

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR RULE)
CREATION - BEXLEY COMMUNITY) Case No. 07-3400
DEVELOPMENT DISTRICT I)
_____)

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 Wesley Chapel, Florida, on November 9, 2007, before Donald R. Alexander, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Susan E. Johnson-Velez, Esquire
Fowler White Boggs Banker P.A.
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Tampa, Florida 33601

STATEMENT OF THE ISSUE

The issue is whether the Petition to Establish the Bexley Community Development District I (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 July 2, 2007, NNP-Bexley, Ltd. (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, was filed with Pasco County (County), where the proposed community development district (District) will be located. The County did not elect to have a local hearing.

On July 20, 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 November 9, 2007, in Wesley Chapel, Florida.² Notice of the public hearing was published in accordance with Section 190.005(1)(d), Florida Statutes. On October 3, 2007, Petitioner pre-filed the testimony of its three witnesses. On November 5, 2007, Petitioner filed the Supplemental Testimony of John McKay, which changed his response to Question 13 by indicating that, at the request of the Commission, paragraph 2 on page 2 of the Statement of Estimated Regulatory Costs (SERC) had been deleted.

At the local public hearing, Petitioner presented the testimony of Rhonda Scott Brewer, Vice-President of Operations

for Newland Communities, LLC, which oversees the Bexley Ranch Development of Regional Impact (DRI); John McKay, Director of Planning and Compliance with Rizzetta & Company, Inc., and accepted as an expert; and Brian G. Surak, Project Manager for Heidt & Associates, Inc. and accepted as an expert. No members of the public appeared at the hearing. Petitioner also offered Petitioner's Exhibits A-H, which were received into evidence. Composite Exhibit A is the Petition and attached Petition Exhibits 1-11; Exhibit B is a revised Future Land Use Map of the County Comprehensive Plan (Plan) showing the current land use designations in the area where the District will be located; Exhibit C is a copy of the notice published in the Florida Administrative Weekly; Exhibit D is the affidavit of publication in a local newspaper; Exhibit E is a copy of County Ordinance No. 06-10, dated March 28, 2006, which changed the land use for the areas in and around the proposed District; Exhibit F is a letter dated August 8, 2007, from the Department of Community Affairs to the Commission; Exhibit G is the SERC, as revised, prepared by Petitioner; and Composite Exhibit H is the prefilled testimony of witnesses Brewer, McKay, and Surak, as supplemented.

The Transcript of the local public hearing was filed on November 19, 2007. Petitioner's Proposed Report of Findings and

Conclusions was filed on December 3, 2007, and 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 2,528.306 acres located within the unincorporated part of the County. The proposed District is located just north of the Hillsborough-Pasco County boundary line and State Road 54 and west of U.S. Highway 41. Its western boundary adjoins the Suncoast Parkway. The nearest community is Land O' Lakes, which is a few miles north of the proposed District.

2. The property within the District is owned by Petitioner (a Florida limited partnership) and Bexley Ranch Land Trust and is part of a unified plan of development for which a development plan has been approved by the County as part of the Bexley Ranch DRI. Petition Exhibit 4 is the Consent and Joinder of Landowners to Establish the Bexley Community Development District I.

3. The Petition indicates that the five persons designated to serve as initial members of the Board of Supervisors are Rhonda Scott Brewer, Rick Harcrow, Dean Hill, Galen Custard, and

Bryan Bexley, and that each member is a resident of the State of Florida and a citizen of the United States.

4. Petition Exhibit 5 describes the major water, wastewater, and reuse trunk lines within the proposed District, while Petition Exhibit 6 provides the proposed construction timetable and cost estimates during the years 2008-2009 and 2009-2010. The total estimated cost of the infrastructure facilities and services which are presently expected to be provided to the lands within the District is \$263,373,404.00.

5. Petition Exhibit 7 is the SERC, which indicates that it was prepared in accordance with Section 120.541, Florida Statutes.

6. Petition Exhibit 8 is a map taken from the Future Land Use Map of the Plan and shows the future land use categories for the property.

7. Petition Exhibit 9 identifies Susan E. Johnson-Velez, Esquire, and Fowler White Boggs Banker P.A. as authorized agents for Petitioner.

8. A copy of the Bexley Ranch DRI and accompanying Development Order adopted by County Resolution 06-181 on March 28, 2006, are included in Petition Exhibit 10.

9. Finally, Petition Exhibit 11 is a copy of the Development Agreement between the County and Bexley Ranch Land Trust, L.S.B. Corporation, and Newland Communities, LLC (which

will supervise the development of the District) for the Bexley Ranch DRI.

10. The sole purpose of this proceeding was to consider the establishment of the District as proposed by Petitioner. 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 part 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. Petitioner's Composite Exhibit A consists of the Petition and attached exhibits as filed with the Commission. Rhonda Scott Brewer, who is Vice-President of Operations for Newland Communities, LLC, testified that she had reviewed the contents of the Petition and that one correction should be made. Specifically, Ms. Brewer stated that Petition Exhibit 8, which is the Plan map of the land use designations, should be corrected to reflect the proper land use designation for the property included within the proposed District. The correct map was substituted for the original map and was received in evidence as Exhibit B. With this substitution, the witness testified that the information contained in the Petition was true and correct to the best of her knowledge.

12. Mr. McKay is a certified public accountant whose firm serves as financial advisor and manager for more than 120 community development districts around the State. Besides preparing the SERC, the witness reviewed the Petition and all attached exhibits. To the best of his knowledge and belief, all matters contained in the Petition and attached exhibits were true and correct.

13. Finally, Mr. Surak, a professional engineer, oversees the design and construction of infrastructure necessary for land development, including community development districts. Mr. Surak prepared Petition Exhibits 1, 2, 5, and 6 and stated that to the best of his knowledge and belief, the Petition and attached Exhibits 1, 2, 5, and 6 were true and correct.

14. 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.

15. Mr. Surak testified that he reviewed the Petition for consistency with the County's Plan. He indicated that the proposed District is not inconsistent with any applicable provision of that Plan.

16. According to Mr. Surak, several provisions of the local Plan indicate that the County looks to community

development districts to provide alternative funding for public infrastructure and community services. For example, he stated that Future Land Use Element (FLUE) Policy 1.2.7 of the Plan requires that all wetlands be deeded to a mandatory homeowners' association or community development district, as required by the County Land Development Code. Also, FLUE Policy 1.4.1 relating to Subdivision Standards provides that the County shall maintain the viability of established and future residential neighborhoods by continuing to enforce Land Development Code provisions relating to maintenance and use of common-space areas and neighborhood parks through homeowners' associations and community development districts. Finally, he cited "CON" Policy 1.2.6, which provides that the County will require environmental management plans to address the operation and maintenance of conservation easements, and that these shall be the responsibility of the homeowners' association or community development district. He added that the proposed District is consistent with each of these provisions.

17. In a letter to the Commission dated August 8, 2007, the Department of Community Affairs stated that it had reviewed the Petition and information presented in the application and identified no potential inconsistency with Chapter 163, Florida Statutes.

18. Ms. Brewer testified that the adoption of the amendment to the Plan, which changed the land use designations on the District property, results in the development being consistent with the Plan.

19. Finally, the Petition states that the establishment of the District and all land uses and services planned within the District are consistent with the State Comprehensive Plan codified in Chapter 187, Florida Statutes, and all applicable elements or portions of the County's Plan.

20. 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 County 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.

21. According to Mr. Surak, from an engineering 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 as a single functionally interrelated community.

22. Mr. McKay further indicated that from economic and management perspectives, the proposed District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional, interrelated community.

23. 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.

24. Ms. Brewer testified that the proposed District will participate in the acquisition or construction of master roads and streets, infrastructure, landscaping, signage and walls, parks and recreational facilities, an irrigation reservoir, and offsite improvements. This is evidenced by Petitioner's Exhibit 6, which indicates Petitioner's present intention to construct or provide certain infrastructure improvements as outlined in the Petition.

25. Mr. McKay stated that the proposed District will issue bonds to finance these services and improvements. These bonds will be repaid from the proceeds of special assessments on benefited property within the proposed District. He added that the use of special assessments will ensure that those benefiting from these services help pay for those services.

26. According to Mr. McKay, one alternative to the use of a community development district, as proposed, is a homeowners' association. However, he pointed out that a community

development district is preferable to a homeowners' association because a homeowners' association does not have the ability to finance the facilities. Also, the local water management district (presumably the Southwest Florida Water Management District) prefers community development districts to homeowners' associations. Mr. McKay further explained that the proposed District is a better alternative from a governmental accountability perspective because residents have a focused unit of government, ultimately under residential control, with limited responsibilities, and it is responsive to the needs of its residents. In addition, a community development district can impose, collect, and enforce assessments like property taxes. This provides a greater certainty of assuring that needed funds are available.

27. Mr. McKay testified that unlike homeowner associations, a community development district is subject to the same statutes and regulations applicable to other local governments. These statutes include the Public Records Law in Chapter 119, Florida Statutes, the Government in the Sunshine Law in Chapter 286, Florida Statutes, and the rulemaking procedures codified in Chapter 120, Florida Statutes. He added that compliance with these laws ensures the ability of residents, landowners, and the general public to participate in the decision-making process.

28. Mr. Surak also testified that from an engineering perspective concerned with the long-term management and maintenance of facilities and services, the proposed District is the best alternative for providing long-term, self-sufficient development.

29. 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.

30. Mr. Surak testified that from an engineering perspective, there is no planned duplication of facilities and services. He stated that the facilities and services to be provided will not duplicate any facilities and services provided by the County or the region. He added that the proposed District will supply the additional facilities and services necessary for development that are not currently provided by local general-purpose government or other government entities.

31. From an economic analysis perspective, Mr. McKay indicated that the services and facilities to be provided by the proposed District will not be incompatible with the uses of the existing local and regional facilities and services. He further

stated that the master stormwater management, potable water, and sanitary sewer systems expected to be constructed by the proposed District are not currently provided. He added that heightened public oversight also ensures that duplication and incompatibility are avoided.

32. Ms. Brewer testified that certain roads and the water and sewer facilities to be constructed by the District will be owned and maintained by the County.

33. 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.

34. Witness McKay indicated that from a management perspective, the land area within the proposed District is well-suited to the provision of the proposed services and facilities and that the size, compactness, and contiguity of the proposed District make it amenable to separate special district governance.

35. Mr. McKay further added that from an economic perspective, it is expected that the proposed District will levy assessments and fees on the landowners and residents within the District who will benefit from the improvements in order to fund

the construction of the planned improvements. He also indicated that the District will levy non-ad valorem or special assessments to fund the operations and maintenance of the respective facilities and services of the District. Finally, he stated that the area to be served is amenable to separate special district government and is well-suited for the proposed services and facilities.

36. From an engineering perspective, Mr. Surak testified that the proposed District will constitute an efficient mechanism for providing necessary capital improvements for development of the area.

37. The testimony is that from economic, management, and engineering 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. McKay, who prepared the SERC, which is found in Petition Exhibit 7, it contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the District -- the State of Florida and its citizens, the County and its citizens, Petitioner, and current and future property owners.

41. The SERC 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 additional local government reports filed annually; that the proposed District will require no subsidies from the State; and that the benefits will include the possibility of increased sales tax revenues, a positive impact on property values and ad valorem taxes, and impact fee and development permit revenues, all of which are difficult to quantify but potentially substantial.

42. The SERC also states that administrative costs incurred by the 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 the County.

43. The SERC further provides that consumers will pay non-ad valorem or special assessments for certain facilities and

that locating within the District is voluntary. It also states that benefits to consumers in the area within the District will include a higher level of public services and amenities than might otherwise be available 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 that 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. Petitioner's Exhibit A, page 3, indicates that Petitioner has complied with the provisions of Section 190.005(1)(b)1., Florida Statutes, in that the County was provided copies of the Petition and was 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 Tampa Tribune, Pasco County Edition, a newspaper of general paid circulation in the County, for four consecutive weeks on October 12, 19, 26, and November 2, 2007.

47. No public comment was received during the hearing and no comments were filed by any person during the ten-day period after 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 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 Pasco 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.

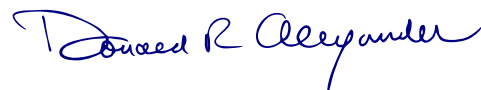
58. The evidence was that the community development services and facilities of the proposed District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. § 190.005(1)(e)5., Fla. Stat.

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 Bexley Community Development District I 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 18th day of December, 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 18th day of December, 2007.

ENDNOTES

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

2/ The local public hearing was originally scheduled to be conducted on October 8, 2007. At the request of Petitioner, however, it was renoticed and readvertised for November 9, 2007.

COPIES FURNISHED:

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