

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION - SOUTHEASTERN) Case No. 07-1413
COMMUNITY DEVELOPMENT DISTRICT)
_____)

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

Pursuant to notice, a local public hearing was held in this matter in Tallahassee, Florida, on June 5, 2007, before Donald R. Alexander, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael C. Eckert, Esquire
Joseph A. Brown, Esquire
Hopping Green & Sams, P.A.
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STATEMENT OF THE ISSUE

The issue is whether the Petition to Establish the Southeastern Community Development District (Petition) meets the applicable criteria set forth in Chapter 190, Florida Statutes (2006),¹ and Florida Administrative Code Rule Chapter 42-1. The purpose of the hearing was to gather information in anticipation of quasi-legislative rulemaking by the Florida Land and Water Adjudicatory Commission (Commission).

PRELIMINARY STATEMENT

On February 2, 2007, The St. Joe Company (Petitioner) filed its Petition with the Secretary of the Commission. Prior to that time, a copy of the Petition and exhibits, along with the requisite filing fee, were filed with the City of Tallahassee (City) and Leon County (County), where the proposed community development district (District) will be located.²

On February 15, 2007, the Commission issued a Notice of Insufficiency and Request for Additional Information (Notice of Insufficiency). On March 15, 2007, Petitioner submitted its Response to the Notice of Insufficiency.

On March 21, 2007, the Secretary of the Commission certified that the Petition contained all required elements and forwarded it to the Division of Administrative Hearings for the purpose of holding the local public hearing required under Section 190.005(1)(d), Florida Statutes.

The local public hearing was held on June 5, 2007, in Tallahassee, Florida. Notice of the public hearing was published in accordance with Section 190.005(1)(d), Florida Statutes. On June 1, 2007, Petitioner pre-filed the testimony of its five witnesses.

At the local public hearing, Petitioner presented the testimony of Bill Wier, its Vice President and Project Manager; Fred A. Greene, P.E., of CH2M Hill and accepted as an expert;

James A. Perry, Managing Director of Governmental Management Services, LLC, and accepted as an expert; G. Russell Weyer, Senior Associate at Fishkind & Associates, Inc., and accepted as an expert; and Jorge Gonzalez, its Vice President of Entitlements and accepted as an expert. No members of the public appeared at the hearing. Petitioner also offered Petitioner's Exhibits 1 through 7, which were received into evidence. Composite Exhibit 1 is the Petition and attached Exhibits 1-9; Exhibit 2 contains the affidavits of publication; Exhibit 3 is the resolution of the City supporting the establishment of the District; Exhibit 4 is a similar resolution by the County; Exhibit 5 is the pre-filed testimony of the five witnesses; Exhibit 6 contains consents to establish the District by two entities that purchased parcels within the proposed District after the Petition was filed; and Exhibit 7 is the resume of Jorge Gonzalez.

The Transcript of the local public hearing was filed on June 19, 2007. On the same date, Petitioner filed a Proposed Report of Findings and Conclusions, which has been considered in the preparation of this Report.

SUMMARY OF THE RECORD

A. Petition and Related Matters

1. Petitioner is seeking the adoption of a rule by the Commission to establish the District, which will consist of

approximately 1,035 acres located within the City and unincorporated part of the County. The proposed District lies just south of Apalachee Parkway, east of Capital Circle Southeast (as it swings in a southerly direction from Apalachee Parkway before turning to the west), and north of Tram Road. The southern boundary of the District lies a short distance from the State office complex in Southwood. The name for the proposed District is the Southeastern Community Development District. Petition Exhibit 2 describes the metes and bounds of the external boundaries of the District, while Petition Exhibit 4 is a map depicting the boundaries of the District and the land uses on the Future Land Use Map of the local comprehensive plan.

2. There are two parcels within the external boundaries of the proposed District which are to be excluded from the District. The two out-parcels are owned by Kilpatrick Cemetery, c/o Eddie L. Kilpatrick, 3727 Old St. Augustine Road, Tallahassee, Florida, and Jennie V. Fowler, 517 Howard Avenue, Tallahassee, Florida. Both parcels are on the eastern edge of the District's property and are accessed by way of the old Southwood Plantation Road. When the Petition was filed, The St. Joe Company was named as the owner of the property. Petition Exhibit 3 is the Consent and Joinder of Landowner to Establishment of a Community Development District executed by the owner.

3. The Petition indicates that the five persons designated to serve as initial members of the Board of Supervisors are Clay Smallwood, Chris Gent, Shaw Flippen, Sean Fennelly, and Pat Groeniger, and that each member is a resident of the State of Florida and a citizen of the United States.

4. The estimated cost of the infrastructure facilities and services which are presently expected to be provided to the lands within the District was included in the Petition as filed and as amended in the Response to the Commission's Notice of Insufficiency issued on February 15, 2007.

5. Petition Exhibit 6 describes the type of facilities Petitioner expects the District to finance, construct, acquire, and install, as well as the anticipated owner and entity responsible for the operation and maintenance. Petition Exhibit 7 identifies the estimated costs of constructing those facilities as \$45,750,000.00.

6. Petition Exhibit 8 is the Statement of Estimated Regulatory Costs (SERC), which indicates that it was prepared in accordance with Section 120.541, Florida Statutes.

7. Finally, Petition Exhibit 9 identifies Jonathan T. Johnson, Esquire, and Brian A. Crumbaker, Esquire, as authorized agents for Petitioner.

8. The sole purpose of this proceeding was to consider the establishment of the District as proposed by Petitioner.

Information relating to the managing and financing of the service-delivery function of the proposed District was also considered. Because Section 190.005, Florida Statutes, contains the statutory criteria to be considered, a summary of the evidence relating to each enumerated section of the statute is set forth in the following section of this Report.

SUMMARY OF EVIDENCE AND TESTIMONY

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

9. Petitioner's Hearing Composite Exhibit 1 consists of the Petition and its exhibits as filed with the Commission. Mr. Wier, who is a Vice-President with The St. Joe Company, testified that he had reviewed the contents of the Petition. He noted several changes or corrections to the Petition in his testimony. Specifically, Mr. Wier stated that paragraph 8 of the Petition should be amended, as provided in Exhibit A to his written testimony, to provide additional information regarding the operation and maintenance responsibility between the District and the City for relevant stormwater facilities within the proposed District. Mr. Wier also testified that Petition Exhibit 3 would be supplemented with additional consents of parties that have become landowners within the proposed boundary of the District since the Petition was filed. Supplemental consents of Beazer Homes Corporation and Weekley Homes, LP, were

admitted into evidence as Hearing Exhibit 6. (The additional consents are required because during the pendency of this proceeding, parcels within the proposed District are being sold to third parties. Therefore, as each parcel is sold, the consent of the new owner is required.) The original consent of Weekley Homes, LP, was not available at the time of the public hearing and is therefore being transmitted with this Report. Additionally, Mr. Wier stated that in response to the Notice of Insufficiency, Petition Exhibit 4 was supplemented to provide further description of the general distribution, location, and extent of the public and private uses of land. In addition, Petition Exhibit 7 was supplemented with a more detailed good faith estimate of the order and sequence of District construction. Mr. Wier also generally described certain of the exhibits to the Petition. Finally, Mr. Wier testified that the Petition and its exhibits were true and correct, as amended, to the best of his knowledge.

10. Mr. Greene, who is a professional engineer, testified that he had assisted in the preparation of portions of the Petition and its exhibits. Mr. Greene generally described the services and facilities that the proposed District is expected to provide. He also generally described those Petition exhibits that he had reviewed and described in his testimony the need for certain amendments and revisions to the Petition and exhibits,

all of which have been previously described above in Mr. Wier's testimony. Finally, Mr. Greene testified that, with the exception of the amendments to the Petition and its exhibits as described, Petition Exhibits 1, 2, 4, 5, 6, and 7 were true and correct to the best of his knowledge.

11. Mr. Weyer, who is a financial advisor to the District, testified that he had prepared the SERC, which has been received in evidence as Petition Exhibit 8. He added that the SERC was true and correct to the best of his knowledge.

12. The testimony is that the Petition and its exhibits as amended and supplemented 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.

13. Mr. Gonzalez, a Vice-President for The St. Joe Company, reviewed the proposed District in light of the requirements of the State Comprehensive Plan codified in Section 187.201, Florida Statutes. He also reviewed the proposed District in light of the requirements of the Tallahassee-Leon County Comprehensive Plan.

14. The State Comprehensive Plan "provides long-range policy guidance for the orderly social, economic and physical growth of the State" by way of twenty-five subjects and numerous goals and policies. § 187.101, Fla. Stat. From a planning

perspective, the witness indicated that three subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District as do the policies supporting those subjects.

15. First, Mr. Gonzalez cited Subject 15, Land Use, which recognizes the importance of locating development in areas with the fiscal ability and service capacity to accommodate growth. § 187.201(15), Fla. Stat. He testified that the proposed District will have the fiscal ability to provide services and facilities and help provide infrastructure in a fiscally responsible manner in an area which can accommodate development within the City and County.

16. Mr. Gonzalez also referred to Policy 1 under Subject 15, which promotes efficient development activities in areas which will have the capacity to service new populations and commerce. The witness testified that the proposed District will be a vehicle to provide high quality services in an efficient and focused manner over the long term.

17. Second, Mr. Gonzales cited Subject 17 of the State Comprehensive Plan, Public Facilities, which promotes efficient and orderly financing of new facilities. § 187.201(17), Fla. Stat. Especially relevant are Policy 3 of that Subject which provides that the cost of new public facilities should be allocated to existing and future residents on the basis of

benefits received and Policy 6, which provides that fiscally sound and cost-effective techniques for financing public facilities should be encouraged. Mr. Gonzalez also testified that the District will further these goals and related policies.

18. Mr. Gonzalez testified that Subject 25 of the State Comprehensive Plan, Plan Implementation, should also be considered. That Subject provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination, should be considered. § 187.201(25), Fla. Stat. He indicated that the proposed District is consistent with this element of the State Comprehensive Plan because the proposed District will systematically plan for the construction, operation, and maintenance of the public improvements and the community facilities authorized under Chapter 190, Florida Statutes, subject to and not inconsistent with the local government comprehensive plan and land development regulations. Additionally, the witness stated that the District meetings are publicly advertised and are open to the public so that all District property owners and residents can be involved in planning for improvements.

19. Mr. Gonzalez further opined that there are three relevant policies under Subject 25: Policies 2, 3, and 6. Policy 2 seeks to ensure operational authority in each level of

government for the implementation of the policy directives in the State Comprehensive Plan. In conjunction with that Policy, the witness pointed out that Chapter 190, Florida Statutes, provides the proposed District with operational authority to deliver basic community services and capital infrastructure. According to Mr. Gonzalez, Policy 3 seeks to provide effective monitoring, incentive, and enforcement capabilities to ensure that regulatory programs are met, and under Section 189.415(2), Florida Statutes, the District will have to submit public facilities reports to the local general-purpose government. He further stated that Policy 6 encourages citizen participation in all levels of policy development, planning, and operations, and under Chapter 190, Florida Statutes, the District is required to eventually transition to a resident elected Board of Supervisors. The witness added that regardless of the method of election, the Board of Supervisors must convene meetings in accordance with Florida's government-in-the-sunshine laws.

20. Mr. Gonzalez also reviewed the proposed District in light of the requirements of the Tallahassee-Leon County Comprehensive Plan. Mr. Gonzalez testified that under Chapter 190, Florida Statutes, the District is prohibited from acting inconsistently with the local government comprehensive plan. As to this requirement, the witness testified that the establishment of the proposed District would not be inconsistent

with any applicable element or portion of the Tallahassee-Leon County Comprehensive Plan.

21. Mr. Weir indicated that the Department of Community Affairs (DCA) reviewed the Petition for compliance with its various programs and responsibilities. According to Mr. Weir, after conducting a review of the Petition, the DCA identified no potential inconsistency between the Petition and Chapters 163 and 380, Florida Statutes, and found that the land uses and infrastructure improvements proposed within the District are consistent with the SouthWood DRI Development Order (DRI).

22. The testimony and exhibits indicate that the proposed District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan or the Tallahassee-Leon 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.

23. According to Mr. Weir, the proposed District will include approximately 1,035 acres located within the City and unincorporated part of the County. As indicated in the testimony of Mr. Weir, Mr. Greene, and Mr. Weyer, from economic, engineering, and management perspectives, the area of land to be included in the proposed District is of sufficient size, is

sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community.

24. The testimony was that Petitioner has demonstrated that the proposed District will be 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.

25. Petitioner's Exhibit 6 indicates that The St. Joe Company's present intention is for the District to construct or provide certain infrastructure improvements as outlined in the Petition.

26. In this respect, Mr. Wier testified that the installation and maintenance of infrastructure systems and services by the proposed District is expected to be paid through the imposition of special assessments. He added that the use of such assessments will ensure that the real property benefiting from District services is the same property which pays for them.

27. According to witnesses Perry and Wayer, three alternatives to the use of the District exist. First, a local general-purpose government might provide facilities and services from its general fund. Second, a developer might provide the proposed improvements using private financing. Third,

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

28. Both witnesses testified that the District is preferable to these alternatives at focusing attention on providing the best long-term service to specific benefited properties.

29. They added that the District will construct certain infrastructure and community facilities which will be needed by the property owners and residents of the project. Expenses for the operations and maintenance of the facilities the District retains are expected to be paid through maintenance assessments to ensure that the property receiving the benefit of the district services is the same property paying for those services.

30. Mr. Perry and Mr. Weyer also testified that only a community development district allows for the independent financing, administration, operations, and maintenance of the land within such a district; that only a community development district allows district residents to ultimately completely control the district; and that the other alternatives do not have these characteristics.

31. Mr. Perry and Mr. Weyer further testified that the proposed District is the best alternative to provide the

proposed community development services and facilities to the land included in the proposed District because it is a long-term, stable, perpetual entity capable of maintaining the facilities over their expected life.

32. Additionally, Mr. Gonzalez testified that the boundary of the proposed District is intended to track Phase II of the DRI, so that that the District will encompass those lands subject to the new Phase II DRI infrastructure obligations recently approved by the City.

33. The testimony is that 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 proposed 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.

34. According to witnesses Gonzalez, Weyer, Greene, and Perry, 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 will not duplicate any existing regional services or facilities; and the proposed services or facilities to be provided by the District are either not yet in existence or have been provided in accordance with the development plan for the

area. Further, as noted above, the proposed District is intended to track Phase II of the DRI and associated distinct infrastructure obligations.

35. The testimony is that the community development services and facilities of the proposed District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

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

36. Witnesses Gonzalez, Perry, and Greene each indicated that from economic, planning, 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. They added that the community to be included in the District has need for certain basic infrastructure systems and the proposed District provides for an efficient mechanism to oversee the installation of these improvements. Finally, as noted above, the District's proposed establishment is intended in coordination with Phase II of the DRI infrastructure obligations.

37. The testimony is that from management, engineering, and planning perspectives, the area that will be served by the District is amenable to separate special-district government.

G. Other Requirements Imposed by Statute or Rule

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

a. Elements of the Petition

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

b. Statement of the Estimated Regulatory Costs

40. According to Mr. Weyer, the SERC 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 City and County and their citizens, Petitioner, and consumers.

41. Petitioner's Exhibit 8 indicates that beyond administrative costs related to rule adoption, the State and its citizens will only incur minimal costs from establishing the District; that these costs are related to the incremental costs to various agencies of reviewing one additional local government report; that the proposed District will require no subsidies from the State; and the benefits will include improved planning and coordination of development, which is difficult to quantify but nonetheless substantial.

42. The same exhibit states that administrative costs incurred by the City and County related to rule adoption will be modest and that these modest costs are offset by the \$15,000.00 filing fee required to accompany the Petition to both the City and the County.

43. Exhibit 8 further provides that consumers will pay non-ad valorem or special assessments for certain facilities and that locating within the District is voluntary. It goes on to say that generally, District financing will be less expensive than maintenance through a property owners' association or capital improvements financed through developer loans. It further states that benefits to consumers in the area within the community development 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.

44. Section 190.005(1)(a), Florida Statutes, requires the petition to include a SERC which meets the requirements of Section 120.541, Florida Statutes. As noted above, the Petition contains a SERC and appears to meet all requirements of that statute.

c. Other Requirements

45. According to Mr. Weir, Petitioner has complied with the provisions of Section 190.005(1)(b)1., Florida Statutes, in that the City and County were provided copies of the Petition and were paid the requisite filing fee.

46. Section 190.005(1)(d), Florida Statutes, requires a petitioner to publish notice of the local public hearing in a newspaper of general circulation in the County for four consecutive weeks prior to the hearing. The notice was published in the Tallahassee Democrat, a newspaper of general paid circulation in the County on May 9, 11, 16, 23, and 30, 2007. The May 11 publication was a re-publication of the May 9 publication, which mistakenly appeared in the classifieds section of the newspaper.

47. No public comment was received during the hearing.

APPLICABLE LAW

48. This proceeding is governed by Chapters 120 and 190, Florida Statutes, and Florida Administrative Code Rule Chapter 42-1.

49. Section 190.005(1), Florida Statutes, provides that the exclusive method for establishing a community development district with a size of 1,000 or more acres shall be by rule adopted by the Commission.

50. The evidence was that the proceeding was properly noticed pursuant to Section 190.005(1)(d), Florida Statutes, by publication of an advertisement in a newspaper of general paid circulation in the County and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

51. The evidence was that Petitioner has met the requirements of Section 190.005(1)(b), Florida Statutes, regarding the submission of the Petition and satisfaction of filing fee requirements.

52. Petitioner bears the burden of establishing that the Petition meets the relevant statutory criteria set forth in Section 190.005(1)(e), Florida Statutes.

53. The evidence was that all portions of the Petition and other submittals have been completed and filed as required by law.

54. The evidence was that all statements contained within the Petition as corrected and supplemented at the hearing are true and correct. § 190.005(1)(e)1., Fla. Stat.

55. The evidence was that the establishment of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective Tallahassee-Leon County Comprehensive Plan. § 190.005(1)(e)2., Fla. Stat.

56. The evidence was that the area of land within the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community. § 190.005(1)(e)3., Fla. Stat.

57. The evidence was that the proposed District is the best alternative available for delivering community development services and facilities to the area that will be served by the District. § 190.005(1)(e)4., Fla. Stat.

58. The evidence was that the community development services and facilities of the proposed District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. § 190.005(1)(e)5., Fla. Stat.

59. The evidence was that the area to be served by the proposed District is amenable to separate special district government. § 190.005(1)(e)6., Fla. Stat.

CONCLUSION

Section 190.005(1)(e), Florida Statutes, states that the Commission "shall consider the entire record of the local hearing, resolutions adopted by the local general-purpose governments," and the factors listed in subparagraphs 1. through 6. of that statute. Based on the record evidence, the Petition

appears to meet all statutory requirements, and there appears to be no reason not to grant the Petition to Establish the Southeastern Community Development District as requested by Petitioner. For purposes of drafting a rule, a copy of the metes and bounds description of the District is found in Petition Exhibit 2.

DONE AND ENTERED this 2nd day of July, 2007, in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of July, 2007.

ENDNOTES

1/ All references are to the 2006 version of the Florida Statutes.

2/ The County held its optional public hearing on April 10, 2007, and the City held its public hearing on May 23, 2007. Both the City and the County supported the establishment of the District and have adopted resolutions to that effect.

COPIES FURNISHED:

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