

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO ESTABLISH)
THE THREE CREEKS COMMUNITY) Case No. 07-1674
DEVELOPMENT DISTRICT)
_____)

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

On June 1, 2007, a local public hearing under Section 190.005(1)(d), Florida Statutes (2006),¹ was conducted by J. Lawrence Johnston, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH). The hearing was held at the County Administrative Office, Board Room, 1000 Cecil G. Costin Senior Boulevard, Port St. Joe, 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) in this proceeding is whether the Petition to Establish the Three Creeks Community Development District (Petition) meets the criteria set forth in Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code. The local public hearing was for the purpose of gathering

information in anticipation of quasi-legislative rulemaking by FLWAC.

PRELIMINARY STATEMENT

The St. Joe Company (Petitioner) filed the Petition with the Secretary of FLWAC on March 30, 2007. It requested that FLWAC adopt a rule to establish a community development district, to be called the Three Creeks Community Development District (District), on certain property in the City of Port St. Joe (City). Prior to the filing of the Petition, the Petitioner provided for delivery of the Petition and its attachments, along with the requisite filing fee, to the City and Gulf County (County).

On April 11, 2007, the Secretary of FLWAC forwarded the Petition to DOAH for the purpose of holding the public hearing required under Section 190.005(1)(d), Florida Statutes. Petitioner then published notice of the local public hearing in accordance with Section 190.005(1)(d), Florida Statutes.

The land to be included within the proposed District is located entirely within the limits of the City. 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 forty-five days of the filing of a petition. The City and County held optional public hearings but took no action

either in favor or against the establishment of the proposed District.

The local public hearing before the ALJ was held on Friday, June 1, 2007, at 10:00 a.m., at the County Administrative Office, Board Room, 1000 Cecil G. Costin Senior Boulevard, Port St. Joe, Florida. On May 30, 2007, Petitioner pre-filed the written testimony of its witnesses: Joe Rentfro, Vice President and Project Manager for the WindMark Beach development project for the St. Joe Company; Michal Szymonowicz, Director of Financial Services for Wrathell, Hart, Hunt & Associates, LLC; Stephen A. Means P.E., Senior Vice President and Managing Principal in the Panama City Beach office of WilsonMiller, Inc.; and Tom Beck, Regional Manager, Development Planning and Approvals, for the North Florida offices of WilsonMiller, Inc. No live testimony was given at the hearing, and no members of the public appeared at the hearing.²

During the hearing, a copy of the Petition including attachments was received into evidence as Composite Hearing Exhibit A. The proofs of publication providing notice were received into evidence as Hearing Exhibit B. The pre-filed testimony and affidavits of Rentfro, Szymonowicz, Means, and Beck were received into evidence as Composite Hearing Exhibit C. A consent and joinder for the Culpeppers' property was received into evidence as Hearing Exhibit D.

The Transcript of the local public hearing was filed with DOAH on June 18, 2007. Petitioner filed a Proposed Report of Findings and Conclusions on June 18, 2007.

SUMMARY OF THE RECORD

A. Petition and Related Matters

1. The Petitioner is seeking the adoption of a rule by FLWAC to establish Three Creeks Community Development District. The District is proposed to consist of approximately 1,812.999 acres located on the Gulf of Mexico within the incorporated limits of the City. Petition Exhibit 1 is a map of the District's proposed location, and Exhibit 2 describes the metes and bounds of the external boundaries of the District.

2. The Petition states that there are no parcels within the external boundaries of the proposed District that are to be excluded from the District.

3. Petition Exhibit 3 names three owners of property within the boundaries of the proposed District: St. Joe Home Building, L.P.; St. Joe Timberland Company of Delaware, L.L.C.; and David A. and Elaine D. Freni. All three gave written consent to the establishment of the District. Petition Exhibit D is written consent to the establishment of the District by landowners Ray V. and Kelli Q. Culpepper. Together, these exhibits establish consent of all of the landowners within the boundaries of the proposed District.

4. The Petition names the five persons designated to be the initial members of the Board of Supervisors of the proposed District. Matt Fleck, Joe Rentfro, Brian Underwood, Mercedes Pineiro, and Dave Harrelson are all listed at the same address: 301 East First Street, Port St. Joe, Florida 32456. The Petition states that they are all residents of the State of Florida and citizens of the United States of America.

5. The Petition states that the name of the proposed District will be "Three Creeks Community Development District."

6. Future land uses are depicted on Petition Exhibit 4.

7. Petition Exhibit 5 shows a map of the pre-development jurisdictional wetlands and the existing sanitary sewer and water distribution systems for lands within the proposed District.

8. Petition Exhibit 6 describes the type of facilities the Petitioner expects the District to finance, construct, acquire, and install, as well as the anticipated owner and entity responsible for maintenance. Petition Exhibit 7 identifies the estimated costs of constructing those facilities. The Petition states: "Actual construction timetables and expenditures will likely vary, due in part to the effects of future changes in the economic conditions upon costs such as labor, services, materials, interest rates and market conditions."

9. Petition Exhibit 9 is the statement of estimated regulatory costs (SERC), which was prepared in accordance with the requirements of Section 120.541, Florida Statutes.

10. The SERC states that consumers purchasing property within the District will pay non-ad valorem or special assessments for certain facilities. Locating within the District is voluntary. Generally, District financing will be less expensive than maintenance through a property owners' association or capital improvements financed through developer loans.

11. 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; the Petitioner; and consumers. 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.

12. 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.

13. Administrative costs incurred by the City and County related to rule adoption will be modest. These modest costs are offset by the \$15,000 filing fee required to accompany the Petition to both the City and the County.

14. The SERC states that the proposed District will require no subsidies from the State and that benefits will include improved planning and coordination of development, which is difficult to quantify but nonetheless substantial.

15. The SERC makes no mention of the possibility that the State and its citizens may be required to subsidize the cost of insuring beachfront and coastal property in the District. Such subsidies, if required, would be paid regardless whether the proposed development proceeds as a community development district or in some other form. However, it is possible that establishment of the District would facilitate development that would not proceed without it.

16. Petition Exhibit 9 identifies Brian A. Crumbaker, Esquire, and Joseph A. Brown, Esquire, as authorized agents for the Petitioner.

17. The Petition alleges that prior to filing with FLWAC, copies were sent to the City and County, along with the required

filing fee of \$15,000 to each local government, in accordance with Section 190.005(1)(b), Florida Statutes.

18. The Petition alleges that it should be granted according to the factors listed in Section 190.005(1)(e), Florida Statutes.

19. The Petition meets all of the requirements of Section 190.005(1)(a), Florida Statutes.

B. Additional Information

20. 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 Gulf County for four consecutive weeks prior to the hearing. The notice was published in a newspaper of general paid circulation in Gulf County (*The Star*) for four consecutive weeks, on May 3, 10, 17, and May 24, 2007.

SUMMARY OF EVIDENCE AND TESTIMONY

A. Factor 1: Whether all statements contained within the Petition have been found to be true and correct.

21. Petitioner's Composite Exhibit A consists of the Petition and its attachments as filed with the Commission. Mr. Rentfro testified in his pre-filed written testimony that he had reviewed the contents of the Petition and approved its findings. Mr. Rentfro generally described certain of the exhibits to the Petition. Mr. Rentfro also indicated that

Petition Exhibit 3 should be supplemented with an additional consent. The supplemental consent was received into evidence at the hearing as Exhibit D. Mr. Rentfro testified that Petition Exhibit 3, as supplemented, was a true and correct copy of the consent and joinder of the owners of 100 percent of the lands to be included within the proposed District. Finally, Mr. Rentfro testified that the Petition and all its exhibits, as supplemented, were true and correct to the best of his knowledge.

22. Mr. Means testified in his pre-filed written testimony that he had reviewed and helped compile some of the Petition exhibits. Mr. Means generally described those Petition exhibits that he had reviewed, testified that he was unaware of any change or correction required at the time of the hearing, and that the Petition exhibits he had reviewed were true and correct. Mr. Means additionally described the services and facilities that the proposed District is expected to provide.

23. Mr. Szymonowicz testified in his pre-filed written testimony that he had prepared Petition Exhibit 8, the Statement of Estimated Regulatory Costs. Mr. Szymonowicz also testified that the SERC as submitted was true and correct to the best of his knowledge.

24. As stated in paragraph 15, supra, the SERC makes no mention of the possibility that the State and its citizens may

be required to subsidize the cost of insuring beachfront and coastal property in the District. Such subsidies, if required, would be paid regardless whether the proposed development proceeds as a community development district or in some other form. However, it is possible that establishment of the District would facilitate development that would not proceed without it. With this possible exception, the Petition and its exhibits are true and correct.

B. Factor 2: 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.

25. The State Comprehensive Plan "provides long-range policy guidance for the orderly social, economic and physical growth of the State" by way of 25 subjects, and numerous goals and policies. The evidence was that, from a planning perspective, three subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District as do the policies supporting those subjects.

26. 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.

27. Mr. Beck reviewed the proposed District in light of the requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes. He stated that the proposed District will

have the fiscal ability to provide services and facilities and will help provide infrastructure in a fiscally responsible manner in an area which can accommodate development within a designated growth area in the City.

28. Policy 1 under Subject 15 promotes efficient development activities in areas which will have the capacity to service new populations and commerce. Mr. Beck stated that the proposed District will be a vehicle to provide high quality services in an efficient and focused manner over the long term.

29. Subject 17 of the State Comprehensive Plan, Public Facilities, promotes efficient and orderly financing of new facilities and particularly provides in Policy 3 that the cost of new public facilities should be allocated to existing and future residents on the basis of benefits received and in Policy 6 provides that fiscally sound and cost-effective techniques for financing public facilities should be encouraged. Mr. Beck testified that the District will further these goals and related policies.

30. 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. Mr. Beck testified 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 community facilities authorized under Chapter 190, Florida Statutes, subject to, and not inconsistent with, the local government comprehensive plan and land development regulations. Additionally, the District meetings are publicly advertised and are open to the public so that all District property owners and residents can be involved in planning for improvements.

31. Mr. Beck also testified with regard to several relevant policies under Subject 25, including Policy 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, and in accord therewith, Chapter 190, Florida Statutes, provides the proposed District with operational authority to deliver basic community services and capital infrastructure. 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 with the local general purpose government. Policy 6 encourages citizen participation in all levels of policy development, planning and operations. Under Chapter 190, Florida Statutes, the District is required to eventually transition to a resident-elected Board of Supervisors;

regardless of the method of election, the Board of Supervisors must convene meetings in accordance with Florida's government-in-the-sunshine laws.

32. Mr. Beck also reviewed the proposed District in light of the requirements of the City's Comprehensive Plan. Mr. Beck stated that under Chapter 190, Florida Statutes, the District is prohibited from acting inconsistently with the local government comprehensive plan and identified certain elements of the City's Comprehensive Plan that would relate to and be consistent with the establishment of the District.

33. The evidence did not mention or discuss Policy (b)3. under Subject 8, Coastal and Marine Resources, which states: "Avoid expenditure of state funds that subsidize development in high-hazard coastal areas."

34. Based on the pre-filed testimony and exhibits in the record, the proposed District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan, with the possible exception of Policy (b)3. under Subject 8, Coastal and Marine Resources, assuming the proposed development is in the coastal high-hazard area.

35. Based on the pre-filed testimony and evidence in the record, the proposed District will not be inconsistent with any applicable element or portion of the City's Comprehensive Plan.

C. Factor 3: 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.

36. The proposed District will include approximately 1,812.999 acres located within the incorporated limits of the City. From engineering, financial, 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.

37. Based on the pre-filed testimony and evidence in the record, Petitioner has demonstrated that the proposed District will be of sufficient size, sufficiently compact, and sufficiently contiguous to be developed as a single functionally interrelated community.

D. Factor 4: 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.

38. It is intended that the District will construct or provide certain infrastructure improvements as outlined in the Petition.

39. Installation and maintenance of infrastructure systems and services by the proposed District is expected to be paid through the imposition of special assessments. Use of such

assessments will ensure that the real property benefiting from District services is the same property which pays for them.

40. Mr. Szymonowicz and Mr. Beck testified in their pre-filed written testimony that from a financial, management, and planning perspective, the proposed District is the best and most practical alternative to provide the proposed improvements to accommodate the planned development within the lands to be included within the District.

41. Three alternatives to the use of the proposed District were identified. First, the City could provide the facilities and services. Second, facilities and services could be provided by the developer of the lands within the District. The third alternative identified is a property or homeowner's association ("POA" or "HOA").

42. The proposed District is preferable to the City as provider of the proposed facilities and services because, while both are capable of acting as stable entities capable of qualifying for low-cost financing long term, the use of the District restricts the costs and burdens of providing the improvements to the District and the property owners within the District that will directly benefit from the improvements.

43. The proposed District is preferable to the developer as provider of the proposed facilities and services because the developer is not a perpetual entity that would ensure long-term

maintenance and management of the proposed facilities and services. Also, the developer, as a private entity, is not subject to the same safeguards as the proposed District, which is a public entity. For instance, there is a difference with regard to competitive bidding of construction contracts and public access to meetings and documents. The developer would also be restricted to private financing and would lack access to the low-cost financing options available to the District.

44. The proposed District is preferable to a POA or HOA because, although a POA or HOA could provide long-term maintenance, they both lack access to the low-cost financing available to the District in the municipal bond market and they are not subject to the safeguards imposed on the District as a public entity.

45. Only a community development district combines two important qualities for the benefit of the planned development. First, the District will be a stable entity capable of providing the proposed services and facilities long-term through low-cost financing available as a public entity, which will restrict the cost of the facilities and services to only those directly benefiting from the proposed services and facilities. Second, the District allows the property owners and eventually residents to control the Board and thereby the timing and extent of facility and service improvements and maintenance.

46. 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. Factor 5: 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.

47. 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. None of the proposed services or facilities are presently being provided by another entity for the lands to be included within the District.

48. 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. Factor 6: Whether the area that will be served by the District is amenable to separate special-district government.

49. Subject to the discussion on the other factors, from an engineering, financial, and management perspective, the area of land to be included in the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed and become a functionally interrelated community.

The community to be included in the District has need for certain basic infrastructure systems, and the proposed District provides for an efficient mechanism to oversee the installation of these improvements. The area that will be served by the District is amenable to separate special-district government.

APPLICABLE LAW

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

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

52. The evidence indicates 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 Gulf County and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

53. The evidence indicates that Petitioner has met the requirements of Section 190.005(1)(d), Florida Statutes, regarding the submission of the Petition and filing fee requirements.

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

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

56. Except for the possibility discussed in paragraph 15, supra, that the SERC omits mention of the possibility that the State and its citizens may be required to subsidize the cost of insuring beachfront and coastal property in the District, the evidence indicates that all statements contained within the Petition as corrected and supplemented at the hearing are true and correct.

57. The evidence indicates that the establishment of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan (with the possible exception of Policy (b)3. under Subject 8, Coastal and Marine Resources, cited in paragraphs 33-34, supra) or with the effective City Comprehensive Plan.

58. The evidence indicates 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.

59. The evidence indicates 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.

60. The evidence indicates 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.

61. The evidence indicates that the area to be served by the proposed District is 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 that subparagraph. Based on the record evidence, the Petition appears to meet all statutory requirements, and there appears to be no compelling reason not to grant the Petition and establish the proposed Three Creeks Community Development District by rule, except possibly the failure to address the possibility that the State and its citizens may be required to subsidize the cost of insuring beachfront and coastal property in the District.

DONE AND ENTERED this 28th day of June, 2007, in
Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of June, 2007.

ENDNOTES

- 1/ All references are to Florida Statutes (2006).
- 2/ One member of the public arrived late to the hearing and asked questions of the Petitioner's attorney after the hearing had concluded. This person appeared satisfied with the answers given by the attorney and declined to file written comments post-hearing, as allowed by Florida Administrative Code Rule 42-1.012(3).

COPIES FURNISHED

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