

OR: 3866 PG: 2091

ORDINANCE NO. 05-24

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA ESTABLISHING HERITAGE BAY COMMUNITY DEVELOPMENT DISTRICT; DESCRIBING THE EXTERNAL BOUNDARIES OF THE DISTRICT; NAMING THE INITIAL MEMBERS OF THE DISTRICT'S BOARD OF SUPERVISORS; NAMING THE DISTRICT; PROVIDING STATUTORY PROVISIONS GOVERNING THE DISTRICT; PROVIDING FOR CONSENT TO SPECIAL POWERS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Bay Home USH, Inc., a Florida Limited Liability Company of which the managing member Bayvest L.L.C., has petitioned the Board of County Commissioners of Collier County, Florida, a political subdivision of the State of Florida, to establish the HERITAGE BAY COMMUNITY DEVELOPMENT DISTRICT (District); and

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA
2005 SEP 13 9 AM 12:22
FILED

WHEREAS, the Board of County Commissioners, after proper published notice has 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) Florida Statutes, as required by Section 190.005(2)(c), Florida Statutes:

1. The petition is complete in that it meets the requirements of Sections 190.005 (1)(e) 2., and 190.005(2)(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 this State, as provided for 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 serviced 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. Community development

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districts do not have the power of a local government to adopt a comprehensive plan, building code, or land development code, as those terms are defined in the Local Government Comprehensive Planning and Land Development Regulation Act. A district shall take no action which is inconsistent with applicable comprehensive plans, ordinances, or regulations of the applicable local general-purpose government; and

WHEREAS, pursuant to Section 190.012, Florida Statutes, upon the establishment of the proposed community development district, the District Board of Supervisors will have the right to seek consent from Collier County for the grant of authority to exercise special powers without question as to the continued right authority and power to exercise its limited powers as established by this Ordinance.

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

SECTION ONE: 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 TWO: ESTABLISHMENT OF THE HERITAGE BAY COMMUNITY DEVELOPMENT DISTRICT.

The Heritage Bay 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 THREE: DESIGNATION OF INITIAL BOARD MEMBERS

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

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| 1. Jeffrey Marculaitis
541 SE 1 st Terrace
Cape Coral, FL 33990 | 3. Samuel W. Marshall, P.E.
4413 E. Riverside Drive
Fort Myers, FL 33905 |
| 2. Frank L. Reynolds
611 SW 52 nd Street
Cape Coral, FL 33914 | 4. Ronnie S. Searcy
P.O. Box 354
Labelle, FL 33935 |
| 5. Russell R. Smith
5327 Summerlin Road #12
Fort Myers, FL 33919 | |

SECTION FOUR: DISTRICT NAME

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

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SECTION FIVE: STATUTORY PROVISIONS GOVERNING THE DISTRICT

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

SECTION SIX: CONSENT TO SPECIAL POWERS

Upon the effective date of this Ordinance, the Heritage Bay Community Development District will be duly and legally authorized to exist and exercise all of its general powers as limited by law; and has the right to seek consent from the Collier County Board of County Commissioners for the grant of authority to exercise special powers in accordance with Section 190.012(2), Florida Statutes, without question as to the district's continued right, authority and power to exercise its general powers as established by this Ordinance. The District Board's authority to exercise special powers may include the power 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), Florida Statutes.

SECTION SEVEN: 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 EIGHT: 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 NINE: EFFECTIVE DATE

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

PASSED ON DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 24th day of May, 2005.

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BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

ATTEST: DWIGHT E. BROCK

BY: Fred W. Coyle
FRED W. COYLE, CHAIRMAN

By: Fred W. Coyle, DC
Deputy Clerk
Attest to the Chairman's
signature only.

Approved as to form
and legal sufficiency:

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

Mk/f:\compplan/CDD/ORD.