

**Official Minutes of
MARION COUNTY
BOARD OF COUNTY COMMISSIONERS**

December 13, 2023

CALL TO ORDER:

The Marion County Board of County Commissioners (BCC) met in a special session in Commission Chambers at 2:39 p.m. on Wednesday, December 13, 2023 at the Marion County Governmental Complex located in Ocala, Florida.

INTRODUCTION BY CHAIRMAN MICHELLE STONE:

Chairman Stone advised that the public hearing was scheduled this afternoon to consider approval of a Petition to Establish the Aurora Oaks Community Development District (CDD) and adoption of an Ordinance to establish the Aurora Oaks CDD.

PLEDGE OF ALLEGIANCE:

The meeting opened with the Pledge of Allegiance to the Flag of our Country.

ROLL CALL:

Upon roll call the following members were present: Chairman Michelle Stone, District 5; Vice-Chairman Kathy Bryant, District 2; Commissioner Craig Curry, District 1; Commissioner Matthew McClain, District 3; and Commissioner Carl Zalak, III, District 4. Also present were County Attorney Matthew G. Minter and County Administrator Mounir Bouyounes.

PRESENT PROOF OF PUBLICATION

Deputy Clerk Ketner presented Proof of Publication of a display ad entitled, "Notice of Public Hearing" published in the Star Banner newspaper on November 15, November 22, November 29, and December 6, 2023. The Notice states the Board will consider an Ordinance to establish a Community Development District, which may be known as the Aurora Oaks Community Development District (CDD).

The Deputy Clerk was in receipt of an 81 page Agenda packet.

STAFF PRESENTATION:

1. PUBLIC HEARING: Consider Approval of a Petition to Establish the Aurora Oaks Community Development District and Adoption of an Ordinance Creating the Aurora Oaks Community Development District

The Board considered the following recommendation as presented by Growth Services Director Chuck Varadin:

Description/Background: Brian Lamb of Inframark, LLC, filed a petition on behalf of Calibrex Ocala Ontario, LP, to establish a new community development district (CDD) for a development titled Aurora Oaks pursuant to F.S. Section 190.005 and Marion County's Code of Ordinances (COO) Chapter 14.5, Article III, Division 1.

The draft petition was reviewed by the Marion County Property Appraiser and the County's key departments regarding infrastructure (e.g., central water, central sewer, roads, stormwater, etc.). Following receipt of staff comments, the applicant submitted the final petition with the proposed Ordinance to establish the CDD. No objections were provided; however, the Utilities Department does note that water

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and sewer improvements, once construction is complete, must be conveyed to Marion County Utilities consistent with applicable County Ordinances, rather than being held by the resulting CDD.

Following Board authorization on October 17, 2023, the applicant has provided for the placement of the necessary public notice advertising (4 consecutive weekly ads) in a qualified newspaper of general circulation pursuant to Chapter 50, F.S., for this hearing.

Staff recommends the Board consider the applicant's Petition to Establish the Aurora Oaks CDD, approve the petition and adopt the attached Ordinance to establish the Aurora Oaks CDD as requested.

Budget/Impact: None.

Recommended Action: Motion to approve the Petition to Establish the Aurora Oaks Community Development District, adopt the proposed Ordinance to establish the Aurora Oaks Community Development District, and authorize the Chairman and Clerk to execute the Ordinance.

Senior Planner Chris Rison, Growth Services, presented a 6 page electronic mail (email) from Mira and Jeff Korber, Lisa Kaslow, Kathy Dale, Pamela Bruno, Renee St. Leger, and Michael Otto entitled, "Community Opposition to approval of Aurora Oaks CDD" and a 1 page handout entitled, "Affidavit of Ownership and Consent and Joinder of Landowner to Establishment of Aurora Oaks Community Development District". He presented a brief PowerPoint presentation and stated the request is related to the Aurora Oaks CDD, which is proposed for an area off of SW 60th Avenue (westside), that extends from SW 52nd Street down to SW 66th Street. The applicants are Calibrex Ocala Ontario, LP, with Inframark Infrastructure Management Services, LCC, as its representatives. The overall Aurora Oaks projects (initially known as Calibrex) was approved in November of 2022 for approximately 1,250 dwelling units (du). Currently that project is undergoing a Master Plan review and will be returning back to the Board for its final Planned Unit Development (PUD) consideration. Mr. Rison advised that staff has the updated owner's consent as there was some confusion relating to the previous document provided, noting the updated document is being provided today (1 page handout). He noted CDD's are governed by Florida Statutes (FS) Chapters 189 and 190 and set forth the exclusive and uniform methods of establishing an independent CDD. Mr. Rison advised that due to the size of this project, it is created locally by the County government since it is less than 2,500 acres, noting anything larger would need to be created by the State of Florida. He noted a CDD is an independent operational entity over the geographic area, functions as a limited form of government and is granted independent powers, but more extensive than Municipal Service Benefit Units/Municipal Service Taxing Units (MSBU/MSTU). The proposed CDD is eligible for design and construction of improvements and services (i.e., street construction and maintenance, utilities construction and maintenance, stormwater systems, and other community services such as recreation facilities), and may function in addition to a Property Owners Association (POA). Mr. Rison stated CDD's are a special purpose government, which is governed by a Board of Supervisors who are originally appointed with the creation of the CDD. As the original appointees' terms expire, the elected Board of Supervisors members are elected until each member is duly elected. The Board of Supervisors will employ a district manager, essentially responsible for overseeing day-to-day operations (similar to a City/County Manager/Administrator). Mr. Rison provided a brief history of the proposed CDD, noting the project is considering a combination of single-family units and townhomes. He stated the development will have

roadways, water and sewer, stormwater, landscaping, irrigation, some amenities, etc., which will be initiated by the District for construction, and as ownership and maintenance goes in, some parts may be conveyed to and maintained by the County. Mr. Rison stated the current estimated cost of the CDD for the first 2 years is approximately \$10,000,000.00 annually, with an overall total cost of \$22,000,000.00.

Brian Lamb, Pan Am Circle, Tampa, on behalf of the applicant, stated he was present to answer any questions.

Jimmy Gooding, SE 36th Avenue, commented on the email the Board received from Mira Korber and others, noting there was a previous challenge to the rezoning of this property. He stated one of the issues was related to whether the opponents of the project were denied "due process" by having the public comment time limited. Mr. Gooding requested the Board grant those who sent the email more than the usual time allotted for public comment.

Chairman Stone clarified that the matter being addressed today relates to the possible creation of a CDD only and not the approval of the project or the land use/zoning change. Mark Pavkovic, Toronto, Canada, advised that he is present today as the owner's representative. He apologized for previously filing the wrong Affidavit of Ownership and Consent and Joinder form, noting the matter has been corrected.

(Ed. Note: The Deputy Clerk did not receive a copy of the PowerPoint presentation.)

PUBLIC COMMENT

Chairman Stone opened the floor to public comment.

Mira Korber, SW 59th Street, expressed concern relating to County staff proof reading documents prior to being presented to the BCC and questioned whose interest is being considered. She referred to Item 11.a. of the petition to establish the Aurora Oaks CDD, which states "Establishment of the District and all land uses and services planned within the proposed District are not inconsistent with applicable elements or portions of the effective State Comprehensive Plan or the County Comprehensive Plan". Ms. Korber advised that she and other property owners did bring forth a challenge relating to the approval of the PUD, but were not able to challenge the application on any elements of the Comprehensive Plan. She clarified that if those in opposition lost the case, the property owners would be responsible for paying the applicant's attorney fees. Ms. Korber commented on County Policy staff cited in its recommendation of denial regarding the Jumbolair project (23-L03) as it relates to the protection of rural neighborhoods as follows "Marion County shall recognize rural neighborhoods that occur within and outside the Urban Growth Boundary (UGB) that deserve special protection from the intrusion of urban uses, densities, and intensities, where new development occurs within the immediate vicinity. For the purpose of this Policy a rural neighborhood is an existing recorded or unrecorded subdivision where the overall density does not exceed 1 unit per 3 acres and the subdivision has a predominate future land use designation of rural land or low residential". She noted Aurora Oaks abuts two existing subdivisions, both of which have low residential land uses. Ms. Korber questioned what special protections will surrounding properties receive, particularly during the development process. She opined that a CDD workshop should have been recommended given the incompatibility and to allow surrounding neighbors an opportunity to speak with the developers to work together to come into compliance with County Policy.

Chairman Stone reiterated that the matter being addressed today relates to the possible creation of a CDD only and not the approval of the project or the land use/zoning change.

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Pam Bruno, SW 69th Street, expressed concern with the CDD's easement and having to go through one community to get to another community, which is the only way she has to get to where she lives.

Chairman Stone advised that the Board has not seen the final development plan yet, which is not part of this process; however, when the final Master Plan comes back before the Board, Ms. Bruno would be able to attend that meeting to address her concerns. She clarified that for this process there are 6 Legislative Priorities that must be met according to Florida Statutes, noting the developer has met those requirements to ask for the CDD in order to form their own "limited government".

Commissioner Bryant out at 2:54 p.m.

Kathy Dale, SW 59th Street, opined that CDDs are risky investments with no consequences for the County, but high consequences to adjoining property owners. She stated CDDs have defaulted in the past when economic conditions have not supported bond repayments by the issuer of the tax municipal bond. Current economic conditions are not friendly as the issuer will be required to pay high interest to investors. Ms. Dale opined that without robust demand for housing Aurora Oaks CDD is at risk of bankruptcy. She stated even if the CDD does not default, future homeowners within the District will be subject to ever increasing fees to keep up with interest payments on the bond over a 30 year period. Ms. Dale expressed concern that if the CDD does default, mid-construction, adjoining property owners will face depressed property values due to the proximity to an unfinished, aborted construction site. She questioned who would be responsible for Code Enforcement and remedying any potential violations. Ms. Dale questioned the credit rating of the municipal bond being assigned. She requested a workshop be held prior to approving the proposed CDD in order for these questions to be answered. Ms. Dale questioned how Marion County can justify taking no responsibility for building out infrastructure on parcels that may or may not be sources of County tax revenue in the future.

Commissioner Bryant returned at 2:55 p.m.

Ms. Dale commented on the cost to the County as it relates to infrastructure for schools, public safety, emergency services, environmental damage, and the impact on the broader network of road systems in the region.

Chairman Stone stated the bond rates will be fixed rates and Code violations will be addressed through the Marion County Code Enforcement Board (CEB) if not taken care of through the homeowner's association (HOA).

Nancy Jo Haehn, SW 79th Place, requested future workshops be held relating to CDDs. She questioned if the name of the CDD is Aurora Oaks or Calibrex.

Chairman Stone clarified that for the CDD the name is Aurora Oaks.

Ms. Haehn expressed concern that the Board of Directors for the CDD is entirely composed of Inframark officers, which is the firm that will install the infrastructures into this development, noting Inframark is the beneficiary of the revenues generated by the bond. She opined that it is a conflict of interest as there are no 3rd party Board members to look out for the interest of future homebuyers in the Aurora Oaks community. Ms. Haehn noted Inframark's annual revenue is approximately \$80,000,000.00 and the Aurora Oaks projects by Calibrex will generate approximately \$22,000,000.00 in revenue through the municipal bond issuance. She opined that the economic benefit to small businesses in Marion County is overstated due to Inframark's dominance of the infrastructure project receivables and therefore have no incentive to hire Marion County small businesses to complete construction activities. Ms. Haehn opined that the negative

economic impact to residents with agricultural properties and equestrian business will outweigh any short-term gains by out of County subcontractors.

In response to Ms. Haehn, Commissioner Bryant advised that at the most recent BCC meeting the Board addressed utilizing revenue from the proposed One-Cent Sales Surtax to address road issues throughout the County.

Cuong Kim, SW 66th Street, expressed concern that her home shares the property line with Calibrex on the east side where the developer plans to place the utility infrastructure.

Karin Ahrman, did not appear when called upon to speak.

Chairman Stone advised that public comment is now closed.

BOARD DISCUSSION

Mr. Gooding addressed Ms. Dale's concern relating to conflicts of interest as the initial CDD Board members are affiliated with either the developer or Inframark. He clarified that Inframark is the representative that is getting this done by helping the developer set up the CDD and market the funds, noting Calibrex is the owner and developer. Mr. Gooding advised that initial CDD Board memberships are almost always setup this way, noting FS 190.007, Chapter 112, states that it is not a conflict for a Board member, the District Manager, or another employee of the District to be a stockholder, officer, or employee of a land owner or an entity affiliated with a land owner. He clarified that afterwards, there will be elections and the residents will elect Board members. Mr. Gooding further clarified that the project name is Aurora Oaks, but the developer is the same. He stated construction projects will be bid on and every business (large or small) will be able to participate. He advised that the developer is obligated to prove that this project is not inconsistent with the County's Comprehensive Plan, noting Section 190.002 FS reads as follows: "it is the policy of the State that the process of establishing a CDD pursuant to uniform general law be fair and based only on factors material to managing and financing the service delivery function of the District so that any matter concerning permitting or planning of the development is not material or relevant". Mr. Gooding commented on inconsistencies with the Comprehensive Plan and provided a brief overview of a previous CDD Division of Administrative Hearing (1997-WL1053424) decision that addresses this matter. In that Decision it states, in part, "No provision of the Lee County or State Comprehensive Plan prohibits the creation and establishment of CDDs, thus the creation of the CDD could not contravene any express plan provision." He advised that a finding that the proposed CDD would not be inconsistent requires more than a finding that the plans do not prohibit the creation of a CDD. It requires an analysis of whether the proposed CDD would be inconsistent with the operative provisions of the plans including the local government Future Land Use Map (FLUM). Mr. Gooding stated the Lee County Comprehensive Plan contains provisions almost verbatim to Marion County's Comprehensive Plan.

Commissioner Zalak questioned what would outline the demarcation between responsibilities. Mr. Gooding opined that generally it is the HOA that handles enforcement of restrictions on use of the property and the CDD would handle the maintenance responsibilities for the common areas. He advised that if there is not a Declaration of Covenants then it would be the CDD that does everything; however, this project must have a Declaration of Covenants due to architectural restrictions, etc. He noted the Declaration of Covenants would have to be recorded.

General discussion ensued.

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Commissioner Bryant excused at 3:13 p.m.

A motion was made by Commissioner Curry, seconded by Commissioner Zalak, to approve the Petition to Establish the Aurora Oaks Community Development District, and to adopt Ordinance 23-35 creating the Aurora Oaks CDD. The motion was unanimously approved by the Board (4-0).

Ordinance 23-35 is entitled:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, CREATING THE AURORA OAKS COMMUNITY DEVELOPMENT DISTRICT PURSUANT TO CHAPTER 190, FLORIDA STATUTES; PROVIDING FOR THE ESTABLISHMENT AND NAME OF THE DISTRICT TO BE KNOWN AS AURORA OAKS COMMUNITY DEVELOPMENT DISTRICT; PROVIDING FOR THE LEGAL DESCRIPTION; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR THE INITIAL MEMBERS OF THE BOARD OF SUPERVISORS; PROVIDING FOR POWERS; PROVIDING FOR APPLICABILITY OF CHAPTER 190, FLORIDA STATUTES, AND ALL OTHER APPLICABLE STATUTES, ORDINANCES, RULES AND REGULATIONS; PROVIDING FOR NO MARION COUNTY OBLIGATIONS; PROVIDING FOR NO LIMITATION ON MARION COUNTY POWERS; PROVIDING FOR DISCLOSURE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

CLOSING COMMENTS:

There being no further business to come before the Board, the meeting thereupon adjourned at 3:13 p.m.

Michelle Stone, Chairman

Attest:

Gregory C. Harrell, Clerk