



ORDINANCE NO. 02-09

ORDINANCE ESTABLISHING THE FLOW WAY COMMUNITY DEVELOPMENT DISTRICT; ADOPTING FINDINGS OF FACT; PROVIDING FOR AUTHORITY; DESCRIBING THE EXTERNAL BOUNDARIES OF THE DISTRICT; NAMING THE INITIAL MEMBERS OF THE BOARD OF SUPERVISORS; NAMING THE DISTRICT; RECOGNIZING GOVERNING LAWS; CONSENTING TO THE EXERCISE OF CERTAIN SPECIAL POWERS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

FILED
2002 MAR -4 PM 3:19
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

RECITALS

WHEREAS, Mirasol Development, L.L.C. has petitioned the Board of County Commissioners (Board) of Collier County, Florida, a political subdivision of the State of Florida, to establish the FLOW WAY COMMUNITY DEVELOPMENT DISTRICT (District); and

WHEREAS, the Board of County Commissioners, after proper published notice conducted a public hearing on the petition and determined the following with respect to the factors to be considered in Section 190.005(1)(e), as required by Section 190.005(2)(c), Florida Statutes.

1. The petition is complete in that it meets the requirements of Section 190.005 (1) (a), Florida Statutes; and all statements contained within the petition are true and correct.
2. Establishment of the proposed District is not inconsistent with any applicable element or portion of the local comprehensive plan of Collier County, known as the Collier County Growth Management Plan, or the State Comprehensive Plan.
3. 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. The District is the best alternative available for delivering community development services and facilities to the area that will be serviced by the District.
5. 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.
6. The area that will be served by the District is amenable to separate special-district government; and

WHEREAS, It is the policy of the State, as provided in Section 190.002 (2) (c), Florida Statutes, that the exercise by any independent district of its powers as set forth by uniform general law comply with all applicable governmental laws, rules, regulations, and policies governing planning and permitting of the development to be served by the district, to ensure that neither the establishment nor operation of such district is a development order under Chapter 380, Florida Statutes, and that the district so established does not have any zoning or permitting powers governing development; and

WHEREAS, Section 190.004 (3), Florida Statutes, provides that all governmental planning, environmental, and land development laws, regulations, and ordinances apply to all development of the land within a community development district; and that a

district shall take no action which is inconsistent with applicable comprehensive plans, ordinances, or regulations of local general purpose government; and

WHEREAS, pursuant to Section 190.012, Florida Statutes, the District's special powers are subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies and special districts having authority with respect to any area included therein.

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

SECTION ONE: FINDINGS OF FACT.

The foregoing Recitals are hereby adopted as if fully set forth here as findings of facts which are determined by the Board to be true and correct.

SECTION TWO: AUTHORITY FOR ORDINANCE.

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

SECTION THREE: ESTABLISHMENT OF THE FLOW WAY COMMUNITY DEVELOPMENT DISTRICT.

The Flow Way Community Development District is hereby established within the boundaries of the real property described in Exhibit "A" attached hereto and incorporated by reference herein.

SECTION FOUR: DESIGNATION OF INITIAL BOARD MEMBERS.

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

- | | |
|--|---|
| 1. Christopher G. Claussen
2074 Sevilla Way
Naples, FL 34109 | 3. Bruce Bowers
1205 Pocantico Lane
Naples, FL 34110 |
| 2. Jack Sterling
3221 64 th Street, SW
Naples, FL 34105 | 4. Mark Alderuccio
5425 Park Central Court
Naples, FL 34109 |
| 5. Thomas Barrett
132-204 Pebble Shores Drive
Naples, FL 34110 | |

SECTION FIVE: DISTRICT NAME.

The community development district herein established shall henceforth be known as the "Flow Way Community Development District."

SECTION SIX: STATUTORY PROVISIONS GOVERNING DISTRICT.

The Flow Way Community Development District shall be governed by the provisions of Chapter 190, Florida Statutes, and all other applicable general and local law.

SECTION SEVEN: CONSENT TO SPECIAL POWERS.

The Board specifically consents to the District's exercise of certain additional special powers to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for: (I) parks and facilities for indoor and outdoor recreational, cultural, and educational uses; and (II) security,

including, but not limited to, guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies; except that the District may not exercise any police power, but may contract with the appropriate local general-purpose government agencies for an increased level of such services within the District boundaries; all as authorized and described by Section 190.012 (2)(a) and (d), Florida Statutes. The Board further recognizes the District's right to seek consent from Collier County for further additional special powers in accordance with Section 190.012(2), Florida Statutes.

SECTION EIGHT: CONFLICT AND SEVERABILITY.

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

SECTION NINE: INCLUSION IN CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinances may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION TEN: EFFECTIVE DATE.

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

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 26th day of February, 2002.

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA



BY:

James N. Coletta
JAMES N. COLETTA, CHAIRMAN

Dwight E. Brock, D.C.
DWIGHT E. BROCK, Deputy Clerk

Attest as to Chairman's
signature only.

Approved as to Form
And Legal Sufficiency:

Patrick G. White
PATRICK G. WHITE,
Assistant County Attorney

This ordinance filed with the
Secretary of State's Office the
26th day of March, 2002
and acknowledgement of that
filing received this 26th day
of March, 2002

By Dwight E. Brock
Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA**

RE: PROPOSED ORDINANCE PURSUANT TO)
SECTION 190.005 (2), FLORIDA STATUTES)
TO ESTABLISH THE FLOW WAY)
COMMUNITY DEVELOPMENT DISTRICT)

**PETITION TO ESTABLISH
A COMMUNITY DEVELOPMENT DISTRICT**

MIRASOL DEVELOPMENT, L.L.C., (hereinafter "Petitioner"), by and through its undersigned attorney, hereby petitions the Collier County Board of County Commissioners to adopt an ordinance: establish and recognizing a Community Development District (hereinafter "District") pursuant to the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended; acknowledging the uniform district charter contained in Sections 190.006 through 190.041 as provided by Section 190.004(4), Florida Statutes, establishing the District on the property described herein within which the District may manage and finance its basic infrastructure systems, facilities and services as provided in its charter; and designating the initial District Board of Supervisors. In support of this petition, Petitioner states:

1. Location and Size. The proposed District is located entirely within Collier County, Florida. Exhibit 1 depicts the general location of the project. The proposed district covers approximately 830 acres of land. The site is located in portions of Section 15 and Section 22, near the intersection of CR 951 and Immokalee Road. The metes and bounds description of the external boundaries of the District is set forth in Exhibit 2.

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

3. Landowner Consent. At the time of filing this Petition, all of the land to be included in the District is owned by IMCOLLIER Joint Venture. Petitioner has obtained written consent to establish the District in accordance with Section 190.005, F.S. Documentation of this consent is contained in Exhibit 3.

4. Initial Board Members. The five persons designated to serve as the initial members of the Board of Supervisors of the proposed District is as follows:

Christopher G. Claussen
2074 Sevilla Way
Naples, FL 34109

Jack Sterling
3221 64th St SW
Naples, FL 34105

Bruce Bowers
1205 Pocantico Lane
Naples FL 34110

Mark Alderuccio
5425 Park Central Court
Naples, FL 34109

Thomas Barrett
132-204 Pebble Shores Drive
Naples, FL 34110

All of the above-listed persons are residents of the State of Florida, and citizens of the United States of America.

5. Name. The proposed name of the District is the "Flow Way Community Development District."

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6. Existing Zoning. Currently, the lands to be included within the District are zoned PUD. Neighboring lands are principally zoned PUD and AG, as shown in Exhibit 4.

7. Future Land Uses. The future general distribution, location, and extent of the public and private land uses proposed for the District by future land use plan element of the County's Future Land Use Plan is identified on Exhibit 5. The construction of approximately up to 799 residential dwelling units, recreational areas, 36 holes of golf, clubhouse, a swimming and fitness facility, a tennis facility, and a network of trails and parks are authorized for the portions of the development to be included within the District. Development is projected to occur over an estimated 8-year period. The proposed land uses for the lands contained within the proposed District are consistent with the approved Collier County Future Land Use Plan.

8. Major Water and Wastewater Facilities. Exhibit 6 shows the major trunk water mains and wastewater interceptors within the currently undeveloped lands proposed to be included within the District. A portion of the storm water run-off will be reclaimed for golf course irrigation. It is currently proposed that Collier County will provide water and sewer service to the lands within the District.

9. District Facilities and Services. Exhibit 7, attached hereto, depicts the type of facilities the Petitioner presently expects the District to finance, construct and install from approximately 2001-2008. The estimated costs of construction are also described in Exhibit 7. Actual construction timetables and expenditures will likely vary, due in part to the effects of future changes in the economic conditions upon costs such as labor services materials interest rates, and market conditions.

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10. Mitigation lands for the project in Sections 10 and 15 and to the east of Section 10. The District shall have the authority, pursuant to Section 190.012 (1)(f), Florida Statutes, to exercise all powers under the Act with regard to the mitigation lands depicted as the "Upland Preserve" and "Wetland Preserve" areas on attached Exhibit 8. These mitigation lands are in addition to the mitigation lands located within the boundaries of the District and perpetual maintenance and monitoring is required by the South Florida Water Management District as a condition of Environmental Resource Permit (Application No. 000518-10). These areas are necessary to construct the public and private land uses identified in Exhibit 5. The District shall comply with all the conditions in the permit issued pursuant to Application 000518-10 regarding the perpetual maintenance and monitoring of the mitigation areas as depicted in Exhibit 8.

11. Chain (or ribbon) of lakes. The District shall have the authority, pursuant to Section 190.012 (1)(a), Florida Statutes, to exercise all powers under the Act on the water management improvements depicted as the "Flow-Way Conveyance" on attached Exhibit 8. These water conveyance improvements provide the necessary legal positive outfall to drain the land uses within the District. These conveyances are also a condition for the issuance of the South Florida Water Management District to obtain the Environmental Resource Permits (Applications No. 000518-10, 010419-6 and 970923-12) required for the lands within the District. As part of the reasonable assurances granted to the South Florida Water Management District for the referenced Environmental Resource Permit applications, the District shall comply with all the necessary and required permit conditions in the permits associated with the referenced applications, requiring perpetual maintenance and operation of the Flow-Way

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Conveyance area as depicted in Exhibit 8. To insure that the District has the authority to exercise its powers on all of the water management improvements located outside the geographical boundaries of the District, it has been granted a Drainage Ingress/Egress and Maintenance Easement from the adjacent landowners (Olde Cypress Development, Ltd., and Robert Vocisano, Trustee) over which a portion of these water management improvements are located which is attached as Exhibit 8A. These entities are not located within nor a part of the District, however, in order for Petitioner and these adjacent landowners to obtain their Environmental Resource Permits, the District was required to accept responsibility over the maintenance responsibilities for the Flow-Way Conveyance set forth in Exhibit 8.

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Inserted: To insure that the District has the authority to exercise its powers on all of the water management improvements located outside the geographical boundaries of the District, it has been granted a Drainage Ingress/Egress and Maintenance Easement from the adjacent landowners (Olde Cypress Development, Ltd., and Robert Vocisano, Trustee) over which a portion of these water management improvements are located

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12. Statement of Estimated Regulatory Costs. Exhibit 9 is the statement of estimated regulatory costs ("SERC") prepared in accordance with the requirements of Section 120.541, Florida Statutes (1997). The SERC is based upon presently available data. The data and methodology used in preparing the SERC, accompany it.

13. Authorized Agent. The Petitioner, Mirasol Development, L.L.C., a Florida Limited Liability Company, is authorized to do business in Florida. The authorized agent for the Petitioner is:

Robert G. Claussen
6025 Carlton Lakes Blvd.
Naples, FL 34110

See Exhibit 10 - Authorization of Agent. Copies of all correspondence and official notices should also be sent to:

Dr. Henry Fishkind
Fishkind & Associates, Inc.
11869 High Tech Avenue
Orlando, FL 32817

And:

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Ms. Neale Montgomery, Esq.
Pavese, Haverfield, Dalton, Harrison, & Jensen, L.L.P.
P.O. Drawer 1507
Ft. Myers, FL 33902-1507

14. This petition to establish the Flow Way Community Development District should be granted for the following reasons:

A. Establishment of the District and all land used and services planned within the proposed District are not inconsistent with applicable elements or portions of the effective State Comprehensive Plan or the Collier County Comprehensive Plan.

B. The area of land within the proposed District is part of a planned community. It is of a sufficient size and is sufficiently compact and contiguous to be developed as one functional and interrelated community.

C. The establishment of the District will prevent the general body of taxpayers in Collier County from bearing the burden for installation of the infrastructure and the maintenance of certain facilities with the development encompassed by the District. The District is the best alternative for delivering community development service and facilities to the proposed community without imposing an additional burden on the general population of the local general-purpose government. Establishment of the District in conjunction with a comprehensively planned community, as proposed, allows for a more efficient use of resources.

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

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community development services and facilities. In addition, the establishment of the District will provide a perpetual entity capable of making reasonable provisions for the operation and maintenance of the District's services and facilities.

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

WHEREFORE, Petitioner respectfully requests the County Commission of Collier County, Florida to:

1. Direct its staff to schedule a public hearing in accordance with the requirements of Section 190.005 (2) (b), Florida Statutes (1997);
2. Grant the petition and adopt an ordinance to establish the District pursuant to Chapter 190, Florida Statutes;
3. Consent to the District's exercise of certain additional powers to finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate and maintain systems and facilities for: (i) parks and facilities for indoor and outdoor recreational, cultural, and educational uses, (ii) security, including, but not limited to, guard-houses, fences and gates, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies, all as authorized and described by Section 190.012 (2), Florida Statutes.

RESPECTFULLY SUBMITTED this _____ day of _____
2002.

By: _____
Neale Montgomery

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Pavese, Haverfield, Dalton,
Harrison & Jensen, L.L.P.
1833 Hendry Street
P.O. Drawer 1507
Fort Myers, FL 33902-1507
Representatives for the Petitioner

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STATE OF FLORIDA)

COUNTY OF COLLIER)

I, DWIGHT E. BROCK, Clerk of Courts in and for the
Twentieth Judicial Circuit, Collier County, Florida, do
hereby certify that the foregoing is a true and correct
copy of:

ORDINANCE 2002-09

Which was adopted by the Board of County Commissioners
on the 26th day of February, 2002, during Regular Session.

WITNESS my hand and the official seal of the Board of
County Commissioners of Collier County, Florida, this 27th
day of February, 2002.

DWIGHT E. BROCK
Clerk of Courts and Clerk
Ex-officio to Board of
County Commissioners

Ellie Hoffman

By: Ellie Hoffman,
Deputy Clerk

