

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: CENTREX HOMES, A NEVADA )  
GENERAL PARTNERSHIP AND OWNER ) Case No. 99-3021  
OF FLEMING ISLAND PLANTATION, )  
\_\_\_\_\_ )

REPORT AND CONCLUSIONS

On October 2, 1999, a local public hearing was held in this case in Green Cove Springs, Clay County, Florida, before Don W. Davis, Administrative Law Judge (ALJ), Division of Administrative Hearings, under the authority of Section 190.005(1)(d), Florida Statutes (Supp. 1998).

APPEARANCES

For Petitioner: Susan C. McDonald, Esquire  
Rogers, Towers, Bailey,  
Jones & Gay, P.A.  
1301 Riverplace Boulevard, Suite 1500  
Jacksonville, Florida 32207

STATEMENT OF THE ISSUE

The issue in this case is whether the Petition to Establish Rule and the Amended Petition to Establish Rule (the Petition) should be granted.

PRELIMINARY STATEMENT

The original Petition was filed with the Secretary of the Florida Land and Water Adjudicatory Commission (FLAWAC) on April 30, 1999. The Amended Petition was filed with FLAWAC on September 8, 1999. The Secretary forwarded the original Petition to the Division of Administrative Hearings (DOAH) on July 12,

1999. On or about July 16, 1999, DOAH assigned the ALJ to conduct the required public hearing and render this report. On August 13, 1999, a Notice of Hearing was issued for October 21, 1999, in Green Cove Springs, Florida. Appropriate notice of the public hearing was published in the Florida Times-Union, a daily newspaper in Clay County, Florida, as required by Section 190.005(1)(d), Florida Statutes (Supp. 1998), and in the Florida Administrative Weekly, as required by Rule 42-1.010(1)(b), Florida Administrative Code.

Prior to the hearing, the Petitioner filed a Motion to Qualify Gary L. Moyer as an expert along with pre-hearing testimony. This was admitted into evidence at the hearing as Petitioner's Exhibit No. 1. Mr. Moyer was qualified as an expert at the hearing on October 21, 1999, and he gave additional testimony in support of his conclusions. Furthermore, Resolution 99-57, demonstrating Clay County's support of the creation of the Fleming Island Community Development District (Fleming Island CDD) was admitted as Petitioner's Exhibit No. 2. The statement of regulatory cost was admitted as Petitioner's Exhibit No. 3. Additional expert testimony was provided by Susan L. Fraser and William J. Rizzetta in support of the Petition.

At the conclusion of the hearing, the Petitioner ordered a hearing Transcript which was mailed to the ALJ by the court reporter on October 21, 1999.

Pursuant to Rule 42-1.012(3), Florida Administrative Code, the record of this matter remained open after the hearing to permit the submission by any affected or interested persons of written statements concerning the Petition. No public statements were filed.

#### FINDINGS OF FACT

1. The Petitioner, Centrex Homes, is a Nevada General Partnership which owns or has authority over the property proposed for establishment of the state created District.

2. Clay County is the affected local general purpose government, a political subdivision of Florida, within whose jurisdiction in the unincorporated area of the county the proposed land is located.

3. The Petition proposes the establishment by rule of Fleming Island CDD on certain proposed real property in the unincorporated area of Clay County. (The uniform statutory charter for all established community development districts (CDDs) is found in Sections 190.006 through 190.046, Florida Statutes (Supp. 1998), as amended by Chapter 99-378, Laws of Florida (1999). See Conclusions, infra.)

4. The proposed land to be served by Fleming Island CDD consists of approximately 1,580 acres bounded on the north and west by vacant property; on the east by U.S. Highway 17, Fleming Island Estates and the St. Johns River; on the southwest by Black Creek; and on the south by Black Creek and the St. Johns River.

A map showing the location of the land areas to be served by the CDD was attached as Petitioner's Exhibit No. 1 to the Petition.

5. As proposed, Fleming Island CDD contains no enclaves; the land is contiguous and will be separated only by roads, streets, or other similar, small barriers.

6. The Petition alleges that the metes and bounds legal description of the property is contained in Petition Exhibit No. 2.

7. The Petition Exhibit Nos. 3, 4, and 5 constitute documentation that the owners of all the real property proposed to be included in Fleming Island CDD have given written consent to the establishment of the CDD on the proposed property.

8. The Petition names the five persons (revised in the Amended Petition) to serve on the initial Board of Supervisors upon establishment of the CDD by rule. The Petition identifies and depicts in Petition Exhibit No. 6 proposed land uses within the previously-approved DRI.

9. The Petition identifies the DRI development order in Petition Exhibit No. 7.

10. The Petition identifies and depicts in Petition Exhibit No. 8 the main trunk waterlines, sewer interceptors, and outfalls on the property proposed to be served by the CDD.

11. The Petition sets forth in Petition Exhibit No. 9 (revised in the Amended Petition) the proposed timetable and

schedule of estimated costs for the construction of the proposed facilities.

12. The Petition alleges and Petitioner's Exhibit No. 2 admitted at the hearing demonstrates that the Clay County Local Government Comprehensive Plan is an effective local government comprehensive plan which is in compliance with state law. The Petition also alleges that the Clay County future land use map (FLUM) designates the land to be within Fleming Island CDD.

13. Petition Exhibit No. 11 is a Statement of Estimated Regulatory Costs.

14. The Petitioner paid \$15,000 to Clay County for the required filing and processing fees prior to filing the Petition on April 30, 1999.

15. Based on the evidence, all statements contained within the Petition are found to be true and correct. See pre-filed and oral testimony of Gary L. Moyer; testimony of Petitioner's land use planner, Susan Fraser, AICP; and testimony of Petitioner's business expert, William J. Rizzetta.

16. The underlying community development anticipated to be served by the CDD is described in Section 1.0 of the Statement of Estimated Regulatory Costs at Petition Exhibit No. 11 and in the testimony of Gary L. Moyer. It will be consistent with and similar to the adjacent development. Development in Fleming Island CDD is to proceed under the development order for development of regional impact (DRI).

17. The evidence, especially the testimony of Susan Fraser (AICP), indicates that establishment of Fleming Island CDD will not be inconsistent with any applicable element or portion of the state comprehensive plan or of the Clay County Comprehensive Plan. There was no evidence to the contrary.

18. The evidence indicates that the area of land within the proposed CDD is of sufficient size, is sufficiently compact, and sufficiently contiguous to be developable as one, functional, interrelated community. There was no evidence to the contrary.

19. The evidence indicates that the CDD is the best alternative available for delivering community development services and facilities (including recreational facilities) to the area that will be served by the CDD. There was no evidence to the contrary.

20. The evidence indicates that the CDD's services and facilities will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. There was no evidence to the contrary.

21. The evidence was that the area to be served by Fleming Island CDD is amenable to separate special-district government. There was no evidence to the contrary.

22. Clay County also held a public hearing on the Petition, which resulted in the County's adoption of a Resolution 99-57 supporting the Petition and establishment of the Fleming Island CDD.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over this subject matter and the parties to this action pursuant to Section 120.57(1), Florida Statutes.

24. Under Section 190.003(6), Florida Statutes (1997), a community development district (CDD) is "a local unit of special-purpose government which is created pursuant to this act and limited to the performance of these specialized functions authorized by this act; the boundaries of which are contained wholly within a single county; the governing head of which is a body created, organized, and constituted and authorized to function specifically as prescribed in this act for the delivery of urban community development services; and the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law."

25. Sections 190.006 through 190.006, Florida Statutes (1997) and (Supp. 1998), as amended by Section 35 of Chapter 99-378, Laws of Florida (1999), constitute the uniform general law charter of all CDDs, which can be amended only by the Florida Legislature.

26. Section 190.011, Florida Statutes (1997), enumerates the general powers of CDDs. These powers include the power of eminent domain inside the district and, with the approval of the governing body of the applicable county or municipality, outside

the district for proposes related solely to water, sewer, district roads, and water management.

27. Section 190.012, Florida Statutes (Supp. 1998), as amended by Section 35 of Chapter 99-378, Laws of Florida (1999), lists special powers of CDDs. Subject to the regulatory power of all applicable government agencies, CDDs may plan, finance, acquire, construct, enlarge, operate, and maintain systems and facilities for water management; water supply, sewer, and waste water management; CDD roads meeting minimum county specifications and certain projects within or without the CDD pursuant to development orders from local governments. After obtaining the consent of the applicable local government, a CDD may have the same powers with respect to the following "additional" systems and facilities: parks and recreation, fire prevention, school buildings, security, mosquito control, and waste collection and disposal.

28. Section 190.005(1)(a), Florida Statutes (Supp. 1998), requires that the petition to establish a CDD be filed with FLAWAC and submitted to the County. The petition must describe by metes and bounds the proposed area to be serviced by the CDD with a specific description of real property to be excluded from the district. The petition must set forth that the Petitioner has the written consent of the owners of all of the proposed real property in the CDD, or has control by "deed, trust agreement, contract or option" of all of the proposed real property. The



petition must designate the five initial members of the Board of Supervisors of the CDD and the district's name. The petition must contain a map showing current major trunk water mains and sewer interceptors and outfalls, if any. The Petition in this case meets all of those requirements.

29. Section 190.005(1)(a), Florida Statutes, also requires that the petition propose a timetable for construction and an estimate of construction costs. The petition must designate future general distribution, location, and extent of public and private uses of land in the future land-use element of the appropriate local government. The petition must also contain a Statement of Estimated Regulatory Cost. The Petition in this case meets all of those requirements.

30. Section 190.005(1)(a), Florida Statutes, also requires the Petitioner to provide a copy of the local government's growth management plan (the local government comprehensive plan). The Petitioner in this case has done so.

31. Section 190.005(1)(b), Florida Statutes (Supp. 1998), requires that the Petitioner pay a filing fee of \$15,000 to the county and to each municipality whose boundaries are within or contiguous to the CDD. The Petitioner must serve a copy of the petition on those local governments as well. The Petitioner in this case has met those requirements.

32. Section 109.005(1)(c), Florida Statutes (Supp. 1998), permits the county and each municipality described in the

preceding paragraph to conduct a public hearing on the Petition. Such local governments may then present resolutions to FLAWAC as to the proposed property for the CDD. Clay County has exercised this option and has adopted Resolution 99-57 in support of establishment of Fleming Island CDD.

33. Section 190.005(1)(d), Florida Statutes (Supp. 1998), requires a hearing officer to conduct a local public hearing pursuant to Chapter 120, Florida Statutes. The hearing "shall include oral and written comments on the petition pertinent to the factors spelled in paragraph (e)." Section 190.005(1)(d), Florida Statutes, specifies that the Petitioner must publish notice of the local public hearing once a week for the four successive weeks immediately prior to the hearing. The Petitioner has met those requirements.

34. Under Section 190.005(1)(e), Florida Statutes (Supp. 1998), as amended by Section 35 of Chapter 99-378, Laws of Florida (1999), FLAWAC must consider the following factors in determining whether to grant or deny a petition for the establishment of a CDD:

1. Whether all statements contained within the petition have been found to be true and correct.
2. Whether the establishment of the district is inconsistent with any applicable element or portion for the state comprehensive plan or of the effective local government comprehensive plan.

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

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

Factor 1

35. In this case, all statements contained within the Petition are found to be true and correct.

Factor 2

36. In this case, it is found that the establishment of Fleming Island CDD is not inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.

Factor 3

37. In this case, it is found that the area of land within the Fleming Island CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

Factor 4

38. In this case, it is found that Fleming Island CDD is the best alternative available for delivering community development services and facilities to the area that will be served by the CDD.

Factor 5

39. In this case, it is found that the proposed community development services and facilities will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

Factor 6

40. In this case, it is found that the area to be served by the Fleming Island CDD is amenable to separate special-district government.

DONE AND ENTERED this 10th day of November, 1999, in Tallahassee, Leon County, Florida.

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Filed with the Clerk of the  
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this 10th day of November, 1999.

COPIES FURNISHED:

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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.