

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO EXPAND THE Case No. 18-6390
BELLA COLLINA COMMUNITY
DEVELOPMENT DISTRICT

REPORT TO THE FLORIDA
LAND AND WATER ADJUDICATORY COMMISSION

D. R. Alexander, Administrative Law Judge of the Division of Administrative Hearings, conducted a local public hearing in this case on February 14, 2019, at the Bella Collina Clubhouse, 16350 Vetta Drive, Montverde, Florida.

APPEARANCES

For Petitioner: Andrew C. d'Adesky, Esquire
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STATEMENT OF THE ISSUE

The issue presented in this proceeding is whether the Petition to Expand the Boundaries of the Bella Collina Community Development District (Petition) meets the applicable criteria in chapter 190, Florida Statutes (2018), 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 November 19, 2018, the Bella Collina Community Development District (Petitioner or District) filed its Petition and attached exhibits with the Commission requesting that the Commission adopt a rule expanding the District by adding approximately 5.11 acres. Prior to this time, the Petition and exhibits, along with the requisite filing fee, were delivered to the Town of Montverde (Town) and Lake County (County). Both the Town and the County elected not to hold an optional public hearing on the Petition. On December 5, 2018, the Secretary of the Commission certified that the Petition contained all required elements and referred it to the Division of Administrative Hearings to conduct a local public hearing, as required by section 190.005(1)(d).

Notice of the public hearing was published in accordance with section 190.005(1)(d). At the local public hearing conducted on February 14, 2019, the District presented the testimony, live and written, of Randall F. Greene, owner of the expansion parcel; Steven Boyd, a registered professional engineer, District Engineer, and accepted as an expert; and George Flint, the District Manager. Petitioner's Exhibits 1 through 3 were accepted in evidence. One member of the public

attended the hearing, but no members of the public offered testimony. No written comments were submitted after the local hearing. See Fla. Admin. Code R. 42-1.012(3).

A one-volume Transcript of the hearing has been prepared. Petitioner filed a proposed report of findings and conclusions, which has been considered in the preparation of this Report.

OVERVIEW OF THE DISTRICT

1. Petitioner is seeking the adoption of a rule to add approximately 5.11 acres to the District (Expansion Parcel), as described in the Petition. After expansion, the District will contain approximately 1,810.11 acres. The District was created in 2004 and lies wholly within the County just south of the Town and east of the Florida Turnpike.

2. The entirety of the Expansion Parcel is owned by DCS Real Estate Investments, LLC, and the landowner has provided written consent to the proposed expansion of the District boundaries.

3. The District is presently providing certain infrastructure improvements to the land within its boundaries and intends, once expanded, to construct or provide similar infrastructure improvements within the Expansion Parcel in the future.

4. The sole purpose of this proceeding is to consider the expansion of the District boundaries as proposed by Petitioner.

Information related to the managing and financing of the service-delivery function of the District as expanded (Expanded District) is also considered. Because sections 190.046 and 190.005 provide the statutory criteria to be considered, this Report summarizes the evidence relating to each relevant section of the statutes.

SUMMARY OF THE RECORD

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

5. Exhibit 1 consists of the Petition and its exhibits as filed with the Commission. Mr. Flint testified that he is familiar with the Petition, and he generally described the exhibit that he, or others under his supervision, prepared. He testified that the contents of the Petition and the exhibits attached thereto were true and correct to the best of his knowledge.

6. Mr. Boyd testified that he is familiar with the Petition, and that he prepared, or had others prepare under his supervision, several of the exhibits attached to the Petition. Mr. Boyd testified that these exhibits were true and correct to the best of his knowledge.

7. Finally, Mr. Greene testified that he is familiar with the Petition and that he executed the Consent and Joinder to Petition to Expand the Boundaries of the Bella Collina Community Development District. He also testified that the contents of the

Petition and the exhibits attached thereto were true and correct to the best of his knowledge.

8. Petitioner has demonstrated that the Petition and exhibits are true and correct.

B. Whether the amendment of the District boundaries is inconsistent with any applicable element or portion of the State Comprehensive Plan or of the effective local government comprehensive plan.

9. Mr. Boyd reviewed the proposed District boundary in light of the requirements of the State Comprehensive Plan found in chapter 187, which provides long-range policy guidance for the orderly social, economic, and physical growth of the State by way of 25 subjects, goals, and policies. He testified that the Expanded District is not inconsistent with any applicable provisions of the State Comprehensive Plan.

10. Mr. Boyd also reviewed the Expanded District in light of the requirements of the County Comprehensive Plan. He testified that the Expanded District would not be inconsistent with any applicable element or portion of the County Comprehensive Plan.

11. Petitioner has demonstrated that the Expanded District will not be inconsistent with any applicable provision of the State Comprehensive Plan or County 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.

12. The Expanded District will include approximately 1,810.11 acres, located entirely within the unincorporated part of the County.

13. Mr. Flint testified that the Expanded District has sufficient land area, and is sufficiently compact and contiguous to be developed, and in fact has been developed, as one functional, interrelated community and that the boundary expansion has no impact on functionality.

14. Mr. Boyd testified that the area of land within the District was originally developed as a planned community and was previously determined to be of sufficient size, compactness, and contiguity to be developed with facilities and services as one functionally interrelated community. The facilities and services planned for the Expansion Parcel are of the same kind as currently within the District and will operate as part of one functionally interrelated community following the expansion of the District boundaries. As a result, the Expanded District remains of sufficient size, compactness, and contiguity to function as one interrelated community.

15. Petitioner has demonstrated that the Expanded District will be of sufficient size, sufficiently compact, and

sufficiently contiguous to be developed as a single functionally interrelated community.

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

16. The District is presently providing certain infrastructure improvements and services to the lands within its boundaries and intends to construct and provide such infrastructure improvements and services to the Expanded Parcel in the future.

17. Mr. Flint testified that, to date, the District has been the mechanism to plan, finance, construct, operate, and maintain the public facilities within the existing District; the District has already constructed the entirety of the facilities and services needed to adequately serve the Expanded District; and the District is providing the associated maintenance and operations that will allow for the Expanded District to continue to operate the facilities and services to the lands within its boundaries. Accordingly, the Expanded District is the best alternative to provide such facilities and services to the area to be served.

18. Mr. Boyd testified that due to the fact that the existing District has provided community development facilities and services effectively and efficiently to the areas served from

the date the District was established, the District has proven in the past that it is the best alternative available. Further, the District is the only entity capable of serving the Expansion Parcel with the proposed community development facilities and services. Therefore, even after the addition of the Expansion Parcel, the Expanded District is capable of continuing to efficiently finance and oversee the operation and maintenance of necessary capital improvements within the community.

19. Petitioner has demonstrated that the Expanded District remains the best alternative available for delivering community development services and facilities to the area that will be served by the Expanded District.

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

20. Mr. Flint testified that the services and facilities of the Expanded District are identical to those being provided by the existing District, and thus are not incompatible with the capacity and use of existing local or regional community development services and facilities.

21. Mr. Boyd testified that the services and facilities to be provided by the Expanded District are not incompatible, and in fact remain fully compatible, with the capacities and uses of the

existing local or regional community development facilities and those provided by the existing District.

22. Petitioner has demonstrated that the community development services and facilities of the Expanded 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.

23. Mr. Flint testified that the addition of the Expansion Parcel will not affect the ability of the Expanded District to operate as a separate special-district government, and that expanding the boundaries of the existing District will not change the way the unit of government is operating either now or in the future.

24. Mr. Boyd testified that even with the addition of the Expansion Parcel to the existing District boundary, the area within the District remains an appropriate size to comprise its own community with individual facility and service needs. Moreover, the Expanded District will continue to constitute an efficient mechanism for providing the necessary capital infrastructure improvements, and ongoing operation and maintenance thereof, to directly serve the development within its boundaries.

25. Petitioner has demonstrated that the area that will be served by the Expanded District is amenable to separate special-district government.

G. Other requirements imposed by statute or rule.

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

27. The Commission has certified that the Petition meets all of the requirements of sections 190.046(1) and 190.005(1)(a).

28. Section 190.005(1)(a)8. requires the Petition to include a Statement of Estimated Regulatory Costs (SERC), which meets the requirements of section 120.541. The Petition contains a SERC.

29. Mr. Flint explained the purpose of the SERC, the economic analysis presented therein, and the data and methodology used in preparing the SERC.

30. The SERC contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to expand the boundaries of the District -- the State and its citizens, the County and its citizens, the Town and its citizens, and property owners within the existing District and Expansion Parcel.

31. Beyond administrative costs related to rule amendment, the State and its citizens will only incur modest costs from expanding the District as proposed. Specifically, State staff

will process, analyze, and conduct a public hearing on the Petition to expand the District boundaries. These activities will utilize the time of the staff and State officials. However, these costs to the State are likely to be minimal for a number of reasons. First, review of the Petition does not include analysis of the development to be served by the District. Second, the Petition itself provides most of the information needed for State staff's review. Third, the State currently employs the staff needed to conduct the review of the Petition. Finally, no capital expenditure is required to review the Petition.

32. The cost of petitioning for the expansion of the District boundaries will be paid entirely by the developer, DCS Real Estate Investments, LLC, pursuant to a funding agreement with the District. Also, the Expanded District will incur costs for operations and maintenance of its facilities and for its administration. Those costs will be completely paid for from annual assessments against all properties within the Expanded District benefiting from its facilities and services.

33. As an existing District, the ongoing cost to various State entities related to the Expanded District relate strictly to the receipt and processing of various reports that the Expanded District is required to file annually with the State and various entities. However, the costs to the State agencies that will receive and process the Expanded District's reports will be

minimal. The Expanded District is only one of many governmental subdivisions required to submit various reports to the State. Additionally, pursuant to section 189.18, the Expanded District will pay an annual fee to the Department of Economic Opportunity to offset such processing costs.

34. It is not anticipated that the County or Town will incur costs in reviewing the Petition, as the District has remitted a filing fee to the County and Town to offset any such costs. Additionally, the County and Town are not required to hold any public hearings on the matter, and in fact declined to hold a public hearing. As with the existing District, the annual costs to the County and Town related to the ongoing operations of the Expanded District are also minimal. The Expanded District is an independent unit of local government. The only annual costs incurred by the County and Town will be the minimal costs of receiving and, to the extent desired, reviewing the various reports that the Expanded District is required to provide the County and Town.

35. Petitioner has demonstrated that the SERC meets all requirements of section 120.541.

36. Petitioner has complied with the provisions of section 190.005(1)(b) in that the County and Town were provided with a copy of the Petition and were paid the requisite filing fees prior to Petitioner filing the Petition with the Commission.

37. Section 190.005(1)(d) requires Petitioner to publish notice of the local public hearing in a newspaper of general paid circulation in the county where the district is located for four consecutive weeks prior to the hearing. The notice was published in a newspaper of general paid circulation in Lake County (Orlando Sentinel) on January 21, January 28, February 4, and February 11, 2019.

H. Public Participation

38. During the local meeting, one individual asked for the specific location of the Expansion Parcel, which was answered in detail by the District Engineer.

CONCLUSIONS

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

40. The proceeding was properly noticed pursuant to section 190.005(1)(d) by publication of an advertisement in a newspaper of general paid circulation in Lake County of general interest and readership, once each week for the four consecutive weeks immediately prior to the hearing.

41. Petitioner has met the requirements of section 190.005(1)(a) regarding the submission of the Petition and satisfaction of the filing fee requirements.

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

43. All portions of the Petition and other submittals have been completed and filed as required by law.

44. All statements contained within the Petition are true and correct.

45. The expansion of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective County Comprehensive Plan.

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

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

48. The community development services and facilities of the Expanded District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

49. The area to be served by the Expanded District remains amenable to separate special-district government.

50. Based on the record evidence, the Petition satisfies all of the statutory requirements and, therefore, there is no reason not to grant Petitioner's request for expanding the boundaries of the existing District, as requested by Petitioner.

DONE AND ENTERED this 7th day of March, 2019, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 7th day of March, 2019.

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