

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO MERGE THE)
WESTCHASE COMMUNITY DEVELOPMENT)
DISTRICT AND THE WESTCHASE EAST) Case No. 10-2436
COMMUNITY DEVELOPMENT DISTRICT)
_____)

REPORT TO THE FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

Pursuant to Section 190.005(1)(d), Florida Statutes,^{1/} a local public hearing was conducted on September 30, 2010, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings, in Tampa, Florida.

The hearing was conducted for the purpose of receiving testimony and exhibits and for taking any public comments on the petition to merge the Westchase Community Development District ("Westchase") and the Westchase East Community Development District ("Westchase East") into a single district to be known as the Westchase Community Development District. This Report of the public hearing is made for the consideration of the Florida Land and Water Adjudicatory Commission ("Commission") in its determination whether to adopt a rule to merge the districts.

APPEARANCES

For Petitioners Westchase and Westchase East:

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STATEMENT OF THE ISSUES

The issues to be determined are whether the merger of the two districts meets the criteria set forth in chapter 190, Florida Statutes, and whether the hearing process has been conducted in accordance with the requirements of chapter 190 and Florida Administrative Code Chapter 42-1.

PRELIMINARY STATEMENT

On April 5, 2010, Petitioners filed a petition to merge the districts. Petitioners provided a copy of the petition and its attachments, along with the requisite filing fee, to Hillsborough County.

The Commission referred the petition to the Division of Administrative Hearings ("DOAH") to conduct a local public hearing pursuant to section 190.005(1)(d). At the local public hearing, Petitioners presented the testimony of five witnesses: Mark Ragusa, Gregory Chesney, Tonja Stewart, Karen Ellis, and Andrew Mendenhall. Petitioner also introduced 12 exhibits, designated A through L. No member of the general public attended the hearing.

After the close of the public hearing, the record was left open for 10 days for the submittal of written comments from the public in support of or in opposition to the petition, as allowed by Florida Administrative Code Rule 42-1.012. No written statements were submitted to DOAH.

The one-volume Transcript of the local public hearing was filed with DOAH on January 5, 2011. Petitioners timely submitted a proposed report, which was considered in the preparation of this Report.

SUMMARY OF THE HEARING AND RECORD

1. Pursuant to section 190.046(3), a petition to merge community development districts is to be evaluated using the criteria set forth in section 190.005(1)(e). The discussion that follows addresses each criterion in sequence.

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

2. The evidence presented at the public hearing establishes that the statements in the petition are true and correct.

3. The Districts are petitioning to merge their boundaries in order to become a more effective and efficient local unit of special-purpose government.

4. In many respects, the Westchase and Westchase East districts have been operating jointly, using interlocal agreements and employing the same auditors, managers, legal counsel, and engineers.

5. The merger of the districts is a logical step that would improve efficiency and better serve the residents and landowners within the districts.

6. The merger would not change the type of capital facilities currently provided by the districts. Westchase is a built-out community, and the infrastructure for both districts is complete. The merged district would continue to provide transportation infrastructure, recreation infrastructure, stormwater facilities, and maintenance infrastructure.

7. The boards of supervisors of Westchase and Westchase East each passed resolutions authorizing the merger of the districts. Both districts have stated a preference for Westchase to remain as the surviving entity after the merger.

8. The five persons designated in the petition to serve as the Board of Supervisors of the merged district are Mark Ragusa, Robert Argus, William Kemerer, William Casale, and Joseph Lechman. They are the current board members of Westchase.

9. A qualified expert testified that the legal descriptions for Westchase and Westchase East, as amended, are accurate metes and bounds descriptions of the lands included in the merged district.

10. The Board of County Commissioners of Hillsborough County adopted a resolution to express support for the petition to merge the Westchase and Westchase East districts.

Whether the merger of the boundaries of the District is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.

11. The Hillsborough County Comprehensive Plan encourages the elimination of needless duplication of governmental activities and encourages cooperation between and among governmental units. It also is a goal of the Comprehensive Plan to provide infrastructure facilities in a timely, orderly and efficient manner. The merger of the two districts would eliminate needless duplication and would provide community facilities and services more efficiently.

12. The goals of the Capital Improvements Element of the Hillsborough County Comprehensive Plan are to ensure the provision of infrastructure facilities and services, such as roads, utilities, recreation, and drainage. The proposed merged district would continue to serve as an alternate provider of these infrastructure facilities and services.

13. The petition includes a letter from the Office of Comprehensive Planning of the Department of Community Affairs, which reviewed the petition and identified no potential inconsistency with the Local Government Comprehensive Planning and Land Development Regulation Act, chapter 163, Florida Statutes.

14. After the merger of the districts, all land uses and services planned within the new Westchase district would be consistent with all applicable elements or portions of the State Comprehensive Plan and the Hillsborough County Comprehensive Plan.

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.

15. Westchase currently contains approximately 741 acres of land and Westchase East currently contains approximately 972 acres of land. The proposed merged district would consist of approximately 1,713 acres.

16. The two districts have been able to function reasonably well because they have a combined budget and the boards of supervisors make many joint decisions regarding the operation and maintenance of the community's facilities and infrastructure.

17. The proposed merged district will serve the single, large, mixed-use Westchase Project and provide a greater sense of community and identity for the residents.

18. The area of land within the proposed merged district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

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 District.

19. Although the districts have operated reasonably well, the best alternative for efficiency and cost-effectiveness is to merge the districts. There is duplication of costs and effort in the management of the districts that would be eliminated by the merger.

20. Fourteen administrative costs have been identified that would be reduced as a result of merging the districts, with a projected annual savings of \$62,000.

21. A community development district allows the community to have greater control over the construction of community infrastructure, compared to a county government that must provide infrastructure for a much larger area. For the same reason, a community development district is the best alternative for maintaining infrastructure. Hillsborough County does not have the resources and ability to provide facilities and services at the same level and to the same standards as the merged district.

22. The proposed merged district is the best alternative available for delivering community development services and facilities to the area that will be served by the district.

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.

23. The two existing districts are already providing community development services and facilities. These services and facilities are fully consistent with the existing capacity and facilities operated by Hillsborough County. The proposed merger will not change the existing services and facilities.

24. The community development services and facilities of the proposed merged district will be compatible with the capacity and uses of existing local and regional community development services and facilities.

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

25. The two areas that will be served by the proposed merged district have already functioned as community development districts. Therefore, these areas have shown themselves to be amenable to separate special-district government.

Statement of Estimated Regulatory Costs.

26. Attached to the petition as Exhibit 8 is a Statement of Estimated Regulatory Costs. The Statement concludes that the economic benefits of merging the districts exceed the economic costs to all affected parties. It states that there would be no adverse impact on the outstanding bonds as a result of the merger. The bonds will continue to be secured by the

assessments on the lands within each district. The merged district would be financially sound and would manage the district more efficiently for the benefit of the residents and landowners of the district. Merging the districts is the best alternative available to provide professional operations and management.

27. Beyond administrative costs related to rule adoption, the State and its citizens will not incur costs from merging the districts. The proposed merger will create cost savings for persons living within the merged district.

Other requirements imposed by statute or rule.

28. Section 190.005(1)(d) requires the Petitioner to publish notice of the local public hearing in a newspaper of general circulation in Hillsborough County for four consecutive weeks prior to the hearing. The notice was published in the Tampa Tribune, a newspaper of general paid circulation in Hillsborough County, for four consecutive weeks, on September 2, September 9, September 16, and September 23, 2010.

CONCLUSIONS OF LAW

29. This proceeding is governed by chapter 190, Florida Statutes, which establishes an exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more.

30. Section 190.046(3), Florida Statutes, provides for the merger of community development districts. It states that the approval of a merger agreement and the petition by the board of supervisors of the district to merge with another district shall constitute consent of the landowners within the district. The Westchase and Westchase East districts entered into a merger agreement that was included with the petition.

31. The petition contained all the information required by section 190.005(1) and Hillsborough County was paid the required filing fee.

32. The petition contained all of the information required by section 190.005(1)(a).

33. The petition contains a Statement of Estimated Regulatory Costs in accordance with the requirements of section 120.541.

34. Section 190.046(3) requires that a petition to merge districts must address the criteria in section 190.005(1)(e). As discussed above, the Petitioner favorably addressed all the factors in section 190.005(1)(e).

35. The local public hearing was properly noticed as required by section 190.005(1)(d). The local public hearing was held and affected units of general-purpose local government and the general public were afforded an opportunity to comment on the proposed merger as required by section 190.005(1)(d) and

Florida Administrative Code Rule 42-1.012. No member of the public offered an oral or written statement at the public hearing and no written statements were submitted after the hearing.

CONCLUSION

Based on the record evidence, the petition meets all statutory requirements, and there appears no reason not to grant the petition to merge the districts and thereby create a new Westchase Community Development District by rule of the Commission.

REPORT SUBMITTED this 23rd day of February, 2011, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 23rd day of February, 2011.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2010).

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