

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO ESTABLISH THE
WESTVIEW SOUTH COMMUNITY
DEVELOPMENT DISTRICT.

Case No. 22-0046

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

On March 30, 2022, Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) conducted two public hearings at the following locations and times: (1) at 10:00 a.m. at the Ramada by Wyndham Davenport Orlando South, 43824 Highway 27, Davenport, Florida; and (2) at 2:00 p.m., at the Hampton Inn & Suites by Hilton, 4971 Calypso Cay Way, Kissimmee, Florida. The purpose of the local public hearings was to take testimony and public comment, and receive exhibits on the Amended Petition to Establish the Westview Community Development District (Amended Petition).

APPEARANCES

For Petitioner: Jere Earlywine, Esquire
KE Law Group, PLLC
2016 Delta Boulevard, Suite 101
Tallahassee, Florida 32303

STATEMENT OF THE ISSUES

This report is prepared and submitted to the Florida Land and Water Adjudicatory Commission (Commission) for consideration in its determination of whether to adopt a rule establishing the Westview South Community Development District (District) in Osceola and Polk Counties. The issues before the Commission in this proceeding are whether the Amended Petition meets the criteria of chapter 190, Florida Statutes, and

Florida Administrative Code Chapter 42-1, and whether the hearing process was conducted pursuant to the requirements of section 190.005, Florida Statutes (2021).¹

PRELIMINARY STATEMENT

On November 29, 2021, Petitioner filed a Petition to Establish the Westview South Community Development District (Petition) with the Commission. Petitioner previously submitted the Petition and its exhibits, along with the requisite filing fee, to both Polk County and Osceola County, Florida, as required by section 190.005(1)(b)1.

On January 6, 2022, the Secretary of the Commission certified that the Petition contained all required statutory elements and forwarded it to DOAH to conduct the local public hearing as required by section 190.005(1)(d). The matter was assigned to the undersigned and set for two public hearings, one in Osceola County and another in Polk County.

On January 10, 2022, the Board of County Commissioners of Osceola County (Osceola Board) announced its support of the Petition without holding a public hearing. Similarly, on January 4, 2022, the Board of County Commissioners of Polk County (Polk Board) advised the Commission that it supports the Petition but did not hold a public hearing.

On March 14, 2022, the District filed the Amended Petition with DOAH. The Amended Petition changed the amount of acreage of the District to include conservation areas at the northern boundary.

On March 15, 2022, a Notice of Receipt of Petition was published in the Florida Administrative Register, Volume 48, Number 51.

¹ All rule and statutory references are to the 2021 versions unless otherwise indicated.

On January 24, 2022, the undersigned issued a Notice of Hearing, setting local public hearings in both Osceola and Polk Counties.

On January 28, 2022, the Department of Economic Opportunity (DEO) certified to the Commission that the Petition was consistent with chapter 163, Florida Statutes.

Petitioner published notice of the local public hearings in accordance with section 190.005(1)(d). At the local public hearings, Petitioner presented the live and/or written testimony of the following witnesses:

1. Heather Isaacs, Forward Planning Director of Taylor Morrison of Florida, Inc.;
2. Craig Wrathell, District Manager, President of Wrathell, Hunt & Associates, LLC, and an assessment consultant;
3. Santiago Machado, Project Manager at Atwell, LLC, the District's Engineer, and an expert in civil engineering; and
4. Bryan Gaines, Director of Planning at RVi Planning and Landscape Architecture, a certified Professional Planner, and an expert in state and local comprehensive planning.

Petitioner's Exhibits A through H were admitted into evidence and are described as follows:

Composite Exhibit A - Amended Petition with attachments Exhibits 1 through 8;

Exhibit B – Testimony of Ms. Isaacs, including attachments HI-1 through HI-7;

Exhibit C – Testimony of Mr. Wrathell;

Exhibit D – Testimony of Mr. Machado;

Exhibit E – Testimony of Mr. Gaines;

Exhibit F – Notice of Receipt of Petition, Florida Administrative Register;

Exhibit G - Proof of publication for the notice of the Osceola County public hearing; and

Exhibit H - Proof of publication for the notice of the Polk County public hearing.

Josh Kaylin, Petitioner's representative, was at the local public hearing. No members of the public appeared at either the Osceola or Polk County hearing locations.

Pursuant to rule 42-1.012, after the close of the local public hearings, the record was left open for ten days, until April 11, 2022, for submittal of written comments from the public in support of or in opposition to the Amended Petition. No written statements were submitted to DOAH.

The Transcripts of the local public hearings were filed with DOAH on May 20, 2022. Petitioner filed a Proposed Report of Findings and Conclusions on that same day, which has been considered in the preparation of this Report.

SUMMARY OF TESTIMONY AND EVIDENCE

1. The proposed District is located entirely within Osceola and Polk Counties, Florida, and covers approximately 1,015.431 acres of land. The site of the District is generally located northwest of the intersection of Poinciana Parkway and Cypress Parkway.

2. There are no parcels within the external boundaries of the District which are to be excluded from the District.

AMENDED PETITION

3. The Commission has certified that the Petition met all of the requirements of section 190.005(1)(a). The undersigned confirms that based on the testimony and evidence provided in the Amended Petition and at the

public hearings, Petitioner has complied with the provisions of section 190.005(1)(a), and the Amended Petition contains all required information as set forth below.

4. The Amended Petition contains the metes and bounds description of the external boundaries of the District as required by section 190.005(1)(a)1.

5. Petitioner has obtained written consent to establish the District from the owners of 100 percent of the real property located within the District as required by section 190.005(1)(a)2.

6. The Amended Petition designates the following people to be the initial members of the board of supervisors for the District, as required by section 190.005(1)(a)3.: Heather Isaacs, Nora Schuster, Damon Cascio, Julie Aragona, and Jeff Stalder.

7. The Amended Petition includes the name of the District, “Westview South Community Development District,” as required by section 190.005(1)(a)4.

8. The Amended Petition contains a map of the District showing current major trunk water mains and sewer interceptors and outfalls as required by section 190.005(1)(a)5.

9. The Amended 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. Petitioner expects the District to finance and fund the estimated costs of construction, and construct, acquire, and install any required infrastructure and improvements.

10. These improvements are estimated to be made, acquired, constructed, and installed in four phases over an estimated eight-year period from 2022 through 2030. Actual construction timetables and expenditures may vary, due in part to the effects of changes in the economic conditions, labor and materials costs, interest rates, and market conditions.

11. The Amended Petition contains 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.

ESTIMATED REGULATORY COSTS

12. The Amended Petition contains a statement of estimated regulatory costs (SERC) in accordance with the requirements of section 120.541, Florida Statutes. *See* § 190.005(1)(a)8., Fla. Stat. The SERC in the Amended Petition contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to establish the District including the State, Polk County, Osceola County, and the citizens of these jurisdictions. It also contains an estimate of costs and benefits to all future citizens and landowners in the District.

13. Beyond administrative costs related to rule adoption, the State and its citizens will only incur minimal costs from establishing the District. These costs are related to the incremental costs of various agencies for reviewing any additional local government reports.

14. Moreover, any debt obligations incurred by the District to construct its infrastructure, or for any other reason, are not debts of the State of Florida or any unit of local government.

LOCAL GOVERNMENT SUPPORT FOR ESTABLISHMENT.

15. Pursuant to the requirements of section 190.005(1)(b), Petitioner filed a copy of the Petition and paid a \$15,000 filing fee with Polk County prior to filing the Petition with the Commission.

16. The Polk Board did not hold a public hearing on the establishment of the District as allowed, but not required by section 190.005(1)(c).

17. Similarly, Petitioner filed a copy of the Petition and paid a \$15,000 filing fee with Osceola County prior to filing the Petition with the Commission. *See* § 190.005(1)(b), Fla. Stat.

18. The Osceola Board did not hold a public hearing on the establishment of the District as allowed, but not required by section 190.005(1)(c).

PUBLIC NOTICE

19. Section 190.005(1)(d) requires that a petitioner seeking to establish a community development district publish notice of the local public hearing in a newspaper of general paid circulation in the county in which the community development district is to be located for four consecutive weeks prior to the hearing.

20. The notice for the public hearings in these proceedings was published in the Osceola News-Gazette, a newspaper of general paid circulation in Osceola County, for four consecutive weeks on March 3, 10, 17, and 24, 2022.

21. The notice was also published in The Ledger, a newspaper of general paid circulation in Polk County, for four consecutive weeks on March 3, 10, 17, and 24, 2022.

FACTORS FOR CONSIDERATION BY THE COMMISSION

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

SECTION 190.005(1)(e)1. - WHETHER ALL STATEMENTS CONTAINED WITHIN THE AMENDED PETITION HAVE BEEN FOUND TO BE TRUE AND CORRECT.

23. Ms. Isaacs stated that she had reviewed the contents of the Amended Petition and generally described the attachments to the Amended Petition. She stated that the Amended Petition and its attachments (Petitioner's Composite Exhibit A) are true and correct to the best of her knowledge.

24. Mr. Wrathell stated that he had reviewed the contents of the Amended Petition. He stated that the Amended Petition and its attachments, as admitted into evidence as Petitioner's Composite Exhibit A, are true and correct to the best of his knowledge.

25. Mr. Machado stated that he assisted with the preparation of certain exhibits to the Amended Petition, specifically Exhibits 1, 2, and 4, through 6, and stated that these exhibits are true and correct.

26. No one disputed or offered evidence contradicting the statements in the Amended Petition or the information in its attachments.

27. Based on the record, and in the absence of evidence to the contrary, Petitioner has established that the statements contained in the Amended Petition and the attachments are true and correct.

SECTION 190.005(1)(e)2. - WHETHER THE DISTRICT BOUNDARY IS INCONSISTENT WITH ANY APPLICABLE ELEMENT OR PORTION OF THE STATE COMPREHENSIVE PLAN OR OF THE EFFECTIVE LOCAL GOVERNMENT COMPREHENSIVE PLAN.

28. “The State Comprehensive Plan shall provide long-range policy guidance for the orderly social, economic, and physical growth of the state.” § 187.101(1), Fla. Stat.

29. Mr. Gaines, an expert in the field of state and local comprehensive planning, reviewed the Amended Petition and the provisions of the State Comprehensive Plan relating to the establishment of a community development district.

30. Mr. Gaines specifically addressed three subjects of the State Comprehensive Plan that directly apply to the establishment of the District. First, Subject No. 15 of the State Comprehensive Plan, Land Use, recognizes the importance of enhancing the quality of life in Florida by ensuring that future development is located in areas that have the fiscal ability and service capacity to accommodate growth. Mr. Gaines testified that the District will have the fiscal ability to provide services and facilities to the population in the designated growth area and help provide infrastructure in an area that can accommodate development in a fiscally responsible manner.

31. Second, regarding Subject No. 17 of the State Comprehensive Plan, Public Facilities, Mr. Gaines explained that the cost of new public facilities

created for the District will be allocated to the existing and future residents of the District on the basis of the benefits received. This will encourage fiscally sound and cost-effective techniques for financing public facilities.

32. Finally, Subject No. 25 of the State Comprehensive Plan, Plan Implementation, requires that systematic planning be incorporated into all levels of government throughout the state. Mr. Gaines testified that the District is consistent with this element of the State Comprehensive Plan because it will systematically plan for the construction, operation, and maintenance of the public improvements and the community facilities authorized under chapter 190.

33. Additionally, the meetings of the District's board of supervisors must be publicly advertised and will be open to the public so District property owners and residents will have the opportunity to be involved in planning for improvements.

34. Mr. Gaines also evaluated the District for consistency with the Polk County Comprehensive Plan and Osceola County Comprehensive Plan. He found the establishment of the District is not inconsistent with any applicable element or portion of these Comprehensive Plans.

35. Mr. Gaines concluded the District was subject to and not inconsistent with the local government comprehensive plans and land development regulations.

36. Specifically, the District is consistent with Objective 2.205-A of the Polk Comprehensive Plan, Housing Element, as the proposed development has been through the required development process and received the necessary approvals based on Polk County standards and policies.

37. Similarly, the District is consistent with Objective 14-1.2 of the Osceola Comprehensive Plan, Capital Improvements Element, because the proposed development has been through the required development process and has received required approvals based on Osceola County standards and policies.

38. Mr. Gaines's testimony constitutes competent, substantial evidence that the District is not inconsistent any applicable provisions of the State Comprehensive Plan, Polk Comprehensive Plan, or Osceola Comprehensive Plan. There was no evidence to the contrary.

39. Additionally, DEO reviewed the Petition for consistency with the state and local Comprehensive Plans and indicated it could not identify any inconsistencies.

40. Based on the evidence adduced at the hearing, Petitioner has demonstrated the District will not be inconsistent with any applicable provision of the State Comprehensive Plan, Polk County Comprehensive Plan, or Osceola Comprehensive Plan.

SECTION 190.005(1)(e)3. - WHETHER THE AREA OF LAND WITHIN THE DISTRICT IS OF SUFFICIENT SIZE, IS SUFFICIENTLY COMPACT, AND IS SUFFICIENTLY CONTIGUOUS TO BE DEVELOPABLE AS ONE FUNCTIONAL INTERRELATED COMMUNITY.

41. The District includes an area of approximately 1,015.431 acres that essentially straddles Polk and Osceola Counties.

42. According to Mr. Wrathell, the District has sufficient land area and is sufficiently compact and contiguous to be developed, with the services contemplated. Mr. Wrathell further testified that the District will operate as one functionally interrelated community.

43. According to Mr. Machado, the lands to be included within the District have sufficient infrastructure needs to be developable as a functionally interrelated community. Mr. Machado further explained that the specific design of the community allows infrastructure to be provided in a cost-effective manner. Mr. Machado concluded that the provision of services and facilities through the use of one development plan provides a contiguous and homogenous method of providing services to lands throughout the District.

44. The testimony of Mr. Wrathell and Mr. Machado constitute competent, substantial evidence that the 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.

45. Petitioner has demonstrated that the land to be included in the District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community.

SECTION 190.005(1)(e)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.

46. Two alternatives for delivering planned facilities and services to the District were identified: (1) by Osceola and Polk Counties utilizing special assessments or general funds; or (2) by a developer and/or a homeowner's association.

47. According to Mr. Wrathell, both Osceola and Polk Counties have substantial demands over broad geographical areas that place a heavy management delivery load on their staff and budgets. The use of a community development district will allow both counties to focus staff time, finances, and other resources elsewhere and does not burden the general taxpayers in those counties with the debt associated with the growth within the District. Rather, this burden would be borne by the taxpayers in the District.

48. Regarding the second alternative, the developer does not have the ability to effectively finance the type of improvements contemplated for the District.

49. Mr. Wrathell opined that the District is the best available alternative for delivering community services and facilities to the area that will be served by the District because the District can access the tax-exempt public capital markets and thereby fund the District's proposed facilities at a lower cost

than the alternative of developer funding. He further noted that, unlike a homeowners' association, the District will have the power to assess property and collect those assessments along with other property taxes. Under such a system, only residents of the area served by the District would bear the full costs of the needed facilities and services. In other words, the residents of Polk and Osceola Counties not living in the District would not be burdened with the development of this area.

50. Mr. Machado also testified that the District is the best available alternative for delivering long-term operation and maintenance services.

51. The testimony of Mr. Wrathell and Mr. Machado constitute competent, substantial evidence that the District is the best alternative available for delivering community development services and facilities to the area. There was no evidence to the contrary.

52. Petitioner has demonstrated that the District is the best alternative available for delivering community development services and facilities to the area.

SECTION 190.005(1)(e)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.

53. Mr. Wrathell opined that the services and facilities the District will provide will not be incompatible with the capacity and uses of existing local and regional facilities and services because there are currently no facilities or services similar to those to be provided by the District. Therefore, there will be no overlap or incompatibility with existing services or facilities provided by a county or other entity.

54. Similarly, Mr. Machado opined there would be no redundancies in the services and facilities to be provided by the District with those currently available. Mr. Machado's testimony in this regard focused on infrastructure. He testified that none of the planned infrastructure improvements for the

District presently exist in a form that is adequate for a proposed residential development. Mr. Machado further stated that each of the District's infrastructure improvements would connect to an existing county system only after review and approval of the relevant county. Therefore, he believed there would be no incompatibility.

55. The testimony of Mr. Wrathell and Mr. Machado constitute competent, substantial evidence that the community development services and facilities of the District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. There was no evidence to the contrary.

56. Petitioner has demonstrated that the community development services and facilities of the District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

SECTION 190.005(1)(e)6. - WHETHER THE AREA THAT WILL BE SERVED BY THE DISTRICT IS AMENABLE TO SEPARATE SPECIAL-DISTRICT GOVERNMENT.

57. Mr. Wrathell opined that the District would be amenable to a separate special district based on two evaluation criteria: (1) whether the land area is of sufficient size and compactness, and is sufficiently contiguous to be the basis for a functional interrelated community; and (2) does the land area have a need for the facilities and services.

58. With respect to the first criterion, Mr. Wrathell explained that from a planning, economics, engineering, and special district management perspective, the area of land to be included in the District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a functionally interrelated community.

59. With regard to the second criterion, the community that would be served by the District's facilities would need basic infrastructure systems to be provided.

60. Mr. Machado also stated that the District would be amenable to a separate special district government. He testified that the District is limited in purpose and the infrastructure improvements to be provided are limited in scope.

61. The testimony of Mr. Wrathell and Mr. Machado constitute competent, substantial evidence that the area that will be served by the District is amenable to separate special-district government. There was no evidence to the contrary.

62. Petitioner has demonstrated that the District is amenable to separate special-district government.

PUBLIC COMMENT

63. No members of the public attended the public hearing at either the Davenport or Kissimmee locations.

64. No written public comment was submitted to DOAH.

CONCLUSIONS OF LAW

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

65. This proceeding is governed by chapters 120 and 190, and Florida Administrative Code Chapter 42-1. Pursuant these statutes and rules, the Commission shall consider the establishment of any community development district that is located partially within the unincorporated area of more than one county.

66. This proceeding was properly noticed by publication in newspapers of general interest, readership, and paid circulation in Polk County and Osceola County for a period of once a week for the four consecutive weeks immediately prior to the public hearings.

67. Petitioner met the requirements of section 190.005 regarding submission of the Petition and Amended Petition and satisfaction of filing fee requirements.

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

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

70. The establishment of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan, the Polk County Comprehensive Plan, or the Osceola Comprehensive Plan.

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

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

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

74. The area to be served by the District is amenable to a separate special-district government.

75. Based on the record evidence, Petitioner has satisfied all of the applicable statutory requirements to establish a community development district and there is no reason not to grant the Amended Petition.

CONCLUSION

The Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, should formally adopt a rule to establish the Westview South Community Development District.

DONE AND ENTERED this 8th day of June, 2022, in Tallahassee, Leon
County, Florida.



HETAL DESAI
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of June, 2022.

COPIES FURNISHED:

Joshua Elliott Pratt, Esquire
Executive Office of the Governor
400 South Monroe Street
Tallahassee, Florida 32311

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

Mark A. Buckles, Esquire
Executive Office of the Governor
400 South Monroe Street
Tallahassee, Florida 32311

Jere Earlywine, Esquire
KE Law Group, PLLC
2016 Delta Boulevard
Suite 101
Tallahassee, Florida 32303

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