

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
AMENDMENT - TUSCANY)
COMMUNITY DEVELOPMENT) Case No. 06-5318
DISTRICT)
_____)

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

Pursuant to Section 190.005(1)(d), Florida Statutes, on March 22, 2007, a local public hearing was conducted by Donald R. Alexander, Administrative Law Judge with the Division of Administrative Hearings (DOAH), in Lecanto, Florida.

APPEARANCES

For Petitioner: Brian A. Crumbaker, Esquire
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STATEMENT OF THE ISSUE

The issue before the Florida Land and Water Adjudicatory Commission (FLWAC) is whether to grant the Petition to Amend the Boundary of the Tuscany Community Development District (Petition).

PRELIMINARY STATEMENT

The Petition was filed by the Tuscany Community Development District (Petitioner or District) on August 25, 2006. It requested that FLWAC amend the rule (Florida Administrative Code

Rule 42GG-1.002) to expand the boundary of the District to include certain property in unincorporated Citrus County, Florida. The Petition includes eleven exhibits.

FLWAC referred the Petition to DOAH on December 26, 2006, for assignment of an administrative law judge to conduct a local public hearing pursuant to Sections 190.046(1)(g) and 190.005(1)(d), Florida Statutes. The local public hearing was held on Thursday, March 22, 2007, at the Citrus County Resource Center, 2804 West Marc Knighton Court, in Lecanto, Florida. At the local public hearing, Petitioner presented the live and pre-filed, written testimony of George Flint, employed by Governmental Management Services - Central Florida, LLC, in Orlando, Florida; Richard S. Olsen, P.E., employed by Countryside Engineering, Inc., in Brooksville, Florida; and Taylor Collins, Chairman of Petitioner's Board of Supervisors. Petitioner also introduced six exhibits, designated as Exhibits A through F, which are described in the Transcript of the Record. Three members of the public, Connie Evans, Diane Pugh, and Duane Taylor, who live in the area, attended the public hearing and asked several questions but offered no testimony in opposition to the proposal.

The Transcript of the local public hearing was filed on April 6, 2007. Petitioner also filed a Proposed Report on April 6, 2007, which has been considered in the preparation of

this Report. References to Hearing Exhibits are to exhibits introduced during the local public hearing. The exhibits attached to the Petition are referred to as Petition Exhibits.

SUMMARY OF PETITION AND TESTIMONY

1. The Petition was submitted to FLWAC and the County.
2. The Petition alleges that the land proposed to be included in the District is located in an unincorporated portion of the County. (The existing District lies just northeast of the community of Beverly Hills, south of the community of Holder, and north of County Road 486.) Petition Exhibit 1 sets forth the general location of the existing District. The District currently covers approximately 1,378.86 acres of land. The current metes and bounds description of the external boundaries of the District is set forth in Petition Exhibit 2. The metes and bounds description for the land to be added into the expanded boundary of the District is set forth in Petition Exhibit 3. Petitioner seeks to expand the boundary of the District to include an additional 332.07 acres of land (Expansion Parcels). After amendment, the District will encompass approximately 1,710.93 acres of land. The metes and bounds description of the proposed District boundary is set forth in Petition Exhibit 4.
3. The three Expansion Parcels are owned by the Beverly Hills Development Corporation and William H. Cauthen, Trustee of

the R.P. King T187 Land Trust UTD 7/6/87. Documentation of the consent of the owners of the Expansion Parcels to their inclusion within the boundary of the District is contained in Petition Exhibits 5A and 5B, respectively. The Petition alleges that the favorable action of the District's Board constitutes consent for all other lands within the boundary of the District pursuant to Section 190.046(1)(e), Florida Statutes.

Additionally, Petitioner obtained written consent from one hundred percent of the owners of land within the current boundary of the District, which was attached as Exhibit A to Hearing Composite Exhibit B.

4. The future general distribution, location, and extent of public and private land uses proposed for the Expansion Parcels by the Future Land Use Element of the adopted Citrus County Comprehensive Plan (Plan) are shown on Petition Exhibit 7. Amendment of the boundary of the District in the manner proposed is not inconsistent with the Plan.

5. Petition Exhibit 8 sets forth the proposed facilities and services for the Expansion Parcels and outlines the entities that will finance, own, operate, and maintain such facilities and services.

6. Petition Exhibit 9 outlines the estimated construction costs and timetable for the construction of the improvements to

be constructed within the Expansion Parcels. This information was supplemented with Exhibit C to Hearing Composite Exhibit B.

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

8. Hearing Composite Exhibit B alleges that Petitioner submitted a copy of the Petition and Petition Exhibits to the County with the required filing fee of \$15,000.00 in accordance with the requirement of Section 190.005(1)(b)1., Florida Statutes.

9. The Petition alleges that amendment of the boundary of the District should be granted for the following reasons:

a. Amendment of the District's boundary and all land uses and services planned within the District, as amended, are not inconsistent with applicable elements and portions of the adopted State Comprehensive Plan or the effective Citrus County Comprehensive Plan.

b. The District, as amended, will continue to be of a sufficient size and sufficiently compact and contiguous to be developed as one functional and interrelated community.

c. Amendment of the District will prevent the general body of taxpayers in Citrus County, Florida, from bearing the burden for the installation of the infrastructure and the maintenance of the described facilities within the Expansion Parcels. The District is the best alternative for delivering community development services and

facilities to the Expansion Parcel[s] without imposing an additional burden on the general population of the local general-purpose government. Amendment of the District to include such lands within a comprehensively planned community, as proposed, allows for a more efficient use of resources as well as providing an opportunity for new growth to pay for itself.

d. The community development services and facilities of the District, as amended, will not be incompatible with the capacity and use of existing local and regional community development services and facilities. In addition, the District, as amended, will provide a perpetual entity capable of making reasonable provision for the operation and maintenance of the District services and facilities for the lands to be included within the District.

e. The area to be served by the District, as amended, will continue to be amenable to separate special-district government.

10. The local public hearing was noticed and held on Thursday, March 22, 2007, at 11:15 a.m., at the Citrus County Resource Center, located at 2804 West Marc Knighton Court, Lecanto, Florida. Pursuant to Section 190.005(1)(d), Florida Statutes, notice of the public hearing was advertised on February 22, March 1, 8, and 15, 2007, in the Citrus County Chronicle, a newspaper of general paid circulation in the County, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. The notice gave the time and place for the

hearing; a description of the area to be included within the District, including a map showing the land to be included within the District; and other relevant information. The advertisement was published as a display advertisement, not in the portion of the newspaper where legal notices and classified advertisements appear. See § 190.005(1)(d), Fla. Stat.

11. Petitioner presented the live and pre-filed, written testimony of three witnesses at the hearing. Several members of the public were present at the hearing and made comments and asked questions which were responded to by Petitioner's witnesses. None opposed the proposed amendment of the District's boundary.

12. At the hearing, the Petition and Petitioner's Response to Notice of Insufficiency and Request for Additional Information were received into evidence as Hearing Composite Exhibits A and B, respectively. In addition, the State Comprehensive Plan codified in Chapter 187, Florida Statutes, and a copy of the Plan were received into evidence as Hearing Exhibits C and D, respectively. The original proof of publication of the notice of public hearing from the Citrus County Chronicle was received in evidence as Hearing Exhibit E. Finally, the written, pre-filed testimony of Taylor Collins, George Flint, and Richard S. Olsen, P.E., along with the original affidavits of each, adopting their written, pre-filed

testimony were admitted into evidence as Hearing Composite Exhibit F. Mr. Olsen clarified one statement on page two, lines one and two, of his written, pre-filed testimony. That clarification indicated that the reference to \$12,210,000 in the second line of page two was referring to the cost of the infrastructure for the Killarney Community Development District in Hernando County, of which he had previous experience, and not the cost of the District's infrastructure. No other changes to the written, pre-filed testimony were made.

13. Mr. Collins, who is employed by Crown Parrish, a real estate developer, and is the current Chairman of the Board of Supervisors for the District, identified and described Petition Exhibits 1 through 11. He noted that, pursuant to a request received from FLWAC, the District supplemented the Petition with consent and joinder of landowners within the existing boundary of the District, a revised exhibit identifying water mains, sewer interceptors, and outfalls, and an updated good faith estimate of the construction costs and timetable for construction. These exhibits were attached to Mr. Collins' written testimony as TC-1 through TC-3, respectively.

14. Mr. Collins testified that the existing District is approximately 1,378.86 acres. He also stated that the current owners of the land proposed to be added to the District are the Beverly Hills Development Corporation and William H. Cauthen, as

Trustee of the R.P. King T187 Land Trust UTD 7/6/87. The witness further testified that the 332.07-acre tract of land proposed to be added to the District was not part of the original petition to establish the District because the original petitioner did not own the property at the time. Mr. Collins stated that subsequent to the establishment of the District, the entity developing the property acquired title to the tracts consisting of the 332.07 acres of land. Mr. Collins further stated that the addition of this land within the boundary of the District will facilitate community integration.

15. Finally, Mr. Collins testified that the proposed boundary amendment accomplishes community integration, makes the District's boundaries consistent with the current development plan, and has no impact on the District's abilities to fulfill its obligations to its residents and third parties.

16. George Flint, who is currently employed by Governmental Management Services-Central Florida, LLC, also testified on behalf of Petitioner. His firm provides district management and financial consulting services to community development districts, including the District, and other forms of special taxing districts throughout the State of Florida.

17. Reiterating the points made by Mr. Collins, Mr. Flint also testified that the District is petitioning to add the newly-acquired land because Petitioner did not own the land when

the original District was established. Mr. Flint stated that the addition of the Expansion Parcels will facilitate community integration.

18. Mr. Flint testified that, within the boundaries of the proposed additional 332.07-acre tract of land, the District presently plans to construct, acquire, or install roadways, a stormwater management system, landscaping, irrigation and entry improvements, recreational amenities, and a water/wastewater system.

19. Mr. Flint testified that he is familiar with Petition Exhibits 1 through 5 and 11 and that they are true and correct to his knowledge. Mr. Flint states that Petition Exhibit 1 is a map depicting the general location of the District; Petition Exhibit 2 is a current metes and bounds description of the external boundary of the District; Petition Exhibit 3 is a metes and bounds description of the land to be added to the District; Petition Exhibit 4 is the metes and bounds description of the proposed new District; Petition Exhibits 5A and 5B are consent and joinder of the owners of one hundred percent of the land to be added to the District; and Petition Exhibit 11 is an authorization naming Brian Crumbaker, Esquire, to act as agent for the District during the boundary amendment process.

20. Mr. Flint testified that on August 25, 2006, the District filed one original and twelve copies of the Petition

and exhibits with FLWAC. He further stated that the District tendered ten copies of the Petition to the County along with the required filing fee of \$1,500.00 prior to the time the Petition was filed with FLWAC. The filing fee was supplemented by the Petitioner bringing the total filing fee to \$15,000.00. He also testified that FLWAC determined that the Petition was complete and referred the Petition to the District's Board of Supervisors to conduct the local public hearing required by Section 190.005 and 190.046, Florida Statutes. A copy of the correspondence was attached to Mr. Flint's testimony as GF-1.

21. Mr. Flint testified that the District arranged for newspaper notice of the hearing scheduled by the Board of Supervisors to be published in the Citrus County Chronicle, which is a newspaper of general circulation in the County, in each of the four consecutive weeks immediately preceding the hearing. Mr. Flint stated that the dates of publication were February 22, March 1, March 8, and March 15, 2007. As noted above, the original proof of publication from the Citrus County Chronicle was received in evidence as Hearing Exhibit E.

22. Mr. Flint testified that FLWAC published a Notice of Receipt of Petition in the Florida Administrative Weekly. A copy of this Notice was attached to Mr. Flint's testimony as GF-2.

23. Mr. Flint also testified that the County elected not to hold any additional public hearings or publish any additional notices regarding the District's Petition to amend its boundaries.

24. Mr. Flint testified that FLWAC notified the Department of Community Affairs (DCA) by correspondence dated December 22, 2006, of the Petition filed by the District. A copy of this correspondence was attached to Mr. Flint's testimony as GF-3.

25. Mr. Flint reported that the DCA responded to FLWAC by letter dated January 9, 2007, regarding the Petition. A copy of this correspondence was attached to Mr. Flint's testimony as GF-4.

26. Mr. Flint testified that the proposed amended District is the best alternative available to provide the proposed community development services and facilities to the Expansion Parcels.

27. Mr. Flint testified that the amended District is of sufficient size and is sufficiently compact and contiguous to be developable as one functionally-interrelated community.

28. Mr. Flint testified that the services and facilities provided by the amended District are compatible with the uses and existing local and regional facilities because the District's facilities and services within the amended boundaries

will not duplicate any available regional services of facilities.

29. Mr. Flint testified that the amended District is amenable to being served by separate special district government because the District will provide an efficient mechanism to oversee the installation of capital improvements necessary for the Expansion Parcels.

30. Mr. Flint testified that the District is the best available alternative for delivering community services and facilities to the Expansion Parcels because the District exceeds other available alternatives at focusing attention on when, how, and where the next system of infrastructure will be needed to service the projected population within the District. Mr. Flint further testified that this results in full utilization of existing facilities before new facilities are constructed, which reduces the delivered cost to the citizens being served.

31. Mr. Flint went on to testify that he prepared the SERC attached to the Petition as Exhibit 10, and that the SERC is true and correct to the best of his knowledge.

32. Mr. Flint testified that the District is a special-purpose unit of local government with a single objective: the provision of infrastructure and services for a planned community. Mr. Flint testified that because of this, the

District's economic benefits exceed its economic costs to all affected parties.

33. Mr. Flint testified that based on his experience with other districts, the amended District is expected to be financially viable and feasible.

34. Mr. Flint testified that from an economic perspective, the proposed amended District is not inconsistent with the State Comprehensive Plan codified in Chapter 187, Florida Statutes. Mr. Flint indicated that two subjects of that Plan are particularly relevant, Subject 17-Public Facilities and Subject 20-Governmental Efficiency, and that the amended District was not inconsistent with either subject.

35. Mr. Flint opined that the amendment of the District's boundary is consistent with all applicable elements or portions of the effective and current Plan.

36. Finally, Mr. Flint testified that the amended District is the best alternative available for providing the District development services to the area to be added to the District. This is because the District generally restricts costs to those who benefit from the District services provided, and the use of non-ad valorem assessments and maintenance assessments to fund the infrastructure and facilities ensures that the property receiving the benefit of the District service is the same property to pay for those services.

37. Petitioner's final witness, Mr. Olsen, a professional engineer, testified that the proposed development within the District is part of an approved Development of Regional Impact. He further stated that, although the District's boundary will be expanded as a result of the proposed amendment, the infrastructure proposed to be financed and constructed by the District will continue to support the development of 5,396 single and multi-family residential units; 400 life care center units; 400,000 square feet of business/commercial/office space; and 41,368 square feet of community/neighborhood facilities. Mr. Olsen testified that the number and types of units planned for development within the District will not change as a result of the addition of the lands to be incorporated in the District's boundaries.

38. Mr. Olsen testified that during his involvement with the District, he has made numerous field visits to the site and has been involved in the design of several development infrastructure systems for various areas within the District.

39. Mr. Olsen testified that Petition Exhibits 8 and 9 were prepared, partially or in their entirety, by his firm or under his supervision. He stated that these exhibits are true and correct to the best of his knowledge and required no changes or corrections at that time. Mr. Olsen identified Petition Exhibit 8 as a chart setting forth the improvements and

facilities the District intends to construct, acquire, install, or provide for the land to be added to the District. He stated that Petition Exhibit 9 is a chart showing the estimated construction costs of the facilities the District intends to construct, acquire, install, or provide in the parcel to be added to the District.

40. Mr. Olsen testified that with the net expansion of 332.07 acres, the District is still of sufficient size, compactness, and contiguity to be developed as a functional interrelated community.

41. Mr. Olsen testified that the services and facilities to be provided to the Expansion Parcels by the District are not incompatible with the capacities and existing uses of existing local and regional community facilities and services. He also noted that there is no one else presently providing the services and facilities to the Expansion Parcels.

42. Mr. Olsen testified that the District is the best alternative to provide community development services and facilities to the area to be incorporated into the District because the District will be capable of efficiently financing and overseeing the construction of the necessary capital improvements. Mr. Olsen added that as a unit of special-purpose government, the District is more effective than typical property owners associations and that the land to be added to the

District will benefit from the fact that the District is up and running.

43. Finally, Mr. Olsen testified that he believes that the area to be included within the District is amenable to being served by separate special district government because the District will constitute an effective mechanism for providing the necessary capital improvements to the land to be incorporated into the District, and the District provides a mechanism whereby long-term maintenance obligations can be satisfied by persons actually using the facilities and services.

APPLICABLE LAW

A. General

44. Section 190.046(1)(a)-(g), Florida Statutes, provides the means for amending the boundaries of a community development district of 1,000 acres or more that has been established by a rule adopted by FLWAC.

45. Section 190.046(1)(g), Florida Statutes, provides that petitions to amend the boundaries of a district which exceed the amount of land specified in Section 190.046(1)(f), Florida Statutes, that is, which add "more than a total of 250 acres," shall be considered petitions to establish a new district and shall follow all procedures specified in Section 190.005, Florida Statutes. Because the amendment here adds 332.07 acres, the procedures in the latter statute must be followed.

46. Pursuant to Section 190.046(1)(a), Florida Statutes, when the expansion of a district's boundaries is sought, the petition shall contain the same information required by Sections 190.005(1)(a)1. and 8., Florida Statutes. Specifically, the petition must provide a metes and bounds description of the area to be serviced by the district with a specific description of the real property to be included in the district. The petition must also contain a SERC and describe the proposed timetable for construction of any district services to the area, the estimated cost of constructing the proposed services, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land use plan element of the adopted local government comprehensive plan.

47. Section 190.046(1)(e), Florida Statutes, requires the written consent of all the landowners whose land is to be added within the boundaries of the district. Pursuant to that provision, the filing of the Petition by the District's Board constitutes consent of the landowners within the District other than of the landowners whose land is proposed to be included within the District. The Beverly Hills Development Corporation and William H. Cauthen, Trustee of the R.P. King T187 Land Trust UTD 7/6/87, are the owners of the lands to be added to the District, and consents from both parties were provided. This

consent was supplemented with the consent of the owners of one hundred percent of the lands within the existing District boundary in response to a request received from FLWAC.

48. Pursuant to a request from FLWAC for additional information, Petitioner provided: (a) the information required by Section 190.005(1)(a)1., Florida Statutes, regarding excluded real property within the District; (b) written consent to amend the boundaries from one hundred percent of the landowners whose real property is to be included in the amended boundaries and evidence of ownership and consent by the existing landowners; (c) the names of the five persons who will serve on the Board of Supervisors, as required by Section 190.005(1)(a)3., Florida Statutes; (d) a map of the proposed District showing major trunk water mains and sewer interceptors and outfalls in existence, as required by Section 190.005(1)(a)5., Florida Statutes; (e) the proposed timetable for construction of district services and the estimated cost of constructing those services pursuant to Section 190.005(1)(a)6., Florida Statutes; and (f) evidence of compliance with Section 190.005(1)(a)8.(b)1., Florida Statutes, pertaining to the payment of a filing fee to the County.

49. Section 190.046(1)(d)1., Florida Statutes, states that a petition to amend the boundaries of a district initially established by administrative rule pursuant to Section 190.005(1), Florida Statutes, shall be filed with FLWAC. On

August 25, 2006, Petitioner filed with FLWAC one original and twelve copies of the Petition and attached Exhibits.

50. Section 190.046(1)(d)2., Florida Statutes, requires that a petitioner provide a copy of the boundary amendment petition and the requisite \$1,500.00 filing fee to the county and to each municipality whose proposed boundary is within or contiguous to the district prior to filing the boundary amendment petition with FLWAC. Petitioner submitted copies of the Petition with the Petition Exhibits and the filing fee to the County on August 24, 2006, prior to the time the Petition was filed with FLWAC. In compliance with a request of FLWAC, Petitioner submitted an additional payment in the amount of \$13,500.00 to the County, for a total of \$15,000.00.

51. Section 190.046(1)(d)3., Florida Statutes, permits the local general-purpose governments described in the preceding paragraph to conduct a public hearing on the boundary amendment petition. However, such public hearing is limited to consideration of the contents of the Petition. These local government entities may then present resolutions to FLWAC expressing their support of, or opposition to, the boundary amendment petition. In this case, the County opted not to hold a public hearing or adopt a resolution regarding the amendment of the boundary of the District.

B. Factors by Law to be Considered for Granting or Denying Petition

52. Pursuant to Section 190.005(1)(e), Florida Statutes, FLWAC must consider the entire record of the local public 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 to make a determination to grant or deny a petition for the amendment of the boundary of a district:

1. Whether all statements contained within the petition have been found to be true and correct;
2. Whether the amendment of the boundary 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 amended district is still of sufficient size, is still sufficiently compact, and is still sufficiently contiguous to continue to be developable as one functional interrelated community;
4. Whether the district is still the best alternative available for delivering community development services and facilities to the area to be included within the boundary of the district and that will continue to be served by the district;
5. Whether the community development services and facilities that will continue to be provided by the district will be incompatible with the capacity and uses of existing local and regional community development services and facilities; and

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

COMPARISON OF RECORD TO APPLICABLE LAW

A. Procedural Requirements

53. The evidence indicates that Petitioner has satisfied the procedural requirements for the amendment of the boundary of the District by filing the Petition and Supplement in the proper form with the required attachments, by tendering the requisite filing fee to each 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

54. The evidence was that the statements in the Petition and its attachments, as supplemented, are true and correct.

55. The evidence was that the amendment of the boundary of the District is not inconsistent with any applicable element or portion of the State and local government comprehensive plans.

56. The evidence was that the District, with the addition of the land proposed to be added into the amended boundary of the District, is still of sufficient size, is still sufficiently compact, and is still sufficiently contiguous to continue to be developable as "one functional interrelated community."

57. The evidence was that the District is still the best alternative available for delivering community development services and facilities to the area to be included within the

boundary of the District and that will be served by the District.

58. The evidence was that the District is the best alternative available for delivering community development services and facilities to the area to be included within the boundary of the District.

59. The evidence was that the community development services and facilities that will continue to be provided by the District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

60. The evidence was that the area that will continue to be served by the District is still amenable to separate special-district government.

CONCLUSION

Section 190.005(1)(e), Florida Statutes, states that 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 subparagraphs 1. through 6. 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 Amend the Boundaries of the Tuscan Community Development District by rule. For purposes of drafting the amended rule, a metes and bounds description of the

revised boundary of the Tuscany Community Development District may be found in Petition Exhibit 4.

DONE AND ENTERED this 19th day of April, 2007, in Tallahassee, Leon County, Florida.

S

DONALD R. ALEXANDER
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Filed with the Clerk of the
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