

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO CONTRACT)
THE CAPITAL REGION COMMUNITY) Case No. 07-1414
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, by Donald R. Alexander, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jonathan T. Johnson, Esquire
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 Contract the Boundary of the Capital Region 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 Commission. Prior to that time, a copy of the Petition and its attachments, along with the requisite filing fee, were provided to the City of Tallahassee (City) and Leon County (County), where the existing District lies. The County held its optional public hearing on April 10, 2007, and the City held its optional public hearing on May 23, 2007. Both the County and the City supported the proposed contraction of the existing District and have adopted resolutions to that effect.

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 public hearing required under Section 190.005(1)(d), Florida Statutes.

The land to be included within the proposed District is located entirely within the incorporated limits of the City and unincorporated Leon County.

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 Exhibit 2.

The local public hearing was held on June 5, 2007, in Tallahassee, Florida. At the local public hearing, Petitioner presented the testimony of Jorge Gonzalez, its Vice-President and Chairman of the District's Board of Supervisors and accepted as an expert in land use planning; James A. Perry, Managing Director of Governmental Management Services, LLC, and accepted as an expert; G. Russell Weyer, Senior Associate at Fishkind and Associates and accepted as an expert; and Fred A. Greene, a professional engineer with CH2M Hill and accepted as an expert. No members of the public appeared at the hearing. Also, Petitioner offered Exhibits 1 through 7, which were received into evidence. Composite Exhibit 1 is the Petition and attached exhibits; Exhibit 2 is the notice of affidavit of publication; Exhibit 3 is City of Tallahassee Resolution No. 07-R-27 supporting the contraction of the District; Exhibit 4 is Leon County Resolution No. R07-08 supporting the contraction of the District; Exhibit 5 is the pre-filed testimony of the four witnesses; Exhibit 6 is the supplemental consents for property sold after the filing of the Petition; 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

1. Petitioner is seeking the adoption of an amendment to Florida Administrative Code Rule 42CC-1.002 to remove approximately 1,081.55 acres from the District, as described in the Petition. (The rule establishing the existing District became effective February 28, 2000.) If the Petition is granted, the District's size will be reduced from 3,286.94 acres to 2,205.39 acres. (The area to be removed will be used to establish the Southeastern Community Development District, a separate matter now pending in DOAH Case No. 07-1413.) Generally, the District, as amended, lies south of Apalachee Parkway, north of Tram Road, and east of Capital Circle Southeast. However, parts of the District will still extend south of Tram Road and across Capital Circle Southeast to the west. The contracted District's northern boundary will adjoin the southern boundary of the new Southeastern Community Development District. Petition Exhibit 1 is a map reflecting the project location and the area to be removed from the existing District. Petition Exhibit 2 reflects the current metes and bounds description of the District, Petition Exhibit 3 reflects the metes and bounds of the land to be subtracted from the District, and Petition Exhibit 4 reflects the metes and bounds of the proposed District after contraction.

2. There are two parcels of land within the external boundaries of the proposed District that are to be excluded from the District, both of which are owned by the Board of Trustees of the Internal Improvement Trust Fund. When the Petition was filed, The St. Joe Company was identified as owner of the property. Petition Exhibit 5 is the owner's Declaration of Consent to Jurisdiction of Community Development District and to Imposition of Special Assessments.

3. The estimated cost of the infrastructure facilities and services which are presently expected to be provided to the lands within the District is included in the Petition. According to Petition Exhibit 9, this amount totals \$69,350,000.00.

4. The Petition indicates that the five persons currently serving the District as members of the Board of Directors are Sean Fennelly, Jorge Gonzalez, Pat Groeniger, Alan Hanstein, and Mary Lee Kiracofe, who are all residents of the State and citizens of the United States.

5. Petition Exhibit 6 reflects the existing general distribution, location, and extent of public and private uses for the proposed area to be excluded from the District by the Future Land Use plan element of the Tallahassee-Leon County Comprehensive Plan.

6. Petition Exhibit 7 depicts the existing drainage patterns, major trunk water mains, sewer interceptors, and outfalls within the District's current boundaries and within the lands to be removed.

7. Petition Exhibit 8 identifies the facilities anticipated to be financed, constructed, acquired, or installed by the District within the boundaries of the proposed contracted District, while Petition Exhibit 9 provides the estimated cost of these facilities.

8. Petition Exhibit 10 is the Statement of Estimated Regulatory Costs (SERC), which indicates that it was prepared in accordance with the requirements of Section 120.541, Florida Statutes.

9. Finally, the Petition states that the authorized agents are Brian A. Crumbaker, Esquire, and Joseph A. Brown, Esquire.

10. The sole purpose of this proceeding was to consider the contraction of the District boundary as proposed by the Petitioner. Information relating to the managing and financing of the service-delivery function of the proposed contracted District was also considered. Because Sections 190.046 and 190.005, Florida Statutes, provide 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.

11. Hearing Exhibit 1 consists of the Petition and its attachments as filed with the Commission. Mr. Gonzalez, who is a Vice-President with The St. Joe Company, testified that he had reviewed the contents of the Petition and approved its findings. Mr. Gonzalez generally described the exhibits to the Petition.

12. Mr. Gonzalez also testified that the Petition as originally submitted should be amended as follows: Paragraph 2 of the Petition should be amended to reflect the fact that no impact is anticipated on the excluded parcels identified in the Petition, as is provided in Exhibit B attached to Mr. Gonzalez' pre-filed written testimony; Paragraph 4 of the Petition should be amended to reflect that Corbett Drew is currently serving the unexpired term of resigned Supervisor Pat Groeniger; and that Paragraph 7 of the Petition should be amended with regard to operation and maintenance responsibility between the District and City for stormwater facilities as provided in Exhibit A attached to his pre-filed written testimony.

13. Mr. Gonzalez further testified that the following Petition Exhibits as originally submitted should be amended: Petition Exhibit 5 should be supplemented with additional consents of property owners within the contraction parcel

provided at the time of the hearing; Petition Exhibit 6 should be supplemented to provide a further description of the general distribution, location, and extent of the public and private uses of land; and Petition Exhibit 9 should be supplemented to reflect a more detailed good faith estimate of the order and sequence of District construction, both as provided in Exhibit B attached to his written prefiled testimony. Supplemental consents were received into evidence at the hearing as Hearing Exhibit 6. The original consent of Weekly Homes, LP, was not available at the time of the public hearing and is therefore being transmitted with this Report.

14. Finally, Mr. Gonzalez further testified that the Petition and all its exhibits, amended as stated, were true and correct to the best of his knowledge.

15. Mr. Greene, who is a professional engineer, testified that he helped prepare the Petition and had reviewed its exhibits. He generally described those Petition exhibits that he had reviewed and described in his testimony the need for certain amendments and revisions to the Petition, all of which have been previously described above in Mr. Gonzalez' testimony. Finally, Mr. Greene testified that the Petition and its exhibits were true and correct amended as stated.

16. Mr. Weyer, who is a financial advisor to the District, testified that he had prepared the SERC in Petition Exhibit 8.

Mr. Weyer also testified that SERC as submitted in the Petition was true and correct to the best of his knowledge.

17. The testimony is that the Petition and its exhibits as amended and supplemented are true and correct.

B. Whether the contraction of the District boundary is inconsistent with any applicable element or portion of the State Comprehensive Plan or of the effective local government comprehensive plan.

18. Mr. Gonzalez reviewed the proposed District boundary contraction in light of the requirements of the State Comprehensive Plan codified in Chapter 187, Florida Statutes.

19. The State Comprehensive Plan is designed to provide "long-range policy guidance for the orderly social, economic and physical growth of the State." § 187.101, Fla. Stat. It contains twenty-five subjects, and numerous goals and policies, of which Mr. Gonzalez identified Subject Nos. 15, 17, and 25 as being particularly relevant.

20. Subject 15 of the State Comprehensive Plan, Land Use, recognizes the importance of locating development in areas with the fiscal ability and service capacity to accommodate growth. § 187.201(15), Fla. Stat. Mr. Gonzalez testified that the contracted District will continue to have the fiscal ability to provide services and facilities to a population in a designated growth area.

21. Subject 17 of the State Comprehensive Plan, Public Facilities, promotes the protection of existing public facilities and the efficient and orderly financing of new facilities. § 187.201(17), Fla. Stat. Mr. Gonzalez testified that the amendment of the District boundary will not affect the District's ability to continue providing for the orderly planning and financing of infrastructure within the District.

22. Subject 25 of the State Comprehensive Plan, Plan Implementation, provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination and citizen involvement. § 187.201(25), Fla. Stat. Mr. Gonzalez testified that the contracted District will continue to systematically plan for the construction, operation, and maintenance of the public improvements and community facilities authorized under Chapter 190, Florida Statutes, subject to, and not inconsistent with, the local government comprehensive plan and land development regulations. He added that the District meetings will continue to be publicly advertised and are open to the public so that all District property owners and residents can be involved in planning for improvements.

23. Mr. Gonzalez also reviewed the proposed amended District in light of the requirements of the Tallahassee-Leon County Comprehensive Plan. He testified that the District as

amended would not be inconsistent with any applicable element or portion of the Tallahassee-Leon County Comprehensive Plan. He further testified that under Chapter 190, Florida Statutes, the District is prohibited from acting inconsistently with the local government comprehensive plan and identified the Future Land Use, Intergovernmental Coordination, and Capital Improvement Elements of the Tallahassee-Leon County Comprehensive Plan as being consistent with the proposed amended District.

24. According to Mr. Gonzalez, the Department of Community Affairs (DCA) reviewed the Petition for compliance with its various programs and responsibilities. After conducting a review of the Petition, the DCA identified no potential inconsistency between the Petition and Florida's growth management laws under Chapters 163 and 380, Florida Statutes, and found that the land uses and infrastructure improvements proposed within the proposed amended District are consistent with the SouthWood DRI Development Order (DRI). See Exhibit E attached to the Gonzalez pre-filed testimony.

25. Based on the pre-filed testimony and exhibits in the record, it appears that the proposed contracted District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan.

26. Based on the pre-filed testimony and evidence in the record, it appears that the proposed contracted District will

not be inconsistent with any applicable element or portion of the Tallahassee-Leon County Comprehensive Plan.

C. Whether the area of land within the proposed contracted District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

27. The Petition indicates that the contracted District will include approximately 2,205.39 acres located within the City and unincorporated part of the County. According to witnesses Gonzalez, Perry, Weyer, and Greene, from engineering, financial management, and land use planning perspectives the proposed contracted District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community.

28. Based on the pre-filed testimony and evidence in the record, it appears 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, contracted as proposed, remains the best alternative available for delivering community development services and facilities to the area that will be served by the proposed District.

29. Hearing Exhibit 1 and Petition Exhibits 8 and 9 indicate that the District is currently providing certain infrastructure improvements and intends to construct or provide

additional infrastructure improvements all as outlined in the Petition.

30. Mr. Perry and Mr. Weyer testified that following contraction of its boundary, the proposed amended District remains the best and most practical viable alternative to provide the proposed improvements to accommodate the planned development benefiting the lands to remain within the District.

31. Mr. Perry testified that the proposed amended District would remain superior to either a property owner's association or the general purpose local government as a mechanism for delivering community services and facilities to the area within the proposed amended District. He also testified that the District exceeds alternatives in the delivery of infrastructure by focusing attention on when and where and how the next system will be required. Also, a property owner's association could not as effectively finance the infrastructure improvements needed by the community, and provision of the infrastructure improvements by the local general-purpose governments would increase the demands upon, and require diversion of, local general-purpose government resources. Mr. Perry testified that only a community development district allows independent financing, administration, operations, and maintenance and allows landowners to control the timing and extent of infrastructure development.

32. Mr. Gonzalez went on to say that the proposed boundary contraction was planned in conjunction with the establishment of a separate proposed Southeastern Community Development District over substantially all of the contraction parcels. As explained by the witness, the existing District is located within the DRI and is subject to its terms and conditions. In approving Phase 2 of the DRI, the City and County "imposed additional infrastructure obligations for Phase 2," and the Southeastern Community Development District will be established and fulfill those infrastructure obligations. Mr. Gonzalez also testified that the proposed contraction of the District's boundary will not result in increased debt being imposed upon existing homeowners residing within the contracted District boundary. He added that a contraction parcel owned by the State of Florida in the southwestern portion of the District is being developed by the State through a separate development entitlement process and is not to be included within the proposed Southeastern Community Development District.

33. The testimony is that Petitioner has demonstrated that the proposed District remains the best alternative available for delivering community development services and facilities to the area that will be served by the proposed amended District.

E. Whether the community development services and facilities of the proposed contracted District will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

34. Mr. Perry, Mr. Gonzalez, and Mr. Weyer testified that the proposed boundary contraction will have no effect on the District's ability to deliver community development services and facilities and will not affect the current compatibility of those services and facilities with existing local or regional services or facilities. Also, as noted in paragraph 32, the proposed boundary contraction is planned in conjunction with the establishment of a separate Southeastern Community Development District. In this respect, Mr. Gonzalez testified that the combined contraction/establishment tracks the separate Phase 1 and Phase 2 DRI requirements, thereby allowing Phase 2 DRI obligations, particularly off-site transportation improvements, to be coordinated by the proposed Southeastern Community Development District established over the lands subject to the Phase 2 DRI requirements.

35. The testimony is that the community development services and facilities of the proposed contracted 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. As reported in paragraph 27, from engineering, financial management, and land use planning perspectives, the area of land to remain in the District following contraction will remain of sufficient size, compactness, and is sufficiently contiguous to be a functionally interrelated community. Witness Perry testified that once contracted the District will continue to successfully function as a separate special district government. Also, Mr. Gonzalez testified that the boundary amendment will have no effect on the District's operations and functions and will not affect the prior determination of the Commission that the District is amenable to separate special district governance. Further, as noted above, Mr. Gonzalez testified that a separate Southeastern Community Development District is proposed to be established over substantially all of the contraction parcels to effectively address the Phase 2 DRI requirements tied to development within the contraction parcel.

37. The testimony is that Petitioner has demonstrated that 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 Sections 190.046(1)(g) and 190.005(1)(a), Florida Statutes.

b. Statement of Estimated Regulatory Costs

40. Both the Petition and the testimony of the witnesses indicate that 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 of Tallahassee and Leon County and their citizens, the Petitioner, and consumers.

41. Petition Exhibit 8 indicates that beyond administrative costs related to rule amendment, the State and its citizens will only incur minimal costs from contracting the District's boundary as proposed. These costs are related to the incremental costs to various agencies of reviewing one additional local government report, which are marginal. Also, the District must pay an annual fee to the DCA to offset such costs.

42. The same exhibit indicates that administrative costs incurred by the City and County related to rule amendment will be modest. Further, these modest costs are offset by the

\$15,000.00 filing fee that was required to accompany the Petition to both the City and the County for this boundary amendment. Also, costs to the City and County will not change from the pre-contraction costs incurred.

43. Petition Exhibit 8 further indicates that consumers will pay non-ad valorem or special assessments for certain facilities. Locating within the District is voluntary. Generally, District financing has been and 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.

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. The Petition contains a SERC. According to Mr. Weyer, it meets all requirements of Section 120.541, Florida Statutes.

c. Other Requirements

45. Mr. Gonzalez testified that 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 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. Hearing Exhibit 2 reflects that 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.

d. Public Comment During the Hearing

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 190.046(1), Florida Statutes, provides that an existing district "may petition to contract or expand the boundaries of a community development district in the . . . manner" prescribed therein. Paragraph (g) of the same statute provides that "[p]etitions to amend the boundaries of the district which exceed the amount of land specified in paragraph (f) [250 acres] shall be considered petitions to establish a new

district and shall follow all of the procedures specified in s. 190.005." Because the amendment here exceeds the 250-acre statutory threshold, Petitioner must satisfy all procedures in Section 190.005, Florida Statutes.

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

51. 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.

52. 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.

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 contracted District remains 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 contracted District remains 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.

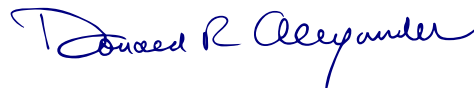
58. The evidence was that the compatibility of facilities of the proposed amended District with the capacity and uses of existing local and regional community development services and facilities will not be affected by the boundary contraction. § 190.005(1)(e)5., Fla. Stat.

59. The evidence was that the area to be served by the proposed contracted District remains 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 and the evidence, the Petition appears to meet all statutory requirements, and there appears to be no reason not to grant the Petition to Contract the Capital Region Community Development District. For purposes of amending Florida Administrative Code Rule 42CC-1.002, a metes and bounds description of the contracted District is found in Petition Exhibit 4.

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.

ENDNOTE

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

COPIES FURNISHED:

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