

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: AMENDED PETITION TO)
MERGE THE SEVEN OAKS COMMUNITY)
DEVELOPMENT DISTRICT I AND THE) Case No. 09-2893
SEVEN OAKS COMMUNITY)
DEVELOPMENT DISTRICT II)
_____)

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 July 16, 2009, before Donald R. Alexander, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Tracy J. Robin, Esquire
Straley & Robin
100 East Madison Street, Suite 300
Tampa, Florida 33602-4703

STATEMENT OF THE ISSUE

The issue is whether the Amended Petition to Merge the Seven Oaks Community Development District I and the Seven Oaks Community Development District II (Amended Petition) meets the applicable criteria set forth in Chapter 190, Florida Statutes (2008),¹ and Florida Administrative Code Rule Chapter 42-1.² 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 June 16, 2008, Petitioners, Seven Oaks Community Development District I (District I) and Seven Oaks Community Development District II (District II), two existing community development districts, filed their Petition with the Secretary of the Commission seeking to merge the two entities into a new community development district known as Seven Oaks Community Development District.³ 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 new district will be located. The County did not elect to have a local hearing.

After a Notice of Insufficiency and Request for Additional Information was issued by the Commission on August 1, 2008, a first, second, and third set of Supplemental Exhibits were submitted by Petitioners on August 27, 2008, January 21, 2009, and April 6, 2009, respectively. On May 5, 2009, 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 July 16, 2009, in Wesley Chapel, Florida. Notice of the public hearing was published in accordance with Section 190.005(1)(d), Florida

Statutes. On July 9, 2009, Petitioners pre-filed the testimony of their three witnesses.

On July 16, 2009, Petitioners filed an Amended Petition, which amended their original request by asking that in lieu of establishing a new district, that District II be merged into District I, with District I becoming the surviving district. The Amended Petition further requested that the name of the surviving district be changed from Seven Oaks Community Development District I to Seven Oaks Community Development District. This change was authorized by an amendment to Section 190.046(3), Florida Statutes, which became effective on July 1, 2009, and provided the option, when merging two districts, of creating a new district or for one of the two merged districts to be the surviving district. See Ch. 2009-142, Laws of Fla. Prior to the change in the law, the only option available when merging two districts was to create a new district. At the hearing, counsel represented that copies of the Amended Petition were being "overnighted" that day to both the Commission and the County. Attached to the Amended Petition are Petition Exhibits A through J, some of which duplicate other exhibits received in evidence.

At the local public hearing, Petitioners presented the testimony of William P. Bahlke, a professional engineer with Heidt & Associates, Inc., who serves as project engineer and was

accepted as an expert; William E. Parsons, vice-chair of the Board of Supervisors of Districts I and II; and John H. McKay, Director of Planning and Compliance with Rizzetta & Company, Inc., and accepted as an expert. No members of the public appeared at the hearing.

Besides the information submitted to the Commission in response to the Notice of Insufficiency and Request for Additional Information during the preliminary review process, Petitioners offered Hearing Exhibits 1 through 9, which were received into evidence. Exhibit 1 is the Third Amended Merger Agreement dated July 15, 2009; Exhibit 2 is Resolution No. 2009-13 adopted by District I on July 15, 2009, which approved the Third Amended Merger Agreement; Exhibit 3 is Resolution No. 2009-15 adopted by District II on July 15, 2009, which approved the Third Amended Merger Agreement; Exhibit 4 is a Summary of Bond Issues for both Districts I and II, which totaled \$36,315,000 as of May 2, 2009; Exhibit 5 is the affidavit and pre-filed testimony of John H. McKay; Exhibit 6 is the affidavit and pre-filed testimony with attachments of William Parsons; Exhibit 6 is the affidavit and pre-filed testimony of William P. Bahlke; Exhibit 8 is the Notice of Filing Affidavit of Publication of the local public hearing in the St. Petersburg Times, Pasco County Edition, on June 18 and 25 and July 2 and 9, 2009; and Exhibit 9 is a copy of House Bill 821, which is

engrossed in Chapter 2009-142, Laws of Florida. Petitioners also offered into evidence the Amended Petition, with attached Exhibits A through J, and requested that it be marked as Hearing Exhibit 5. While the Transcript (page 21) correctly reflects that Exhibit 5 is the affidavit and prefiled testimony of witness McKay, the list of exhibits prepared by the court reporter on page 2 of the Transcript identifies Exhibit 5 as the Amended Petition. To avoid confusion, the Amended Petition, with attachments, has been numbered as Hearing Exhibit 10.

At the local hearing, Petitioners' counsel represented that an incorrect notice had been initially published by the Commission in the Florida Administrative Weekly. Therefore, a new notice was published by the Commission on July 17, 2009. Because of this, at counsel's request, the record in this case was kept open for an additional thirty days, or until August 16, 2009. (Normally, the record would have been kept open for ten days after the close of the hearing. See Fla. Admin. Code R. 42-1.012(3).) No written communications were filed by any person in response to the second notice.

The Transcript of the local public hearing was filed on August 21, 2009. On the same date, Petitioners filed a proposed Report to the Florida Land and Water Adjudicatory Commission, which has been considered in the preparation of this Report.

SUMMARY OF THE RECORD

A. Petition Contents and Related Matters

1. Petitioners are seeking the adoption of a rule by the Commission to merge Districts I and II, which will consist of approximately 1,773.422 acres located entirely within the unincorporated part of the County. See Amended Petition Exhibit A. The merged District is located just north of the Hillsborough-Pasco County boundary line. Its southern boundary intersects and/or adjoins State Road 56, its western boundary adjoins Intrastate Highway 75, and its eastern boundary adjoins County Road 581. The nearest community appears to be Wesley Chapel.

2. The metes and bounds description and sketch of the external boundaries of the surviving district are found in Amended Petition Exhibit B. There are four parcels within the proposed surviving district which are to be excluded and are owned by other entities: (a) Withlacoochee Electric Cooperative, Inc.; (b) Tampa Bay Regional Water Supply Authority; (c) the County Facilities Management Department; and (d) the District School Board of the County.

3. Amended Petition Exhibits C-1, C-2, and C-3 are true and correct copies of the Third Amended Merger Agreement, the District I resolution approving the merger, and the District II

resolution approving the merger, respectively. (These three exhibits duplicate Hearing Exhibits 1 through 3.)

4. Amended Petition Exhibit D indicates that the five persons designated to serve as initial members of the Board of Supervisors are Jeffrey Rosenberg, William Parsons, Susan Jurik, Stephen Wheeler, and John Christenson, and that each member is a resident of the State of Florida and a citizen of the United States.

5. Amended Petition Exhibit E describes the major water, wastewater, and reuse trunk lines within the proposed District. Because the capital infrastructure of Districts I and II is completely built out, there is no additional construction planned in the surviving district. Amended Petition Exhibits F-1 through F-4 are the Engineer's Reports dated October 2001, July 30, 2002, March 3, 2003, and October 7, 2004, respectively, which reflect the timetables and costs involved when the existing infrastructure facilities were constructed. Amended Petition Exhibit F-5 is the proposed infrastructure plan.

6. Amended Petition Exhibit G is the relevant portion of the Future Land Use Map of the County's Comprehensive Plan and shows the general distribution, location, and extent of the public and private land uses within the surviving district. It also includes a description of each land use category within the merged District.

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

8. Amended Petition Exhibit I is a copy of a letter dated July 8, 2009, prepared by Akerman Senterfitt, bond counsel for Districts I and II, who represents that the merger will not adversely affect the terms and conditions of the outstanding bonds or other interests of the bondholders therein.

9. Amended Petition Exhibit J (which duplicates Hearing Exhibit 4) is a summary of the outstanding bond issues by the two districts, which totaled around \$36,315,000 as of May 2, 2009.

10. The Amended Petition identifies Jeffrey Rosenberg, 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614, who is Chairman of the Board of Supervisors of Districts I and II, as the authorized agent for Petitioners. Also identified as agents are Mark K. Straley, Esquire, and John M. Vericker, Esquire, Straley & Robin, 100 East Madison Street, Suite 300, Tampa, Florida 33602.

11. The Amended Petition alleges that merger of the boundaries of the two Districts should be approved and that the surviving district will comport with all requirements of the law.

12. The sole purpose of this proceeding was to consider the merger of Districts I and II, as proposed by Petitioners. 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 Amended Petition have been found to be true and correct.

13. Petitioners' Exhibit 10 consists of the Amended Petition and attached Exhibits A-J, as filed with the Commission. William Parsons serves as Vice-Chairman of the Board of Supervisors for both Districts. He testified that Exhibits C-1 and C-2 are true and correct to the best of his knowledge. He added that the merger will result in the increased efficiency of the operation and/or maintenance of certain infrastructure to better serve the residents of Districts I and II.

14. Mr. McKay is a certified public accountant whose firm serves as financial advisor and manager for more than 130 community development districts around the State. Besides preparing the SERC, which is Exhibit H to the Amended Petition, the witness reviewed the Petition and all attached exhibits. To the best of his knowledge and belief, all matters contained in

the Amended Petition and attached exhibits were true and correct.

15. Finally, Mr. Bahlke, a professional engineer, oversees the design and construction of infrastructure necessary for land development, including community development districts.

Mr. Bahlke testified that to the best of his knowledge and belief, Amended Petition Exhibits A, B, E, and G were true and correct.

16. The testimony is that the Amended Petition and its exhibits are true and correct.

B. Whether the merger of the two Districts is inconsistent with any applicable element or portion of the State Comprehensive Plan or of the effective local government comprehensive plan.

17. Mr. Bahlke testified that he reviewed the County's Comprehensive Plan and the State Comprehensive Plan and that the merged District will not be inconsistent with any provision therein.

18. The testimony is that the merged 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 surviving District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

19. According to Mr. Bahlke, the area of land to be included in the merged District is of sufficient size, is

sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community. Mr. McKay also testified that the surviving district will satisfy this criterion.

20. The testimony was that Petitioners have demonstrated that the merged 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 merger of the two Districts is the best alternative available for delivering community development services and facilities to the area that will be served by the merged District.

21. Mr. McKay testified that the merged District is the best alternative available to provide the community development services and facilities to be provided by the merged district.

22. The testimony and exhibits are that Petitioners have demonstrated that the merged 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 merged District will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

23. Mr. Bahlke testified that facilities and services to be provided by the surviving district will not be incompatible with the capacity and uses of existing local and regional

community development services and facilities. Mr. McKay offered similar testimony.

24. The testimony is that the merged District will be compatible with the capacity and uses of the existing local and regional community development services and facilities.

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

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

26. The testimony is that the area that will be served by the merged District is amenable to separate special-district government.

G. Other Requirements Imposed by Statute or Rule

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

a. Elements of the Petition

28. The Commission has certified that the original Petition meets all of the requirements of Sections 190.046(3), and 190.005(1)(a), Florida Statutes. Counsel has represented

that the Amended Petition was provided to the Commission and satisfies all requirements of the law.

b. Statement of the Estimated Regulatory Costs

29. According to Mr. McKay, who prepared the SERC, which is found in Amended Petition Exhibit H, 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.

30. The SERC indicates that beyond administrative costs related to rule adoption, the State and its citizens will only incur minimal costs from merging the two districts; that these costs are related to the incremental costs to various agencies of reviewing additional local government reports filed annually; that the surviving 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.

31. The SERC also states that there will be no administrative costs incurred by the County related to rule adoption. If there are any one-time costs in reviewing the

Amended Petition, they will be offset by the \$15,000.00 filing fee submitted to the County.

32. 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 Amended Petition contains a SERC and appears to meet all requirements of that statute.

c. Other Requirements

33. The Amended Petition represents that Petitioners have complied with the provisions of Section 190.005(1)(b)1., Florida Statutes, in that the County was provided copies of the Amended Petition and was paid the requisite filing fee.

34. 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. Hearing Exhibit 8 reflects that a notice was published in the St. Petersburg Times, Pasco County Edition, a newspaper of general paid circulation in the County, for four consecutive weeks on June 18 and 25 and July 2 and 9, 2009.

35. No public comment was received during the local hearing and no comments were filed by any person during the thirty-day period after the hearing.

APPLICABLE LAW

A. Generally

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

37. Section 190.046(3), Florida Statutes (2009), provides the means of merging the boundaries of a community development district pursuant to Section 190.005, Florida Statutes. It states as follows:

(3) The district may merge with other community development districts upon filing a petition for merger, which petition shall include the elements set forth in s. 190.005(1) and which shall be evaluated using the criteria set forth in s. 190.005(1)(e). The filing fee shall be as set forth in s. 190.005(1)(b). In addition, the petition shall state whether a new district is to be established or whether one district shall be the surviving district. The district may merge with any other special districts upon filing a petition for establishment of a community development district pursuant to s. 190.005. The government formed by a merger involving a community development district pursuant to this section shall assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property shall not be impaired by such merger. Any claim existing or action or proceeding pending by or against any district that is a party to the merger may be continued as if the merger had not occurred, or the surviving district may be substituted in the proceeding for the district that ceased to exist. Prior to filing the petition, the districts seeking to merge shall enter into a merger agreement

and shall provide for the proper allocation of the indebtedness so assumed and the manner in which such debts shall be retired. The approval of the merger agreement and the petition by the board of supervisors of the district shall constitute consent of the landowners of the district.

38. Section 190.046(3), Florida Statutes (2009), requires that a petition to merge be filed containing the same elements found in Section 190.005(1)(a), Florida Statutes. They include a metes and bounds description of the area to be served; written consent to the merger; a designation of five persons to be the initial members of the board of supervisors; the proposed name of the district; a map of the major infrastructure; the proposed timetable for construction, if any; the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area; and a SERC. The Amended Petition includes all of the required elements.

B. Procedural Requirements

39. Section 190.046(3), Florida Statutes (2009), incorporates the procedures in Section 190.005(1), Florida Statutes, that must be followed by a petitioner.

40. Section 190.005(1)(a), requires that the petition be filed with the Commission. On June 16, 2008, and July 17, 2009, the original Petition and Amended Petition, respectively, were filed with the Commission.

41. Section 190.005(1)(b), Florida Statutes, requires that a petitioner provide a copy of the petition and the requisite \$15,000.00 filing fee to the county in which the merger will occur. Petitioners submitted copies of the original Petition, Amended Petition, and the appropriate filing fee to the County.

42. Section 190.005(1)(c), Florida Statutes, requires that the county in which the merged districts are located to conduct a hearing within forty-five days of the filing of the petition. The County did not choose to hold a public hearing.

43. Section 190.005(1)(d), Florida Statutes, requires a local public hearing to be conducted by a hearing officer [administrative law judge]. A local public hearing was conducted in Wesley Chapel, Florida, on July 16, 2009.

44. Section 190.005(1)(d), also requires that a petitioner publish notice of the local public hearing once a week for four consecutive weeks immediately prior to the hearing in a newspaper of general circulation in the county. The appropriate notice was published. See paragraph 34, supra.

45. Rule 42-1.010 requires that a Notice of Receipt of Petition be published in the Florida Administrative Weekly. Such a notice was published on July 17, 2009.

46. Petitioners have complied with all procedural requirements.

C. Factors to be Considered for Granting or Denying
Petition

47. Petitioners bear the burden of establishing that the Amended Petition meets the relevant statutory criteria set forth in Section 190.005(1)(e), Florida Statutes.

48. The evidence was that all statements contained within the Amended Petition are true and correct. § 190.005(1)(e)1., Fla. Stat.

49. The evidence was that the merger of Districts I and II is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective County Comprehensive Plan. § 190.005(1)(e)2., Fla. Stat.

50. The evidence was that the area of land within the merged 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.

51. The evidence was that the merged 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.

52. The evidence was that the community development services and facilities of the merged District will not be incompatible with the capacity and uses of existing local and

regional community development services and facilities.

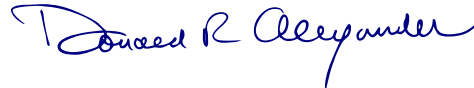
§ 190.005(1)(e)5., Fla. Stat.

53. The evidence was that the area to be served by the merged 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 Amended Petition appears to meet all statutory requirements, and there appears to be no reason not to grant the Amended Petition to Merge Seven Oaks Community Development District I and Seven Oaks Community Development District II, with District I becoming the surviving district with the name Seven Oaks Community Development District, as requested by Petitioners. For purposes of drafting a rule, a copy of the metes and bounds description of the surviving District is found in Amended Petition Exhibit B.

DONE AND ENTERED this 30th day of September, 2009, in
Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2009.

ENDNOTES

- 1/ Unless otherwise noted, all references are to the 2008 version of the Florida Statutes.
- 2/ All references are to the current version of the Florida Administrative Code.
- 3/ District I was established by County Ordinance No. 01-03 under the name of Saddlebrook Village Community Development District. By County Ordinance No. 01-22, the name was changed to Seven Oaks Community Development District I. District II was established by County Ordinance No. 02-23, as amended by County Ordinance No. 04-40.

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