



Legislation Text

File #: 180972., **Version:** 1

Request to Establish the Finley Woods Community Development District (B)

Ordinance No. 180972

An ordinance of the City of Gainesville, Florida, establishing the Finley Woods Community Development District, pursuant to Chapter 190, Florida Statutes; naming the District; describing the external boundaries of the District; describing the functions and powers of the District; designating five persons to serve as the initial members of the District's Board of Supervisors; providing a severability clause; providing a repealing clause; and providing an effective date.

The City Commission hear presentations and consider whether to establish the Finley Woods CDD.

STAFF REPORT

This item is a request from a private land owner/developer for the City Commission to create a Community Development District ("CDD") within the City of Gainesville. The first part of this agenda summary will provide a general overview of CDDs in Florida, including the mechanics and potential advantages and disadvantages of CDDs. The second part will provide details regarding the particular CDD that the City Commission has been asked to create.

Part I - CDDs in Florida

CDDs, as provided for in Chapter 190, Florida Statutes, are independent special taxing districts that operate as "a local unit of special-purpose government" to serve as an alternative method for financing and maintaining community development infrastructure and services. To grant the request and create the CDD, the City Commission adopts an ordinance that, per statute, may only include: 1) a description of the subject area; 2) the name of the CDD; and 3) the names of five people selected by the owner/developer to serve as the initial members of the CDD Board until they are replaced in accordance with state law by members elected by CDD residents. If approved, the CDD operates as an independent quasi-public entity with no oversight by the City of Gainesville and has the powers provided for in state law, which include amongst other things the power to borrow money and issue bonds and notes, to assess ad valorem taxes, to levy special assessments, to issue user charges or fees, and to exercise eminent domain. To determine whether to grant or deny the request to create a CDD, the City Commission per statute shall consider the following factors:

- 1) Whether all statements contained within the petition have been found to be true and correct.
- 2) Whether the establishment of the CDD is inconsistent with any applicable element or portion of the state comprehensive plan or of the City's Comprehensive Plan.
- 3) Whether the area of land within the proposed CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.
- 4) Whether the CDD is the best alternative available for delivering community development services and

facilities to the area that will be served by the CDD.

5) Whether the community development services and facilities of the CDD 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 CDD is amenable to separate special-district government.

The above criteria, particularly 4) and 6), necessitate prudent discretion from the City Commission. Therefore, it is helpful to review the purpose and mechanics of special taxing districts such as CDDs and some potential advantages and disadvantages of CDDs.

Special taxing districts historically began as a tool tied to traditional governmental functions such as providing public infrastructure, roads and bridges, water distribution, sewer services, fire and police safety, and the development of economically distressed areas, all under the general theory that municipalities were not equipped to handle certain functions with a particularly specific scope and that these items should not be, or just practically speaking could not be, supported by general government funds. The uses of special taxing districts expanded over the years, including for private real estate development as provided in Florida's Uniform Community Development District Act of 1980 (Chapter 190, F.S.). Under this Act, CDDs provide a mechanism whereby a developer-controlled CDD is able to: 1) obtain financing immediately through the issuance of long-term tax-exempt bonds at a lower cost than financing available through conventional lenders; 2) build the improvements immediately; and 3) structure the CDDs debt obligation to be paid back over time by the property owners within the CDD paying special assessments on their property tax bills. 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. Alachua County only has two CDDs: 1) Parker Road CDD approved by the Alachua County BOCC in 2006, which includes the Oakmont Development; and 2) Celebration Pointe CDD approved by the Alachua County BOCC in 2012.

The CDD structure can be advantageous for developers because projects can be completed with cheaper financing that is off the books of the developer (since the debt is owned by the CDD), and the ultimate cost of the improvements need not be recouped from the developer's sales proceeds from the lots within the development because it will be paid by future owners over time. CDDs can be advantageous to homeowners because they may avail themselves of infrastructure and amenities that either the municipality or the developer may not have supported or financed; and because the debt is assumed long term via assessments on tax bills, the purchase price of the properties need not be inflated to account for the developer's need to repay the debt in the short term. CDDs can be advantageous for municipalities as an attractive economic development tool, whereby at no cost to the municipality developers can be incentivized by a CDD to provide infrastructure and services to residents leading to economic development and increased municipal tax revenues.

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. Upon creation of a CDD, the developer may elect its own officers, employees, associates, or friends to serve on the CDD Board, and although the CDD Board is subject to the Sunshine Law and Public Records Law, Florida's Ethics Law exempts the developer's stockholders, officers, employees, or affiliates serving as CDD Board members or CDD employees from any conflict of interest limitations, and therefore they may permissibly make decisions in the best interests of the developer. Second, and even 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. In this vein, 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). Third, the 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). Fourth, 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.

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 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.

Part II - Finley Woods CDD

The proposed Finley Woods CDD is a subset of the larger 118-acre Finley Woods Development. The 88-acre CDD boundaries will encompass Phases IC, II, and III of the subdivision and when constructed will contain 255 single-family residential lots. Phase IC is located south of SW 62nd Avenue and is currently under construction. Phases II and III are located north of SW 62nd Avenue. Phases II and III received design plat approval from the City Commission on February 7, 2019. Construction and engineering plans for Phase II are currently under review by City Departments. Electric service is currently provided by Clay Electric. Water and wastewater facilities are provided by GRU.

Infrastructure improvements that the Developer has proposed to finance through the City's creation of the Finley Woods CDD include: 1) entry signage; 2) stormwater facilities; 3) water and sewer service; 4) roadways; 5) street lights; and 6) roadway landscaping and hardscaping. Exhibit 7 of the Developer's CDD application provides cost estimates for all of the infrastructure improvements totaling \$10,897,287. With the exception of the proposed entry signage, it is important to note that the infrastructure improvements proposed by the Developer and outlined here are all required by the City's Land Development Code and are items that are typical with a common development of this type.

CITY ATTORNEY MEMORANDUM

This ordinance requires two hearings and will become effective immediately upon adoption.