

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO ESTABLISH)
THE WIREGRASS COMMUNITY) Case No. 08-3029
DEVELOPMENT DISTRICT)
_____)

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

Notice was given and on August 15, 2008, a local public hearing was conducted in Wesley Chapel, Florida, pursuant to Section 190.005(1)(d), Florida Statutes, by J. Lawrence Johnston, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Mark K. Straley, Esquire
John M. Vericker, Esquire
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The issue before the Florida Land and Water Adjudicatory Commission ("FLWAC") in this proceeding is whether to grant the Petition to Establish Wiregrass Community Development District (the "Petition") dated April 15, 2008. The local public hearing was conducted for the purpose of gathering information in anticipation of rulemaking by FLWAC.

PRELIMINARY STATEMENT

Locust Branch, LLC (the "Petitioner") filed the Petition with the Secretary of FLWAC on April 18, 2008. It requested that FLWAC adopt a rule to establish a uniform community development district, to be known as the Wiregrass Community Development District (the "District"), on certain property situated wholly in the unincorporated area of Pasco County, Florida (the "County"). Simultaneously with filing the Petition, the Petitioner delivered the Petition and its exhibits, along with the requisite filing fee, to the County.

The land within the external boundaries of the proposed District is neither contained within nor contiguous to the boundaries of any municipality. Section 190.005(1)(c), Florida Statutes, provides that the county containing all or a portion of the lands within the proposed District has the option to hold a public hearing within forty-five (45) days of the filing of the Petition. The County opted not to hold such a hearing.

On June 18, 2008, the Secretary of FLWAC certified that the Petition contained all required elements and forwarded it to DOAH for the purpose of holding the public hearing required under Section 190.005(1)(d), Florida Statutes.

The local public hearing was held at 9:00 a.m., on August 15, 2008, at the offices of Rizzetta & Company, Inc., located at 5844 Old Pasco Road, Suite 100, Wesley Chapel,

Florida. Petitioner published the notice of the hearing in accordance with Section 190.005(1)(d), Florida Statutes.

At the local public hearing, Petitioner presented the testimony of John H. McKay, Director of Planning and Compliance for Rizzetta & Company, Inc., the proposed District's management and fiscal consultant, an expert in district management; Lawrence F. Kistler, Operations Manager, Land Development for King Engineering Associates, Inc., the proposed District's engineer, an expert in civil engineering and public infrastructure; David J. Evans, President of Locust Branch, LLC, on behalf of the Petitioner; and William H. Porter, President of Wiregrass Ranch, Inc., a representative of Wiregrass Ranch, Inc., as one of the landowners and as a representative for the family trust and other landowners within the proposed community development district. No one from the public or the County appeared at the public hearing.

At the local public hearing, Petitioner introduced the following Exhibits into evidence:

Exhibit 1

Petition to Establish Wiregrass Community Development District, including revised exhibits as of May 28, 2008.

Exhibit 2

Pre-Filed Testimony of John H. McKay.

Exhibit 3

Pre-Filed Testimony of David J. Evans.

Exhibit 4

Pre-Filed Testimony of Lawrence Kistler.

Exhibit 5

Affidavit of Publication from the St. Petersburg Times newspaper, providing evidence that the public hearing notice for this hearing was published on July 18, 2008, July 25, 2008, August 1, 2008, and August 8, 2008, in accordance with the requirements of Section 190.005(1)(d), Florida Statutes.

Exhibit 6

Copy of Florida Administrative Weekly, Volume 34, Number 30, dated July 25, 2008, reflecting publication of local public hearing by FLWAC.

On August 21, 2008, Petitioner filed the Transcript of the local public hearing and a Proposed Report of Administrative Law Judge to FLWAC, which has been considered and used in the preparation of this Report.

SUMMARY OF THE REPORT

A. Overview

1. Petitioner is seeking the adoption of a rule by FLWAC to establish a community development district ("CDD") consisting of approximately 3,974.216 acres located within the unincorporated boundaries of the County. The name of the proposed District is the Wiregrass Community Development District.

2. There are no parcels within the external boundaries of the proposed District that are to be excluded from the District.

3. The estimated cost of the infrastructure facilities and services that are currently expected to be provided to the lands within the District is included in the Petition.

4. The sole purpose of this proceeding is to consider the establishment of the District as proposed by the Petitioner. Information relating to the managing and financing of the service-delivery function of the proposed District was considered. This report summarizes the relevant and material evidence relating to Section 190.005(e)1.-6., Florida Statutes.

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

5. Petitioner's Exhibit 1 consists of the Petition and its exhibits filed with FLWAC. Mr. Evans testified that the Petition and its exhibits were true and correct to the best of his knowledge.

6. Mr. Kistler testified that all the facts set forth in the Petition were true and correct to the best of his knowledge. Mr. Kistler also testified that the construction cost estimates set forth in Exhibit F are true and correct to the best of his knowledge.

7. Mr. McKay testified that he had prepared Exhibit H to the Petition, the Statement of Estimated Regulatory Costs (SERC).

8. The Petition included written consent to establish the District from the owner or owners of one hundred percent of the real property located within the lands to be included in the proposed District.

9. The evidence indicates that the Petition and its exhibits are true and correct.

C. 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.

10. Mr. Kistler reviewed the proposed District in light of the requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes, and the Pasco County Comprehensive Plan.

11. 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. From a planning perspective, two subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District, as do the policies supporting those subjects.

12. Subject 15, Land Use, recognizes the importance of locating development in areas with the fiscal ability and

service capacity to accommodate growth. The evidence indicates that the proposed District will have the fiscal ability to provide services and facilities, and will help provide infrastructure in a fiscally responsible manner.

13. Subject 25, Plan Implementation, provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination. The evidence indicates 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's 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 the improvements. Finally, Section 189.415, Florida Statutes, requires the District to file and update public facilities reports with the County or City, which they may rely upon in making any revisions to the local comprehensive plan.

14. From a financial perspective two subjects of the State Comprehensive Plan apply directly to the establishment of the proposed District, as do the policies supporting those subjects.

15. Subject 17, Public Facilities, provides that the State shall protect substantial investments in public facilities, and plan for and finance new facilities to serve residents in a timely, orderly, and efficient manner. The evidence indicates that the proposed District will be consistent with this element because the District will (i) plan and finance the infrastructure systems and facilities needed for the development of lands within the District; (ii) be a stable, perpetual unit of local government and to maintain the infrastructure servicing the lands within the District; and (iii) allow growth within the District to pay for itself at no cost to Pasco County.

16. Subject 20, Governmental Efficiency, provides that governments shall economically and efficiently provide the amount and quality of services required by the public. The evidence indicates that the proposed District will be consistent with this element because the proposed District will economically and efficiently finance and deliver those public services and facilities as needed by the District's residents and property owners. The evidence indicates that the proposed District will be professionally managed, financed, and governed by those whose property directly receives the benefits of the services and the facilities provided. Creating the District does not burden the general taxpayer with the costs for the services or facilities inside the proposed District.

17. Based on the testimony and exhibits in the record, the evidence indicates that the proposed District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan or the Pasco County Comprehensive Plan.

D. 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.

18. Mr. Kistler testified that all of the land in the proposed District is part of a Master Planned Unit Development approved by the County.

19. Mr. Kistler testified that the land within the District is of sufficient size, compactness, and contiguity to be developable as a functional interrelated community.

20. Mr. McKay testified that the proposed District covers approximately 3,974.216 acres of land and that it is of sufficient size and is sufficiently compact and contiguous to be developed as a functionally interrelated community.

21. Mr. McKay testified that the proposed District is sufficiently compact to function as one functionally interrelated community because it can finance, construct, and maintain the requisite improvements in a time and cost-efficient manner on a long-term basis.

22. Mr. McKay testified that, from an economic perspective, the property within the proposed District is in a

manner that lends itself to the efficient design, construction, and maintenance of infrastructure and efficient governance.

E. 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.

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

24. Installation and maintenance of infrastructure systems and services by the proposed District are 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 that pays for them.

25. Mr. McKay testified that, in his opinion, establishing the proposed District is the best way to assure that growth within the area encompassed by the District pays for itself.

26. Mr. McKay testified that the proposed District will construct certain public infrastructure and community facilities, which will be needed by the property owners and residents of the proposed District. The community development district mechanism allows the community development process to take care of its own needs. It restricts costs to those who benefit from the services provided.

27. Mr. McKay testified that non-ad valorem or special assessments on the property within the proposed District are expected to be used to repay any debt that is incurred. Expenses for operations and maintenance are expected to be paid through maintenance assessments. Use of non-ad valorem and maintenance assessments or user fees ensures that the property receiving the benefit of district services is the same property to pay for those services. There are no effective alternatives to provide for such financing structures.

28. Mr. McKay testified that a homeowners' association (HOA) and/or developer would not have the ability to finance the facilities or to provide long-term maintenance for any facilities.

29. Mr. McKay testified that establishment of the District would result in the lowest cost to landowners and to homeowners as compared to other alternatives.

30. The community development district allows for the independent financing, administration, operation, and maintenance of the land within such a district. The community development district allows district residents to ultimately completely control the District.

31. From planning, economic, engineering, and special district management perspectives, 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.

F. 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.

32. Mr. McKay testified 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 because: (i) the facilities proposed by the District do not currently exist in the area; and (ii) once the improvements are constructed, there will not be duplication in services.

33. Mr. Kistler testified that, in his opinion, the proposed services to be developed within the proposed District are compatible with the uses of the existing community because those services and facilities are necessary but not currently available on a centralized basis within the proposed District.

34. The evidence indicates that none of the proposed services or facilities is currently being provided by another entity for the lands to be included within the proposed District.

35. The evidence indicates that the community development services and facilities of the proposed District will not duplicate any existing local or regional services or facilities.

36. The evidence indicates that the facilities proposed by the proposed District are consistent with similar infrastructure facilities that are currently servicing developments of a similar nature.

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

37. As cited previously, from planning, economic, engineering, and special-district management perspectives, the evidence indicates that 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 and become a functionally interrelated community. The community to be included in the proposed District needs certain basic infrastructure systems, and the proposed District provides for an efficient mechanism to oversee the construction and installation of these improvements.

38. From planning, engineering, economic, and management perspectives, the evidence indicates that the area that will be served by the proposed District is amenable to separate special-district government.

H. Other requirements imposed by statute or rule.

39. 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 FLWAC.

Elements of the Petition

40. The Commission has certified that the Petition to Establish the Wiregrass Community Development District has all required elements, as defined by Section 190.005(1)(a), Florida Statutes.

Statement of Estimated Regulatory Costs (SERC)

41. The SERC contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the proposed District--the State of Florida and its citizens, the County and its citizens, the Petitioner, residents and consumers.

42. Beyond administrative costs related to rule adoption, the evidence indicates that the State and its citizens will only incur minimal costs from establishment of the proposed District. These costs are related to the incremental costs to various agencies of reviewing periodic additional local government reports. The proposed District will require no subsidies from the State. Benefits will include improved planning and coordination of development, which are difficult to quantify but nonetheless substantial.

43. The proposed District's debts and obligations will not become a State or County obligation.

44. Administrative costs incurred by the County related to rule adoption will be modest. The costs are offset by the \$15,000 filing fee paid by the Petitioner to the County.

45. Benefited property owners within the proposed District will pay non-ad valorem or special assessments that will be used to repay bonds issued to finance capital improvements within the District. Locating within the District is voluntary. Generally, the evidence indicates that the District financing will be less expensive than maintenance through an HOA or capital improvements financed through developer loans.

46. There is the potential for increase in State sales tax. Also, impact fee and development permit revenue is expected to be generated by private development within the District, which would increase local revenues.

47. 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. The evidence indicates that it meets all requirements of Section 120.541, Florida Statutes.

Other Requirements

48. The evidence indicates that the Petitioner has complied with the provisions of Section 190.005(1)(b), Florida Statutes, in that the County was provided a copy of the Petition and was paid the requisite filing fee.

49. Pursuant to Section 190.005(1)(d), Florida Statutes, notice of the public hearing was advertised on July 18, 2008, July 25, 2008, August 1, 2008, and August 8, 2008, in the St. Petersburg Times, a newspaper of general paid circulation in the County, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. The published notices gave the time and place for the hearing; a description of the area to be included within the District, including a map showing the land to be included within the District; and other relevant information. The advertisement was published as a display advertisement, not in the portion of the newspaper where legal notices and classified advertisements appear.

Public Comment During the Hearing

50. No member of the public was present, nor was any public comment received at the hearing.

51. No representative of the County appeared at the hearing, nor was any written comment received from the County.

APPLICABLE LAW

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

53. The proceeding was properly noticed pursuant to Section 190.005, Florida Statutes, by publication of an

advertisement in a newspaper of general paid circulation in Pasco County, and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

54. The evidence indicates that the Petitioner has met the requirements of Section 190.005, Florida Statutes, regarding the submission of the Petition and has satisfied the filing fee requirements.

55. The Petitioner bears the burden of establishing that the Petition meets the relevant statutory criteria set forth in Section 190.005(1)(e)1-6, Florida Statutes.

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

57. The evidence was that all statements contained within the Petition are true and correct.

58. 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.

59. 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.

60. 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.

61. 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.


62. The evidence was 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 upon the record evidence, the Petitioner has met all statutory requirements and there appears to be no reason not to grant the Petition and establish the proposed Wiregrass Community Development District by rule. For purposes of drafting such a rule, a metes and bounds description of the proposed Wiregrass Community Development District can be found as Petition Exhibit B. Also, the five persons designated to serve as the initial members of the Board of Supervisors of the

Wiregrass Community Development District are identified in Exhibit D of the Petition.

DONE AND ENTERED this 28th day of August, 2008, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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