

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO EXPAND THE
VILLAGE COMMUNITY DEVELOPMENT
DISTRICT NO. 10

Case No. 13-2154

REPORT TO THE FLORIDA
LAND AND WATER ADJUDICATORY COMMISSION

Pursuant to notice, a local public hearing was held in this matter in The Villages, Florida, on August 14, 2013, before D. R. Alexander, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Martha Harrell Chumbler, Esquire
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302-0190

STATEMENT OF THE ISSUE

The issue presented in this proceeding is whether the Amended Petition to Amend the Boundaries of Village Community Development District No. 10 (Amended Petition) satisfies the requirements set forth in chapter 190, Florida Statutes, and Florida Administrative Code Chapter 42-1. The purpose of the local public hearing was to gather information in anticipation of quasi-legislative rulemaking by the Florida Land and Water Adjudicatory Commission (Commission).

PRELIMINARY STATEMENT

On May 29, 2013, the Village Community Development District No. 10 (District) filed its Petition to Amend the Boundaries of the District (Initial Petition) with the Commission, requesting that the Commission adopt a rule expanding the District's boundaries by 89.5 acres. On June 13, 2013, the Secretary of the Commission certified that the Initial Petition contained all required elements and referred it to DOAH to conduct a local public hearing, as required by section 190.005(1)(d).

On July 18, 2013, the District filed a motion for leave to amend the Initial Petition in order to increase the requested boundary expansion to 99.3 acres. That motion was granted on July 22, 2013, and the Amended Petition deemed filed.

Notice of the public hearing was published in accordance with section 190.005(1)(d). The District pre-filed proposed Exhibits 1 through 29, which included the written testimony of seven witnesses: Janet Tutt, Gary Moyer, Darrin Taylor, Dr. Henry Fishkind, Robert Farner, Stephanie Vaughn, and Bill Kearns. The District also filed a Request for Official Recognition of Sumter County Ordinances 2004-38, 2010-09, 2012-10, and 2012-13; Sumter County Resolution 2013-27; City of Wildwood Ordinance 2013-28; City of Wildwood Resolution R2013-10; the Commission's certification that the Initial Petition contained all elements required by section 190.046(1)(f); and

the Notice of Receipt of Amended Petition published by the Commission in the Florida Administrative Register.^{1/}

At the local public hearing, the District's pre-filed exhibits, which included the pre-filed testimony, were accepted into the record, as were two additional exhibits, Exhibits 30 and 31. Late-filed Exhibit 32, which corrected a typographical error in the pre-filed testimony of Janet Tutt, was admitted by Order dated August 20, 2013. The District supplemented its previous request for official recognition to include Sumter County Resolution 2013-37. All requests for official recognition were granted.

The District presented the live testimony of Janet Tutt, the executive director of the District; Gary Moyer, a representative of the owners of the 99.3 acres and expert in community development district (CDD) governance; and Dr. Henry Fishkind, an economist and senior partner of Fishkind and Associates.

No members of the public offered testimony at hearing or submitted written comments into the record. See Fla. Admin. Code R. 42-1.012(3).

A Transcript of the hearing has been prepared. The District filed a Proposed Report, which has been considered in the preparation of this Report.

SUMMARY OF THE RECORD

History of the District

1. The District is located in Sumter County and was first established in 2004 through Sumter County Ordinance 2004-38, as a CDD consisting of 998.8 acres, all of which are located in unincorporated areas. In the intervening years, the District's boundaries have been expanded twice: in 2010 with the addition of 399.01 acres and again in 2012 with the addition of another 91.69 acres, for a total current aggregate of 1,489.5 acres. These two expansions did not result in a cumulative increase of land within the District's boundaries of more than either 50 percent or 500 acres. To date, all of the District's expansions have been restricted to properties lying within unincorporated Sumter County.

2. On May 16, 2013, the District's Board of Supervisors (District Board) authorized the filing of a petition to again expand the District's boundaries. On August 1, 2013, the District Board confirmed its authorization of the filing of the Amended Petition. On May 17, 2013, copies of the Initial Petition were submitted to the City of Wildwood and Sumter County, together with a filing fee to each government entity in the amount of \$15,000.00.

3. By resolution adopted on June 10, 2013, the City of Wildwood expressed its support for the expansion of the

District's boundaries. By resolution adopted on May 28, 2013, Sumter County expressed its support for the expansion of the District's boundaries as reflected in the Initial Petition and, on August 13, 2013, stated its support for the expansion as revised in the Amended Petition.^{2/}

4. The current petition for expansion of the District's boundaries would increase the land within the District by an additional 99.5 acres, to an aggregate of 1,589 acres -- an increase which exceeds the original size of the District by more than both 50 percent and a cumulative net amount of 500 acres. Of the 99.3 acres that would be added to the District, 9.8 acres lie within unincorporated Sumter County and 89.5 acres within the City of Wildwood.

5. The 9.8 acres in unincorporated Sumter County are located approximately one quarter mile east of Morse Boulevard. The 89.5 acres that are within the City of Wildwood consist of two parcels, both located south of County Road 44A. Forty-three and nine/tenths (43.9) acres lie west of Powell Road and approximately 45 acres lie east of Buena Vista Boulevard.

6. The areas to be added to the District are owned by The Villages of Lake-Sumter, Inc., and Village of Southwest Plazas, LLC, both of which consent to the proposed expansion of the District. The property owners intend to use the land for residential development, ultimately to include 374 units.

Exhibits

7. Exhibit 1 is the Amended Petition, with exhibits, as filed with the Commission and DOAH.

8. Exhibit 2 is a composite exhibit consisting of a copy of minutes reflecting the District Board's initial authorization for the Initial Petition to be filed and the District Board's Resolution 13-17, reflecting verification of the District Board's authorization for the Amended Petition to be filed.

9. Exhibits 3 through 6 are various maps of the District. Exhibit 3 identifies the general location of the District. Exhibit 4 depicts the District's current boundaries. Exhibit 5 adds those areas that are proposed to be added and Exhibit 6 reflects the District's boundaries as they will exist if the requested rule is adopted.

10. Exhibit 7 is a map identifying the location of existing stormwater interceptors and outfalls that will serve the expansion areas.

11. Exhibit 8 is the current resume of Robert Farner.

12. Exhibits 9 through 11 are legal descriptions, in metes and bounds, of the District, with Exhibit 9 describing the District's current boundaries, Exhibit 10 describing the areas to be added, and Exhibit 11 describing the boundaries as they will exist if the requested rule is approved.

13. Exhibit 12 is a table identifying the estimated cost of the infrastructure planned for the expansion areas and the estimated schedule for its construction.

14. Exhibit 13 is the resume of Darrin Taylor.

15. Exhibit 14 is an excerpt of the Future Land Use Map (FLUM) of the City of Wildwood, including those areas to be added to the District.

16. Exhibit 15 is an excerpt of the FLUM of Sumter County, including those areas that currently lie within the District and those areas to be added.

17. Exhibit 16 is a copy of combined Amended Development Plans for The Villages of Sumter Development of Regional Impact (Villages DRI) and Villages of Wildwood DRI.

18. Exhibit 17 is the resume of Gary Moyer.

19. Exhibit 18 is a copy of the executed consent of the property owners to the expansion of the District.

20. Exhibit 19 is the resume of Dr. Henry Fishkind.

21. Exhibit 20 is the revised Statement of Estimated Regulatory Costs (Revised SERC).

22. Exhibit 21 is a copy of the notice of local public hearing that was published in The Villages Daily Sun, a local newspaper of general circulation.

23. Exhibit 22 is a letter from the Department of Economic Opportunity (DEO) stating that DEO has no comment on the Initial Petition.

24. Exhibits 23 through 29 are the pre-filed testimony of Janet Tutt, Stephanie Vaughn, Robert Farner, Darrin Taylor, Gary Moyer, Williams Kearns, and Dr. Henry Fishkind, respectively. The pre-filed testimony of Stephanie Vaughn, Robert Farner, Darrin Taylor, and Williams Kearns are accompanied by verified affidavits executed by each of these witnesses.

25. Exhibit 30 is a letter from DEO, stating that the agency has no comment on the Amended Petition.

26. Exhibit 31 is the a proof of publication provided by The Villages Daily Sun, verifying the publication of the notice of local public hearing on July 17, 24, and 31, and August 7, 2013.

27. Exhibit 32 is the affidavit of Janet Tutt, identifying a typographical error in her pre-filed testimony,

28. The sole purpose of this proceeding is to establish the record to be relied upon by the Commission when deciding whether to adopt a rule expanding the District's boundaries. Because paragraph 190.005(1)(e) applies in this matter and contains the statutory criteria to be considered, a summary of the evidence relating to each is set forth below.

SUMMARY OF EVIDENCE AND TESTIMONY

Factors Set Forth in Section 190.005(1)(e), Florida Statutes

A. Whether all statements contained in the Amended Petition are found to be true and correct.

29. Janet Tutt, manager of the District for the past six years, testified that she had reviewed the contents of the Amended Petition and the exhibits and that, to the best of her knowledge, all are true and correct.

30. Based on this testimony, and in the absence of any contrary evidence, the evidence establishes that the Amended Petition and the exhibits attached to it are all true and correct.

B. Whether the proposed expansion of the District is inconsistent with any applicable element or portion of the state comprehensive plan or the effective local government comprehensive plans.

31. Darrin Taylor is a land use planner who has worked in the public sector for the former Department of Community Affairs, for a local government, and in the private sector. Much of his experience has involved review and analysis of comprehensive plans and growth management laws.

32. The land use category assigned by the City of Wildwood FLUM to that portion of the expansion that lies within the municipal boundaries is The Villages of Wildwood. The category permits a mixture of land uses, including residential, retail, and similar uses.

33. Specific policies were developed for The Villages of Wildwood that supersede all other policies in the City of Wildwood Comprehensive Plan. No other provisions in the City of Wildwood Comprehensive Plan apply within that land use category. Mr. Taylor reviewed The Villages of Wildwood policies and determined that the CDD expansion is consistent with the City of Wildwood Comprehensive Plan.

34. Mr. Taylor also concluded that the proposed expansion is consistent with the Sumter County Comprehensive Plan. The most relevant portion of that plan with respect to the proposed expansion is the Future Land Use Element (FLUE). The expansion area in unincorporated Sumter County is designated Mixed Use on the County's FLUM. The County FLUE provides that a variety of uses are allowed within the Mixed Use category, including residential and retail.

35. In addition, since the property in question lies within The Villages DRI, the County's Comprehensive Plan requires it to have a separate community plan. Mr. Taylor reviewed The Villages DRI community plan and determined that the proposed District expansion is consistent with that plan. He also reviewed the other elements in the County's Comprehensive Plan and determined that the proposed expansion is not inconsistent with those provisions.

36. Mr. Taylor further stated that the proposed expansion of the District is not inconsistent with the state comprehensive plan. The development within the District, including those areas proposed to be added, is an integral part of the overall Villages development. The Villages development furthers many of the state's goals in protecting and providing for the elderly, in planning and developing land in an efficient manner, and in the protection of our natural resources. The Villages development also provides transportation alternatives such as the extensive use of golf carts and many amenities which keep the residents healthy. Each of these furthers a general goal set forth in the state comprehensive plan.

37. After reviewing both the Initial and the Amended Petitions, DEO stated that it had no comments relating to the proposed District expansion.

38. The testimony and exhibits indicate that the expanded District will not be inconsistent with any applicable element or portion of either the local comprehensive plans or the state comprehensive plan.

C. Whether the area of land within the expanded District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

39. Gary Moyer, an expert in the governance of CDDs, testified that, with the proposed expansion, the District will

still be of sufficient size, compactness, and contiguity to be developed as an interrelated community. That opinion was echoed by Robert Farner, a professional engineer whose firm has been involved in creating and financing over 15 CDDs. Both Mr. Moyer and Mr. Farner explained that the District is part of a nationally known active adult community -- The Villages -- that includes over 21,000 acres. The District, as expanded, will continue to function as part of this already interrelated community.

40. In addition, Mr. Moyer stated that the property to be included in the District is similar in character to the other residential properties in the District.

41. The testimony establishes that the expanded District will be of sufficient size, compactness, and contiguity to be developed as a single functionally interrelated community.

D. Whether expansion of the District is the best alternative available for delivering community development services and facilities to the area that will be served by the District.

42. Mr. Moyer further testified that expansion of the District is the best alternative available for providing CDD services and facilities to the area. The CDD structure facilitates a focus on the management of infrastructure that allows better coordination between the construction of infrastructure and development. In addition, for this

particular expansion, there are economies of scale to be realized as a result of the larger base over which to allocate costs, especially for certain fixed costs such as management, insurance, and other administrative costs.

43. Dr. Henry Fishkind, an expert in economics with significant experience involving CDDs, testified that the District provides property owners with a governance structure that is focused on providing services and facilities specific to the property within its boundaries. Dr. Fishkind also testified that the District structure affords the ability to issue long-term bonds to fund infrastructure improvements at a cost that is equal to -- and perhaps lower than -- other available funding sources.

44. Both Mr. Moyer and Dr. Fishkind indicated that other alternatives that could have been considered include provision of services and facilities by the county and municipal governments, either directly or through a dependent special district, or by developer-financed infrastructure, with responsibility for maintenance and operation eventually transferred to a property owners' association.

45. Under either the direct local government or dependent special district option, the County would incur the significant costs of administering the program. The requested expansion will allow the District, rather than the County, to shoulder

this expense. The expansion will also free the County from the possible entanglements associated with debt incurred to finance construction infrastructure improvements.

46. Expansion of the District is also preferable to reliance on developers to construct facilities, with long-term operation and maintenance ultimately transferred to a property owners' association. Unlike fees charged by a property owners' association, the District's assessments are collected along with other property taxes, giving greater assurance of obtaining needed funds. In addition, the District is subject to specific regulations, including both those specific to CDDs and those that apply to all government agencies in Florida. A property owners' association is not.

47. The testimony and exhibits demonstrate that expansion of the District is the best alternative available for providing community development services to the area.

E. Whether the community development services and facilities of the District will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

48. Both Mr. Moyer and Mr. Farner testified that the services and facilities that will be provided by the District to the expansion areas will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. There are currently no regional or

local facilities and services serving the expansion areas and the expansion will not adversely impact the District's capacity to provide services and facilities within its existing boundaries. Furthermore, the expansion will not result in overly burdening either existing or planned facilities.

49. The testimony submitted establishes that the community development services and facilities of the 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 expanded District is amenable to separate special-district government.

50. Ms. Tutt testified that she expects the expansion to have no adverse impact on the successful operation of the District.

51. Mr. Moyer testified that the areas to be added to the District are amenable to a special-district type of governance and that the expansion will have no adverse impact on the District's ability to successfully operate under the separate special-district form of governance. In Mr. Moyer's opinion, CDDs provide an efficient and focused mechanism for managing and supervising the construction of capital improvements in the expanded areas, as well as managing and operating those improvements once installed.

52. The testimony submitted establishes that the area to be added to the District is amenable to a separate special-district type of governance.

G. Other Statutory and Regulatory Requirements Elements of the Petition and Public Notice.

53. The Commission has certified that the Initial Petition met all of the applicable requirements of section 190.005(1)(a).

54. Notice of the local public hearing was published in The Villages Daily Sun for four consecutive weeks prior to the hearing, on July 17, 24, and 31, and August 7, 2013. In addition, the Commission published notice of its receipt of the Initial Petition and Amended Petition in the July 25, 2013, Florida Administrative Register.

Statement of Estimated Regulatory Costs (SERC)

55. The initial SERC, which accompanied both the Initial Petition and the Amended Petition, was prepared under the supervision of Dr. Henry Fishkind, an expert in economic analysis with significant experience relating to CDDs. Prior to the hearing, a Revised SERC was prepared, reflecting the small increase in the size of the expansion sought by the District -- from 89.5 acres to 99.3 -- and the correction of a typographical error in the original SERC.

56. The Revised SERC includes an analysis of all of the elements required by section 120.541, including: (a) a good

faith estimate of the costs and any anticipated effect of revenues of state and local government; (b) a good faith estimate of the transactional costs that individuals and entities subject to the expanded District boundary are likely to incur; and (c) an analysis of any impacts on small businesses and small cities.^{3/} Because the current proceeding involves the expansion of an existing District, the Revised SERC's scope is limited to the costs and impacts of that expansion.

57. Dr. Fishkind opined that the economic benefits of the requested expansion to all affected parties will exceed any costs incurred. Following formation of the District, the County and City incur no additional direct costs. To the extent the Property Appraiser or Tax Collector is utilized to collect District assessments, the District is required to cover those costs. Moreover, neither the County nor the City will become liable for debts incurred by the District and bonds issued by the District will not affect the bonding capacity of either the City or the State.

58. Dr. Fishkind also concluded that property values in the expansion areas will increase by more than the cost of assessment levied by the District to fund infrastructure improvements.

59. The testimony and exhibits establish that the Revised SERC satisfies the requirements of section 120.541.

Other Requirements

60. The District provided both the City and the County with copies of the Initial Petition and, because an additional 9.8 acres in the unincorporated area were later added to the expansion request, the District also provided the County with a copy of the Amended Petition. The District also submitted filing fees of \$15,000.00 each to both local governments. Both the City and the County adopted resolutions consenting to the expansion.

61. All of the properties to be added to the District are owned by either Village of Southwest Plazas, LLC, or Villages of Lake-Sumter, Inc. Village of Southwest Plazas, LLC, has two members -- the Villages Operating Company and Acorn Investments. The Villages of Lake-Sumter, Inc., and Village of Southwest Plazas, LLC -- through its two members -- both consent to the requested expansion.

62. Notice of the local public hearing was published in a newspaper once a week for each of the four weeks immediately preceding the hearing. The notice included the time and place of the hearing, a description and map of the area affected by the expansion, and a summary of the District's expansion request. The notice was also posted on the newspaper's website and on the Florida Press Association's website.

APPLICABLE LAW

63. This proceeding is governed by sections 190.005 and 190.046 and rule chapter 42-1.

64. A petition to expand a CDD that was initially established by local ordinance must be processed as provided in section 190.005 if the expansion will increase the size of the district by either 50 percent over its initial size, or by a cumulative net amount of 500 acres. See § 190.046(1)(f), Fla. Stat. While prior expansions of the District have not exceeded this limitation, the expansion requested through the Amended Petition does.

65. A petition for expansion that exceeds the limitation described above shall "include only the elements set forth in section 190.005(1)(a)1. and 5.-8. and the consent required by paragraph (g)." § 190.046(1)(f), Fla. Stat.

66. The evidence establishes that the District has satisfied the requirement of section 190.046(1)(g), which requires that written consent be obtained from the owners of the property to be added. The filing of the Initial Petition and Amended Petition by or on behalf of the District Board constitutes the consent of the property owners within the current District boundaries. See § 190.046(1)(g), Fla. Stat. The evidence establishes that the District Board authorized the filing of both the Initial Petition and the Amended Petition.

67. The evidence also establishes that the District fully satisfied the notice requirements imposed by section 190.005(1) by providing the City with copies of the Initial Petition and the County with copies of both the Initial Petition and Amended Petition, as well as by publishing notice of the local public hearing in the manner required by the statute. The District also submitted the required filing fees to the City and County.

68. The Amended Petition includes the elements required by subparagraphs 1. and 5.-8. of section 190.005(1) (a).

69. The evidence is that each of the statutory criteria imposed by section 190.005(1) (e) is satisfied.

70. The evidence is that the statements contained in the Amended Petition are true and correct. See § 190.005 (1) (e)1., Fla. Stat.

71. The evidence is that the amendment of the District's boundaries will not be inconsistent with either the applicable local comprehensive plans or the state comprehensive plan. See § 190.005(1) (e)2., Fla. Stat.

72. The evidence is that the District, with the expanded boundaries, will be of sufficient size, sufficiently compact, and sufficiently contiguous to be developable as one functional interrelated community. See § 190.005(1) (e)3., Fla. Stat.

73. The evidence is that the District, as expanded, is the best alternative available for delivering community development

services and facilities to the areas being added. See
§ 190.005(1)(e)4., Fla. Stat.

74. The evidence is that the services and facilities that will be provided by the District to the expansion areas are not incompatible with the capacity or uses of any local or regional community development services and facilities. See
§ 190.005(1)(e)5., Fla. Stat.

75. The evidence is that the District, as expanded, is amenable to separate special-district government. See
§ 190.005(1)(e)6., Fla. Stat.

CONCLUSION

Section 190.005(1)(e) provides that the "Commission shall consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments . . .," and the factors set forth in section 190.005(1)(e)1. through 6. when determining whether to grant or deny a petition to amend the boundaries of a CDD. Based on the record evidence, the Amended Petition satisfies all of the statutory requirements and, therefore, there is no reason not to grant the District's request for amendment of its boundaries.

DONE AND ENTERED this 26th day of August, 2013, in
Tallahassee, Leon County, Florida.

D.R. Alexander

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of August, 2013.

ENDNOTES

^{1/} The Florida Administrative Weekly was replaced by the Florida Administrative Register effective October 1, 2012. See § 120.55(1)(b), Fla. Stat.

^{2/} The 9.8 acres added to the expansion area through the Amended Petition are all located in the unincorporated areas of Sumter County. Thus, the acreage lying within the City of Wildwood remained unchanged from that described in the Initial Petition.

^{3/} Because Sumter County has a population that exceeds 25,000, it is not categorized as a small county. However, the Revised SERC reflects the conclusion that the District expansion will have no adverse affect on either Sumter County or the City of Wildwood.

COPIES FURNISHED:

Jerry McDaniel, Secretary
Florida Land and Water
Adjudicatory Commission
The Capitol, Room 1802
Tallahassee, Florida 32399-0001

Peter Antonacci, General Counsel
Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32399-1001

Robert N. Sechen, General Counsel
Department of Economic Opportunity
The Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399-4128

Barbara R. Leighty, Clerk
Transportation and Economic
Development Policy Unit
The Capitol, Room 1801
Tallahassee, Florida 32399-0001

Martha Harrell Chumbler, Esquire
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302-0190