

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: Petition for Rule Amendment:)
The Crossings at Fleming Island) Case No. 98-4159
Community Development District.)
)
)
_____)

RECOMMENDED ORDER

On Tuesday, November 24, 1998, the local public hearing in this proceeding was held before Administrative Law Judge Don W. Davis of the State of Florida Division of Administrative Hearings. The hearing was held at the City of Orange Park, Town Hall, Commission Chambers, 2042 Park Avenue, Orange Park, Florida 32073.

The hearing was conducted pursuant to Sections 190.046 and 190.005, Florida Statutes, for the purpose of taking testimony and public comment and receiving exhibits on the petition of The Crossings at Fleming Island Community Development District (hereinafter "Petitioner" or "District") to amend the boundaries of the District.

This report is prepared and submitted to the Florida Land and Water Adjudicatory Commission ("Commission") pursuant to Section 190.046, Florida Statutes.

STATEMENT OF THE ISSUE

The sole issue to be addressed is whether the amendment of the boundaries of The Crossings at Fleming Island Community

Development District meets the applicable criteria set forth in Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code.

APPEARANCES

Petitioner: Jonathan T. Johnson, Esquire
Hopping, Green, Sams and Smith, P.A.
Post Office Box 6526
Tallahassee, Florida 32314

PRELIMINARY STATEMENT

The Petitioner filed the petition to amend the boundaries of the District with the Secretary of the Commission on September 4, 1998. Previously, the Petitioner delivered a copy of the petition and exhibits, together with a filing fee, to Clay County. A copy of the petition, including its attached exhibits, was received into evidence as Petitioner's Composite Exhibit A.

On September 18, 1998, the Secretary of the Commission certified that the petition contained all required elements and forwarded it to the Division of Administrative Hearings for the purpose of holding the public hearing required under Chapter 190, Florida Statutes. The Commission published a notice of receipt of petition in the Florida Administrative Weekly on October 23, 1998. A copy of the notice of receipt of petition was received into evidence as Petitioner's Exhibit B.

The local public hearing was scheduled in Clay County, Florida, for Tuesday, November 24, 1998. The Petitioner published notice of the hearing in accordance with Section 190.005(1)(d), Florida Statutes. The Petitioner also pre-filed

the prepared written testimony of three witnesses, together with attached exhibits, on November 19, 1998.

Section 190.046(1)(d)3., Florida Statutes, provides that a local government has the option to hold a public hearing within 45 days of the filing of a petition. The Board of County Commissioners of Clay County (the "County") did not hold a public hearing on the petition.

At the local public hearing on November 24, 1998, the Petitioner presented the testimony of Ronald E. Kolar, an expert in the design, permitting, cost estimation, and construction of public infrastructure; Dr. Henry A. Fishkind, President of the firm of Fishkind and Associates, and an expert in economic development and analysis; and Gary R. Walters, President of Gary Walters and Associates, a community planning and management consulting firm and an expert in land use, comprehensive planning, and special district operations and management. Their full names and addresses are attached to this report as Exhibit 1. The Petitioner offered Petitioner's Exhibits A through E, which were received into evidence at the hearing. A list of Petitioner's exhibits in this proceeding is attached to this report as Exhibit 2.

No other persons or entity presented any witnesses or exhibits. No other public comment was received.

A transcript of the local public hearing was prepared and received by the Petitioner. A copy of the transcript is being transmitted with this Report of Findings and Conclusions.

Overview

1. The Petitioner is seeking the adoption of a rule by the Commission to amend the boundaries of a community development district currently consisting of approximately 2,801 acres located entirely within Clay County. It is located generally northwest, southwest, and southeast of the intersection of U.S. 17 and C.R. 220 on Fleming Island. The Petitioner is seeking to add approximately 46 acres to the District. After expansion, the District will consist of approximately 2,847 acres.

2. Currently the lands to be included within the amended boundaries of the District are designated as Planned Community under the Future Land Use Element of the Clay County Comprehensive Plan. Neighboring lands are also categorized as Planned Community or Rural Fringe.

3. There are no new parcels within the external boundaries of the proposed amended District that are to be excluded from the District.

4. The Petitioner currently intends for the District to participate in the acquisition or construction of certain road and drainage improvements, potable water distribution, wastewater collection systems, and reclaimed water systems for the lands to be added to the District. Capital costs of these improvements

will be borne by the District. Once completed, the road improvements will be dedicated to the County and the ownership and operation of these improvements will become the responsibility of the County. The master surface water management system and drainage improvements for the lands to be added to the District will be constructed, owned and operated by the District. The water, sewer and reuse improvements will be constructed and owned by the District and operated by Clay County.

5. The estimated cost for all identified capital improvements is \$3,438,000 with construction scheduled to take place from 1999 through 2002. Actual construction costs and timetables may vary for a variety of reasons, including final design and permitting criteria, and future changes in economic conditions upon labor, services, materials, interest and general market circumstances. These cost estimates are reasonable.

6. The Petitioner expects that the District will finance such services and improvements through the use of long-term loans or through issuance of tax exempt bonds. The debt issued by the District is expected to be retired by non-ad valorem or special assessments on benefited property within the District or by the imposition of other rates, fees or charges. The Petitioner has no current plans to issue general obligation bonds or to impose ad valorem taxes.

7. The sole purpose of this proceeding was to consider the amendment of the boundaries of the District as proposed by the Petitioner.

Summary of Evidence and Testimony

A. Whether all statements contained within the petition have been found to be true and correct.

8. Petitioner's Composite Exhibit A was identified for the record as a copy of the petition and its attachments as filed with the Commission. Witnesses Walters, Kolar and Fishkind each stated that he had reviewed the contents of and exhibits to the petition and approved its findings, then generally described certain of the attachments.

9. Witness Kolar testified that consents by the owners of the land within the proposed amended District were true and correct as shown in the petition, which petition indicated that the Petitioner either owns or has written consent to amend the District from the owners of one hundred percent of the real property located within the lands to be added to the District.

10. The petition and its attached exhibits are true and correct.

B. Whether the amendment of the district is inconsistent with any applicable element or portion of the State Comprehensive Plan or of the effective local government comprehensive plan.

11. Witnesses Walters and Fishkind reviewed the proposed amendment of the District in light of the requirements of the State Comprehensive Plan, Chapter 187, Florida Statutes, and the

Clay County Comprehensive Plan, adopted pursuant to Chapter 163, Part II, Florida Statutes ("Local Comprehensive Plan").

12. Each witness concluded that the amendment of the District would not be inconsistent with any relevant or material portion or element of the Local Comprehensive Plan.

State Comprehensive Plan

13. From a planning perspective, three goals of the State Comprehensive Plan, and policies supporting those goals, apply directly to the District. From an economic perspective, two goals and policies supporting those goals apply directly to the District.

14. Goal 16, Land Use, recognizes the importance of locating development in areas with the fiscal ability and service capacity to accommodate growth. From a planning perspective, the amended District will have the fiscal capacity to provide a wide range of services and facilities to a population in a designated growth area lying within the County.

15. Goal 18, Public Facilities, provides that the state shall protect substantial investments in public facilities and plan for and finance new facilities to serve residents in a timely, orderly and efficient manner. From planning and economics perspectives, the amended District will provide certain designated improvements and services in a cost efficient manner. These actions allow local government resources to be focused on the public facilities needs outside of the District and so contribute to the timely, orderly and efficient provision of services to all County residents. The District, as amended, will

continue to plan and finance infrastructure facilities for the lands within the District.

16. Goal 26, Plan Implementation, provides that systematic planning shall be integrated into all levels of government, with emphasis on intergovernmental coordination. From a planning perspective, all District board meetings will be publicly noticed and open to the public; therefore, all citizens and residents of the District, including the amended portion of the District, may participate. In addition, Section 189.415, Florida Statutes, requires the District to file annual public facilities reports with the County which the County may use and rely on in any revisions to the Local Comprehensive Plan.

17. Goal 21, Governmental Efficiency, provides that governments shall economically and efficiently provide the amount and quality of services required by the public. From an economic perspective, the amended District would finance and deliver quality public services and facilities at a level demanded by residents and property owners of the District who directly benefit and pay for those services and facilities.

18. Based on the testimony and exhibits in the record, the amended District would not be inconsistent with any applicable element or portion of the State Comprehensive Plan.

Local Comprehensive Plan

19. From a planning perspective, the Future Land Use Element and Map, the Capital Improvement Element, and the Intergovernmental Coordination Element of the Local Comprehensive Plan apply directly to the District.

20. The Future Land Use Element Land Use Goal and Objectives are targeted to effectively manage growth in areas designated to accommodate future development and provide services in a cost efficient manner. The District is within the County's Planned Urban Service Area, and is part of a Chapter 380, Florida Statutes, development order vested on the County Land Use Plan. The District is the recognized vehicle to provide the necessary services and facilities to this area, including the new area to be added to the District.

21. The Intergovernmental Coordination Element seeks to establish processes among the various governmental, public, and private entities to achieve including coordination of all development activities, preservation of the quality of life, and the efficient use of available resources. The amended District will continue to be a vital link in this coordination process and will provide and maintain community infrastructure undertaking activities that are coordinated with and are not inconsistent with plans and activities of related public and private agencies.

22. The Capital Improvements Element is intended to provide necessary infrastructure in a timely and orderly manner. The amended District will expand the areas that enjoy the high quality infrastructure developed by the District in a manner consistent with the Clay County Comprehensive Plan.

23. Since Chapter 190, Florida Statutes, prohibits any community development district from acting in a way inconsistent with the local government's comprehensive plan, the exercising of any power must be done with the comprehensive plan in mind.

Construction activities of the District, as amended, may require County permitting review under established procedures.

Therefore, the use of those powers granted to the District does not make it inconsistent with the Clay County Comprehensive Plan.

24. Based on the evidence in this record, the amended District would not be inconsistent with any applicable element or portion of the Local Comprehensive Plan.

C. Whether the area of land within the amended district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

25. Testimony on this criterion was provided by witnesses Kolar, Walters and Fishkind.

26. All of the land in the amended District is part of a planned community included in The Crossings at Fleming Island Development of Regional Impact (the "DRI").

27. There are no new parcels of land within the external boundaries of the amended District which are excluded from the District.

28. Functional interrelation means that each community purpose has a mutual reinforcing relationship with each of the community's other purposes. Each function must be designed to contribute to the development or maintenance of the larger whole. Each function requires a management capability, funding source, and an understanding of the size of the community's needs so as to handle the growth and development of the community.

29. The size of the District as amended is approximately 2,847 acres. From a planning perspective, this is a sufficient size to accommodate roads, drainage, water, sewer, reuse and other basic facilities and services typical of a functionally interrelated community. With adequate planning, design, financing, construction and maintenance, provision of these facilities and services will contribute to the development of a functional interrelated community.

30. Compactness relates to the location in distance between the lands and land uses within a community. From a planning perspective, the property that comprises this community is compact because all of the property is part of or adjacent to a single project, is close together, and has no physical barriers segregating one portion of the project from any of the others.

31. Contiguity has to do with whether all parts of the project are touching along a boundary or point. From a planning perspective, the property is sufficiently contiguous when all parts of a project are either in actual contact or are close enough to allow the efficient design and use of infrastructure. The land need not be physically connected in order to be functionally connected, especially when planning specialized governmental systems, facilities and services. However, all parts of the project do need to be spatially proximate so that the facilities and services can be provided in a cost-effective manner and can be properly maintained with minimum difficulty. The amended District is sufficiently contiguous for planning purposes and for the purpose of district governance.

32. From an economic perspective, the physical configuration of the amended District is ideal. The area to be included in the amended District is compact and contiguous. The size and physical configuration of the amended District allows economical construction of road improvements, and maintenance of the water management and drainage systems in a long-term, cost-

effective manner. The cost-efficient delivery of potable water distribution, wastewater collection, and reuse lines is also enhanced by the compactness and contiguity of the site. From an engineering perspective, the proposed facilities can be provided in an efficient, functional, and integrated manner. The District has been in existence since 1989 and the amended area will be added to an established project that is already functioning as a single interrelated community.

33. The area to be included within the amended District can be expected to succeed as a functional, interrelated community from a district management perspective because the characteristics of compactness, contiguity and size ensure the effective delivery of services and facilities.

34. From planning, economics, engineering and management perspectives, the area of land to be included in the District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community.

D. Whether the amended district is the best alternative available for delivering community development services and facilities to the area that will be served by the amended district.

35. It is presently intended that the District, as amended, will participate in the construction or acquisition of certain road improvements, potable water distribution, wastewater collection, and reuse systems. Capital costs of these improvements will be borne by the District. Once completed,

certain of these improvements will be dedicated, in whole or in part, to the County and the ownership, maintenance and operation of the dedicated improvements will become the County's responsibility. Others may be owned and maintained by the District.

36. The amended District would also construct or acquire portions of the water management system. Upon completion, the system will be owned, operated, and maintained by the District.

37. It is expected that the District will finance these services and improvements through use of notes or issuance of tax exempt bonds. The debt issued by the District is expected to be retired by non-ad valorem or special assessments on benefited property within the District or through the imposition of other rates, fees or charges. Use of non-ad valorem or special assessments and user fees will ensure that the real property benefiting from District services is the same property which pays for them.

38. Two types of alternatives to the use of the amended District were identified. First, the County might provide facilities and services from its general fund or through a MSTU. Second, facilities and services might be provided by some private means, generally either through a private developer dependent upon commercial loans or through a community-wide property owners' association. These alternatives can be evaluated in several ways: whether the alternative is able to provide the best

focused service and facilities; whether the alternative has an entity to manage the delivery; whether the alternative can provide a long-term perspective; whether the alternative is a stable provider of services and facilities; and if desired, whether the alternative can secure long term public financing and pay for all of these management benefits at sustained levels of quality.

39. The amended District will continue to be an independent special purpose unit of local government designed to focus its attention on providing long-term services to its specific benefited properties and residents. The District will continue to be governed by its own board of supervisors whose purpose is to provide long-term planning, financing, and management of services and facilities. Sources of funding assure that District services and facilities will be adequately managed at sustained levels of quality. Provision of facilities and services by the County would require the County and its staff to continue to administer, operate, and maintain the facilities. Private means for delivering community development services and facilities include delivery through a master neighborhood-type property owners' association or by a private developer. Either of these means can satisfy the demand for focused service and facilities and managed delivery. However, neither can assure a long-term perspective or necessarily qualify as a low-cost source of financing.

40. From an engineering perspective, the amended District is the best alternative to provide the proposed community development services and facilities because it is a long-term, stable, perpetual entity capable of maintaining the facilities over their expected life.

41. Knowing when, where and how infrastructure will be needed to service a projected population allows for more efficient delivery. The amended District is better able than the other available alternatives to focus attention on when and where and how the next system of infrastructure will be required. This results in a more complete utilization of existing facilities. Moreover, the financing, construction, and delivery of facilities and services concurrent with development in an area allow growth to pay for itself.

42. From planning, economic, engineering, and special district management perspectives, the amended District is the best alternative available for delivering community development services and facilities to the area that will be served by the District, as amended.

E. Whether the community development services and facilities of the amended district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

43. The services and facilities of the amended District are, from a planning perspective, fully compatible with the capacity and uses of existing local or regional community development services and facilities.

44. The services and facilities of the District as amended are fully compatible with the capacity and uses of existing local or regional community development services and facilities and are consistent with the Development order. The construction, management, and operation of the District will be closely coordinated with and reviewed by the appropriate unit of government. The success of the District's existing infrastructure development activities has demonstrated that ability within the boundaries of the existing District. The amendment of the District's boundaries will not impact the ability of the District to continue to successfully manage its services and facilities. The fact that the District already exists and provides similar services and facilities to those which will be needed by the lands to be added to the District is indicative of the fact that the amended District will continue to successfully serve within the new boundaries.

45. From planning, economic, engineering, and special district management perspectives, the services and facilities to be provided by the amended District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

F. Whether the area that will be served by the district, as amended, is amenable to separate special-district government.

46. As cited previously, from planning, economics, engineering, and special district management perspectives, it is

clear that the area of land to be included in the amended District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed and become part of the existing functionally interrelated community at The Crossings. The community to be included in the District as amended has need for basic infrastructure including water management systems; potable water distribution; wastewater collection and reuse systems; roads; bridges; culverts and such other infrastructure. The District has shown the ability to provide these facilities and services.

47. From an engineering perspective, the area within the amended District is also large enough to support a staff necessary to operate and maintain the proposed infrastructure systems and facilities.

48. Therefore, the area that will be served by the amended District is amenable to separate special-district government.

G. Other requirements imposed by statute or rule.

49. Chapter 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code, impose specific requirements regarding the petition and other information to be submitted to the Commission.

Elements of the Petition

50. Section 190.046(1)(a), Florida Statutes, requires the petition to contain a metes and bounds description of the

external boundaries of the District. Petitioner's Composite Exhibit A contains such a description.

51. Section 190.046(1)(a), Florida Statutes, also requires a description of any real property within the revised external boundaries which is to be excluded from the district and the last known address of the owners of such properties. There are no such parcels.

52. In cases of district expansions, section 190.046(1)(a), Florida Statutes, also requires that the petition contain the proposed timetable for the construction of any district services to the area being added and the estimated construction costs for those services as well as the designation of the future general distribution, location, and extent of public and private land uses proposed for the area by the future land use element of the adopted local government comprehensive plan. Petitioner's Composite Exhibit A contains this information.

53. Section 190.046(1)(e), Florida Statutes, requires the petition to contain written consent to establishment of the District by the owners of 100 percent of the real property to be included within the District. Petitioner's Composite Exhibit A contains this information.

54. Section 190.046(1)(a), Florida Statutes, requires the petition to include a Statement of Estimated Regulatory Costs (the "SERC") which meets the requirements of Section 120.541,

Florida Statutes. The petition contains a SERC. It meets all requirements of Section 120.541, Florida Statutes.

Statement of Estimated Regulatory Costs

55. The SERC contains an estimate of the costs and benefits to all persons directly affected by the proposed rule to amend the boundaries of the District -- the State of Florida and its citizens, the County and its citizens, the Petitioner, and consumers.

56. Beyond administrative costs related to rule adoption, the State and its citizens will incur no costs from amendment of the District's boundaries. The amended District will require no subsidies from the State. Benefits will include improved planning and coordination of development, which is difficult to quantify but nonetheless substantial. There will be no additional residential units within the District as a result of expansion beyond those contemplated for the initial District. Administrative costs incurred by the County related to FLWAC's rule adoption should be offset by the filing fee paid by the Petitioner.

57. Consumers will pay District non-ad valorem or special assessments or other rates, fees or charges for certain facilities. Location within the District is voluntary. Benefits to consumers in the amended area will include a higher level of public services and amenities than might otherwise be available, completion of District-sponsored improvements to the amended area on a timely basis, and a larger share of direct control over

community development services and facilities within the amended area.

More Requirements

58. The SERC concludes that there will be no adverse impact on any affected party from the amendment of the District's boundaries.

59. Petitioner has complied with the provisions of Section 190.046(1)(d)2, Florida Statutes, regarding submission of the Petition and payment of a filing fee to the local general purpose government -- Clay County.

60. Section 190.046(1)(d)4, Florida Statutes, requires the Petitioner to publish notice of the local public hearing in a newspaper of general circulation in Clay County for four consecutive weeks prior to the hearing. The notice was published in the Jacksonville Times-Union newspaper, a newspaper of general circulation in Clay County, for four consecutive weeks, on October 28, November 4, 11 and 18.

CONCLUSIONS OF LAW

61. This proceeding is governed by Chapters 120 and 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code.

62. The proceeding was properly noticed pursuant to Section 190.046, Florida Statutes, by publication of an advertisement in a newspaper of general paid circulation in Clay County and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

63. The Petitioner has met the requirements of Section 190.046, Florida Statutes, regarding the submission of the Petition and payment of a filing fee.

64. The Petitioner bears the burden of establishing that the petition meets the relevant statutory criteria set forth in Section 190.005(1)(e), Florida Statutes.

65. All portions of the petition and other submittals have been completed and filed as required by law.

66. All statements contained within the petition as corrected and supplemented at the hearing are true and correct.

67. The amendment of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective Clay County Comprehensive Plan, as amended.

68. The area of land within the amended District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

69. The amended District is the best alternative available for delivering community development services and facilities to the new area that will be served by the District.

70. The community development services and facilities of the amended District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

71. The area to be served by the amended District is amenable to separate special district government.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, the undersigned Administrative Law Judge recommends that the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, pursuant to Chapters 190 and 120, Florida Statutes, and Chapter 42-1, Florida Administrative Code, amend the boundaries of The Crossings at Fleming Island Community Development District as requested by the Petitioner by formal adoption of the proposed rule attached to this Report of Findings and Conclusions as Exhibit 3.

DONE AND ENTERED this 22nd day of December, 1998, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 1998.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.