

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO AMEND THE)
CROSSINGS AT FLEMING ISLAND) Case No. 07-5750
COMMUNITY DEVELOPMENT DISTRICT)
_____)

ADMINISTRATIVE LAW JUDGE'S REPORT TO THE FLORIDA LAND AND
WATER ADJUDICATORY COMMISSION

Pursuant to notice, a local public hearing was held in this matter in Orange Park, Florida, on February 28, 2008, before Donald R. Alexander, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael C. Eckert, Esquire
A. Tucker Frazee, Esquire
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STATEMENT OF THE ISSUE

The issue is whether the Petition to Amend the Boundaries of the Crossings at Fleming Island Community Development District (Petition) meets the applicable criteria set forth in Chapter 190, Florida Statutes (2007)¹, and Florida Administrative Code Rule Chapter 42-1. The purpose of the local public hearing was to gather information in anticipation of quasi-legislative rulemaking by the Florida Land and Water Adjudicatory Commission (Commission).

PRELIMINARY STATEMENT

On March 14, 2007, the Crossings at Fleming Island Community Development District (Petitioner or District) filed its Petition with the Commission. It requested that the Commission amend Florida Administrative Code Rule 42H-1.002 to expand the boundaries of the District to include certain property in Clay County (County), Florida, consisting of approximately 20.7 acres. The initial Petition included ten exhibits.

On June 29, 2007, the Commission issued a Notice of Insufficiency and Request for Additional Information (Notice of Insufficiency). On September 7, 2007, Petitioner filed its Response to Notice of Insufficiency and Request for Additional Information.

On December 17, 2007, the Secretary of the Commission certified that with one exception, the Petition contained all required elements and referred it to the Division of Administrative Hearings (DOAH) to conduct a local public hearing pursuant to Section 190.005(1)(d), Florida Statutes. The referral letter noted in relevant part that

the Petition does not strictly comport with [Section] 190.005(1)(a)2., in that it lacks consent of all landowners whose property is to be included within the District. The District has been amended on two prior occasions, surpassing the cumulative threshold in [Section] 190.046(1)(f),

Florida Statutes. Accordingly, the Petition is considered a Petition to establish a new district and must comport with all of the requirements of [S]ection 190.005, Florida Statutes. See [§] 190.046(1)(f), Fla. Stat. In this particular case, however, counsel for Petitioner has represented that the negative effects to the residents from addition of 21 acres, which is less than 1% increase of the CDD, are de minimis. Moreover, the lands to be added are mainly infill to the already existing CDD. Because there are thousands of residential and commercial landowners, adherence to a sterile literal reading of the statute requiring all landowner consent, given the facts and parcel descriptions in Petitioner's November 13, 2007, letter to the Commission (incorporated by reference herein), would be unreasonable, especially in light of the prior amendments. This determination results from the unique factual circumstances of the instant District and in no way shall be interpreted to mean that the Commission waives the requirement that petitions to amend community development districts that surpass the threshold in [Section] 190.046(1)(g) must contain the landowner consent of all real property included within the district's boundaries.

The local public hearing was held on February 28, 2008, in Orange Park, Florida. Notice of the public hearing was published in accordance with Section 190.005(1)(d), Florida Statutes. On February 25, 2008, Petitioner pre-filed the written testimony of its four witnesses.

At the local public hearing, Petitioner presented the testimony of Yvette Hartsfield, District Manager of the District and employed by Government Services Group, Inc.; Ronald E.

Kolar, Developer Representative and employed by East-West Partners; Stephen Czajkowski, Vice-Chairman of the District's Board of Supervisors (Board); and Carol Rogers, District Financial Advisor and employed by Government Services Group, Inc. Except for Mr. Czajkowski, all witnesses were accepted as experts. Petitioner also introduced seventeen exhibits, designated as Exhibits A through Q. Composite Exhibit A is the Petition filed with the Commission, with ten attachments; Exhibit B is a letter from the Clay County Attorney dated April 17, 2007, indicating that the County would not conduct a public hearing on the matter; Exhibit C is the Commission's Notice of Insufficiency; Exhibit D is the Commission's Order Granting Request for Enlargement of time to respond to the Notice of Insufficiency entered on July 16, 2007; Exhibit E is Petitioner's Response to the Notice of Insufficiency dated September 7, 2007; Exhibit F is a letter dated November 13, 2007, from Petitioner's counsel to Barbara Leighty; Exhibit G is the transmittal letter from the Commission to DOAH; Exhibit H is a letter dated December 17, 2007, from the Commission to the Northeast Florida Regional Planning Council (Council); Exhibit I is a letter dated December 17, 2007, from the Commission to the Department of Community Affairs (Department); Exhibit J is a copy of the Notice of Local Public Hearing issued on January 9, 2008; Exhibit K is the affidavit of publication for the local

public hearing published in a community subsection of The Florida Times-Union on January 31 and February 7, 14, and 21, 2008; Exhibit L is the Notice of Receipt of Petition published by the Commission in the Florida Administrative Weekly on February 8, 2008; Exhibit M is a certified copy of Chapter 187, Florida Statutes; and Exhibits N through Q are the pre-filed written testimony of witnesses Kolar, Hartsfield, Czajkowski, and Rogers, respectively.

In addition, three members of the public, all of whom reside within the District, presented testimony at the hearing: Ronald Dill, Jenise Whitmire, and Michael Heemer.

On March 5, 2008, or within ten days after the public hearing, Joseph E. Snyder, also a resident of the District, filed written comments in opposition to the Petition. See Fla. Admin. Code R. 42-1.012(3). As permitted by the same rule, Petitioner filed a Response to those comments on March 17, 2008.

On March 7, 2008, Petitioner filed a Supplement to the Petition. The Supplement was filed because after the preparation and filing of the Petition, certain lands within the proposed expansion parcels changed. The original landowners sold some of the lots they owned to individual landowners. The Supplement contains a list of the new individual landowners of each lot and the additional Consents and Joinders of Landowners executed by those individual landowners.

The Transcript of the hearing was filed on April 3, 2008. On the same date, Petitioner filed a Proposed Report of Findings and Conclusions, which has been considered in the preparation of this Report.

SUMMARY OF RECORD

A. History of the District

1. The testimony of witness Ronald E. Kolar, a professional engineer, addresses the previous boundary amendments of the District, the procedural history behind the current Petition, and the location and nature of the lands sought to be added to the District. His testimony and the exhibits received in evidence make up the record which underpin this portion of the Report.

2. The District was established by the Commission through the adoption of Florida Administrative Code Rule 42H-1.001 on November 20, 1989, after a petition to establish the District was approved. The related proceedings before DOAH are reported in the case of In re: A Rule to Establish the Crossings at Fleming Island Community Development District, DOAH Case No. 89-1850, 1989 Fla. Div. Adm. Hear. LEXIS 7292 (Report of Findings and Conclusions July 22, 1989). A legal description of the District's boundaries, as amended, is found in Florida Administrative Code Rule 42H-1.002. The District is located entirely within Clay County, Florida, and generally lies

northwest, southwest, and southeast of the intersection of U.S. Highway 17 and County Road 220 on Fleming Island, which is north of Green Cove Springs and just south of Orange Park. According to the Report of Findings and Conclusions, the original District encompassed "some 2,600 acres." Id. at *5.

3. After the District's Board submitted a request to amend the boundaries, effective March 23, 1998, the Commission amended Florida Administrative Code Rule 42H-1.002 by adding a net addition of approximately 228.91 acres.² See FLWAC Case No. CDD-97-002. This boundary amendment did not exceed the acreage thresholds set forth in Section 190.046(1)(f)1., Florida Statutes. (The acreage threshold in the cited statute is "a total of 250 acres.") Therefore, the Board conducted the local public hearing.

4. In August 1998, Petitioner filed another petition with the Commission seeking to amend the District's boundaries by adding approximately 46 acres. After a local public hearing was conducted by DOAH, a Recommended Order was issued recommending that the petition be approved. See In re: Petition for Rule Amendment: The Crossings at Fleming Island Community Development District, DOAH Case No. 98-4159, 1998 Fla. Div. Adm. Hear. LEXIS 6035 (DOAH Dec. 22, 1998). This recommendation was adopted by the Commission, and Florida Administrative Code Rule 42H-1.002

was amended effective March 17, 1999, to add the 46 acres to the District's boundaries.³

5. The petition in Case No. 98-4159 alleged that the acreage sought to be added, when combined with the 228 acres previously added in March 1998, exceeded the threshold contained in Section 190.046(1)(f)1., Florida Statutes. (That statute provides in part that "in no event shall all such petitions to amend the boundaries ever encompass more than a total of 250 acres"; otherwise, petitions to amend the boundaries shall be considered petitions to establish a new district and must follow the procedures specified in Section 190.005, Florida Statutes.) Cumulatively, the 1998 and 1999 boundary amendments resulted in an approximate 10.64 percent increase in acreage over the initial District. The petition further alleged that only the consent from the owners of the lands sought to be added was required to be included in the petition. No consents were tendered by owners of lands within the existing District. A copy of the petition is found in Exhibit B of Hearing Exhibit E. After receiving and reviewing the petition, the Commission's Secretary issued a letter dated September 18, 1998, which found that the petition was sufficient in that it included all the information required by Chapter 190, Florida Statutes. See Exhibit C of Hearing Exhibit E. Specifically, the Commission's letter stated that "[t]his letter constitutes certification that

all required elements, as defined in section 190.005(1)(a), Florida Statutes, (F.S.), are contained in the petition." Id.

6. Without saying so explicitly, in DOAH Case No. 98-4159 it can be inferred that Petitioner, the Administrative Law Judge, and the Commission implicitly acknowledged that when expanding a district under the unique circumstances present in that case, consent from all owners within an existing district is not a "procedure" under Section 190.005(1)(a), Florida Statutes, that must be strictly followed.

7. On June 23, 2006, Petitioner filed a petition with the Commission seeking to add 41 acres to the District's boundaries. That matter was assigned FLWAC Case No. CDD-06-007. The petition alleged that the acreage sought to be added, when combined with the acres previously added, exceeded the 250-acre threshold contained in Section 190.046(1)(f)1., Florida Statutes. Consistent with the Commission's prior decision in Case No. 98-4159, the petition further alleged that only the consent from the owners of the lands sought to be added was required to be included in the petition, and that consent from the Board constituted consent under Chapter 190, Florida Statutes, for all landowners within the existing District. As evidence of the Board's consent for all lands within the existing District, the Petition attached Resolution 2004-04 of the Board authorizing the boundary amendment.

8. After receiving and reviewing the petition, the Commission's Secretary issued a letter dated June 29, 2006, stating that the petition was sufficient in that it included all the information required by Chapter 190, Florida Statutes. See Exhibit G of Hearing Exhibit E. The letter further stated that it constituted certification that "all required elements, as defined in section 190.005(1)(a), Florida Statutes (F.S.), were contained in the petition." There was no indication in the letter, either explicitly or implicitly, that consent from all landowners within the existing District was a required element of the petition.

9. After the Commission certified that the petition was sufficient, it solicited comments from the Department and the Council. No adverse comments were received. The petition was then forwarded by the Commission to DOAH, and it was assigned DOAH Case No. 06-2334. Thereafter, Petitioner advised DOAH that it wished to withdraw its petition. By Order dated August 21, 2006, jurisdiction in the matter was relinquished to the Commission, and a Final Order of Dismissal was entered by the Commission on August 24, 2006.

B. The Current Petition and Related Matters

10. On January 15, 2007, the District's Board adopted Resolution No. 2007-04 authorizing a boundary amendment through the filing of a new petition. On March 15, 2007, the Petition

and a check in the amount of \$1,500.00 were submitted to the County. On August 13, 2007, Petitioner submitted to the County a second check for filing fees in the amount of \$13,500.00, or a total filing fee of \$15,000.00. The County chose to take no action on the Petition.

11. On March 16, 2007, the Petition was also submitted to the Commission. The current Petition is a refiling of the 2006 petition, the only change being a reduction in the acreage subject to the boundary amendment from 41 acres to 21 acres. The only substantive differences between the instant Petition and that filed in 2006 are the reduction in size of two of the parcels sought to be added and updating the landowner consents for the expansion parcels. No new lands have been added. The Petition seeks to amend Florida Administrative Code Rule 42H-1.002 by adding approximately 20.7 acres to the District, which would result in an increase in the District's acreage of less than one percent from both the District's initial acreage (around 2,600 acres) and its current acreage (2,848 acres). After expansion, the District will encompass a total of 2,868.7 acres. There are no parcels within the expansion parcels or the proposed amended boundaries that are to be excluded from the District.

12. The land to be added consists of seven areas. See Exhibits A through G of Petition Exhibit 4. The first parcel

(Exhibit A) consists of approximately 2.8937 acres on which an old mobile home and an abandoned road were once situated. The land has now been purchased by the developer and eight new homes will be placed on the property. The second parcel (Exhibit B) consists of only 0.7690 acres and lies directly across the street from other District land. The third parcel (Exhibit C) consists of 1.4227 acres and is completely surrounded by other District land. The fourth parcel (Exhibit D) consists of 1.296 acres and includes part of an old railroad right-of-way and small portions of other lots. The fifth parcel (Exhibit E) will add 6.17 acres and previously was the site of a trash dump which has now been cleaned up. The sixth parcel (Exhibit F) consists of 1.008 acres and contained an old house, which has now been removed. The final parcel (Exhibit G) is the largest tract (7.10 acres) and consists of lands surrounded on three sides by other District residents. Development on that property will include 28 lots, some of which are already occupied.

13. Although not noted in the Petition, the District's Response to the Notice of Insufficiency indicates that the current members of the Board are Alan DiMaio-Leach, Stephen Czajkowski, Amy Wilson, Walt Joba, and Ryan Alderson, all residents of the State of Florida. See Exhibit L to Hearing Exhibit E.

14. Petition Exhibit 1 is the Commission's letter dated June 29, 2006, containing the certification that "all required elements, as defined in section 190.005(1)(a), Florida Statutes" were "contained in the petition" filed in FLWAC Case No. CDD-06-007.

15. Petition Exhibit 2 sets forth the general location of the existing District. As noted above, the District is located within Clay County just north of County Road 220 and between U.S. Highway 17 and Blanding Boulevard. It currently covers approximately 2,848 acres of land.

16. Petition Exhibit 3 is the metes and bounds description of the external boundaries of the existing District, while Petition Exhibit 4 consists of the general location, and the metes and bounds description, of the lands to be added to the District.

17. Petition Composite Exhibit 5 is the documentation of ownership and consent to the inclusion of the expansion parcels into the District. Many of the consents are recorded in the real property records of the County and are binding on future owners unless revoked after three years from the date of execution. No revocations of consent have been received into the record. The Petition was supplemented to update consents on March 7, 2008. The Petition alleges that the favorable action of the Board constitutes consent for all landowners within the

boundary of the District pursuant to Section 190.046(1)(e), Florida Statutes, as is evidenced by the District's submission of the Petition.

18. Petition Exhibit 6 is the District's Resolution 2007-04, which was approved on January 15, 2007, directing the Chairman and all District staff to file a petition with the Commission, requesting the adoption of a rule amending the District's boundaries, authorizing such other actions as are necessary in furtherance of the boundary amendment process, and providing an effective date.

19. Petition Composite Exhibit 7 includes letters dated July 25 and 26, 2006, from the Council and Department, respectively, in response to the Commission's inquiries in FLWAC Case No. CDD-06-007. The Council's letter noted that "[t]his petition does not appear to be in conflict with [the Fleming Island Development of Regional Impact or the associated Development Order]," while the Department acknowledged that it "has not identified any issues of concern." The Exhibit also includes a Zoning Map depicting the existing land uses adjacent to the expansion parcels and a map depicting 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 (FLUE) of the County's Comprehensive Plan (Plan).

20. Petition Exhibit 8 sets forth the estimated construction costs and timetable prepared at the time of the filing of the Petition for the construction of the improvements to be constructed within the expansion parcels. These costs are estimated to total \$1,600,000.00.

21. Petition Exhibit 9 is the Statement of Estimated Regulatory Costs (SERC), which indicates that it was prepared in accordance with the requirements of Section 120.541, Florida Statutes.

22. Petition Exhibit 10 is the Authorization of Agent form indicating that Jonathan T. Johnson, Esquire, is the District's authorized agent for all matters relating to this Petition.

23. On March 7, 2008, Petitioner filed a Supplement to the Petition with FLWAC. The Supplement was filed because after the preparation and filing of the Petition, certain lands within the proposed expansion parcels changed. The original landowners sold some of the lots they owned to individual landowners. The Supplement includes a list of the new individual landowners and updated Consent and Joinders of Landowners executed by the new individual landowners who had purchased property within the expansion parcels.

24. On the same date, Petitioner filed with DOAH a Notice of Filing Supplement to the Petition to Expand the Crossings at Fleming Island Community Development District as a Supplement to

the Petitioner's Local Hearing Evidence and requested that it be accepted into the record. The Supplement is hereby accepted and made a part of this record.

25. The sole purpose of this proceeding was to consider the amendment of the District, as proposed by Petitioner. Because Section 190.005, Florida Statutes, applies in this matter, and it contains the statutory criteria to be considered, a summary of the evidence relating to each enumerated section of the statute is set forth below.

SUMMARY OF EVIDENCE AND TESTIMONY

a. Whether all statements contained within the Petition have been found to be true and correct.

26. Hearing Exhibit A consists of the Petition and ten exhibits, as filed with the Commission. Mr. Ronald E. Kolar, developer representative, testified that he had reviewed the contents of the Petition and exhibits. He noted that only one correction to his pre-filed testimony was necessary, that being on page 3, line 12, where he replaced the word "DOAH" with the words "the District's Board of Supervisors." Mr. Kolar prepared Petition Exhibits 2, 3, 4, 5, 7, and 8 and indicated that those exhibits were true and correct, to the best of his knowledge.

27. Mr. Stephen Czajkowski is Vice-Chairman of the District's Board and has served as a Board member for the past three years. Mr. Czajkowski testified that he had reviewed the

Petition and attached Exhibits 1 through 10 and to the best of his knowledge they were true and correct.

28. Carol Rogers is a certified public accountant who serves as financial advisor to the District. Witness Rogers reviewed Petition Exhibits 2, 4, 6, 8, and 9 and stated that to the best of her knowledge, they were all true and correct.

29. The final witness was Yvette Hartsfield, who is the District Manager for the District. On line 32 of page 6 of her testimony, Ms. Hartsfield identified Hearing Exhibit S as the testimony of Carol Rogers. This is a typographical error and should have been Exhibit Q. No other corrections or changes were noted. The witness testified that she had reviewed the contents of the Petition and Exhibits 1 through 10, and to the best of her knowledge, all were true and correct.

30. The testimony is that the Petition and exhibits as amended and supplemented are true and correct.

b. Whether the establishment of the District, as amended, is inconsistent with any applicable element or portion of the State Comprehensive Plan or any effective local government comprehensive plan.

31. Mr. Kolar testified that, as a professional engineer, he believes that the amended district is not inconsistent with any portion or element of the State Comprehensive Plan found in Chapter 187, Florida Statutes. Specifically, he found three subjects of the State Plan codified in Section 187.201, Florida

Statutes, to be relevant, Subjects 15 (land use), 17 (public facilities), and 25 (plan implementation), and that the District, as amended, will not conflict with those subjects. He further testified that the amended District is not inconsistent with any portion or element of the County's Plan, including relevant provisions of the FLUE, Intergovernmental Coordination Element, and Capital Improvement Element.

32. Ms. Hartsfield identified Hearing Exhibit I as a letter to the Department from Barbara Leighty, Commission Clerk, requesting review of the Petition dated December 17, 2007, which is the subject of this proceeding. The response, if any, is not of record. However, in an earlier letter dated July 26, 2006, a Department representative indicated that after reviewing the 2006 petition, the Department had no "issues of concern" with the proposed amendment.

33. The testimony and exhibits indicate that the amended District will not be inconsistent with any applicable element or portion of the State Comprehensive Plan or the County's Plan.

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

34. Mr. Kolar testified that with the net expansion of approximately 20.7 acres, the District is still of sufficient

size, compactness, and contiguity to be developed as an interrelated community.

35. Mr. Czajkowski also testified that the amended District is of sufficient size, is sufficiently compact and contiguous to be developable as one functionally-interrelated community.

36. Finally, Ms. Hartsfield echoed the testimony of the previous two witnesses and testified that, based on her experience in district management, the amended District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional, interrelated community.

37. The testimony was that Petitioner has demonstrated that the District, as amended, will be of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a single functionally interrelated community.

d. Whether the District, as amended, is the best alternative available for delivering community development services and facilities to the area that will be served by the expanded District.

38. Mr. Kolar opined that the District is the best alternative to provide community development services and facilities to the area to be added into the District because the District is a long-term, stable, perpetual entity capable of maintaining the facilities over their life.

39. Ms. Rogers also testified that the amended District is the best alternative available for providing the District development services to the area to be added to the District because the District generally restricts costs to those who benefit from the District services provided. In addition, she noted that the use of non-ad valorem assessments and maintenance assessments to fund the infrastructure and facilities ensures that the property receiving the benefit of the District service is the same property to pay for those services.

40. Ms. Hartsfield also opined that the amended District is the best alternative available to provide the proposed community development services and facilities.

41. The testimony was that Petitioner has demonstrated that 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.

e. Whether the community development services and facilities of the District, as amended, will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

42. Mr. Kolar testified that the services and facilities to be provided to the expansion parcels by the District are not incompatible with the capacities and existing uses of existing local and regional community facilities and services. He added that the services and facilities to be provided by the District

are required by, or consistent with, the Development Order governing development on these lands. Finally, he stated that none of the proposed services or facilities are presently being provided by another entity for the lands to be added.

43. Mr. Czajkowski reached the same conclusion and testified that the services and facilities provided by the amended District are not incompatible with the uses and existing local and regional facilities. In his opinion, the District is the best alternative available for providing the community development services and facilities to the expansion parcels.

44. Ms. Rogers also testified that the amended District is not incompatible with the uses and existing local and regional facilities and services. She further stated that the District's facilities and services with the amended boundaries will not duplicate any available regional services or facilities, nor will the amendment impact the ability of the District to continue to successfully manage its existing services and facilities.

45. Ms. Hartsfield further testified that, based on her experience in district management, the District as amended is not incompatible with the uses of the existing local and regional facilities and services.

46. The testimony was that the community development services and facilities of the District, as amended, 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.

47. Mr. Kolar stated that this criterion has been satisfied for two reasons. First, based upon his experience with the operations and structure of the District, he concluded that the amended District is amenable to separate special district government. Second, he noted that the District has been functioning as a separate special district government for twenty years.

48. Mr. Czajkowski also testified that the amended District is amenable to being served by separate special district government because the District has functioned well as a separate special district government since 1987 and that adding the expansion parcels will not affect its ability to serve as a separate special district government.

49. Witness Rogers further testified that the new area designated to be included in the District is amenable to being served by a separate special district government.

50. Finally, Ms. Hartsfield testified that, based on her experience in district management, the amendment will not affect the District's ability to function as a separate special district government.

51. The testimony was that from the perspectives of the four witnesses, the expanded District will continue to be amenable to separate special-district government.

Other Requirements Imposed by Statute or Rule

a. Elements of the Petition

52. With the exception of having consent of all owners, the Commission has certified that the Petition meets all of the requirements of Section 190.005(1)(a), Florida Statutes.

However, in its transmittal letter to DOAH dated December 17, 2007, the Commission addressed this issue by noting that:

In this particular case, however, counsel for Petitioner has represented that the negative effects to the residents from addition of 21 acres, which is less than 1% increase of the CDD, are de minimis. Moreover, the lands to be added are mainly infill to the already existing CDD. Because there are thousands of residential and commercial landowners, adherence to a sterile literal reading of the statute requiring all landowner consent, given the facts and parcel descriptions in Petitioner's November 13, 2007, letter to the Commission (incorporated by reference herein), would be unreasonable, especially in light of the prior amendments. This determination results from the unique factual circumstances of the instant District and in no way shall be interpreted to mean that the Commission waives the requirement that petitions to amend community development districts that surpass the threshold in [Section] 190.046(1)(g) must contain the landowner consent of all real property included within the district's boundaries.

b. Statement of the Estimated Regulatory Costs (SERC)

53. Carol Rogers, who is a certified public accountant and financial advisor to the District, prepared the SERC. That document has been received in evidence as Petition Exhibit 9. It contains all elements required under Section 120.541, Florida Statutes.

54. Ms. Rogers' testimony includes an economic analysis of the effect of the amendment of the District's boundaries. Based on her experience with other districts, the witness opined that the amended District is expected to be financially viable and feasible.

55. The witness further testified that, as a result of the boundary amendment, existing residents will most likely benefit from both reduced operations and maintenance assessments and debt assessments as a result of the increase in the District's assessment base.

56. The testimony and exhibits are that the Petition contains a SERC which meets the requirements of Section 120.541, Florida Statutes.

c. Other Requirements

57. According to Mr. Kolar, Petitioner has complied with the provisions of Section 190.005(1)(b)1., Florida Statutes, in that the County was provided copies of the Petition and was paid the requisite filing fee.

58. Section 190.005(1)(d), Florida Statutes, requires a petitioner to publish notice of the local public hearing in a newspaper of general circulation in the County for four consecutive weeks prior to the hearing. The notice was published in a community subsection of The Florida Times-Union on January 31 and February 7, 14, and 21, 2008.

59. Section 190.005(1)(d), Florida Statutes, provides in part that "the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition." Three members of the public, all of whom reside within the District, presented oral comments at the hearing.

60. Ronald Dill resides at 2311 Silver Oak Court, Orange Park, Florida. Mr. Dill read a prepared statement into the record in which he stated his opinion that the District's facilities were overcrowded. He also stated that he believed all landowners within the existing District had not consented to the boundary amendment. Mr. Dill further questioned whether consents were in place for owners of the lands sought to be added. However, he did not identify any property for which consent had not been obtained or for which a prior consent was no longer effective. He also acknowledged that he is not the owner of any lands that are sought to be added to the District.

61. Jenise Whitmire, a former Chairperson of the Board, resides at 1642 Waters Edge Drive, Orange Park, Florida. She

stated that she was unsure if appropriate consents had been obtained from landowners sought to be added to the District. However, she did not identify any specific property for which consent had not been obtained. She also generally questioned the experience of witnesses Rogers and Hartsfield.

62. Michael Heemer resides at 1656 Fairway Ridge Drive, Orange Park, Florida. Mr. Heemer's lot is located within a small existing subdivision known as Fairway Ridge at Eagle Harbor, which is one of the parcels being added to the District. See Exhibit G of Petition Exhibit 4. Mr. Heemer stated that he and other residents of the subdivision strongly desire for the land to be added to the District.

63. On March 5, 2008, or less than 10 days after the local public hearing was conducted, Joseph E. Snyder, who resides within the District, filed written comments in this matter. See Fla. Admin. Code R. 42-1.012(3). In his comments, Mr. Snyder states that (a) the number of District residents are higher than first planned; (b) the school and amenity facilities located within the District are currently beyond capacity, the District's facilities were originally designed based on the original District boundaries, and the capacities of those facilities are further exceeded by the proposed boundary amendment of 20.7 acres; (c) Section 190.046(1)(g), Florida Statutes, requires consent from 100 percent of the landowners

within the existing District in order to expand the District; and (d) some of the lands being added cannot be characterized as infill.

64. On March 17, 2008, Petitioner filed its Response to Comments by Joseph E. Snyder Dated March 5, 2008 (Response). The Response was intended to refute Mr. Snyder's comments. As to the statement that the developer has increased the number of residents within the District beyond which was originally contemplated at the time of the District's establishment, Petitioner pointed out that the Eagle Harbor Development of Regional Impact approved construction of 4,622 dwelling units while the current development plan contemplates a build-out of only 3,280 dwelling units, inclusive of the dwelling units located within the proposed annexation parcels. The Response also noted that population is not a factor to be considered under Section 190.005(1)(e), Florida Statutes. As to the statement that the school and amenity facilities located within the District are currently beyond capacity, the Response points out that the proposed boundary amendment does not affect school zones or school construction. It adds that the District's facilities were designed to comply with the requirements of the applicable Development of Regional Impact and were in no way based on the original District boundaries. Petitioner further pointed out that the constructed amenity facilities located

within the District exceed the facilities originally planned, and that the District's amenity facilities are public. Therefore, because any member of the public can use the facilities if they pay the user fee, denial of the boundary amendment would not eliminate the possibility of capacity use. Finally, the District's Vice Chairman testified at the local public hearing that the boundary amendment would not negatively affect the residents' ability to use amenity facilities.

65. Mr. Snyder also stated that consent of 100 percent of the landowners within the existing District is required for any future boundary amendment. In its Response, Petitioner disputes this assertion and states that 100 percent consent from existing landowners is not required by Chapter 190, Florida Statutes.

66. Finally, Mr. Snyder stated in his letter that the character of some of the lands sought to be added cannot be described as infill. Petitioner has responded by stating that whether lands sought to be added are infill is not a factor that bears on a petition to amend a district's boundaries as set forth in Sections 190.046(1) and 190.005(1)(e), Florida Statutes. Petitioner added that it is important to note that the lands sought to be added are subject to the same community development approvals as the lands in the existing District.

APPLICABLE LAW

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

68. Section 190.46(1)(g), Florida Statutes, provides that "[p]etitions to amend the boundaries of the district which exceed the amount of land specified in paragraph (f) ["more than 250 acres"] shall be considered petitions to establish a new district and shall follow all of the procedures specified in s. 190.005."

69. The evidence was that Petitioner has satisfied the requirement in Section 190.005(1)(a)2., Florida Statutes, that a petitioner be required to provide "[t]he written consent to the establishment of the district by all landowners whose real property is to be included in the district" This conclusion is based upon the precedent established in DOAH Case No. 98-4159, the Commission's certification letter in FLWAC Case No. CDD-06-007, and the Commission's December 17, 2007, transmittal letter in this case, which stated in relevant part that under the "unique factual circumstances" present here, a strict compliance with Section 190.005(1)(a)2., Florida Statutes, would be "unreasonable." Given these circumstances, consent from the Board, as evidenced by its resolution,

constitutes the necessary consent of existing landowners under the foregoing statute.

70. The evidence was that the proceeding was properly noticed pursuant to Section 190.005(1)(d), Florida Statutes, by publication of an advertisement in a newspaper of general paid circulation in the County and of general interest and readership once each week for the four consecutive weeks immediately prior to the hearing.

71. The evidence was that Petitioner has met the requirements of Section 190.005(1)(b), Florida Statutes, regarding the submission of the Petition and satisfaction of filing fee requirements.

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

73. The evidence was that all statements contained within the Petition as corrected and supplemented are true and correct. § 190.005(1)(e)1., Fla. Stat.

74. The evidence was that the amendment of the District is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective local comprehensive plan. § 190.005(1)(e)2., Fla. Stat.

75. The evidence was that 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. § 190.005(1)(e)3., Fla. Stat.

76. The evidence was that the District, as amended, is the best alternative available for delivering community development services and facilities to the area that will be served by the District. § 190.005(1)(e)4., Fla. Stat.

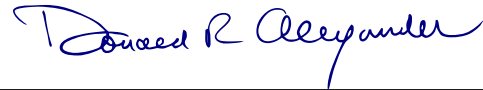
77. The evidence was that the amended District's services and facilities will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. § 190.005(1)(e)5., Fla. Stat.

78. The evidence was that the area to be served by the District, as amended, is amenable to separate special district government. § 190.005(1)(e)6., Fla. Stat.

CONCLUSION

Section 190.005(1)(e), Florida Statutes, states that the Commission "shall consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments," and the factors listed in that subparagraph. Based on the record evidence, as corrected and supplemented, the Petition appears to meet all statutory requirements, and there appears to be no reason not to grant the Petition to amend the boundaries of the District.

DONE AND ENTERED this 29th day of April, 2008, in
Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of April, 2008.

ENDNOTES

- 1/ All further references to the Florida Statutes are to the 2007 version.
- 2/ This expansion increased the District's size to approximately 2,801.21 acres. Exhibit B to Hearing Exhibit E.
- 3/ After this expansion, the District consisted of approximately 2,847.57 acres. Exhibit B to Hearing Exhibit E.

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