

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO ESTABLISH  
THE HARMONY RANCH COMMUNITY  
DEVELOPMENT DISTRICT

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Case No. 18-3295

REPORT TO THE FLORIDA  
LAND AND WATER ADJUDICATORY COMMISSION

Pursuant to notice, Francine M. Ffolkes, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a local public hearing in this case on September 5, 2018, in Hobe Sound, Florida. The purpose of the local public hearing was to take testimony, public comment, and receive exhibits on the Petition to Establish the Harmony Ranch Community Development District (District). This Report is prepared and submitted to the Florida Land and Water Adjudicatory Commission (Commission) for consideration of whether to adopt a rule establishing the District as requested by Hobe Sound Ranch, Ltd. (Petitioner).

APPEARANCES

For Petitioner: Jonathan T. Johnson, Esquire  
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STATEMENT OF THE ISSUE

The issue in this proceeding was whether the Petition to Establish the Harmony Ranch Community Development District (Petition) meets the applicable criteria in chapter 190, Florida Statutes, and Florida Administrative Code Chapter 42-1.

PRELIMINARY STATEMENT

On June 13, 2018, the Petitioner filed the Petition with the Secretary of the Commission. Prior to this time, the Petitioner delivered the Petition and its exhibits, along with the requisite filing fee, to Martin County, Florida (County). On June 25, 2018, the Secretary of the Commission certified that the Petition contained all required elements and forwarded it to DOAH to conduct the local public hearing required under section 190.005(1)(d).

The Commission additionally notified the Florida Department of Economic Opportunity (DEO), which reviews the Petition for compliance with DEO programs and responsibilities. DEO responded that their review did not identify any inconsistencies with chapter 163, Part II, Florida Statutes, or the County Comprehensive Growth Management Plan (County Plan).

The land within the District is located entirely within the unincorporated limits of the County. Section 190.005(1)(c) 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 45 days of the filing of a petition. The County held its optional public hearing and decided to take no action regarding the Petition.

Notice of the local public hearing was published in accordance with section 190.005(1)(d). At the local public hearing, the Petitioner presented the testimony, live and written, of Phillip Brandt, chief financial officer of DiVosta Investments, LLC, authorized agent for the Petitioner; Melissa Corbett, P.E., president of The MilCor Group, an expert in civil engineering and land development; George Gentile, senior partner of Gentile Glas Holloway O'Mahoney & Associates, an expert in land development projects and comprehensive planning; and Peter Pimentel, vice president of special district services, an expert in district management and financial analysis. The Petitioner's Exhibits A through M were received into evidence.

Members of the public attended the hearing, and ten individuals provided testimony. The Town of Jupiter Island offered correspondence and comprehensive plan documents which were received into evidence at the hearing as Public Testimony Composite Exhibit 1. On September 14, 2018, post-hearing public comments were filed by the Town of Jupiter Island, Glenn and Beverly Halstead, Robert B. Montefusco, John F. Sedwitz, and a group of multiple citizens. In response to the public comments, the Petitioner filed rebuttal affidavits on September 24, 2018.

On October 26, 2018, a letter was filed by the Town of Jupiter Island, which was struck as a late-filed public comment by Order entered November 6, 2018.

The Transcript of the local public hearing, with exhibits, was filed with DOAH on October 23, 2018. The Petitioner also filed a Proposed Report of Findings and Conclusions on October 8, 2018, which was considered in the preparation of this Report.

References to the Florida Statutes are to the 2018 version, unless otherwise noted.

#### FINDINGS

1. The Petition is for adoption of a rule establishing the District, as described in the Petition. The District is located entirely in the County and will contain approximately 2,717.2 acres.

2. The lands within the District are presently owned by the Petitioner. There are no parcels within the external boundaries of the District that are to be excluded from the District. The Petitioner has provided written consent to the establishment of the District.

3. The purpose of this proceeding was to consider the establishment of the District as proposed by the Petitioner. This included consideration of information relating to the managing and financing of the service-delivery function of the

District. This Report summarizes the evidence relating to each relevant statutory requirement in section 190.005.

SUMMARY OF THE RECORD

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

4. Exhibit K consists of the Petition and its exhibits as filed with the Commission and amended at the public hearing. Mr. Brandt testified that he was familiar with the Petition, as amended, and the exhibits, and that the contents were true and correct to the best of his knowledge. Mr. Brandt testified of one correction to his pre-filed testimony, which was amended accordingly. Ms. Corbett testified that she is familiar with the Petition and that she prepared or supervised the preparation of Petition Exhibits 1, 2, 4, 5, 6 and 7 to Hearing Exhibit K. Mr. Pimentel testified that he is familiar with the Petition and that he prepared or supervised the preparation of Exhibit 8 to Hearing Exhibit K, the Statement of Estimated Regulatory Costs (SERC).

5. The Petitioner demonstrated that the Petition and its exhibits 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.

*Petitioner's Case-in-Chief*

6. Mr. Gentile's expert testimony reviewed the proposed District establishment in light of the requirements of the State Comprehensive Plan (State Plan) found in chapter 187, Florida Statutes. The State Plan provides long-range policy guidance for the orderly social, economic, and physical growth of the State by way of 25 subjects, goals, and policies. Mr. Gentile identified Subject Nos. 15-Land Use, 17-Public Facilities, and 25-Plan Implementations, as particularly relevant.

7. Subject No. 15 of the State Plan recognizes the importance of locating development in areas that have the resources, fiscal abilities, and service capacity to accommodate growth. Mr. Gentile testified that the District is not inconsistent with this goal because it will continue to have the fiscal capability to provide a wide range of services and facilities to a population in a designated growth area.

8. Policy 1 under Subject No. 15 promotes efficient development activities in areas which will have the capacity to service new populations and commerce. The proposed District will be a vehicle to provide a high quality of infrastructure

facilities and services in an efficient and focused manner at sustained levels over the long term.

9. Subject No. 17 of the State Plan calls for protecting investments in existing public facilities and the timely, orderly, and efficient planning and financing of new facilities. Policy 3 under Subject No. 17 states that the cost of new public facilities should be allocated to existing and future residents on the basis of the benefits received. Policy 6 under Subject No. 17 encourages the identification and implementation of innovative, but fiscally sound and cost-effective, techniques for financing public facilities. Mr. Gentile testified that the proposed District would further this goal and related policies.

10. Subject No. 25 of the State Plan provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination and maximizing citizen involvement.

11. Mr. Gentile testified that there are also several relevant policies under Subject No. 25, including Policies 2, 3, 6, and 8. Policy 2 seeks to ensure appropriate operational authority in each level of government for the implementation of the policy directives in the State Plan. Chapter 190 provides the proposed District with operational authority to deliver basic community services and capital infrastructure without overburdening other local governments and their taxpayers. The

proposed District would provide infrastructure systems and facilities for the acreage within the District without burdening the general body of taxpayers within the County.

12. Policy 3 under Subject No. 25 seeks to provide effective monitoring, incentive, and enforcement capabilities to ensure that regulatory programs are met. Under section 189.08(2), Florida Statutes, the proposed District would submit public facilities reports, including annual updates, with the local general-purpose government. This facilitates an effective monitoring program of the District by the County.

13. Policy 6 under Subject No. 25 encourages citizen participation in all levels of policy development, planning, and operations. Under chapter 190, the District would eventually transition to a resident-elected Board of Supervisors, which must hold its meetings in the sunshine under chapter 286, Florida Statutes.

14. Policy 8 under Subject No. 25 encourages continual cooperation among communities to bring the private and public sectors together for establishing an orderly, environmentally, and economically sound plan for future needs and growth.

15. Mr. Gentile testified that the District is not inconsistent with any applicable provisions of the State Plan.

16. Mr. Gentile also reviewed the District in light of the requirements of the County Plan. Mr. Gentile testified that



chapter 190 prohibits a community development district from acting in any manner inconsistent with the local government's comprehensive plan. Mr. Gentile also testified that the District would further some provisions of the County Plan, specifically Goal 3.1 and Objective 3.1 of the Intergovernmental Coordination Element that provide for coordination between the County and public entities and units of local government, as well as Policy 14.1.B.2 of the Capital Improvement Element, which provides that the County shall look to both existing and future developments to provide public facilities through other levels of government and independent districts. The proposed District would provide the required infrastructure within its boundaries without reducing the fiscal resources of the County. Financing for necessary improvements would be paid for by the landowners and residents of the District in the form of special assessments or non-ad valorem assessments.

17. The proposed District would not be inconsistent with any applicable element or portion of the County Plan.

*Public Comments*

18. Members of the public attended the hearing and filed written comments in the record within ten days. These comments addressed concerns that approval of the District would result in increased densities and impacts to public facilities, such as

schools, emergency services, and roadway capacity in violation of effective comprehensive plans.

19. Thomas Baird, Esquire, appeared on behalf of the Town of Jupiter Island and testified that the property had previously been the subject of two land use related applications which sought increased densities. Mr. Baird argued that while neither application was approved, the Petition should be viewed as a third attempt to increase density on the property and, further, that the Petition could be an attempt to circumvent the County Plan.

*Petitioner's Rebuttal*

20. Mr. Gentile introduced Petitioner's Exhibit M, the approved master site plan for the property, which approves the development of 126 single-family residential units. Mr. Gentile testified that the impacts of the currently approved densities on the master site plan were already contemplated by the existing County Plan, which authorized a development density of 1 dwelling unit per 20 acres (du/acre). Mr. Gentile also testified that before actual development can take place on the property, the applicant must petition the County for final site plan approval. During that process, the County will evaluate concurrency issues, including those related to schools and emergency services.

21. Mr. Gentile testified that a community development district is a unit of special-purpose government, and, under

chapter 190, it has no authority to make zoning, land use, density, or any development-permitting decisions that are inconsistent with the comprehensive plan of a unit of general-purpose government, such as the County.

22. Mr. Gentile testified that an elaborate process exists under chapter 163 to accomplish changes to land use and zoning on the property, and he was not aware of a circumstance where a District was able to circumvent that process. See § 190.004(3), Fla. Stat. ("Community development districts do not have the power of a local government to adopt a comprehensive plan, building code, or land development code.").

23. DEO did not find any inconsistency with the County Plan.

*Conclusions*

24. The Petitioner demonstrated that the District would not be inconsistent with any applicable element or portion of the State Plan.

25. The Petitioner demonstrated that the District would not be inconsistent with any applicable element or portion of the County Plan.

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

*Petitioner's Case-in-Chief*

26. The District will include approximately 2,717.2 acres, located entirely within the unincorporated limits of the County.

27. Ms. Corbett, Mr. Gentile, and Mr. Pimentel provided expert testimony that from engineering, comprehensive planning, economic, and management perspectives, 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.

*Public Comment*

28. On behalf of the Town of Jupiter Island, Mr. Baird testified that it is unreasonable to propose a community development district of 2,717 acres to provide 129 dwelling units. Mr. Baird questioned why, given the County Plan designation of 1 du/20 acres, it would be prudent or necessary to deliver community development services and facilities to an area that the County Plan has identified as unsuitable for urban densities or intensities.

*Petitioner's Rebuttal*

29. Mr. Pimentel testified that the majority of community development districts are established in unincorporated areas.

Mr. Pimentel further testified that community development districts are most frequently established in non-urban, rural or unincorporated areas. He also testified that community development districts are often the primary means of providing infrastructure and community facilities to rural and unincorporated developing areas and that such lands are often outside of urban service area boundaries established by local comprehensive plans.

*Conclusion*

30. The Petitioner demonstrated that the proposed District will be of sufficient size, sufficiently compact, and sufficiently contiguous to be developed as a single functionally interrelated community. No evidence was submitted indicating that the area of land to be included in the proposed District is not of sufficient size, is not sufficiently compact, and is not sufficiently contiguous to be developed as a single functionally interrelated community, which is the pertinent factor. The objections focused instead on the density of development within the proposed District. Testimony and evidence regarding the permitting and planning of the development is not material or relevant in this proceeding. See § 190.002(2)(d), Fla. Stat.

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

*Petitioner's Case-in-Chief*

31. The Petition states that the District would construct or provide certain infrastructure improvements, including stormwater management, roadways, and lake plantings.

32. Ms. Corbett, Mr. Gentile, and Mr. Pimentel provided expert testimony that from engineering, comprehensive planning, economic, and management perspectives, the District is the best alternative for delivering community development services and facilities.

33. Ms. Corbett testified that as a unit of special-purpose government, the District is more effective than typical property owner associations in working with local general-purpose governments to ensure that necessary public infrastructure improvements are provided in a timely and efficient manner.

34. Mr. Gentile testified that from a planning perspective, establishment of a community development district over these lands provides a perpetual local government capable of not only delivering the improvements to the future residents of the District, but also providing long-term, high-quality maintenance of those same improvements.

35. Mr. Pimentel testified that installation and maintenance of infrastructure systems and services by the

proposed District would be paid by imposing special assessments. Use of such assessments would ensure that the real property benefiting from District services is the same property which pays for them.

36. Mr. Pimentel further testified that there are three alternatives for providing the infrastructure for necessary services and facilities besides the proposed District. The first alternative is for the County to build the entire infrastructure and assume a great deal of responsibility related to the oversight of day-to-day construction, maintenance, and management of the proposed services and facilities and landowners of these lands. This would increase the burden on County staff, divert resources from other County developments and projects, and indirectly force the residents of the entire County to pay for these improvements. The second alternative is for a developer to provide the proposed improvements using private financing. This alternative does not provide any guarantee of a long-term, consistent entity to oversee construction, maintenance, and management of the proposed services and facilities. Also, a private landowner is not subject to the same statutory safeguards that the proposed District, as a public entity, would be subject to, including public bidding on contracts and public access to meetings and documents. The third alternative is a property owner's association (POA). A POA is a more long-term and stable

entity that may be capable of providing the necessary maintenance of dedicated improvements. However, a POA is not subject to the same statutory safeguards as the proposed District. Also, a POA cannot impose and collect its assessments in the same manner as property taxes or District assessments.

37. Mr. Pimentel further testified that by comparison to the three alternatives discussed above, the proposed District is the best alternative available to provide for the management and maintenance of various infrastructure improvements. As a special-purpose local government, the proposed District is a stable, long-term public entity capable of maintaining, and managing, the necessary infrastructure, facilities, and services.

38. The limited purpose and scope of the District, combined with the statutory safeguards in place, such as notice of public hearings and access to district records, would ensure that the proposed District is responsive to the infrastructure needs of the proposed District.

39. The proposed District would be able to impose non-ad valorem assessments upon the property within the District to fund maintenance of the infrastructure and related services.

Mr. Pimentel testified that the District allows for independent financing, administration, operation, and maintenance of the land within the District and allows District property owners to



completely control the District Board and, therefore, the timing and extent of infrastructure development.

40. The District would construct certain infrastructure and community facilities needed by the property owners and residents of the District. Expenses for the operations and maintenance of the facilities the District retains are expected to be paid through maintenance assessments. This ensures that the property receiving the benefit of the District services is the same property paying for those services.

41. A community development district allows for independent financing, administration, operations, and maintenance of the land within the district and allows district residents to ultimately completely control the district.

42. Mr. Pimentel testified that the proposed District is the best alternative to provide the proposed community development services and facilities to the land included in the proposed District. This is because it is a long-term, stable entity capable of maintaining, and managing, the necessary infrastructure, facilities, and services.

*Public Comment*

43. Mr. Baird testified that a community development district is not the best alternative for delivering community development and services and facilities to the "ruralest area of western Hobe Sound." Mr. Baird also stated in post-hearing

comments that the proposed District is not the best alternative for the delivery of water and sewer services and that the improvements proposed by the District would be private and not public improvements.

*Petitioner's Rebuttal*

44. Ms. Corbett testified the District's necessary infrastructure may be funded and constructed within an easement granted to the proposed District and that the provision of stormwater ponds, landscaping, roads, and other improvements within perpetual public easements owned by a community development district is a common and usual method of providing such improvements. Ms. Corbett and Mr. Pimentel testified that if a community development district provides these improvements, the improvements are public since the districts are special purpose units of local government and political subdivisions of the State of Florida. As such, the districts are public entities so that any improvements they provide are public improvements.

45. Mr. Pimentel testified that community development districts are often utilized as an alternative means of providing infrastructure to rural, unincorporated areas. Also, water and sewer improvements are not anticipated to be provided or funded by the proposed District. The property is anticipated to be serviced through wells and septic tanks.

46. Mr. Pimentel also testified that the level of improvements anticipated to be funded by the proposed District is sufficient to justify the establishment of a community development district and that districts have been established to fund lesser amounts of improvements. In addition, the establishment of the proposed District would not impact any existing utility service areas or territories.

*Conclusion*

47. The Petitioner demonstrated that the proposed District remains the best alternative available for delivering community development services and facilities to the area that will be served by the District. Objections asserting that the Petition failed to meet this factor relied upon arguments that the rural location of the property, outside of an urban services zone, is inconsistent with the customary location and use of community development districts. However, utility improvements and services are not proposed in the Petition and are not relevant.

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.

*Petitioner's Case-in-Chief*

48. Ms. Corbett, Mr. Gentile, and Mr. Pimentel testified that the services and facilities proposed to be provided by the

District are not incompatible with the uses and existing local and regional services or facilities.

49. Ms. Corbett, Mr. Gentile, and Mr. Pimentel further testified that the services and facilities to be provided by the proposed District are not currently being provided in the area by the existing local government.

*Public Comment*

50. Mr. Baird testified that the delivery of water and sewer services by the proposed District is inconsistent and contrary to the determination that South Martin Regional Utility (SMRU), the Town of Jupiter Island's utility provider, is to be the utility provider for the area within the proposed District. Mr. Baird further testified that establishment of the proposed District within SMRU's service area would authorize the District to provide water and sewer services which would not be compatible with the capacity of water allocated to SMRU pursuant to its Consumptive Use Permit.

*Petitioner's Rebuttal*

51. Mr. Pimentel testified that water and sewer improvements are not anticipated to be provided or funded by the District. Mr. Pimentel testified that arguments about the availability of utility services and special assessment mechanisms through the Town of Jupiter Island's utility service territory are irrelevant to consideration of whether to establish

the proposed District. The proposed District is not expected to fund or provide utility infrastructure or improvements as outlined in the Petition.

52. Community development districts are routinely established within the utility service territories of existing public and private utilities. Nothing about the creation of the proposed District would alter the utility service territory of the Town of Jupiter Island or its authority to continue to provide such services.

*Conclusion*

53. The Petitioner demonstrated 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. The proposed incompatibility with the SMRU does not exist. The landowner is not petitioning to provide utility infrastructure, and establishment of the District will not alter the SMRU service territory.

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

*Petitioner's Case-in-Chief*

54. As cited previously, from engineering, comprehensive planning, economic, and special district management perspectives, 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 and become a functionally interrelated community. Ms. Corbett testified that special-district governance provides a mechanism whereby long-term maintenance obligations can be satisfied by the persons primarily using the facilities and services. Mr. Pimentel testified the proposed District is a logical mechanism to oversee the installation of capital infrastructure improvements necessary for community development and that the land area is well suited for the proposed services and facilities.

*Public Comment*

55. No public comments were received on this factor.

*Conclusion*

56. The Petitioner demonstrated that the area that will be served by the District is amenable to separate special-district government.

G. Other requirements imposed by statute or rule.

57. Chapter 190 and chapter 42-1 impose specific requirements regarding the Petition and other information to be submitted to the Commission.

*Elements of the Petition*

58. The Commission certified that the Petition met all of the requirements of section 190.005(1)(a).

*Statement of Estimated Regulatory Costs (SERC)*

59. Section 190.005(1)(a)8. requires the Petition to include a SERC which meets the requirements of section 120.541, Florida Statutes. The Petition contained a SERC attached as Exhibit 8.

60. Mr. Pimentel explained the purpose of the SERC, the economic analysis presented, and the data and methodology to prepare the SERC.

61. The SERC 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, and property owners within the District.

62. Mr. Pimentel testified that once the District is established, the State of Florida and its citizens will incur only modest administrative costs to review the periodic reports required pursuant to chapters 189 and 190 and other law. Specifically, the State of Florida will review the annual financial report, annual audit, and public financing disclosures. To offset these costs, the Florida Legislature has established a maximum fee of \$175.00 to the DEO per year to pay the costs incurred by the Special District Information Program to administer the reporting requirements.

63. It is not anticipated that the County will incur costs in reviewing the Petition, as the Petitioner remitted a \$15,000.00 filing fee to the County to offset such costs. Mr. Pimentel testified that although the County elected to hold an optional public hearing relative to the Petition, the related costs of the public hearing should not have exceeded the \$15,000.00 filing fee and that the Petition contains all of the information necessary for review and should not require additional staff or capital costs.

64. The Petitioner demonstrated that the SERC met all requirements of section 120.541.

*Other Requirements*

65. The Petitioner complied with the provisions of section 190.005(1)(b) by providing the County with a copy of the Petition and paying the requisite filing fee prior to filing the Petition with the Commission.

66. Section 190.005(1)(d) requires the 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 Stuart News on August 8, August 15, August 22, and August 29, 2018.

CONCLUSIONS OF LAW

Based upon the record of this proceeding, it is concluded that:



67. This proceeding is governed by chapters 190 and 120 and chapter 42-1.

68. This proceeding was properly noticed by publication 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.

69. The Petitioner met the requirements of section 190.005 regarding submission of the Petition and satisfaction of filing-fee requirements.

70. The Petitioner bears the burden of establishing that the Petition met the relevant statutory criteria set forth in section 190.005(1)(e).

71. All portions of the Petition and other submittals are completed and filed as required by law. All statements contained within the Petition as amended are true and correct.

72. The establishment of the District is not inconsistent with any applicable element or portion of the State Plan or the County Plan.

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

74. The District is the best alternative available for delivering community development services and facilities to the area that will be served by the District.

75. 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.

76. The area to be served by the District is amenable to separate special district government.

77. Based on the record evidence, the Petition, as amended, satisfies all of the applicable statutory requirements. Therefore, the Governor and Cabinet, sitting as the Commission, should formally adopt a rule to establish the District as requested by the Petitioner.

DONE AND ENTERED this 28th day of November, 2018, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 28th day of November, 2018.

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