

LEGISLATIVE #
180972E

Hopping Green & Sams

Attorneys and Counselors

July 12, 2019

Via Electronic Mail and Overnight Delivery

Sean M. McDermott, Esq.
Senior Assistant City Attorney
City of Gainesville - Office of the City Attorney
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Gainesville, Florida 32627
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Re: Petition to Establish the Finley Woods Community Development District ("**District**");
Supplemental Affidavit in Support of Establishment

Dear Sean,

I am assisting Katie Buchanan on the above-referenced matter, and am writing in anticipation of the upcoming establishment hearing set for July 18, 2019 whereby the City will consider the Petition to Establish the Finley Woods Community Development District ("**Petition**"). As you know, Ms. Buchanan from my office previously supplied to the City written testimony and affidavits from the District's financial consultant, project engineer, planner and developer representative in order to provide further evidence that the Petition meets the requirements of Section 190.005(1)(e), *Florida Statutes*. Additionally, please find the enclosed *Supplemental Affidavit of Kevin Plenzler*, which is intended to supplement the record and address the City's Staff Report relating to the Petition.

Please forward this letter and the Supplemental Affidavit to the City Council so that they may review it in time for Thursday's hearing. As Ms. Buchanan has previously stated, we believe that the proposed District will benefit the project, future residents and the City. Moreover, the record evidence – which includes the petition materials, the pre-filed testimony, and the supplemental affidavit – demonstrates that all of the statutory criteria for establishment have been met. Accordingly, we respectfully request that the City approve the Petition.

Thank you for your assistance with this matter. If you have any questions, please do not hesitate to contact me at 850-222-7500.

Sincerely,



Jere Earlywine
District Counsel

**BEFORE THE CITY COMMISSION
CITY OF GAINESVILLE, FLORIDA**

IN RE: PETITION TO ESTABLISH THE FINLEY WOODS)
 COMMUNITY DEVELOPMENT DISTRICT)
_____)

**SUPPLEMENTAL AFFIDAVIT OF
KEVIN PLENZLER**

STATE OF FLORIDA
COUNTY OF ORANGE

I, Kevin Plenzler, of PFM Financial Advisors LLC, being first duly sworn, do hereby state for my affidavit as follows:

1. I have personal knowledge of the matters stated herein.
2. My name is Kevin Plenzler and I am a Senior Managing Consultant of PFM Financial Advisors LLC.
3. My credentials, experience and qualifications concerning my work as a district manager and financial consultant are accurately set forth in my pre-filed testimony.
4. I am providing this Supplemental Affidavit to address certain comments set forth in the Staff Report and in connection with the Petition to Establish the Finley Woods Community Development District. Below I have recited certain of the Staff Report's comments and have provided written responses:

- a. ***STAFF REPORT STATEMENT: There are currently over 600 CDDs established throughout Florida, with the majority of those established between 2003-2007 during the housing boom and many experiencing default as a result of the housing crisis.***

RESPONSE: Presently, there are over 675 CDDs in Florida, and the Florida Department of Economic Opportunity indicates that only 6 are in a state of financial emergency. While it is true that certain CDDs did have financial difficulties during the Great Recession, CDDs did NOT cause those projects to fail, but instead likely helped projects recover relatively more quickly than other similarly situated projects that did not have a CDD in place. The reason is that CDDs, unlike projects with traditional mortgages, have institutional investors and professional staff who can more quickly move any defaulting properties through foreclosure. Additionally, the CDD assessment liens are easier to foreclose than traditional mortgages. Moreover, CDD bonds have "reserve funds"

established that can be used to keep the project operating while the project is put back into productive use. Because of these features, CDD-funded projects fared better during the Great Recession than other projects funded with traditional mortgages.

- b. *STAFF REPORT STATEMENT: There are also a variety of potential disadvantages in the use of CDDs. First, CDDs are unilaterally controlled by the developer for generally between 6 and 8 years after creation with homeowners having little to no recourse in challenging the decisions of CDD Boards.*

The Staff Report mischaracterizes this issue. In fact, CDD Boards turn over much more quickly than HOA Boards and are more responsive to resident issues. With respect to turnover, CDDs typically have 2 residents on the Board within 6 years after establishment, with majority control by residents within 8 years. By contrast, HOA Boards typically do NOT turnover until after 90% of a project is built-out, which is almost always later than the CDD turnover time-frame. Thus, CDD Boards almost always turnover to resident control earlier than an HOA Board. Moreover, because CDDs are governmental entities and must follow numerous laws in establishment budgets, assessments, etc., they are more accountable to residents than HOAs.

- c. *STAFF REPORT STATEMENT: [E]ven considering state law requires disclosures to prospective homebuyers within a CDD, the CDD structure can be confusing to homeowners, particularly its revenue collection on tax bills as a quasi-public entity and a CDD's powers and differences in respect to a Homeowner's Association or a municipality.*

RESPONSE: CDDs are not confusing to homebuyers because they are a well-established institution in Florida, and there is a lot of disclosure required by law. In fact, CDDs are extremely common – as evidence, there are almost 700 CDDs in Florida, and they are currently used in new residential land development projects; they have been in existence for over 30 years; and there are numerous disclosures in connection with CDDs. CDDs are required to record numerous documents in the public record giving notice of the CDD, its assessments, financings, etc. Further, CDDs are also required to give notice of their meetings, maintain a public website with various documents, hold open meetings subject to the Sunshine Law, provide records upon request pursuant to Florida's Public Records Laws, etc. Because of how common CDDs are, and how much disclosure is required, it's not accurate to say that they are confusing to homeowners.

- d. *STAFF REPORT STATEMENT: [A] potential criticism is that people who buy property in CDDs may unwittingly pay twice for any CDD benefits, meaning that even though the purchase price of the individual*

properties within a CDD theoretically need not be inflated to account for the developer's need to repay debt in the short term, the market rate purchase price may nevertheless be inflated as it naturally accounts for the infrastructure or amenities financed by the CDD since they are constructed immediately and then in addition the property owner will still be subject to long-term debt payments (i.e., assessments).

RESPONSE: Property owners in a CDD do NOT pay twice for CDD benefits. CDDs only assess for the services and improvements provided, and property owners only pay once for those benefits. Moreover, while home prices themselves are dictated by market conditions, the cost of infrastructure may or may not be built into the home price, regardless of whether a CDD or a traditional mortgage helped finance that infrastructure. As such, the staff comment is incorrect.

- e. *STAFF REPORT STATEMENT: [T]he law affords CDD liens imposed in connection with its assessments a superpriority that is coequal with other governmental liens, such as state, county, municipal, and school board taxes. This may have an impact on the conventional real estate lending market as well as the secondary mortgage market (similar to issues experienced with PACE programs).*

RESPONSE: There is no evidence that CDD liens have an impact on the conventional lending market or the secondary mortgage market. To the contrary, there are almost 700 CDDs in Florida, and many planned developments in Florida use CDDs as a financing mechanism. If CDDs had an impact on lending, then CDDs would not be such a financially viable option.

- f. *STAFF REPORT STATEMENT: The use of CDDs may present a difficulty for municipalities in treating similarly situated developers the same by also providing them with the CDD mechanism of lower-risk, lower-cost financing.*

RESPONSE: The City should not deny a petition simply because other property owners may also want to establish a CDD. As noted, CDDs offer a comparatively lower-cost financing option that is beneficial to property owners, future residents, and the City.


If the statutory criteria are met regarding the requested establishment of a CDD by a property owner, the City should properly evaluate that request. As such, the City's denial of one CDD petition does not in turn mean that other property owners are thereby automatically denied their right to seek to establish a CDD. Finally, in terms of precedent, while the City of Gainesville does not have an active CDD, Alachua County already has existing CDDs.

g. STAFF REPORT STATEMENT: *In light of this analysis, the City Commission should balance these competing interests and the potential advantages and disadvantages of CDDs as it determines whether to grant or deny any request to create a City of Gainesville Page 26 Printed on 5/ 31/19 at 4:44 pm City Commission Meeting Agenda June 6, 2019 CDD, specifically as it exercises its prudent discretion in considering the six statutory factors provided above. As a framework for making such a decision, staff offers that the approval of CDDs is most appropriate or clearly advantageous to the public health, safety, and welfare and therefore should be approved only when both of the following two conditions are met: 1) The project could not occur without public support, meaning the project could not be accomplished through conventional financing or equity financing through traditional channels; and 2) The project provides some unique benefit that furthers a discernable goal(s) of the City and the community, including but not limited to ameliorating an economically depressed or underserved area or providing uniquely beneficial infrastructure or services that would not otherwise be accomplished by the developer or the City.*

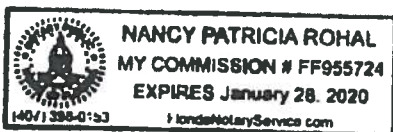
RESPONSE: The additional criteria set forth above in the Staff Report are NOT statutory requirements, and cannot be considered in determining whether to approve the establishment of a CDD. I am not aware of any of the nearly 700 CDDs in Florida ever having to meet these additional requirements.

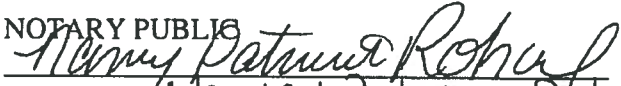
Under penalties of perjury, I declare that I have read the foregoing and the facts alleged are true and correct to the best of my knowledge and belief.

Executed this 12th day of July, 2019.


Kevin Plenzler
PFM Financial Advisors LLC

SWORN TO AND ASCRIBED before me this 12th day of July, 2019, by Kevin Plenzler, of PFM Financial Advisors LLC, who is personally known to me or has provided _____ as identification, and who did / did not take an oath.



NOTARY PUBLIC

Print Name: Nancy Patricia Rohal
Notary Public, State of Florida
Commission No.: FF955724
My Commission Expires: January 28, 2020