. Under such a system, only residents of the area served by the proposed District would bear the full costs of the needed facilities and services.

24. Two alternatives to the establishment of the District were identified. The planned facilities and services could be provided by St. Johns County utilizing special assessments or general funds; or the facilities and services could be provided by the developer and/or a homeowner's association. However, the County has substantial demands over a broad geographical area that places a heavy management delivery load on its staff. The use of a community development district allows the County to focus staff time, finances, and other resources elsewhere and does not burden the general body of taxpayers in the County with the debt associated with the growth within the proposed District. With respect to the developer, it does not have the ability to effectively finance the type of improvements contemplated for the proposed District. A developer's ability to assure adequate funds for sustained high levels of maintenance is less than with a community development district.

25. The St. Johns River Water Management District prefers community development districts over homeowner's associations as the operating and maintenance entities for surface water management systems. See Petitioner's Exhibit C.

26. 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.

27. The long-term management capability of a community development district extends to the operation and maintenance of the facilities owned by the community development district. The sources of funding and the manner of collection of funds will assure that the proposed District's facilities will be managed at the sustained levels of quality desired by residents well into the future.

28. From a planning perspective, the proposed District is the best alternative to provide the proposed community development services and facilities to the 1,282.15 acres proposed to be included within the proposed District. This is in part because the proposed District will provide a perpetual local government capable of delivering improvements which will be directly responsible and responsive to the residents of the proposed District.

29. 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.

30. Mr. Wild stated that none of the planned infrastructure improvements that the proposed District would provide presently exist on the subject property in a form that is adequate for the proposed residential development. Mr. Perry stated that the District will provide the needed infrastructure and services so County financing and other resources will not be burdened. Mr. Wild further stated that each of the District's infrastructure improvements would connect into the County's existing systems only after review and approval of the County. Therefore, there would be no incompatibility.

31. 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.

32. Two criteria are needed to evaluate a land area as amenable to separate special district government: (1) whether the land area is of sufficient size, sufficient compactness, and sufficiently contiguous to be the basis for a functional

interrelated community; and (2) does the land area have a need for the facilities and services.

33. With respect to the first criterion, as found above, 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. With regard to the second criterion, the community that would be served by the District's facilities needs basic infrastructure systems to be provided.

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

G. Other requirements imposed by statute or rule.

35. The Commission certified that the Petition to Establish the Six Mile Creek 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.

36. 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, and future landowners within the proposed District.

37. 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. Any debt obligations incurred by the District to construct its infrastructure, or for any other reason, are not debts of the State of Florida or any unit of local government.

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

39. Landowners within the proposed District will pay non-ad valorem or special assessments for the District's facilities. Benefits to landowners 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.

40. 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 June 21, June 29, July 5, and July 12, 2006.

H. Local Government Support for Establishment.

41. 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.

42. 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. However, James Whitehouse, assistant county attorney with St. Johns County, attended the July 19, 2006, public hearing and specifically noted that the County does not support the sale of wetlands. The Petitioner has indicated that the District does not intend to purchase wetlands.

I. Public comment regarding the establishment of the District.

43. Two members of the public, Mary Lou Thomas and Ellen Whitmer, commented during the public hearing.

44. Ms. Thomas asked what impact the proposed District would have on Six Mile Creek. In response, Mr. Wild, an expert

in civil engineering, described the water management systems that would address the potential impacts on Six Mile Creek. Mr. Wild also noted that the creation of the District, which is the subject of these proceedings, will have no impact on Six Mile Creek.

45. Ms. Whitmer asked what the estimated assessment per homeowner would be. Mr. Perry, an expert in economic analysis, provided background information on how assessment levels are determined. Additionally, Ms. Jenness provided Ms. Whitmer with an estimated level of debt assessment.

46. Neither Ms. Thomas nor Ms. Whitmer lives within the boundaries of the proposed District. Their comments related to matters outside the scope of the six factors, set forth in Section 190.005(1)(e), Florida Statutes, to be considered in making a determination to grant or deny a petition to establish a community development district.

J. Persons designated to be the initial members of the Board of Supervisors.

47. Ms. Jenness stated that the names of the five persons designated to serve as the initial Board of Supervisors of the proposed District are Kelly Kulinski; Steward A. Sparks, III; Cynthia Jones; Kirk Wendland; and herself. According to Ms. Jenness, each of these individuals is a citizen of the United States and resides in the State of Florida.

CONCLUSIONS OF LAW

48. 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.

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

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

51. 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.

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

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

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

CONCLUSION

Based on the entire record of the local hearing, the Transcript of the local hearing, and considering the factors listed in Section 190.005(1)(e), Florida Statutes, the Petition meets all statutory requirements, and there appears no reason not to grant the Petition to establish by rule the proposed Six Mile Creek Community Development District.

DONE AND ENTERED this 30th day of August, 2006, in Tallahassee, Leon County, Florida.



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BRAM D. E. CANTER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of August, 2006.

ENDNOTE

1/ All references to the Florida Statutes are to the 2005 codification.

COPIES FURNISHED:

Jonathan T. Johnson, Esquire  
Wesley S. Haber, Esquire  
Hopping, Green, & Sams, P.A.  
Post Office Box 6526  
Tallahassee, Florida 32314

Barbara Leighty, Clerk  
Growth Management and Strategic  
Planning  
The Capitol, Room 1802  
Tallahassee, Florida 32399-0001

Gladys Perez, Esquire  
Executive Office of the Governor  
The Capitol, Room 209  
Tallahassee, Florida 32399

Michael P. Hansen, Secretary  
Office of the Governor  
The Capitol, Room 1802  
Tallahassee, Florida 32399-0001

Raquel Rodriguez, General Counsel  
Office of the Governor  
The Capitol, Suite 209  
Tallahassee, Florida 32399-0001