

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO AMEND THE TOMOKA
COMMUNITY DEVELOPMENT DISTRICT

Case No. 21-2283

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

On September 13, 2021, a local public hearing was conducted pursuant to sections 190.046(1)(f) and 190.005(1)(d), Florida Statutes, before E. Gary Early, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), by Zoom conference and at the Hampton Inn & Suites, 150 Flagler Plaza Drive, Palm Coast, Florida 32137.

APPEARANCES

For Petitioner: Katie S. Buchanan, Esquire
 Hopping, Green and Sams, P.A.
 Suite 300
 119 South Monroe Street
 Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues before the Florida Land and Water Adjudicatory Commission (Commission) in this proceeding are whether to grant the Petition to Amend the Tomoka Community Development District (Petition) to amend the boundary of the Tomoka Community Development District (District) by adding approximately 80 acres to the land comprising the current area encompassed by the District, and to correct a scrivener's error in the legal description of a parcel that is intended to remain excluded from the District's boundaries.

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

PRELIMINARY STATEMENT

On June 23, 2021, the District filed the Petition with the Commission. The District previously provided the Petition and its exhibits, along with the requisite filing fee, to Flagler County, Florida.

The Petition seeks to add two parcels, each containing 40 acres, more or less, and totaling 80 acres (the Expansion Parcels), to the 1,968 acres comprising the Existing District, which will result in a District boundary encompassing approximately 2,048 acres (the Amended District). The Petition further seeks to correct an erroneous legal description for the Plantation Bay School Site (School Site), which is currently excluded from the District's boundaries. The correction of the scrivener's error is intended to ensure that the School Site remains excluded from the District's boundaries.

The District is located entirely within Flagler County, Florida. Section 190.005(1)(c) provides that the jurisdiction containing all or a portion of the lands within a proposed amended district has the option to hold a public hearing. On July 19, 2021, the County advised the Commission of its support of the Petition without holding a public hearing.

On July 22, 2021, the Commission certified that the Petition contained all required elements, and referred the Petition to DOAH for the purpose of conducting the local public hearing required by section 190.005(1)(d). On August 26, 2021, a Notice of Receipt of Petition was published in the Florida Administrative Register.

On August 4, 2021, the Department of Economic Opportunity (DEO) certified to the Commission that the Petition contained no potential inconsistency with chapter 163, Florida Statutes, or the Flagler County Comprehensive Plan.

The District published notice of the local public hearing in accordance with section 190.005(1)(d). In accordance with the notice, the local public hearing was held on Monday, September 13, 2021, at 9:00 a.m., at the Hampton Inn & Suites, 150 Flagler Plaza Drive, Palm Coast, Florida 32137, with the Administrative Law Judge and witnesses appearing by Zoom conference. At the local public hearing, the District 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 special district management and financial analysis;
2. Kelly White, Director of Finance and Chairperson of the District's Board of Supervisors;
3. Jerry K. Finley, P.E., employed by Finley Engineering Solutions, Inc., and District Engineer for the District, who was accepted as an expert in land development and public infrastructure construction; and
4. Miguel Collazo, III, an attorney and shareholder at Hopping, Green & Sams, P.A., who was accepted as an expert in planning.

The District offered Composite Exhibit A, consisting of the prefiled testimony of Ms. Carvalho, and including as attachments thereto Tabs VC-1 through VC-9; Exhibit B, consisting of the prefiled testimony of Ms. White; Exhibit C, consisting of the prefiled testimony of Mr. Finley; Composite Exhibit D, consisting of the prefiled testimony of Mr. Collazo, and including as attachments thereto Tabs MC-1 and MC-2; and Exhibit E, the proof of

publication for the notice of the public hearing. All exhibits were received in evidence.

No members of the public appeared, either by Zoom or at the Palm Coast location.

The one-volume Transcript of the local public hearing was filed with DOAH on September 23, 2021. The District filed a Proposed Report of Findings and Conclusions on October 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 42LL-1.002 to add the approximately 80 total acres of the Expansion Parcels as described in the Petition. After the addition, the Amended District will contain approximately 2,048 acres.

The District further seeks to correct an erroneous legal description for the School Site, which is currently excluded from the District's boundaries. The correction of the scrivener's error, which referenced the legal description of the School Site in rule 42LL-1.002 as being recorded in Plat Book 29, Page 49, instead of the correct reference to Plat Book 27, Page 49. is intended to ensure that the School Site remains excluded from the District's boundaries.

The Expansion Parcels are both owned, in their entirety, by WL Residential Land, LLC. WL Residential Land, 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 Petition.

The District is presently providing infrastructure improvements to the lands within its boundaries. The District is not currently providing facilities or services to the Expansion Parcels, but expects to provide stormwater management and utilities improvements to the Expansion Parcels.

The sole purpose of this proceeding was to consider the amendment of the District boundary as proposed. 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. Petition Contents and Related Matters

1. The Petition was submitted to the Commission on June 23, 2021. A copy of the Petition was sent to Flagler County on June 21, 2021, and the \$15,000.00 filing fee was submitted to Flagler County, in parts, on June 21, 2021, and July 9, 2021.

2. The Petition incorporated the following Exhibits:

- a. Petition Exhibit 1, which is a depiction of the general location of the Existing District boundary.
- b. Petition Exhibit 2, which is the metes and bounds description of the Existing District boundary as incorporated by reference in Florida Administrative Code Rule 42LL-1.002.
- c. Petition Exhibit 3, which is the metes and bounds description of the Expansion Parcels.

d. Petition Exhibit 4, which is a depiction of the general location of the Amended District boundary, and the metes and bounds description of the Amended District after the addition of the Expansion Parcel.

e. Petition Exhibit 5, which is the written Consent of WL Residential Land, LLC, the owner (at the time of the filing of the Petition) of 100 percent of the lands within the Expansion Parcels, which expressed its consent to the amendment of the boundary of the District.

f. Petition Exhibit 6, which consists of Resolution 2021-05, by which the District's Board of Supervisors has approved and consented to the amendment of the boundary of the District.

g. Petition Exhibit 7, which is the General Land Use Map for the District that depicts the general distribution, location, and extent of the existing and proposed residential, commercial, recreational, environmentally sensitive, open space, and other land uses for the Amended District, in accordance with the future land use plan element of Flagler County's Future Land Use Plan.

h. Petition Exhibit 8, which is a map of the current major trunk water mains, sewer interceptors, and outfalls within the Existing District and as proposed for the Expansion Parcels.

i. Petition Exhibit 9, which describes the types of facilities the District expects to finance, fund, construct, acquire, and/or install, and the costs of construction planned for the Expansion Parcels.

j. Petition Exhibit 10, which is the Statement of Estimated Regulatory Costs prepared in accordance with the requirements of section 120.541, Florida Statutes.

k. Petition Exhibit 11, which is the District's authorization of Katie S. Buchanan of Hopping

Green & Sams, P.A., to act as its agent relative to the boundary amendment.

3. The Petition described the Amended District as being part of a planned community, with improvements estimated to be made, acquired, constructed, and/or installed from 2022 to 2024, conditioned on the effects of future economic and market conditions on costs, including those related to labor, services, materials, and interest rates.

4. The Commission certified that the 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

5. Notice of the public hearing was advertised on August 17, 2021; August 23, 2021; August 30, 2021; and September 5, 2021, in the Daytona Beach News Journal, a newspaper of general paid circulation in Flagler County, 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 hearing, a description of the areas to be added to the District boundary, and other relevant information.

6. The local public hearing on the Petition was held as noticed on Monday, September 13, 2021, at 9:00 a.m., physically at the Hampton Inn & Suites, 150 Flagler Plaza Drive, Palm Coast, Florida 32137, and virtually by Zoom conference.

7. 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 Kelly White; Hearing Exhibit C, consisting of the prefiled written testimony of Jerry K. Finley; and Hearing Exhibit D, consisting of the prefiled written

testimony of Miguel Collazo, III. The four witnesses also offered live testimony in which they fully adopted their pre-filed written testimony.

8. 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 Petition, with each of the Petition Exhibits listed in paragraph 2 herein;

b. Tab VC-2, the June 23, 2021, email transmittal of the Petition and exhibits to the Commission;

c. Tab VC-3, the June 21, 2021, cover letter of transmittal of the Petition to Flagler County, with copies of the two checks constituting the \$15,000.00 filing fee payable to Flagler County;

d. Tab VC-4, the July 19, 2021, letter from Flagler County attesting that the Petition meets the Goals, Objectives, and Policies of the Flagler County Comprehensive Plan, and other statutory criteria, and indicating its approval of the boundary amendment without holding a hearing;

e. Tab VC-5, the July 22, 2021, certification from the Commission that the Petition contained all required elements and referral of the Petition to DOAH for the purpose of conducting the local public hearing required by section 190.005(1)(d);

f. Tab VC-6, the Notice of Receipt of Petition published in the August 26, 2021, Florida Administrative Register, Volume 47, Number 166, Page 3948;

g. Tab VC-7, the August 3, 2021, Notice of Hearing by Zoom Conference setting September 13, 2021, as the date for the local public hearing;

h. Tab VC-8, the August 4, 2021, certification from DEO that the Petition contained no potential inconsistency with chapter 163, or the Flagler County 2035 Comprehensive Plan; and

i. Tab VC-9, a depiction of the general location of the Existing District boundary, and of the Expansion Parcels.

9. Mr. Collazo’s pre-filed testimony, Hearing Exhibit D, included the following exhibits, both of which were received into evidence at the hearing:

a. Tab MC-1, consisting of the State Comprehensive Plan, chapter 187, Florida Statutes; and

b. Tab MC-2, consisting of the Flagler County 2010-2035 Comprehensive Plan, Infrastructure Element.

10. At the public hearing, the District introduced Hearing Exhibit E, the proof of publication that the notice of the public hearing was advertised on August 17, 2021; August 23, 2021; August 30, 2021; and September 5, 2021, in the Daytona Beach News Journal, a newspaper of general paid circulation in Flagler County.

11. The Transcript of the local public hearing was filed with DOAH on September 23, 2021. The District also filed a Proposed Report of Findings and Conclusions on October 22, 2021, which has been considered in the preparation of this Report.

SUMMARY OF THE TESTIMONY AND EVIDENCE

Contents of the Petition

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

(a) The petition shall contain the same information required by s. 190.005(1)(a)1. and 8. In addition, if the petitioner seeks to expand the district, the petition shall describe the proposed timetable for construction of any district services to the area, the estimated cost of constructing the proposed services, 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 use plan element of the adopted local government local comprehensive plan.

13. Furthermore, section 190.046(1)(f) provides, in pertinent part, that “Petitions to amend the boundaries of the district that exceed the amount of

land [applicable here] ... shall include only the elements set forth in s. 190.005(1)(a)1. and 5.-8. and the consent required by paragraph (g).”

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

The petition shall contain:

1. A metes and bounds description of the external boundaries of 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.

15. Section 190.046(1)(g) provides, in pertinent part, that “[i]n all cases of a petition to amend the 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 ... is required.”

Section 190.005(1)(a)1.

16. The Petition contained the metes and bounds description of the external boundaries of the District as required by section 190.005(1)(a)1. *See* Pet. Ex. 1 through 4.

Section 190.005(1)(a)5.

17. The Petition contained a map of the proposed District showing current major trunk water mains and sewer interceptors and outfalls as required by section 190.005(1)(a)5. *See* Pet. Ex. 8.

Section 190.005(1)(a)6.

18. The Petition contained the proposed timetable for construction of the District services and the estimated cost of constructing the proposed services as required by section 190.005(1)(a)6. *See* Pet. Ex. 9.

Section 190.005(1)(a)7.

19. The Petition contained a designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the District as required by section 190.005(1)(a)7. *See* Pet. Ex. 7.

Section 190.005(1)(a)8.

20. The Petition contained a statement of estimated regulatory costs (SERC) in accordance with the requirements of section 120.541, Florida Statutes, as required by section 190.005(1)(a)8. *See* Pet. Ex. 10.

21. Ms. Carvalho explained the purpose of the SERC, the economic analysis presented therein, and the data and methodology used in preparing the SERC. She also explained that the scope of the SERC addresses only the expansion of the District boundary, and not the planning or development of the District itself. Her testimony is accepted.

22. The SERC contains the assumptions regarding the development within the Amended District and the infrastructure provided by the District. The SERC addresses 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, Flagler County and its citizens, and the property owners within the Existing District and the Expansion Parcels. The SERC found no adverse impacts on any potentially affected entities.

23. Ms. Carvalho testified that the economic benefits of the proposed expansion will exceed the economic costs to the District, Flagler County, and to all subsequent purchasers and landowners of the Amended District.

24. The state and its citizens will only incur modest costs from amending chapter 42LL-1 and the District's boundary as proposed, including reviewing, processing, and analyzing the Petition, and conducting public hearings.

25. 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, especially since those reports are already being submitted on behalf of the Existing District. 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 DEO to offset processing costs.

26. It is not anticipated that Flagler County will incur costs in reviewing the Petition, as the District remitted a \$15,000.00 filing fee to Flagler County to offset any such costs. As is the case with the Existing District, annual costs to Flagler County 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 Flagler County will be the minimal costs of receiving and reviewing the various reports that the Amended District will be required to provide to Flagler County. Those reports are already provided on behalf of the Existing District. In addition, to the extent the Amended District utilizes the services of the Flagler County Property Appraiser or Tax Collector to collect assessments, the Amended

District must pay the costs associated with those services, which the District currently does each year.

27. The District currently levies non-ad valorem special assessments on the lands within its boundaries for the payment of debt service expenses relative to the construction and/or acquisition of facilities and services. Landowners within the Expansion Parcels will be required to pay non-ad valorem assessments levied by the District to secure repayment of the District's bond debt. In addition, the District may also impose a non-ad valorem assessment to fund the operations and maintenance of the facilities within the Expansion Parcels.

28. Finally, pursuant to chapter 190, the debt of the Amended District cannot become the debt of Flagler County or the State of Florida. Since the Amended District will be an independent special district government which can, and has, issued its own bonds, the Amended District will have no effect on the bonding capacity of Flagler County or the State of Florida.

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

Section 190.046(1)(g)

30. The Petition contained the consent of the landowners within the District as required by section 190.046(1)(g). *See* Pet. Ex. 5 and 6.

Scrivener's Error

31. The Petition seeks to correct an erroneous legal description for the School Site. The School Site is currently excluded from the District's boundaries, and the correction is intended to ensure that the School Site remains excluded from the District's boundaries. The Petition noted that, when the excluded School Site was identified in the description of the District's boundaries in rule 42LL-1.002, the legal description showed the School Site as being recorded in in Plat Book 29, Page 49, instead of the correct Plat Book 27, Page 49. The correction of the scrivener's error has no

effect on the School Site remaining excluded from the District's boundaries. Ms. Carvalho testified as to the accuracy of the information contained in the Petition. Ms. Carvalho's testimony constitutes competent, substantial evidence of the inadvertent cause, and the lack of substantive effect resulting from the correction of the scrivener's error.

Factors for consideration by the Commission

32. The standards applicable to the Commission's determination of whether to grant or deny the Petition are those in section 190.005(1)(e)1. through 6.

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

33. Ms. Carvalho testified as to the accuracy of the information contained in the Petition. She also prepared, or had others prepare under her supervision, Petition Exhibit 10, the SERC. Ms. Carvalho's testimony constitutes competent, substantial evidence of the accuracy of the statements in the Petition and the exhibits attached thereto.

34. Ms. White, as Chairperson of the District's Board of Supervisors, testified to her familiarity with, and the accuracy of the information contained in, the Petition, including the Joint Exhibits. Furthermore, Ms. White testified that she reviewed the request of WL Residential Land, LLC, owner of 100 percent of the lands within the Expansion Parcels, to add its property to the District boundary, and was familiar with Resolution 2021-05, by which the District's Board of Supervisors approved and consented to the amendment of the boundary of the District. Ms. White's testimony constitutes competent, substantial evidence of the accuracy of the statements in the Petition and the exhibits attached thereto, including Petition Exhibits 5 and 6.

35. Mr. Finley testified that he prepared, or had others prepare under his supervision, Petition Exhibits 1 through 4 and 7 through 9. Mr. Finley testified that those exhibits accurately depict and describe the boundaries and legal descriptions of the parcels of property at issue; Flagler County's future land uses for the parcels of property at issue; the location and description of the existing major trunk water mains, and wastewater interceptors and outfalls associated with the Amended District; and the types of facilities and services anticipated in the Amended District as well as the entities anticipated for future ownership, operation and maintenance, and anticipated construction costs. Mr. Finley's testimony constitutes competent, substantial evidence of the accuracy of Petition Exhibits 1 through 4 and 7 through 9.

36. Based on the testimony and evidence of record, and in the absence of evidence to the contrary, the statements contained in the 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.

37. Mr. Collazo reviewed the proposed District boundary amendment for consistency with the State Comprehensive Plan.

38. The State Comprehensive Plan "provides long-range policy guidance for the orderly social, economic and physical growth of the State." Mr. Collazo testified that the State Comprehensive Plan does not specifically address the issue of expanding districts. Nonetheless, of the 25 subjects in the State Comprehensive Plan, Mr. Collazo identified Subject No. 17 - Public Facilities; and Subject No. 20 - Governmental Efficiency, as relevant to the question of expanding services to the Amended District.

39. Subject No. 17 relates to the protection of existing public facilities; providing financing for new facilities; allocating the costs of new public facilities on the basis of the benefits received by future residents; implementing innovative but fiscally sound techniques for financing public facilities, and identifying and using stable revenue sources for financing public facilities. Mr. Collazo testified that the amendment of the District boundary is not inconsistent with State Comprehensive Plan goals and policies in that subject. Mr. Collazo'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.

40. Subject No. 20 recognizes the importance of Florida governments economically and efficiently providing the amount and quality of services required by the public. Policy 2 provides for the creation of independent special taxing districts to avoid overburdening other governmental units and their taxpayers. Mr. Collazo testified that the amendment of the District boundary is not inconsistent with State Comprehensive Plan goals and policies in that subject. Mr. Collazo'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.

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

42. Mr. Collazo also reviewed the Amended District for consistency with the Flagler County Comprehensive Plan.

43. Chapter 190 prohibits a community development district from acting in any manner inconsistent with the local government's comprehensive plan. There is nothing in the record of this proceeding to suggest that the

expansion of the District's boundaries will impact the land use or development of the Expansion Parcels.

44. Ms. Carvalho testified that the District expects to provide stormwater management and utilities improvements to the Expansion Parcels. Mr. Collazo noted that Goal D.1. of the Flagler County Comprehensive Plan requires planning and coordination between public and private utility providers for the development, operation, and maintenance of cost-effective and efficient potable water and wastewater systems that promote timely, orderly, and efficient land development patterns while protecting public health and the environment; while Goal D.4. requires the development, operation, and maintenance of a cost-effective and efficient surface water management system which, among other things, minimizes flood damage and losses. Mr. Collazo testified that the Amended District will further those goals because it will provide those types of improvements in an efficient and cost-effective manner to the lands within the Expansion Parcels.

45. Mr. Collazo's testimony constitutes competent, substantial evidence that the proposed boundary amendment will not be inconsistent with any applicable element of the Flagler County Comprehensive Plan. There was no evidence to the contrary.

46. Based on the evidence adduced at the hearing, the Amended District will not be inconsistent with any applicable provision of the Flagler County 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.

47. The Amended District will include approximately 2,048 acres, located entirely within Flagler County.

48. Ms. Carvalho testified that the Amended District has sufficient land area, is sufficiently compact and contiguous to be developed, and has, in fact,

been developed as one functional, interrelated community. She further testified that the boundary amendment will have no impact on that functionality.

49. Mr. Finley testified that there are significant infrastructure needs within the District, including the Expansion Parcels, that make the Amended District developable as a functionally interrelated community. The design of the District allows infrastructure to be provided to the Expansion Parcels in a cost-effective manner, and the services and facilities completed or planned by the District will provide a contiguous and homogenous method of providing services to the Expansion Parcels. Thus, the addition of the Expansion Parcels will allow facilities to be provided in the Amended District in an efficient, functional, and integrated manner.

50. The testimony of Ms. Carvalho and Mr. Finley 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.

51. 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 or will construct or acquire facilities that will be needed for the Amended District. The infrastructure needed for the Expansion Parcels is of the same type that the District has provided in the Existing District. The District can also maintain facilities in the Expansion Parcels incrementally, which means that additional facilities can simply be added to the District's existing maintenance program at an incremental cost. Accordingly, the Amended

District is the best alternative to provide such facilities and services to the area to be served.

52. The District structure allows the community development process to meet needs within the Amended District, and restricts costs to those who will benefit from the services. Ms. Carvalho testified convincingly that the use of non-ad valorem or special assessments on the property in the Amended District to repay debt incurred in providing facilities, and assessments for operation and maintenance, will allocate costs to those receiving the benefit of District services, and is less burdensome than having facilities and services provided by Flagler County, and more efficient than through a property owner's association.

53. Mr. Finley testified that the Amended District will be capable of efficiently financing and overseeing the construction of necessary capital improvements for development of the Expansion Parcels. In addition, 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. The fact that the District is an existing, functioning entity will benefit the Expansion Parcels.

54. The testimony of Ms. Carvalho and Mr. Finley 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.

55. Ms. Carvalho testified that the services and facilities needed for the Expansion Parcels are the same type of infrastructure 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.

56. Mr. Finley 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.

57. The testimony of Ms. Carvalho and Mr. Finley 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.

58. Ms. Carvalho testified that the addition of the Expansion Parcels will not affect the ability of the Amended District to operate as a separate special-district government, and will not change the way the unit of government is operating either now or into the future. The Existing District is a planned community with facilities and services provided, operated, and maintained by the District. The Amended District is an efficient mechanism to serve the Expansion Parcels, and to continue to oversee the operation and maintenance of the facilities presently serving residents within its boundary. In addition, the Amended District is of sufficient size, compactness, and contiguity to

constitute one functionally interrelated community. Thus, it was Ms. Carvalho's opinion that the Amended District is amenable to separate special-district government.

59. Mr. Finley testified that the area within the Amended District will continue to constitute an efficient mechanism for providing the necessary capital infrastructure improvements for development of the Expansion Parcels. It was Mr. Finley's opinion that 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.

60. The testimony of Ms. Carvalho and Mr. Finley 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.

Other Procedural Elements

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

62. Section 190.005(1)(d) required the District to publish notice of the local public hearing in a newspaper of general paid circulation in Flagler County for four consecutive weeks prior to the hearing. The notice was published in the Daytona Beach News Journal on August 17, 2021; August 23, 2021; August 30, 2021; and September 5, 2021.

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

Public Comment

64. No members of the public attended the public hearing either at the physical Palm Coast location or via Zoom.

APPLICABLE LAW

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

66. The District was established by the adoption of chapter 42LL-1, to include 846 acres. *See In re: Petition for Rule Creation - Tomoka Community Development District*, DOAH Case No. 03-0908 (Fla. DOAH Report, June 18, 2003; Chapter 42LL-1, effective Oct. 2, 2003). In 2006, the District underwent a boundary amendment adding 1,122 acres to the District, resulting in the current area of 1,968 acres. *See In Re: Petition to Amend the Boundaries of the Tomoka Community Development District*, DOAH Case No. 05-4511 (Fla. DOAH Report, May 10, 2006; Chapter 42LL-1, amendment effective Dec. 19, 2006).

67. The District satisfied the statutory notice requirements by providing Flagler County with a copy of the 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 a newspaper of general paid circulation and of general interest and readership in Flagler County once each week for the four consecutive weeks immediately prior to the 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 190.046(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:

* * *

(e)1. During the existence of a district initially established by administrative rule, the process to amend the boundaries of the district pursuant to paragraphs (a)-(d) shall not permit a cumulative net total greater than 50 percent of the land in the initial district, and in no event greater than 1,000 acres on a cumulative net basis. ...

(f) Petitions to amend the boundaries of the district that exceed the amount of land specified in paragraph (e) 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). ...

(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.

70. 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.

71. The Petition includes the elements required by section 190.005(1)(a)1. and 5.-8.

72. The Consent and Joinder of Landowner introduced as Exhibit A, Tab VC-1, Petition Exhibit 5, establishes that the District provided the requisite consent of the landowner of the Expansion Parcels, thus meeting the landowner consent requirements of section 190.046(1)(g).

73. In addition to the elements set forth in section 190.005(1)(a)1. and 5.-8. and the consent required by paragraph (g), section 190.046(1)(a) provides, in pertinent part, that:

... if the petitioner seeks to expand the district, the petition shall describe the proposed timetable for construction of any district services to the area, the

estimated cost of constructing the proposed services, 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 use plan element of the adopted local government local comprehensive plan.

74. As established herein, the District provided the description of services and facilities, a summary of capital improvement plan costs, and the designation of future public and private land uses as required.

75. Section 190.005(1)(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)].

76. The local public hearing was conducted by the undersigned in accordance with the Administrative Procedure Act, and included oral and written comments on the Petition as required.

77. 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.

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

79. The evidence in this proceeding established by competent, substantial evidence described herein, that the statements contained in the Petition are true and correct. § 190.005(1)(e)1., Fla. Stat.

80. The evidence in this proceeding established by competent, substantial evidence described herein, that the amendment of the District's boundary will not be inconsistent with either Flagler County's Comprehensive Plan or the State Comprehensive Plan. § 190.005(1)(e)2., Fla. Stat.

81. The evidence in this proceeding established by competent, substantial evidence described herein, that, after the addition of the Expansion Parcels, 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.

82. The evidence in this proceeding established by competent, substantial evidence described herein, that, after the addition of the Expansion Parcels, 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.

83. The evidence in this proceeding established by competent, substantial evidence described herein, 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.

84. The evidence in this proceeding established by competent, substantial evidence described herein, that, after the addition of the Expansion Parcels, the District is amenable to separate special-district government. § 190.005(1)(e)6., Fla. Stat.

85. The evidence in this proceeding established no reason to deny the request to correct the scrivener's error regarding the legal description for the School Site by showing the School Site as being correctly recorded in Plat Book 27, Page 49. That correction will clarify the intended exclusion of the School Site from the District's boundaries.

CONCLUSION

Based upon the foregoing Findings of Fact and Applicable 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 add approximately 80 acres to the 1,968 acres that comprise the Existing District, which will result in a District boundary encompassing approximately 2,048 acres; to correct the scrivener's error regarding the excluded School Site so that the affected clause shall read "Less and Except the Plantation Bay School Site recorded in Plat Book 27, Page 49 of the Public Records of Flagler County, Florida"; and to amend Florida Administrative Code Chapter 42LL-1, consistent therewith.

DONE AND ENTERED this 27th day of October, 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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