

**Lee County Board of County Commissioners
Agenda Item Summary**

**DATE CRITICAL
Blue Sheet No. 20030369**

1. REQUESTED MOTION:

ACTION REQUESTED: To adopt and enact an ordinance, with staff recommended conditions, to establish a Uniform Community Development District (UCDD) to be known as the Habitat Community Development District ordinance.

WHY ACTION IS NECESSARY: An ordinance adopted by the BOCC is the exclusive means to establish a UCDD of less than 1,000 acres in size.

WHAT ACTION ACCOMPLISHES: Creates an independent special district that provides an alternative method to manage and finance basic services for community development.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #5 **5:00 #3**

3. MEETING DATE:
04-08-2003

4. AGENDA:

CONSENT

ADMINISTRATIVE

APPEALS

PUBLIC

WALK ON

TIME REQUIRED: 5 Minutes

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE Chapter 190, F.S.

ORDINANCE

ADMIN. CODE

OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER

B. DEPARTMENT County Attorney's Office

C. DIVISION Land Use

BY: John J. Fredyma
John J. Fredyma, Asst. County Atty

7. BACKGROUND: Habitat Lakes, LLC has petitioned the Lee County Board of County Commissioners to adopt an ordinance establishing a Community Development District in accordance with the Uniform Community Development District Act of Florida, Chapter 190, Florida Statutes ("Act"). Section 190.005(2) sets forth the "exclusive and uniform method for the establishment of a Community Development District of less than 1,000 acres in size." This establishment "shall be pursuant to an ordinance adopted by the County Commission having jurisdiction over the majority of the land in the area in which the district is to be located . . ."

A community development district is a local unit of special purpose government created in accordance with the Act and limited to the performance of those specialized functions authorized by the Act for the delivery of urban community development services. The Act provides an alternative streamlined method for financing the construction, maintenance and operation of major infrastructures necessary for community development. Once a community development district has been established, it serves as an infrastructure management tool that ultimately relieves existing county taxpayers of the financial burden of providing urban services to the landowners in the district.

(continued on second page)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	RISK <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i> 3-27-03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.
FORWARDED
TO CO. COMMISSIONERS
3/25/03 *[Signature]*

RECEIVED BY
COUNTY ADMIN. *[Signature]*
3-25-03
1:15
COUNTY ADMIN.
FORWARDED TO: *[Signature]*
3/27 9:00

The proposed Habitat Community Development District is located on approximately 961 contiguous acres, more or less, of land located wholly in unincorporated Lee County. The land area is bounded on the north by Corkscrew Road; on the south by undeveloped vacant land; on the east by a rock mine and land of Lee County; and on the west by undeveloped vacant land (next to Wildcat Run). The property is located in Sections 20, 29 and 32, Township 46 South, Range 26 East. The Habitat Community Development District will be granted the power to finance, fund, plan, establish, acquire, construct or re-construct, enlarge or extend, equip, operate and maintain systems and facilities for the following basic infrastructure: water management; water supplies; sewer and wastewater management; bridges or culvert; district roads; streetlights; conservation areas; and other projects within and outside the district boundary for which a Development Order may be issued.

The creation of the Habitat Community Development District is not a development order within the meaning of Chapter 380, F.S. All county planning, environmental and land development laws, regulations and ordinances will apply to the development of land within the proposed Habitat Community Development District, and the District can take no action that is inconsistent with those regulations.

In accordance with Section 190.005(1)(f), F.S., the proposed ordinance:

1. Establishes the external boundaries of the district.
2. Names the five persons designated to be the initial members of the Board of Supervisors. These members are as follows:
 - a. Antonio Gonzalez, P.E., PLS
 - b. Michael Montero, Esq.
 - c. Reynaldo Mayor
 - d. Carlos Montero
 - e. Felix Pardo
3. Names the district: The Habitat Community Development District

Staff from the Lee County Division of Planning has recommended the Habitat Community Development District should also be subject to the following additional condition:

1. Any and all agreements for the sale of property within the boundaries of the Habitat Community Development District must include the disclosure statement required in Section 190.048, Florida Statutes, for the initial sale of the property. This requirement applies to the initial seller of the property as well as all subsequent sellers, successors and assigns for the life of the Habitat Community Development District.

The proposed ordinance was reviewed and approved by the Executive Regulatory Oversight Committee on March 12, 2003.

A copy of the Petition is available for review at the Department of Community Development.

- Attachment: 1.) FAIS Form
2.) Proposed Ordinance establishing the Habitat Community Development District
3.) Petition for Establishment of a Community Development District (copy)
4.) Lee County Planning Staff's Analysis dated January 13, 2003

**LEE COUNTY, FLORIDA
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT
PROPOSED COUNTY ORDINANCE**

NAME OF ORDINANCE: **HABITAT COMMUNITY DEVELOPMENT DISTRICT**

I. DESCRIPTION OF ORDINANCE

A. Statement of Purpose

To enact a Uniform Community Development District (UCDD) under Chapter 190, Florida Statutes, to be known as the Habitat Community Development District.

B. Narrative Summary of Ordinance (Several Sentence Summary)

The ordinance establishes a UCDD to manage and finance the basic infrastructure systems, facilities and services of a development area to be known as the Habitat Community Development District.

C. Principal Division(s) or Department(s) Affected (List)

Department of Community Development

**LEE COUNTY, FLORIDA
 FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT
 PROPOSED COUNTY ORDINANCE:
The Habitat Community Development District**

II. Fiscal Impact on County Agencies/County Funds. (This section to be completed by DBS).

A. What is estimated Demand?
 (Develop Indicators)

N/A

B. What is estimated Workload?
 (Develop Indicators)

N/A

C. What are estimated costs?

	1st Year \$=s		2nd Year \$=s	
	<u>Existing</u>	<u>New</u>	<u>Existing</u>	<u>New</u>
Personnel	N/A		N/A	
Fringe	N/A		N/A	
Operating	N/A		N/A	
Capital Outlay	N/A		N/A	
Total	N/A		N/A	

D. List the anticipated revenues to cover costs identified in II, C, above. If a fee is to be charged, answer the following:

1. What is the basis (rationale) for the fee?

N/A

2. Do the anticipated fees cover the full cost of operation? If not, what percentage of the costs are covered?

N/A

E. Give a brief narrative analysis of the information contained in II, A-D, above.

No significant impact. The Ordinance authorizes establishing a UCDD (Uniform Community Development District) that will manage and finance basic infrastructure and service needs for the district.

LEE COUNTY ORDINANCE NO. 03-

AN ORDINANCE ESTABLISHING THE HABITAT COMMUNITY DEVELOPMENT DISTRICT; NAMING THE DISTRICT; PROVIDING FOR THE AUTHORITY OF THE ORDINANCE; ESTABLISHING AND DESCRIBING THE EXTERNAL BOUNDARIES OF THE COMMUNITY DEVELOPMENT DISTRICT; DESIGNATING THE INITIAL MEMBERS OF THE BOARD OF SUPERVISORS; ESTABLISHING THE INITIAL POWERS OF THE COMMUNITY DEVELOPMENT DISTRICT; ESTABLISHING THE STATUTORY PROVISIONS GOVERNING THE COMMUNITY DEVELOPMENT DISTRICT; ESTABLISHING ADDITIONAL CONDITIONS IMPOSED ON THE COMMUNITY DEVELOPMENT DISTRICT; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Habitat Lakes, LLC, has petitioned the Lee County Board of County Commissioners to establish the HABITAT COMMUNITY DEVELOPMENT DISTRICT, a Uniform Community Development District (UCDD), pursuant to the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes; and

WHEREAS, the Lee County Board of County Commissioners, after proper published notice, conducted a local public information-gathering ordinance hearing as required by law and finds as follows:

1. The petition is complete in that it meets the requirements of §190.005(1)(a), Florida Statutes; and all statements contained within the petition are true and correct.
2. The Lee County Executive Regulatory Oversight Committee has reviewed and approved the petition for establishment of the proposed district.
3. The costs to the County and government agencies from establishment of the district are nominal. There is no adverse impact on competition or employment from district establishment. The persons affected by establishment are the future landowners, present landowners, Lee County and its taxpayers, and the State of Florida. There is a net economic benefit flowing to these persons from district establishment as the entity to manage and finance the statutory services identified. The impact of district establishment and function on competition and the employment market is marginal and generally positive,

as is the impact on small business. None of the reasonable public or private alternatives, including an assessment of less costly and less intrusive methods and of probable costs and benefits of not adopting the ordinance, is as economically viable as establishing the district. Methodology is set forth in the economic impact statement on file. The statement of estimated regulatory costs of this petition on district establishment is adequate.

4. Establishment of the proposed district, whose charter is consistent with §§190.006 - 190.041, Florida Statutes, was created by general law, is not inconsistent with the local Comprehensive Plan of Lee County or the State Comprehensive Plan.

5. The area of land within the proposed district is of sufficient size, is sufficiently compact and is sufficiently contiguous to be developed as one functional interrelated community.

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

7. The community development services and facilities of the district will be compatible with the capacity and uses of existing local and regional community development services and facilities.

8. The area that will be served by the district is amenable to separate special district government.

9. The proposed district, once established, may petition the Board of County Commissioners for consent to exercise one or more of the powers granted by charter in §190.012(2), Florida Statutes.

10. Upon the effective date of this Ordinance, the proposed Habitat Community Development District will be duly and legally authorized to exist and exercise all of its general and special powers as limited by law; and has the right to seek consent from Lee County for the grant of authority to exercise special powers in accordance with F.S. 190.012(2), without question as to the district's continued right, authority and power to exercise its limited powers as established by this ordinance.

11. All notice requirements of law were met and complete notice was timely given.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: DISTRICT NAME AND LEGAL DESCRIPTION

The community development district herein established will be known as the Habitat Community Development District. A copy of the legal description of the community development district is attached as Exhibit "A" and incorporated herein by reference.

SECTION TWO: AUTHORITY FOR ORDINANCE

This Ordinance is adopted pursuant to §190.005(2), Florida Statutes, and other applicable provisions of law governing county ordinances.

**SECTION THREE: ESTABLISHMENT OF
COMMUNITY DEVELOPMENT DISTRICT**

The Habitat Community Development District is hereby established within the boundaries of the real property located in Lee County, Florida, and described in Exhibit "A" attached hereto and incorporated by reference.

**SECTION FOUR: DESIGNATION OF INITIAL MEMBERS
OF THE BOARD OF SUPERVISORS**

The following five persons are designated to be the initial members of the Board of Supervisors:

1. Antonio Gonzalez, P.E., PLS 782 NW 42nd Avenue #630
Miami, FL 33126
2. Carlos Montero 1717 North Bayshore Drive, Apt. #1457
Miami, FL 33132
3. Michael Montero, Esq. 1885 SW 18th Street
Miami, FL 33145
4. Felix Pardo c/o Felix Pardo and Associates, Inc.
5545 SW 8th Street #205
Miami, FL 33126
5. Reynaldo Mayor 780 NW 42nd Avenue #616
Miami, FL 33126

**SECTION FIVE: INITIAL POWERS OF
THE COMMUNITY DEVELOPMENT DISTRICT**

Upon the effective date of this Ordinance, the proposed Habitat Community Development District will be duly and legally authorized to exist and exercise all of its powers in accordance with §§190.011 and 190.012(1), Florida Statutes, subject to any conditions imposed herein; and has the right to seek consent from Lee County for the grant of authority to exercise additional special powers in accordance with §190.012(2), Florida Statutes.

**SECTION SIX: STATUTORY PROVISIONS GOVERNING
THE COMMUNITY DEVELOPMENT DISTRICT**

The Habitat Community Development District will be governed by the provisions of Chapter 190, Florida Statutes,

**SECTION SEVEN: ADDITIONAL CONDITIONS IMPOSED ON THE
COMMUNITY DEVELOPMENT DISTRICT**

The Habitat Community Development District will also be subject to the following additional conditions:

1. Any and all agreements for the sale of property within the boundaries of the Habitat Community Development District must include the disclosure statement required in Section 190.048, Florida Statutes, for the initial sale of the property. This requirement applies to the initial seller of the property as well as all subsequent sellers, successors and assigns for the life of the Habitat Community Development District.

SECTION EIGHT: CONFLICT AND SEVERABILITY

In the event this Ordinance conflicts with any other Lee County ordinance or other applicable law, the more restrictive will apply. If any phase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate, distinct and independent provision and such holding will not affect the validity of the remaining portion.

SECTION NINE: EFFECTIVE DATE

This Ordinance becomes effective upon filing with the Office of the Secretary of the Florida Department of State.

THE FOREGOING ORDINANCE was offered by Commissioner Ray Judah, who moved its adoption. The motion was seconded by Commissioner John E. Albion and, being put to a vote, the vote was as follows:

ROBERT P. JANES _____
DOUGLAS R. ST. CERNY _____
RAY JUDAH _____
ANDREW W. COY _____
JOHN E. ALBION _____

DULY PASSED AND ADOPTED THIS 8th DAY OF APRIL, 2003.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

**BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA**

RE: PROPOSED ORDINANCE PURSUANT
TO SECTION 190.005(2), FLORIDA
STATUTES TO ESTABLISH ON
PROPERTY PROPOSED IN THE
PETITION OF THE HABITAT COMMUNITY
DEVELOPMENT DISTRICT:

12:52 PM 11-13-09
COUNTY CLERK

**PETITION FOR ESTABLISHMENT BY COUNTY
ORDINANCE OF A COMMUNITY DEVELOPMENT DISTRICT
ON PROPERTY PROPOSED IN THE PETITION**

Petitioner, HABITAT LAKES, LLC, by and through its undersigned attorney, petitions the BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA (the "Commission"), to adopt an ordinance: establishing, on the proposed property, and recognizing, the community development district ("District"), created and chartered by Uniform General Law, the Uniform Community Development District Act of Florida, chapter 190, FS., (2001 and hereafter); acknowledging the uniform district charter expressed in Sections 190.006-190.041, Florida Statutes (FS.), and as referenced and provided by section 190.004(4), FS., and confirmed by section 189.4031(2), FS.; establishing the District (on the property proposed in this petition) and designating the initial members of the district Board of Supervisors; and, designating the proposed land area within which the District may manage and finance its basic infrastructure, systems, facilities, services, improvements and projects. In support whereof Petitioner submits:

1. Petitioner, Habitat Lakes, LLC, is a limited liability company, has its principal place of business at 782 N.W. 42nd Avenue, Suite 630, Miami, FL 33126, and is a Limited Liability Corporation, and Antonio Gonzalez is Manager.

2. The land area to be serviced by the District is located wholly in unincorporated Lee County. The land area is bounded on the north by Corkscrew Road; the east by a rock mine; the

south by undeveloped vacant land ; and, on the west by undeveloped vacant land, and comprises approximately 961 contiguous acres, more or less. A map showing the location of the land area proposed to be serviced by the District is attached as Exhibit "1".

3. A metes and bounds legal description of the proposed external boundaries of the District is attached as Exhibit "2". There is no real property within the proposed boundaries of the District which is to be excluded from the jurisdiction of the District.

4. Attached as Exhibit "3" is documentation constituting written consent to the establishment of the District by the owners of one hundred percent (100%) of the real property to be included in the land area proposed to be serviced by the District.

5. The five (5) persons designated to serve as the initial members of the Board of Supervisors of the District, who are citizens of the United States residents of the State of Florida and who shall serve in that office until replaced by elected members as provided in section 190.006, FS., are:

- | | |
|---|--|
| (1) Antonio Gonzalez, PE, PLS
782 NW 42 nd Avenue #630
Miami, FL 33126 | (2) Carlos Montero
1717 North Bayshore Drive
Apt. #1457
Miami, FL 33132 |
| (3) Michael Montero, Esquire
1885 SW 18 th Street
Miami, FL 33145 | (4) Felix Pardo, President
Felix Pardo and Associates, Inc.
5545 SW 8 th Street #205
Miami, FL 33126 |
| (5) Reynaldo Mayor
780 NW 42 nd Avenue #616
Miami, FL 33126 | |

6. The proposed name of the District is the "The Habitat Community Development District."

7. A map of the land area proposed for the establishment by ordinance of the state created and chartered District, showing current major trunk water mains, sewer interceptors, utilities and outfalls, if any, is attached as Exhibit "4".

8. The proposed timetable and the estimated related costs of construction and provision of District systems, facilities and services (which are contemplated by Petitioner to be proposed to the District Board of Supervisors, if the District is established), and based upon available data which are

subject to change, is attached as Exhibit “5”.

9. Lee County (“County”) has adopted all mandatory elements of its Local Government Comprehensive Plan (“Plan”) in accordance with requirements of chapter 163, FS., and Lee County has completed its revised plan for minimum criterion review pursuant to *chapter 9J-5, Florida Administrative Code*, by adoption of County Ordinance No. 02-02 through 02-06 (“2002 Plan”), as amended. County Ordinance No. 89-02 and all amendments as enacted by ordinances 90-09, 90-43, 90-44, 91-10, 91-19, 92-35, 92-41, 92-47, 92-48, 92-51, 93-05, 93-25, 94-23, 94-29, 94-30, 95-27, 96-19, 97-05, 97-13, 97-17, 97-22, 98-02, 98-09, 98-26, 99-15, 99-16, 99-17, 99-18, 99-19, 00-08, and 00-22, designate the legal description of the land area proposed to be serviced by the District as suburban.

Attached as Exhibit “6-A” is a copy of the suburban designation as set forth in the text of the Future Land Use Element of the 2002 Plan. Attached as Exhibit “6-B” is a copy of the Future Land Use map showing the future general distribution, location and extent of public and private uses of land contemplated by the local government comprehensive plan of Lee County for the land area proposed to be serviced by the District. Additionally, a copy of the entire 2002 Plan, as amended, is on file with the staff of the Commission for its review and consideration. Exhibit “6-C” is a copy of a letter from the Florida Department of Community Affairs reflecting that the 2002 Plan is in compliance. Exhibit “6-D” is in the State Notice of Intent.

10. A Statement of Estimated Regulatory Costs (“SERC”) of the Commission’s granting this Petition, and the establishment by County Commission ordinance on the property proposed in the petition of the state uniform and exclusive created and chartered District pursuant thereto, in accordance and in compliance with sections 190.005(1)(a)(8) and 120.541, FS., is attached as Exhibit “7”.

11. Petitioner attaches, as Exhibit “8” to this Petition, discussions by qualified professionals providing information for use by Lee County and its staff in consideration of the six factors for establishment of the District on the proposed property, and in support of the Commission granting this Petition, and as additional materials in support of the statements in this Petition, alleges (with the sequence discussed logically with factor No. 4 considered last):

A. The Petition hereby affirms that all of the statements contained herein are true and correct, in compliance with sections 190.005(2)(a), FS., 190.005(1)(e)1., FS. (See Exhibit “8”).

B. As according to the Future Land Use element of the Plan, the future land use designation for the land area proposed to be included in the District is “suburban”. (See Exhibit “8”). The District, if established on the proposed property, would not be inconsistent (and in fact, is consistent) with the policies under the suburban future land use category of the Plan, and specifically Policies. For a further discussion on these matters and related applicable Plan matters and also the State Comprehensive Plan, please reference Exhibit “8”. See s. 190.005(2)(a), FS., 190.005(1)(e)2., FS.

C. The land area proposed to be included within the state-created and chartered District is comprised of approximately 961 contiguous acres which are of sufficient size, sufficiently compact and contiguous sufficiently to be developable as one functional, interrelated community as discussed in Exhibit “8”. See s. 190.005(2)(a), FS., 190.005(1)(e)3., FS.

D. The community development systems, facilities and services to be provided by the District on the proposed property will supplement, and will not in any way be incompatible with, existing roads and other local and regional community development systems, facilities and services on the proposed property. This matter is described further in Exhibit “8”. See s. 190.005(2)(a), FS., 190.005(1)(e)5., FS.

E. The area proposed to be served by the District is amenable to separate special district government in the light of the information to be considered regarding the other factors. This matter is described further in Exhibit “8”. See s. 190.005(2)(a), FS., 190.005(1)(e)6, FS.

F. Because the information in the Petition is true and correct; because establishment is not inconsistent with applicable local or state comprehensive plans; because the land area is of sufficient size and compactness, and is contiguous sufficiently, to be developable as one functional interrelated community; because the systems, facilities and services of the District will not be incompatible with the capacity and uses of existing local and regional community development systems, facilities and services; because the land area proposed to be served by the District is amenable to separate special district government; and because, if established on the proposed property, following the procedures in s. 190.005(2), FS., the District will constitute under s. 190.002(1)(b), FS. a mechanism for timely, efficient, effective, responsive and economic delivery of its systems, facilities and services; the District is, therefore, the best alternative available for delivering these systems, facilities and services to the proposed property in light of the services,

systems and facilities which would be provided otherwise as discussed in more detail in Exhibit "8". See s. 190.005(2)(a), FS., 190.005(1)(e)4, FS.

12. Petitioner contemplates a petition by the District, if established to obtain consent of the County, as provided by section 190.012(2), FS., to exercise some or all the powers granted therein the District by the general law charter including parks and facilities for recreational, cultural and educational uses, see section 190.012(2)(a), FS., and security and related facilities, chapter 190.012(2)(d), FS.

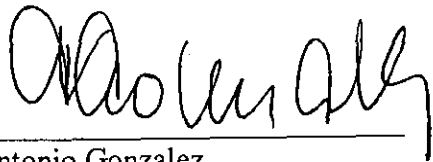
WHEREFORE, Petitioner requests respectfully the Commission to:

A. Direct its staff to notice, as soon as practicable, a local, public, non-emergency and information-gathering ordinance hearing pursuant to the requirements of section 190.005(2)(c), FS., on the subject of whether to grant this Petition for the establishment on the proposed land area of the state chartered and created the Habitat Community Development District and to enact the ordinance establishing the District on the proposed property.

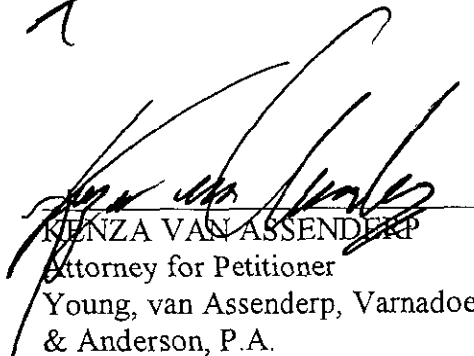
B. Grant this Petition and adopt the ordinance to establish the state created and chartered District in conformity herewith: to designate expressly in the establishing ordinance the land area to be served by the District, the name of the District and the initial members of the Board of Supervisors of the District and to recognize expressly in the ordinance, by statutory citation, that the uniform and exclusive general law charter of the District was created by the Florida Legislature in sections 190.006-190.041, FS., as provided also in section 190.004(4), FS., and confirmed and provided further in section 189.4031(2), FS. Recognize the impending Petition from the District Board of Supervisors, if established, for consent by the Commission to exercise certain enumerated special powers already granted by general law to the District by its exclusive uniform charter under section 190.012(2), FS., and that such potential exercise has been reviewed and assessed to the date of the ordinance. Providing finally that with regard to any future specific consent by the county to the exercise by the District of any of such special granted powers in its general law charter, the legal existence and authority of the District, as created by state law and as established on the proposed property by this ordinance, shall have been decided upon its establishment.

RESPECTFULLY SUBMITTED this 2nd day of October 2002.

2d
20th
RESPECTFULLY SUBMITTED this 20th day of September, 2002.



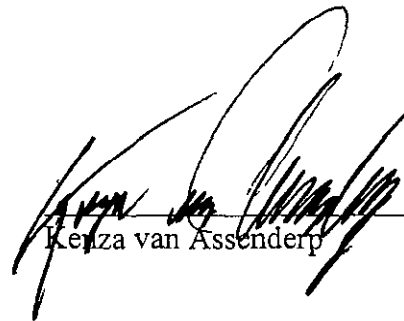
Antonio Gonzalez
Sole Managing Member
Habitat Lakes, LLC
782 N.W. 42nd Avenue
Suite 630
Miami, FL 33126
305-445-9855



KENZA VAN ASSENDERP
Attorney for Petitioner
Young, van Assenderp, Varnadoe
& Anderson, P.A.
225 South Adams Street - Suite 200
Tallahassee, FL 32302-1833
850-222-7206

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition of Establishment of the Habitat Community Development District was furnished to the Lee County Attorney's Office this 3rd day of October, 2002, by Federal Express to **TIMOTHY JONES**, County Attorney, Lee County's Attorney's Office, 2115 Second Street, 6th Floor, Ft. Myers, FL 33901


Kerza van Assenderp

ANALYSIS OF
THE HABITAT
PETITION TO ESTABLISH A
UNIFORM COMMUNITY
DEVELOPMENT DISTRICT

Prepared for
BOARD OF COUNTY COMMISSIONERS

by
LEE COUNTY DIVISION OF PLANNING

January 13, 2003

Table of Contents

INTRODUCTION	1
BACKGROUND	1
THE PETITION	3
FACTORS TO BE CONSIDERED	4
STAFF ANALYSIS OF FACTORS	5
RECOMMENDATION	7

INTRODUCTION

Habitat Lakes, L.L.C. has petitioned the Board of County Commissioners of Lee County, Florida to adopt an ordinance to establish a Uniform Community Development District (UCDD) and to designate the land area within which the UCDD may manage and finance basic infrastructure systems, facilities and services pursuant to the Uniform Community Development District Act of Florida, Chapter 190, Florida Statutes and Rule 42-1, Florida Administrative Code. The Uniform Community Development District Act was originally adopted in 1980. The act sets forth the procedure for the establishment of such a district, the district's powers and duties for public improvements and community facilities, and additional special powers that the district, after its establishment, may petition for.

If approved the district will be granted the power to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for the following basic infrastructure: water management; water supply, sewer, and waste water management; bridges or culverts; district roads; and other projects inside or outside the district boundary for which a Development Order is issued.

BACKGROUND

Habitat Lakes, L.L.C., hereafter called "Petitioner", is a Florida limited liability company with its principal place of business located at 782 N.W. 42nd Avenue, Suite 630, Miami, Florida, 33126 and whose Manager is Antonio Gonzalez.

The Petitioner has petitioned the Board of County Commissioners of Lee County to adopt an ordinance establishing a Uniform Community Development District pursuant to the Uniform Community Development District Act of Florida, Chapter 190, Florida Statutes. The act sets forth the procedure for the establishment of such a district and the district's powers and duties.

F.S. 190.005(2) sets forth the "exclusive and uniform method for the establishment of a community development district of less than 1,000 acres in size." This establishment "shall be pursuant to an ordinance adopted by the county commission having jurisdiction over the majority of the land in the area in which the district is to be located granting a petition for the establishment of a community development district."

The Petitioner proposes to establish a Uniform Community Development District on approximately nine hundred and sixty-one (961±) acres of land located in Lee County, Florida and lying within Sections 20, 29 and 32, Township 46 South, Range 26 East, south of Corkscrew Road and to the east of the Wildcat Run subdivision. A map showing the land area to be served by the District is attached as Exhibit 1 to the petition and a metes and bounds description of the external boundaries of the District is set forth in Exhibit 2 to the petition. The land area is bounded on the West by undeveloped land and the Wildcat

Run subdivision, on the North by Corkscrew Road, on the East by a rock mine and on the South by undeveloped land. There are no parcels within the external boundaries of the proposed District which are to be excluded from the District.

Adopting the ordinance and granting the petition would authorize the district, through its board of supervisors, to manage and finance certain basic infrastructure for the benefit of the landowners in the community. This infrastructure, or basic systems, facilities and services, under Section 190.012(1), F.S., includes four basic types: water supply; sewers and wastewater management; water control and management (drainage); and, roads, bridges and streetlights, as well as "other projects" as specified under Section 190.012(1)(f), Florida Statutes.

In order to provide the basic systems, facilities and services, the district has certain management and financing powers. However, these powers may be exercised only if the district complies with certain strict and detailed procedural requirements. These include: ethics in government; disclosure; conflict of interest requirements; noticed meetings; government-in-the-sunshine conduct; accounting and reporting requirements to various local and state agencies; consultants competitive negotiations procedures; competitive bidding procedures; and others. In addition to complying with these many procedural requirements, the district still may not manage and finance any of these services and facilities *without a showing that development of the properties complies with all legitimate policies, constraints, authorities, controls or conditions on the development of the land, whether local, regional, state or federal in nature, and whether in the form of policies, laws, rules, regulations or ordinances.* The district itself is not considered "development." Rather, the district is an *alternative mechanism to assure the County and the landowners of the particular land in question that basic systems, facilities and services will be managed and financed in an efficient and economical way.*

In order to provide these services, the district is also given certain eminent domain powers, within the very tight constraints summarized above, as well as the authority to require service charges, fees or taxes for the various services rendered, ranging from installation of capital facilities to long-term maintenance and repair. Without the County's consent by resolution, the aforementioned eminent domain power is limited to the boundaries of the district. The district may also issue non-ad valorem special assessment bonds, revenue and other user bonds, and general obligation bonds. However, no general obligation bonds can be issued without a referendum and without a showing that it will not exceed 35 percent of the assessed valuation of the property within the district.

Any additional powers available to the district under s. 190.012(2) F.S., such as parks, fire prevention and control, security structures and so on, may not be exercised by the district without specific consent from the County.

Accordingly, if the County adopts the ordinance and establishes the district, the Habitat Community Development District will then be an infrastructure management tool. This pinpointed responsibility can benefit the landowners with timely, efficient, reliable and

flexible services. It serves as a concurrency management tool for the County, the landowners, the developer and, ultimately, the residents. In addition, the district would be a financing tool providing financial incentives for long-range and high quality service benefits to initial and subsequent landowners without burdening Lee County and its taxpayers.

Finally, such a district may not outlive its practical utility and usefulness. If it ceases to function it will automatically be disbanded by state law. If at any time during its existence Lee County determines by a non-emergency ordinance that it can provide any one of the district services in a more economical manner, over the long term, at lower cost with higher quality, Lee County may then take that service away from the district and provide the service itself.

THE PETITION

The statutes require that a petition be filed containing the following information:

- a metes and bounds description of the external boundaries of the district and the impact of the proposed district on property within the external boundaries of the district which is excluded from the district;
- the consent of the property owners;
- the designation of the initial members of the board of supervisors;
- the proposed name of the district;
- a map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence;
- the proposed timetable and estimated cost of constructing the proposed services;
- the designation of the future general distribution, location, and extent of public and private uses of land; and,
- a statement of estimated regulatory costs.

Such a petition was received from the Petitioner by Lee County on October 4, 2002. In order to assist the Commission and its staff in reviewing the petition, supplemental materials were requested and were furnished by the Petitioner. The Petition and supplemental materials have been incorporated into this analysis. Planning staff's review of the petition finds the submittal to be sufficient.

FACTORS TO BE CONSIDERED

In accordance with F.S. 190, Lee County is required to consider the following six factors in making 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 creation 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.

The obligation of the Board of County Commissioners is to consider the six factors using the information in the petition and its attachments, any other documents and information that have been filed, including the expert documents. The key decisions to be made by the Board in establishing a district is simply whether it is a reasonable thing to do in view of the six factors which the law requires Lee County to analyze.

It should be noted that these factors are not specific criteria nor are they legal permit requirements or standards. Neither are they the basis for rendering any kind of final order or judgement. In accordance with F.S. 190.004(3) the creation of a community development district is not a development order with the meaning described in Chapter 380. All governmental planning, environmental, and land development laws, regulations, and ordinances apply to the development of the land within a community development district.

STAFF ANALYSIS OF FACTORS

Planning staff has reviewed the petition and accompanied materials. Following is staff's determination of the petition's applicability to each of the six factors.

Concerning Factor #1: Staff concludes that all statements contained within the petition are true and correct. This determination applies to the petition and all of its Exhibits. Concerning petition Exhibit 7, staff agrees with the statement of estimated regulatory costs that there is no adverse impact on small businesses. In fact there could be positive impacts due to the opportunity for small businesses to bid on work within the district. Staff also concurs with the methodology employed in the statement of estimated regulatory costs.

Concerning Factor #2: Staff concludes that the creation and establishment of the district is not inconsistent with any applicable element or portion of either the state comprehensive plan or the Lee County local government comprehensive plan, the Lee Plan. In fact, the establishment of the district is affirmatively consistent with Section 187.201(21)(b)(2) F.S., which encourages restructuring political jurisdiction with the goal of greater efficiency. It is also consistent with Policy 1.1.5 of the Lee Plan, the Suburban future land use category. The request is consistent with Objective 2.2, Development Timing, which directs "new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created." Further, the location of the proposed district is within an area which is specifically designated as a Privately Funded Infrastructure Overlay on Map 1 of the Future Land Use Map series. Pursuant to Future Land Use Goal 3, Privately Funded Infrastructure Overlay, and Objective 3.1, Funding Mechanisms, this area is encouraged to establish community development districts to provide infrastructure.

Concerning Factor #3: Planning staff has determined that the area of the land within the proposed district is of sufficient size, is sufficiently compact, and sufficiently contiguous to be developable as one functional interrelated community on the site.

Concerning Factor #4: Planning staff has reviewed the three fundamental alternatives available for managing and financing those basic systems, facilities and services for the Habitat development area. One alternative is for Lee County government to directly provide those services by creating a dependent district or, by directly managing the infrastructure but financing it through a Municipal Services Taxing Unit (MSTU) or Municipal Services Benefit Unit (MSBU). The other alternative is purely private, through a homeowners' association, or through a private company or utility established by the landowners. The third alternative, the Uniform Community Development District, coincides the public policy interests and duties of local government with the private marketing interests and duties of private landowners.

Planning staff has reviewed these three alternatives with regard to the site and concludes that the establishment of a Uniform Community Development District is one of the best

alternatives available for delivering community development services and facilities to the area that will be served by the district. Staff has further concluded that establishment of the district is compatible with the function of existing units of local government or that any issues have been or may be adequately addressed by interlocal agreement.

Concerning Factor #5: Staff has reviewed the issue of the capacity and uses of any existing local and regional community development services and facilities. Currently the subject area is located within the Gulf Environmental Services future water and sewer service areas. The establishment of the District will not create a conflict with this utility because it is the intent of the District to construct and then turn over ownership to Gulf Environmental Services for operating and maintenance. Other services and facilities such as water management, roadways, landscaping and wetland mitigation will be funded and maintained by the district. There are no other Uniform Community Development District services or facilities being provided to the property.

Staff has determined that the community development services and facilities of the district will not be incompatible with the capacity and uses of the existing local and regional services and facilities which deal with community development.

Concerning Factor #6: Staff has reviewed the area in question and has determined that it is amenable to separate special district government.

ADDITIONAL ANALYSIS

As in previous reviews, staff has a concern that future purchasers of property or dwelling units within the proposed UCDD are aware that the property they are purchasing will be subject to additional assessments for public services and facilities, beyond those taxes and assessments levied by local governments. Section 190.048, Florida Statutes, contains a provision that requires that a buyer of an "initial" parcel, or the buyer of an "initial" residential unit within a UCDD be notified that the property or dwelling unit being purchased is subject to special assessments from the district. Second and third buyers of property or dwelling units, however, would not be notified that the property is subject to these special assessments. Staff believes that all future purchasers of property within a UCDD should be made aware that they will be subject to additional district assessments. Staff therefore recommends that the disclosure statement provided in Section 190.048, Florida Statutes apply to all subsequent sales within the UCDD, and not just to the initial sale. Staff recommends the inclusion of the following language in the adopting ordinance of the proposed district:

Any and all agreements for the sale of property within the boundaries of the Habitat Community Development District must include the disclosure statement required in Section 190.048, Florida Statutes, for the initial sale of the property. This requirement applies to the initial seller of the property as well as all subsequent

sellers, successors and assigns for the life of the Habitat Community Development District.

RECOMMENDATION

Planning staff recommends that the Board of County Commissioners adopt and enact the Ordinance establishing the Habitat Uniform Community Development District. In accordance with Section 190.005(1)(f), F.S., the Ordinance enacts the following:

1. It establishes the external boundaries of the district which are set forth in ordinance Attachment A;
2. It names the five persons designated to be the initial members of the board of supervisors who shall be:

Antonio Gonzalez
Carlos Montero
Michael Montero
Felix Pardo
Reynaldo Mayor

3. It establishes the name of the district which shall be: The Habitat Community Development District.
4. It establishes the inclusion of the disclosure statement of Section 190.048, F.S. to subsequent land purchase agreements within the boundaries of the district. The statement is as follows:

Any and all agreements for the sale of property within the boundaries of the Habitat Community Development District must include the disclosure statement required in Section 190.048, Florida Statutes, for the initial sale of the property. This requirement applies to the initial seller of the property as well as all subsequent sellers, successors and assigns for the life of the Habitat Community Development District.