

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: JOINT PETITION TO AMEND THE
VILLAGES OF WESTPORT COMMUNITY
DEVELOPMENT DISTRICT

Case No. 20-4890

ADMINISTRATIVE LAW JUDGE'S REPORT TO THE
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

On January 29, 2021, a local public hearing was conducted before E. Gary Early, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), by Zoom Conference and at the Holiday Inn Express – Bartram Park, 13934 Village Lake Circle, Jacksonville, Florida 32258.

APPEARANCES

For Petitioner Villages of Westport Community Development District:

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For Petitioner CC Westport, LLC:

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STATEMENT OF THE ISSUE

The issue before the Florida Land and Water Adjudicatory Commission (Commission) in this proceeding is whether to grant the Joint Petition to Amend the Villages of Westport Community Development District (Joint Petition) to amend the boundary of the Villages of Westport Community

Development District (District) by removing approximately 1,058.56 acres, and adding approximately 3.63 acres to the land comprising the current area encompassed by the District.

The local public hearing was conducted pursuant to sections 190.046(1)(f) and 190.005(1)(d), Florida Statutes, for the purpose of taking testimony and public comment and receiving exhibits on the Joint Petition.

This report is prepared and submitted to the Commission pursuant to sections 190.046 and 190.005 for consideration in its determination whether to adopt a rule amending the boundary of the District as requested by the District.

PRELIMINARY STATEMENT

On September 1, 2020, the District filed the Joint Petition with the Commission. The District previously provided the Joint Petition and its exhibits, along with the requisite filing fee, to the City of Jacksonville, Florida (the City of Jacksonville).

The Joint Petition seeks to contract the boundary of the District by removing approximately 1,058.56 acres (the Contraction Parcel) from, and by adding approximately 3.63 acres (the Expansion Parcel) to, the 1,476.34 acres comprising the Existing District, which will result in a District boundary encompassing approximately 421.03 acres (the Amended District). Within the boundary of the Amended District are three parcels that are excluded from the boundary of the Amended District (the Excluded Parcels), and are not affected by this Amendment.

The District is located entirely within the City of Jacksonville. Section 190.005(1)(c) provides that the municipality containing all or a portion of the lands within the proposed Amended District has the option to hold a public

hearing within 45 days of the filing of a petition. The City of Jacksonville held a public hearing relative to the proposed boundary amendment on October 27, 2020, and adopted Resolution 20-652-A, recommending approval of the boundary amendment.

On November 5, 2020, the Commission certified that the Joint Petition contained all required elements and referred the Joint Petition to DOAH for the purpose of conducting the local public hearing required by section 190.005(1)(d). On January 15, 2021, a Notice of Receipt of Petition was published in the Florida Administrative Register.

On November 23, 2020, the Department of Economic Opportunity (DEO) certified to the Commission that the Joint Petition contained no potential inconsistency with chapter 163, Florida Statutes, or the City of Jacksonville 2030 Comprehensive Plan.

The local public hearing was held on Friday, January 29, 2021, at 9:00 a.m., at the Holiday Inn Express – Bartram Park, 13934 Village Lake Circle, Jacksonville, Florida 32258, with the Administrative Law Judge appearing by Zoom conference. Petitioners published notice of the local public hearing in accordance with section 190.005(1)(d). At the local public hearing, Petitioners presented the live and written testimony of:

1. Vivian Carvalho, District Manager, employed by PFM Group Consulting, LLC, who was accepted as an expert in district management and finance;

2. James Stowers, Vice-Chairman of the District’s Board of Supervisors;

3. Neal Brockmeier, P.E., the Project Director, employed by Prosser, Inc., and District Engineer for the District, who was accepted as an expert in land development and public infrastructure construction; and

4. Kelly McCarrick, Vice President of CC Westport, LLC.

The District offered Composite Exhibit A, consisting of the prefiled testimony of Ms. Carvalho, and including as attachments thereto Tabs VC-1 through VC-11; Exhibit B, consisting of the prefiled testimony of Mr. Stowers; Composite Exhibit C, consisting of the prefiled testimony of Mr. Brockmeier, and including as attachments thereto Tabs NB-1 and NB-2; and Exhibit D, consisting of the prefiled testimony of Ms. McCarrick. All exhibits were received in evidence.

Roughly eight members of the public appeared by Zoom. Three of them, Alice Sanders, Melissa Story, and Danylle Connor, who are residents in the completed development phases of the area proposed as the Amended District, provided public comment. The comments went beyond the more traditional three-minute statements, and included a number of questions regarding the infrastructure provided by the District, fees before and after the proposed boundary amendment, plans for development of the Contraction Parcel, and other similar concerns. Counsel and witnesses for Petitioners were open and informative in their responses.

The record of the proceeding was held open for 10 days to allow for the submission of additional written comments or documents from the public. On February 8, 2021, six filings were received by the undersigned, placed on the public docket, and have been considered in the development of this Report. The filings have been placed onto a thumb drive which accompanies the record.

On February 15, 2021, Petitioners filed an affidavit in reply to the public comments, which is on the public docket of this proceeding.

The one-volume transcript of the local public hearing was filed with DOAH on February 10, 2021. Petitioners also filed a Proposed Report of Findings and Conclusions on February 22, 2021, which has been considered in the preparation of this Report.

References to statutes are to Florida Statutes (2020), unless otherwise noted.

OVERVIEW

The District is seeking the adoption of an amendment to Florida Administrative Code Rule 42QQ-1.002 to remove the approximately 1,058.56-acre Contraction Parcel, and to add the approximately 3.63-acre Expansion Parcel as described in the Joint Petition. After the contraction and addition, the Amended District will contain approximately 421.03 acres.

The Contraction Parcel and the Expansion Parcel are both owned, in their entirety, by CC Westport, LLC. CC Westport, LLC, provided written consent to the proposed amendment of the District's boundaries. Furthermore, the favorable action of the Board of Supervisors of the District constitutes consent for all of the lands within the District, as is evidenced by District Resolutions 2020-06 and 2020-11, and by its status as a party to the Joint Petition.

The District is presently providing certain infrastructure improvements to the lands within its boundaries, except that the District is not currently providing facilities or services to any land within the Contraction Parcel. Facilities or services to be provided to the Contraction Parcel will be provided by a future community development district (CDD) and/or the developer of the Villages of Westport development.

The sole purpose of this proceeding was to consider the amendment of the District boundary as proposed. Information relating to the managing and financing of the service-delivery function of the Amended District was also considered. Inasmuch as sections 190.046 and 190.005 provide the statutory criteria to be considered, this report summarizes the relevant and material evidence relating to each relevant section of the statute.

SUMMARY OF THE RECORD

A. Joint Petition Contents and Related Matters

1. The Joint Petition was submitted to the Commission on September 1, 2020. A copy of the Joint Petition, along with a check in the amount of \$15,000.00, was previously submitted to the City of Jacksonville on August 31, 2020.

2. The Joint Petition incorporated the following Exhibits:

- a. Joint Petition Exhibit 1, which is a depiction of the general location of the Existing District boundary.
- b. Joint Petition Exhibit 2, which is the metes and bounds description of the Existing District boundary as incorporated by reference in Florida Administrative Code Rule 42QQ-1.002.
- c. Joint Petition Exhibit 3, which is the metes and bounds description of the Contraction Parcel.
- d. Joint Petition Exhibit 4, which is the metes and bounds description of the Expansion Parcel.
- e. Joint Petition Exhibit 5, which is the metes and bounds description of the Amended District after removal of the Contraction Parcel and addition of the Expansion Parcel.
- f. Joint Petition Exhibit 6, which is a general location map of the Amended District.

g. Joint Petition Exhibit 7, which is the written Consent of the owner (at the time of the filing of the Joint Petition) of 100 percent of the lands within the Contraction Parcel and Expansion Parcel expressed its consent to the amendment of the boundary of the District.

h. Joint Petition Exhibit 8, which consists of Resolutions 2020-06 and 2020-11, by which the District's Board of Supervisors has approved and consented to the amendment of the boundary of the District.

i. Joint Petition Exhibit 9, which is the Future Land Use Map for the City of Jacksonville that depicts the distribution, location, and extent of public and private land uses proposed for the Amended District by the future land use elements of the comprehensive plan.

j. Joint Petition Exhibit 10, which is a map of the current major trunk water mains, sewer interceptors, and outfalls within the proposed Amended District.

k. Joint Petition Exhibit 11, which describes the facilities and services that have been completed in the first three phases of construction in the Amended District and the costs of construction, and the infrastructure improvements planned for construction in the fourth phase of construction in the Amended District and the estimated costs of construction.

l. Joint Petition Exhibit 12, which is the Statement of Estimated Regulatory Costs (SERC) prepared in accordance with the requirements of section 120.541, Florida Statutes.

m. Joint Petition Exhibit 13, which is the District's and the Landowner's authorizations of Wesley S. Haber of Hopping Green & Sams, P.A., and Kenneth R. Artin of Bryant Miller Olive, P.A., to

act as their respective agents relative to the boundary amendment.

3. The Joint Petition established that the District is not currently providing any facilities or services to the Contraction Parcel. According to the Joint Petition, the Contraction Parcel is presently subject to debt service assessments and operation and maintenance assessments levied and imposed by the District, however, the Landowner will pay such assessments in full prior to the effective date of any amended rule approving the boundary of the Amended District. There will be no changes in the facilities provided by the District as a result of the removal of the Contraction Parcel.

4. The Joint Petition described the Amended District as including four phases of construction. Infrastructure improvements for the first three phases, which are fully platted and developed and include 540 lots, have been completed. The infrastructure improvements for the fourth phase will allow for the development of 227 lots and are intended to be constructed by the end of 2021.

5. The Joint Petition alleges that the removal of the Contraction Parcel from the District boundary should be granted for the following reasons:

a. Amendment of the District and all land uses and services planned within the District, as amended, are not inconsistent with applicable elements or portions of the adopted State Comprehensive Plan or the City of Jacksonville Comprehensive Plan.

b. The area of land within the District, as amended, is part of a planned community. The District, as amended, will continue to be of sufficient size and sufficiently compact and contiguous to be developed as one functional and interrelated community.

c. The District, as amended, continues to be the best alternative for delivering community development services and facilities without imposing an additional burden on the general population of the local general-purpose government.

d. The community development services and facilities of the District, as amended, will not be incompatible with the capacity and use of existing local and regional community development services and facilities.

e. The area to be served by the District, as amended, continues to be amenable to separate special-district government.

6. The Commission certified that the Joint Petition contained the required elements of a petition to amend the District boundary, though that certification made no representation of the accuracy of the documents.

B. Summary of the Local Public Hearing

7. Notice of the public hearing was advertised on December 30, 2020; January 8, 2021; January 15, 2021; and January 22, 2021, in the Jacksonville Daily Record, a newspaper of general paid circulation in the City of Jacksonville, which newspaper complies with the requirements for publication of legal and official advertisements, pursuant to chapter 50, Florida Statutes. The published notice gave the time and place for the hearings, a description of the area to be removed from the District boundary, including a map showing the Contraction Parcel, and other relevant information.

8. The local public hearing on the Joint Petition was held as noticed on Friday, January 29, 2021, at 9:00 a.m., by Zoom conference, and physically at the Holiday Inn Express – Bartram Park, 13934 Village Lake Circle, Jacksonville, Florida 32258.

9. The Exhibits received in evidence at the hearing consisted of: Hearing Exhibit A, consisting of the pre-filed written testimony of Ms. Carvalho; Hearing Exhibit B, consisting of the prefiled written testimony of Mr. Stowers; Hearing Exhibit C, consisting of the prefiled written testimony of Mr. Brockmeier; and Hearing Exhibit D, consisting of the prefiled written testimony of Ms. McCarrick. The four witnesses also offered live testimony in which they fully adopted their pre-filed written testimony.

10. Ms. Carvalho's pre-filed testimony, Hearing Exhibit A, included the following exhibits, all of which were received into evidence at the hearing:

a. Tab VC-1, which is the Joint Petition, and which includes each of the Joint Petition Exhibits listed in paragraph 2 herein;

b. Tab VC-2, a depiction of the general location of the Existing District boundary, and of the Contraction Parcel, the Expansion Parcel, and the Outparcels;

c. Tab VC-3, the September 1, 2020, cover letter of transmittal of the Joint Petition to the Clerk of the Commission;

d. Tab VC-4, the August 31, 2020, cover letter of transmittal of the Joint Petition and the \$15,000.00 filing fee to the Director of the Department of Planning and Development for the City of Jacksonville;

e. Tab VC-5, which consists of Resolution 2020-652-A by which the Council of the City of Jacksonville recommended approval of the Joint Petition to the Commission;

f. Tab VC-6, the November 5, 2020, certification from the Commission that the Joint Petition contained all required elements and referred the Joint Petition to DOAH for the purpose of conducting the local public hearing required by section 190.005(1)(d);

g. Tab VC-7, the Notice of Receipt of Petition published in the January 15, 2021, Florida Administrative Register, Volume 47, Number 10, Page 368;

h. Tab VC-8, the December 9, 2020, Amended Notice of Hearing by Zoom Conference setting January 29, 2021, as the date for the local public hearing;

i. Tab VC-9, the proof of publication that the notice of the public hearing was advertised on December 30, 2020; January 8, 2021; January 15, 2021; and January 22, 2021, in the Jacksonville Daily Record, a newspaper of general paid circulation in the City of Jacksonville;

j. Tab VC-10, the November 23, 2020, certification from the DEO that the Joint Petition contained no potential inconsistency with chapter 163, or the City of Jacksonville 2030 Comprehensive Plan; and

k. Tab VC-11, the current annual operations and maintenance assessments for each parcel in the 1,856-unit Existing District (\$176.68), and the anticipated annual operations and maintenance assessments for each parcel in the 767-unit Amended District (\$427.54).

11. Mr. Brockmeier's pre-filed testimony, Hearing Exhibit C, included the following exhibits, all of which were received into evidence at the hearing:

a. Tab NB-1, consisting of the State Comprehensive Plan, chapter 187, Florida Statutes (2020); and

b. Tab NB-2, consisting of the City of Jacksonville 2030 Comprehensive Plan.

12. Three members of the public provided comment at the hearing. Six documents were filed as public comment after the local public hearing.

13. The Transcript of the local public hearing was filed with DOAH on February 10, 2021. The District also filed a Proposed Report of Findings and Conclusions on February 22, 2021, which has been considered in the preparation of this Report.

SUMMARY OF THE TESTIMONY AND EVIDENCE

14. The standards applicable to a determination of whether to grant or deny the Joint Petition are those in section 190.005(1)(e).

Section 190.005(1)(e)1. - Whether all statements contained within the Joint Petition have been found to be true and correct.

15. Ms. Carvalho testified as to the accuracy of the information contained in the Joint Petition. She also prepared, or had others prepare under her supervision, Joint Petition Exhibit 12, the SERC. Ms. Carvalho's testimony

constitutes competent, substantial evidence of the accuracy of the statements in the Joint Petition and the exhibits attached thereto.

16. Mr. Stowers testified to his familiarity with, and the accuracy of the information contained in the Joint Petition, including the Joint Exhibits. Mr. Stowers's testimony constitutes competent, substantial evidence of the accuracy of the statements in the Joint Petition and the exhibits attached thereto.

17. Mr. Brockmeier testified that he prepared, or had others prepare under his supervision, Joint Petition Exhibits 1 through 6, and 9 through 11. Mr. Brockmeier testified that these exhibits accurately depict and describe the boundaries and legal descriptions of the parcels of property at issue; the City of Jacksonville's future land uses for the parcels of property at issue; the location and description of the existing major trunk water mains, sewer interceptors, and outfalls associated with the Amended District; and the types of facilities constructed and installed, and those anticipated in the Amended District. Mr. Brockmeier's testimony constitutes competent, substantial evidence of the accuracy of Joint Petition Exhibits 1 through 6, and 9 through 11.

18. Ms. McCarrick testified that she is familiar with the Joint Petition, and that she coordinated the execution of Joint Petition Exhibit 7, the Consent and Joinder of Landowners to the Amendment of the Boundaries of the Villages of Westport Community Development District. Ms. McCarrick's testimony constitutes competent, substantial evidence of the accuracy of the statements in the Joint Petition, and of the consent of the landowners in the Existing District to the proposed District boundary amendment.

19. Based on the testimony and evidence of record, and in the absence of evidence to the contrary, the statements contained in the Joint Petition and the exhibits thereto are true and correct.

Section 190.005(1)(e)2. - Whether the amendment of the District boundary is inconsistent with any applicable element or portion of the State Comprehensive Plan or of the effective local government comprehensive plan.

20. Mr. Brockmeier reviewed the proposed District boundary amendment for consistency with the State Comprehensive Plan.

21. The State Comprehensive Plan “provides long-range policy guidance for the orderly social, economic and physical growth of the State.” Of the subjects, goals, and policies in the State Comprehensive Plan, Mr. Brockmeier identified Subject No. 15 - Land Use; Subject No. 17 - Public Facilities; and Subject No. 25 - Plan Implementation, as relevant from a planning and engineering perspective to the proposed amendment.

22. Subject No. 15 recognizes the importance of locating development in areas that have the resources, fiscal abilities, and service capacity to accommodate growth. Mr. Brockmeier testified that the Amended District will continue to have the fiscal capability to provide a wide range of services and facilities to a population in a designated growth area. Mr. Brockmeier’s testimony constitutes competent, substantial evidence that the proposed boundary amendment is not inconsistent with the land use goal of the State Comprehensive Plan. There was no evidence to the contrary.

23. Subject No. 17 calls for the protection of existing public facilities and the timely, orderly, and efficient planning and financing of new facilities. Mr. Brockmeier testified that the removal of the Contraction Parcel from the boundary of the District will not have an impact on the District’s existing public facilities and services, and the future facilities and services serving the Contraction Parcel will be provided by a newly established CDD(s). Mr. Brockmeier further testified that the removal of the Contraction Parcel from the boundary of the District will not have a significant impact on the District’s existing public facilities and services, and will better allow for the timely, orderly, and efficient planning and financing of new infrastructure within the Contraction Parcel. Mr. Brockmeier’s testimony constitutes

competent, substantial evidence that the proposed boundary amendment is not inconsistent with the public facilities goal of the State Comprehensive Plan. There was no evidence to the contrary.

24. Subject No. 25 calls for systematic planning capabilities to be integrated into all levels of government throughout the State, with particular emphasis on improving intergovernmental coordination and maximizing citizen involvement. Mr. Brockmeier testified that allowing the Amended District and the Contraction Parcel to be overseen by separate CDDs (or other operation entity in the case of the Contraction Parcel) will result in an increased level of coordination between the State, the City of Jacksonville, the relevant CDD, and its residents and landowners, as the CDDs will be serving a more localized geographical boundary allowing for maximized citizen involvement. Mr. Brockmeier's testimony constitutes competent, substantial evidence that the proposed boundary amendment is not inconsistent with the plan implementation goal of the State Comprehensive Plan. There was no evidence to the contrary.

25. Based on the evidence adduced at the hearing, the Amended District will not be inconsistent with any applicable provision of the State Comprehensive Plan.

26. Mr. Brockmeier also reviewed the Amended District for consistency with the City of Jacksonville 2030 Comprehensive Plan.

27. Chapter 190 prohibits a CDD from acting in any manner inconsistent with the local government's comprehensive plan. When initially established in 2004, the District demonstrated that the development of the lands within its boundary was consistent with the City of Jacksonville Comprehensive Plan. There is nothing in the record of this proceeding to suggest that the contraction of the District's boundaries in the manner proposed will cause the Amended District to be inconsistent with any portion or element of the City of Jacksonville 2030 Comprehensive Plan.

28. Mr. Brockmeier's testimony constitutes competent, substantial evidence that the proposed boundary amendment will not be inconsistent with any applicable element of the City of Jacksonville 2030 Comprehensive Plan. There was no evidence to the contrary.

29. Based on the evidence adduced at the hearing, the Amended District will not be inconsistent with any applicable provisions of the City of Jacksonville 2030 Comprehensive Plan.

Section 190.005(1)(e)3. - Whether the area of land within the Amended District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

30. The Amended District will include approximately 421.03 acres, located entirely within the City of Jacksonville.

31. Ms. Carvalho testified that the Amended District has sufficient land area, and is sufficiently compact and contiguous to be developed, and has in fact been developed as one functional, interrelated community, and that the boundary amendment will have no impact on that functionality.

32. Mr. Brockmeier testified that the area of land within the District was originally developed as a planned community, was previously determined to be of sufficient size, compactness, and contiguity to be developed with facilities and services as one functionally interrelated community. Development within the District, to date, has occurred in two geographically abutting phases which will comprise the Amended District after amendment. Thus, the removal of the Contraction Parcel and addition of the Expansion Parcel will allow the lands within the proposed Amended District to continue to operate as a functionally interrelated community, as it remains of sufficient size, compactness, and contiguity.

33. The testimony of Ms. Carvalho and Mr. Brockmeier constitute competent, substantial evidence that the Amended District will be of sufficient size, sufficiently compact, and sufficiently contiguous to be

developed as a single functionally interrelated community. There was no evidence to the contrary.

Section 190.005(1)(e)4. - Whether the Amended District remains the best alternative available for delivering community development services and facilities to the area that will be served by the Amended District.

34. The District is presently providing infrastructure improvements to the lands within the boundary of what is proposed as the Amended District, but provides no infrastructure improvements to the lands within the boundary of the Contraction Parcel. Facilities or services to be provided to the Contraction Parcel will be provided by a future CDD(s) and/or the developer of the Villages of Westport development.

35. Ms. Carvalho testified that to date, the District has been the mechanism used to plan, finance, construct, operate, and maintain the public facilities and services within the Existing District. The District has already constructed the majority of the facilities and services needed to serve the Amended District and is providing the associated maintenance and operations. The proposed amendment will allow for the continued operation of the facilities and services to the lands within the Amended District's boundary. Accordingly, the Amended District is the best alternative to provide such facilities and services to the area to be served.

36. Mr. Brockmeier testified 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, and that it is the best alternative available for delivering community development services and facilities. After removal of the Contraction Parcel and addition of the Expansion Parcel, the Amended District will be capable of continuing to efficiently finance and oversee the operation and maintenance of necessary capital improvements within its boundaries.

37. Ms. McCarrick testified that the developer, CC Westport, LLC, or its subsidiaries or designees will fund the cost of the facilities and services needed for the development of the Contraction Parcel. After construction, the infrastructure and facilities within the Contraction Parcel will be conveyed to a future CDD, the City of Jacksonville, or to an applicable homeowners' association for ownership and maintenance, as is appropriate depending on the type of infrastructure or facilities that are actually constructed.

38. The testimony of Mr. Carvalho, Mr. Brockmeier, and Ms. McCarrick constitute competent, substantial evidence that the Amended District remains the best alternative available for delivering community development services and facilities to the area that will be served by the Amended District. There was no evidence to the contrary.

Section 190.005(1)(e)5. - Whether the community development services and facilities of the Amended District will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

39. Ms. Carvalho testified that the services and facilities of the Amended District are identical to those 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.

40. Mr. Brockmeier testified that the services and facilities to be provided by the Amended 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 with those provided by the Existing District. There will be no duplication or overlap of facilities or services as a result of the elimination of the Contraction Parcel from the District.

41. The testimony of Ms. Carvalho and Mr. Brockmeier constitute competent, substantial evidence that the community development services

and facilities of the Amended District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. There was no evidence to the contrary.

Section 190.005(1)(e)6. - Whether the area that will be served by the Amended District is amenable to separate special-district government.

42. Ms. Carvalho testified that the removal of the Contraction Parcel will not affect the ability of the Amended District to operate as a separate special-district government, and that contracting the boundary of the Existing District will limit the area to be served by the government already in place, but will not change the way the unit of government is operating either now or into the future.

43. Mr. Brockmeier testified that the area within the Amended District remains large enough to comprise its own community with individual facility and service needs, as the areas within the District that are currently developed only include lands within the proposed boundary of the Amended District. Moreover, the Amended 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 boundary. Special-district governance is appropriate for the Amended District because it provides a mechanism whereby long-term maintenance obligations can be satisfied by the persons using the facilities and services.

44. The testimony of Ms. Carvalho and Mr. Brockmeier constitute competent, substantial evidence that the area that will be served by the Amended District is amenable to separate special-district government. There was no evidence to the contrary.

Section 190.005(1)(a)8. - Statement of Estimated Regulatory Costs.

45. In addition to the elements in section 190.005(1)(e), section 190.005(1)(a)8. requires the preparation and submission of a SERC which meets the requirements of section 120.541. The Joint Petition includes a SERC.

46. Ms. Carvalho explained the purpose of the SERC, the economic analysis presented therein, and the data and methodology used in preparing the SERC. Her testimony is accepted.

47. The SERC contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to amend the boundary of the District, including the State of Florida and its citizens, the City of Jacksonville and its citizens, and the property owners within the Existing District, the Expansion Parcels, and the Contraction Parcel.

48. The state and its citizens will only incur modest costs from amending chapter 42QQ-1 and the District's boundary as proposed, including reviewing, processing, and analyzing the Petition, and conducting public hearings. Ongoing state costs related to the Amended District are limited to the receipt and processing of reports that are required to be filed with the state and its various entities. Costs to the state agencies that will receive and process the Amended District's reports are expected to be minimal, if any. The District is one of many governmental subdivisions required to submit reports to the state. Pursuant to section 189.018, Florida Statutes, the Amended District will pay an annual fee to the DEO to offset processing costs.

49. It is not anticipated that the City of Jacksonville will incur costs in reviewing the Joint Petition, as the District remitted a \$15,000.00 filing fee to the City of Jacksonville to offset any such costs. As is the case with the Existing District, annual costs to the City of Jacksonville related to the Amended District are expected to be minimal. Since the Amended District is an independent unit of local government, the only annual costs incurred by the City of Jacksonville will be the minimal costs of receiving and reviewing

the various reports that the Amended District will be required to provide to the City of Jacksonville.

50. The costs of petitioning for the boundary amendment are being paid entirely by the landowner and master developer of the Contraction Parcel and Expansion Parcels, CC Westport, LLC, pursuant to a funding agreement with the District. The Amended District will continue to incur costs for operation and maintenance of its facilities and for its administration. Those costs are, and will continue to be paid from, annual assessments against properties within the District benefiting from its facilities and its services.

51. The evidence in this case establishes that the SERC meets all requirements of section 120.541.

Other Procedural Elements

52. The District has complied with the provisions of section 190.005(1)(b)1., in that the City of Jacksonville was provided a copy of the Joint Petition and was paid the requisite filing fee prior to the District filing the Joint Petition with the Commission.

53. Section 190.005(1)(d) required the District to publish notice of the local public hearing in a newspaper of general circulation in the City of Jacksonville for four consecutive weeks prior to the hearing. The notice was published in the Jacksonville Daily Record, a newspaper of general paid circulation in the City of Jacksonville on December 30, 2020; January 8, 2021; January 15, 2021; and January 22, 2021.

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

Public Comment

55. Members of the public attended the public hearing via Zoom and public comment was provided by Alice Sanford, Melissa Story, and Danielle Conner.

56. On February 8, 2021, written post-hearing comments were filed in the public docket by Phyleshia Jackson-O'Neal, Alice Sanford, and Randall and Virginia Merideth.

57. The public comments included, among others, those regarding notice of the public hearing, levels of operations and maintenance assessments for the Amended District, and development plans for the Contraction Parcel. The written comments were largely directed to what the residents believed to be unfulfilled promises of amenities and improvements (schools, churches, recreational areas, etc.) that were to be provided within the boundaries of the Existing District.

58. In response to the public comments, Petitioner filed a rebuttal affidavit on February 15, 2021.

59. The public comment included a suggestion that the notice for the public hearing was inadequate. As set forth herein, Petitioners met the requirements in section 190.005(1)(d), by publishing notice of the local public hearing in a newspaper of general circulation in the City of Jacksonville for four consecutive weeks prior to the hearing.

60. There were a number of public comments related to the impact the boundary amendment will have on the District's operation and maintenance (O&M) assessments. Using the amounts in the Fiscal Year 2021 Budget, per lot O&M assessments for the proposed Amended District will be increased from \$176.68 per year to \$427.54 per year. The reason for the increase is that the O&M assessments for the improvements made in the Amended District will be limited to the 767 existing and proposed lots in the Amended District, and will no longer be spread across the roughly 1,000 undeveloped lots in the Contraction Parcel. Since the District has not installed any improvements on the Contraction Parcel, there are no maintenance expenses incurred by the District associated with the Contraction Parcel. Ms. McCarrick explained that, in the short term, the removal of the Contraction Parcel will increase the O&M assessments on the landowners in the Amended District. However,

long term O&M assessments will be less for homeowners in the Amended District because they will not share in expenses related to maintaining improvements to be constructed to support the development of the 1,000 additional lots in the Contraction Parcel.

61. There were also a number of public comments related to the impact the boundary amendment will have on the development of the overall Villages of Westport Project, particularly as related to social and recreational amenities. Ms. McCarrick noted that the District has no role in determining how the remainder of the property will be developed. Section 190.004(3) provides that “[a]ll governmental planning, environmental, and land development laws, regulations, and ordinances apply to all development of the land within a community development district.” The master developer holds the land use entitlements for the Villages of Westport as a planned unit development that would allow planned commercial/retail development, recreational amenities, schools, and churches to be built based on market demand. The Landowner, through Resolution 2020-06, has expressed its intention to provide the Amended District access to share in the use of any amenity facilities constructed in the Contraction Parcel, subject to a proportionate share of the cost of operating and maintaining the facilities.

62. The public comments do not alter the findings regarding compliance with the statutory criteria for CDD boundary amendments set forth herein.

APPLICABLE LAW

63. This proceeding is governed by chapter 120, sections 190.005 and 190.046, and Florida Administrative Code Chapter 42-1.

64. The District was established by the adoption of chapter 42QQ-1, effective June 14, 2004. The boundary was previously amended following the issuance of an Administrative Law Judge’s Report to the Florida Land and Water Adjudicatory Commission. *See In Re: Petition for Rule Amendment-*

Villages of Westport Cmty. Dev. Dist., DOAH Case No. 06-0351 (DOAH Report June 22, 2006; Chapter 42QQ-1 amendment Apr. 16, 2007).

65. Section 190.046(1) provides, in pertinent part, that:

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

* * *

(f) Petitions to amend the boundaries of the district [to the extent provided in this case] shall be processed in accordance with s. 190.005, and the petition shall include only the elements set forth in s. 190.005(1)(a)1. and 5.-8. and the consent required by paragraph (g). However, the resulting administrative rule or ordinance may only amend the boundaries of the district and may not establish a new district or cause a new 6-year or 10-year period to begin pursuant to s. 190.006(3)(a)2. The filing fee for such petitions shall be as set forth in s. 190.005(1)(b), as applicable.

(g) In all cases of a petition to amend boundaries of a district, the filing of the petition by the district board of supervisors constitutes consent of the landowners within the district. In all cases, written consent of those landowners whose land is to be added to or deleted from the district as provided in s. 190.005(1)(a)2. is required.

66. The Consent and Joinder of Landowner introduced as Exhibit A, Tab VC-1, Joint Petition Exhibit 7, establishes that the District provided the requisite consent of the Expansion Parcel and Contraction Parcel landowner, thus meeting the landowner consent requirements of section 190.046(1)(g).

67. The District satisfied the statutory notice requirements by providing the City of Jacksonville with a copy of the Joint Petition and paying the required filing fee as required by section 190.005(1)(b). The District also published notice of the local public hearing in the manner required by section 190.005(1)(d).

68. A local public hearing was conducted in accordance with chapter 120, as specified in the published notice.

69. Section 190.005(1) provides, in pertinent part, that:

(1) The exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(a) A petition for the establishment of a community development district shall be filed by the petitioner with the Florida Land and Water Adjudicatory Commission. The petition shall contain:

1. A metes and bounds description of the external boundaries of the district. Any real property within the external boundaries of the district which is to be excluded from the district shall be specifically described, and the last known address of all owners of such real property shall be listed. The petition shall also address the impact of the proposed district on any real property within the external boundaries of the district which is to be excluded from the district.

* * *

5. A map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence.

6. Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services. These estimates shall be submitted in good faith but are not binding and may be subject to change.

7. A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the district by the

future land use plan element of the effective local government comprehensive plan of which all mandatory elements have been adopted by the applicable general-purpose local government in compliance with the Community Planning Act.

8. A statement of estimated regulatory costs in accordance with the requirements of s. 120.541.

70. The Joint Petition includes the elements required by section 190.005(1)(a)1. and 5. through 8.

71. Section 190.046(1)(a) provides that:

If the petitioner seeks to contract the district, the petition shall describe what services and facilities are currently provided by the district to the area being removed, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land element of the adopted local government comprehensive plan.

72. As established herein, the Joint Petition included the description of services and facilities, and the designation of future public and private land uses as required.

73. As established in section 190.046(1)(f), the Joint Petition is to be processed by application of the standards in section 190.005.

74. Section 190.005(d) provides, in pertinent part, that:

A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph [190.005(1)(e)].

75. Section 190.005(1)(e) provides that:

The Florida Land and Water Adjudicatory Commission shall consider the entire record of the local hearing, the transcript of the hearing,

resolutions adopted by local general-purpose governments as provided in paragraph (c), and the following factors and make a determination to grant or deny a petition for the establishment of a community development district:

1. Whether all statements contained within the petition have been found to be true and correct.
2. 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.
3. 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.
4. Whether the district is the best alternative available for delivering community development services and facilities to the area that will be served by the district.
5. 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.
6. Whether the area that will be served by the district is amenable to separate special-district government.

76. Each of the statutory criteria in section 190.005(1)(e) has been satisfied, as established by competent, substantial evidence described herein.

77. The evidence in this proceeding establishes that the statements contained in the Joint Petition are true and correct. § 190.005(1)(e)1., Fla. Stat.

78. The evidence in this proceeding establishes that the amendment of the District's boundary will not be inconsistent with either the City of

Jacksonville 2030 Comprehensive Plan or the State Comprehensive Plan.
§ 190.005(1)(e)2., Fla. Stat.

79. The evidence in this proceeding establishes that, after the addition of the Expansion Parcel and removal of the Contraction Parcel, the Amended District will continue to be of sufficient size, sufficiently compact, and sufficiently contiguous to be developable as one functional interrelated community. § 190.005(1)(e)3., Fla. Stat.

80. The evidence in this proceeding establishes that, after the addition of the Expansion Parcel and removal of the Contraction Parcel, the Amended District will continue to be the best alternative available for delivering community development services and facilities to the remaining areas that will be served by the district. § 190.005(1)(e)4., Fla. Stat.

81. The evidence in this proceeding establishes that the services and facilities that will be provided in the Amended District are not incompatible with the capacity or uses of any local or regional community development services and facilities. § 190.005(1)(e)5., Fla. Stat.

82. The evidence in this proceeding establishes that, after the addition of the Expansion Parcel and removal of the Contraction Parcel, the District is amenable to separate special-district government. § 190.005(1)(e)6., Fla. Stat.

CONCLUSION

Section 190.005(1)(e), as applicable to a petition to amend the boundary of a CDD pursuant to section 190.046(1)(f), 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. in determining whether to grant or deny the petition.

Based upon the foregoing findings of fact and conclusions of law, the undersigned concludes that the proposed boundary amendment satisfies the statutory requirements, and that there is no reason not to grant the District’s

request to remove approximately 1,058.56 acres from, and add approximately 3.63 acres to, the 1,476.34 acres that comprise the Existing District, which will result in a District boundary encompassing approximately 421.03 acres, and to amend Florida Administrative Code Chapter 42QQ-1, consistent therewith.

DONE AND ENTERED this 26th day of February, 2021, in Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
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Filed with the Clerk of the
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this 26th day of February, 2021.

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