West Volusia Hospital Authority
BOARD OF COMMISSIONERS ADVENTIST HOSPITAL WORKSHOP
May 10, 2018 5:00 p.m.
DeLand City Hall
120 S. Florida Ave., DeLand, FL

AGENDA

1. The term for any renewal contract will likely be agreed between 5 and 10 years.
2. Requirement that the Hospital's Chief of Staff has to sit on the FHD's Board of Directors in view of past experience with conflicts of interest in certain discussions.
3. Overlapping provision within the separate sale agreement that FHD would have to maintain at least 156 beds and also "maintain services" that existed in 2000, particularly given FHD's past shut down of Pediatrics and plans to migrate OB-GYN deliveries after 2020 to FHFM's new tower construction. Hospitals would like to clarify this provision to take into account new abilities to achieve better quality of services by locating them on whichever "campus" is deemed most appropriate by hospital professionals after input from community and WVHA. All were very interested in expanding reimbursed services to include community health programs, including primary care outreach for preventative care.
4. Reimbursement rates established at 105% Medicare for inpatient and 125% for outpatient care services at both FHD and FHFM. Hospitals anticipate being able to agree on lower rates, but it is too far out to make a definitive commitment.
5. Relationship between maintenance of independent medical staff and clinically integrated network of employed and independent physicians and impact on recruiting and retention of quality physicians.
6. Degree of coordination of ED and hospital services that WVHA may potentially contract to reimburse Halifax for its new West Volusia facilities.
7. It is not expected that any right of first refusal to buy back the hospitals would be any part of the renewal contract.

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Judge: Law doesn't allow Halifax to build hospital outside district

By Mike Finch II
Posted at 3:32 PM
Updated at 3:34 PM

A Volusia County judge delivered another blow Wednesday to Halifax Health's plans to build a hospital in Deltona, when he ruled that state law does not give the public hospital the power to build facilities outside of its taxing district.

In a written order Volusia County Circuit Court Judge Michael Orfinger agreed with former Ponce Inlet Mayor Nancy Epps' lawsuit that Halifax Health lacks the authority to build or operate the Deltona hospital. Halifax already operates an emergency room in that city.

[Read Judge Orfinger's ruling here]

The ruling does not spell the end for Epps' lawsuit first filed in June 2016 but it answers a question that has been the linchpin of the legal battle.

The Halifax Hospital District is one of three special taxing district in Volusia County created to serve the public's health care needs. Halifax Health Medical Center first opened its doors in 1928 and the taxing district was created to serve indigent patients within its boundaries, between Ormond Beach and Port Orange.

This is a breaking news story. Check back for updates.

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO.: 2016 30830 CICI
DIVISION: 32

NANCY EPPS,

Plaintiff,

vs.

HALIFAX HOSPITAL MEDICAL CENTER,
a special tax district,

Defendant.

_____/

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on Plaintiff, NANCY EPPS's, Motion for Partial Summary Judgment [Doc. 112], and on Defendant, HALIFAX HOSPITAL MEDICAL CENTER's, Amended Motion for Final Summary Judgment [Doc. 105]. The Court has reviewed the motions and their incorporated memoranda of law, together with the parties' written responses and replies to the motions [Docs. 126-127, 135-136]. In addition, the Court conducted a lengthy hearing on the motions on March 27, 2018. For the reasons that follow, the Court finds that Plaintiff's Motion for Partial Summary Judgment should be granted, and that Defendant's Amended Motion for Final Summary Judgment should be denied.

NATURE OF THE ACTION AND THE DISPUTE

This case concerns Defendant HALIFAX HOSPITAL MEDICAL CENTER's ("the District") contemplated construction of a hospital facility in Deltona, Florida ("the Deltona Hospital"). Plaintiff NANCY EPPS ("Epps") challenges the District's legal authority to build

and operate the Deltona Hospital, and she seeks both declaratory and injunctive relief from this Court. She claims standing to sue under *Dep't of Admin. v. Horne*, 269 So. 2d 659 (Fla. 1972) and its progeny, which grants taxpayers standing to challenge the constitutionality of governmental action without showing of special injury when the action violates constitutional limitations on the governmental entity's taxing and spending powers. Reduced to essentials, Epps contends that as a special district, Halifax Hospital Medical Center lacks the authority to construct or operate the Deltona Hospital because it lies outside the geographic boundaries of the District. As such, Epps reasons that construction and operation of the Deltona Hospital cannot be substantially related to the District's purposes.

The District takes issue with Epps's assertion that it cannot operate outside its geographic boundaries. The District contends that expanding its services outside its geographic boundaries is necessary to continue providing quality health care to the residents of the District. It asserts that by responding to the health care needs of surrounding communities, such as Deltona, it can generate alternative revenue sources that make its health care delivery systems financially sustainable, allow it to fulfill its obligation to serve the District's indigent population, and allow it to lower the tax burden on the District's residents.

STATEMENT OF UNDISPUTED FACTS

Volusia County contains three special hospital districts – Halifax Hospital Medical Center, the West Volusia Hospital Authority, and the Southeast Volusia Hospital District. The Florida Legislature has adopted an enabling act for each district, establishing its geographic boundaries and delineating its powers.[1] Epps is a resident of Ponce Inlet, Florida, which is

[1] *See* 2003-374, Laws of Fla. (Halifax Hospital Medical Center); 2004-421, Laws of Fla. (West Volusia Hospital Authority); 2003-310, Laws of Fla. (Southeast Volusia Hospital District).

located within the geographic boundaries of the Defendant District. The Deltona Hospital, which will consist of a 96-bed acute care hospital, a free-standing emergency department, an imaging center, and a medical office building, is located in Deltona, Florida.[2] The Deltona Hospital lies outside the boundaries of the District, and instead lies in the geographical boundaries of the West Volusia Hospital Authority.

The District, originally known as the "Halifax Hospital District," was first created in 1925. *See* Ch. 11272, Laws of Fla. (1925). Over the years, the Florida Legislature amended the 1925 enabling act several times, culminating in its latest iteration, found at Ch. 2003-374, Laws of Fla. ("the Enabling Act"). The current Enabling Act was enacted pursuant to Fla. Stat. § 189.429 (2001), which required every special district to submit a draft codified charter incorporating all special acts relating to the district into a single act for reenactment by the Legislature by December 1, 2004. The reenactment was not to be construed as a grant of any additional authority to a district. *See* Fla. Stat. § 189.429(2) (2001); Fla. Stat. § 189.019(2) (2016).

Of particular significance to the instant case are Sections 3(1) and 3(5) of the Enabling Act. Section 3(1) establishes the jurisdictional boundaries of the District. Those boundaries encompass all of Volusia County except for two excluded portions, which correspond to the legal descriptions of the West Volusia Hospital Authority and the Southeast Volusia Hospital District. *See* 2003-374, §3(1), Laws of Fla; 2004-421, Laws of Fla.; 2003-310, Laws of Fla. Deltona lies within the geographic boundaries of the West Volusia Hospital Authority.

[2] The emergency department has already been completed and is in operation.

Section 3(5) deals with the construction and operation of hospitals, and not surprisingly, it is this provision on which the parties expend most of their energies. That section states as follows:

> The district may establish, construct, operate, and maintain such hospitals, medical facilities, and other health care facilities and services as are necessary. The hospitals, medical facilities, and other health care facilities and services shall be established, constructed, operated, and maintained by the district for the preservation of the public health, for the public good, and for the use of the public of the district. Maintenance of such hospitals, medical facilities, and other health care facilities and services in the district is hereby found and declared to be a public purpose and necessary for the general welfare of the residents of the district.

On or about January 4, 2016, the District and the City of Deltona ("Deltona") entered into an Interlocal Agreement pursuant to which Deltona agreed that the District could "establish and operate health care facilities in appropriate and agreed upon areas within the City, as identified by Halifax, in consultation with the City." *See* Defendant's Motion, Ex. "C". The parties agreed upon the locations for the facilities, one of which included the location of the free-standing emergency room and imaging center. *Id.* Although the acute-care hospital is not specifically mentioned in the Interlocal Agreement, it is in fact to be located adjacent to the now-completed emergency department, near the junction of Interstate 4 and State Road 472.

The real property on which the Deltona Hospital will be located was purchased in November 2015 by H.H. Holdings, Inc. ("H.H. Holdings"). *See* Amended Complaint, ¶¶ 28-30; Answer, ¶¶ 28-30. H.H. Holdings is a Florida not-for-profit corporation formed by the District for the purpose of assisting the District in carrying out its essential purposes.[3] The Articles of Incorporation of H.H. Holdings specifically allow it to operate "only in a manner consistent with

[3] Section 3(7)(3) of the Enabling Act authorizes the District to form for-profit corporations that may engage only in health care related services, as well as not-for-profit corporations that have no such restriction.

the essential governmental purposes of the District." *See* Plaintiff's Motion, Ex. "C". The District is the sole member of H.H. Holdings, and each of the corporation's directors are required to be commissioners of the District. *Id.*

In order to proceed with construction of the Deltona Hospital, the District had to submit an Application for a General Hospital Certificate of Need ("CON") to the Florida Agency for Health Care Administration ("AHCA"). *See* Defendant's Motion, Ex. "E". In its CON application, the District identified the population it intended the Deltona Hospital to serve by identifying the ZIP codes where that population lived. Of the eight ZIP codes identified, none are within the geographic boundaries of the District. Apparently, AHCA does not concern itself in the CON process with whether the applicant has the legal authority to establish a hospital in a particular geographic area. *See* Defendant's Motion at p. 14 n.4. However, in its CON application, the District stated that it had "the power to establish, construct, operate, and maintain such hospitals, medical facilities, and healthcare facilities and services for the preservation of the public health, for he public good, and for the use of the public. . . ." *Id.* For whatever reason, the District omitted the qualifying words "of the District" from the clause "for the use of the public". The parties do not dispute that AHCA ultimately issued a CON to the District for the Deltona Hospital.

On June 6, 2016, the District adopted a resolution ("the Resolution") in which the District's Board of Commissioners stated their finding that "it is necessary that the Management of Halifax Hospital Medical Center expand its healthcare services both inside and outside the geographic boundaries of its District." *See* Defendant's Motion, Ex. "H". The Commissioners expressed their reasoning as follows:

> Expanding the delivery of health care services outside the geographic boundaries of the special taxing district will safeguard District resources and provide non-

> District patients with quality health care services in a manner that does not impact District residents who wish to seek quality health care services within the District, while also providing new sources of revenue to the District from those non-District patients who have the ability to pay for services. This expansion, coupled with an expansion of the delivery of health care services within the District, will provide District residents with increased access to high quality medical care while, at the same time, reducing the overall tax burden on District residents.

Id.

LEGAL ANALYSIS

At the outset, the Court stresses that the issue before it is not whether it is a good idea for there to be an acute care hospital, emergency department, medical office building, and imaging center in Deltona. For purposes of the instant cross-motions for summary judgment, the Court can assume that such facilities are beneficial to the residents of Deltona and those residing in the other ZIP codes the District anticipates the Deltona Hospital will serve. At this stage, the Court's sole inquiry is whether the District has the authority, under Florida law, to be the entity that establishes, constructs, operates, or maintains those facilities.

The analysis begins by identifying the nature of the District itself. Halifax Hospital Medical Center is a special district, a unit of government defined by statute. Fla. Stat. § 189.012(6) (2016) defines a special district, in pertinent part, as follows:

> "Special district" means a unit of local government ***created for a special purpose*** as opposed to a general purpose, ***which has jurisdiction to operate within a limited geographic boundary*** and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. . . . (emphasis added).[4]

[4] The Legislature amended the definition of a "special district" to its current form in 2014. *See* Ch. 2014-22, Laws of Fla. Prior to that amendment, a "special district" was defined as "a local unit of special purpose, as opposed to general-purpose, government ***within a limited boundary***, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Fla. Stat. § 189.403(1) (2013) (emphasis added). While under the pre-2014 definition a special district is still a "government within a limited boundary", the post-2014 statute even more

Chapter 189 recognizes two types of special districts – dependent special districts and independent special districts. Because Halifax Hospital Medical Center does not meet the definition of a "dependent special district," *see* Fla. Stat. § 189.012(2), it is an "independent special district." *See* Fla. Stat. § 189.012(3). Subject to a few exceptions not relevant here, only the Florida Legislature can create an independent special district. *See* Fla. Stat. § 189.031(4). Thus, the District in the instant case is a creature of statute, as established by its most recent Enabling Act. *See* Ch. 2003-374, Laws of Fla.

The enabling act of an independent special district must contain the information required by Fla. Stat. § 189.031(3). Among other things, an enabling act must contain (1) a statement of the purpose of the district; (2) the geographic boundary limitations of the district; (3) the methods for financing the district; (4) the procedures and requirements for issuing bonds; (5) the powers, functions and duties of the district regarding such things as ad valorem taxation, bond issuance, revenue-raising, budgeting, and contractual agreements; and (6) the method for amending the enabling act of the district. *See generally id.*

Courts have recognized that special districts "are essentially financing vehicles which allow residents of a limited geographic area to provide for improvements that substantially benefit the residents in the district." *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631, 633 (Fla. 1980) (citing *State v. Sarasota County*, 372 So. 2d 1115 (Fla. 1979)). This is consistent with the Supreme Court's observation in dictum that by authorizing the creation of hospital taxing districts, the Legislature intended them "to operate as separate government entities with the single governmental purpose and function of creating and

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explicitly defines a special district as one having "jurisdiction to operate within a limited geographic boundary." Fla. Stat. § 189.102(6) (2016).

maintaining hospitals and other medical facilities ***within the boundaries of specified districts***." *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373, 377 (Fla. 1999) (emphasis added).

Because special districts are created by the Legislature, their powers, like those of administrative agencies, are limited to those set forth in their respective enabling acts. *See Board of Com'rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 532 (Fla. 4th DCA 2007). Stated differently, they have only those powers granted expressly or by necessary implication by the statute of their creation. *See Gardinier, Inc. v. Florida Dept. of Pollution Control*, 300 So. 2d 75, 76 (Fla. 1st DCA 1974). When a reasonable doubt exists as to the lawful existence of a particular power, that doubt must be resolved against the exercise of that power. *See City of Cape Coral v. GAC Utilities, Inc.*, 281 So. 2d 493, 496 (Fla. 1973); *accord Radio Tel. Communications, Inc. v. Southeastern Tel. Co.*, 170 So. 2d 577, 582 (Fla. 1964). The Court finds it significant that the Florida Attorney General has relied upon exactly that reasoning and rule of law to opine that the District's then-existing Enabling Act did not grant it the power to lease its assets and operations to a not-for-profit corporation. *See* Op. Att'y Gen. Fla 80-18 (1980) (characterizing the "implied powers" granted to an administrative agency as those which are "indispensable" to those powers expressly granted). [5]

Florida law has long held that legislative intent is the polestar that guides a court's interpretation of a statute. *See, e.g., Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). Courts interpret statutes primarily by looking at their language. *See, e.g., Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). "'When the language of the statute is clear and unambiguous

[5] The Florida Attorney General has applied that rule of law in opining as to the powers of other special hospital districts as well. *See, e.g.*, Op. Att'y Gen. Fla. 16-16 (2016) (South Broward Hospital District); Op. Att'y Gen. Fla. 94-68 (1994) (West Volusia Hospital Authority); Op. Att'y Gen. Fla. 89-52 (1989) (Hillsborough County Hospital Authority).

and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.'" *Id.* (quoting *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 1144, 137 So. 157, 159 (1931). Further, courts should not read words or sentences of a statute in isolation; rather, the statute must be read as a whole to give effect to all the language the Legislature chose. *See Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198-99 (Fla. 2007); *Lazard v. State*, 229 So. 3d 439, 441 (Fla. 5th DCA 2017).

The foregoing provides the legal backdrop against which the Court must measure the District's authority to construct the Deltona Hospital. As noted above, Section 3(5) of the Enabling Act directly addresses the construction of hospitals and medical facilities, and it is the only section of the Enabling Act to do so. Section 3(5) consists of three interrelated sentences which grant the District the following power:

> The district may establish, construct, operate, and maintain such hospitals, medical facilities, and other health care facilities and services ***as are necessary***. The hospitals, medical facilities, and other health care facilities and services shall be established, constructed, operated, and maintained by the district for the preservation of the public health, for the public good, and ***for the use of the public of the district. Maintenance of such hospitals***, medical facilities, and other health care facilities and services ***in the district is hereby found and declared to be a public purpose and necessary for the general welfare of the residents of the district.***

Enabling Act, § 3(5) (emphasis added).

The parties offer vastly differing interpretations of what this language means. The District focuses primarily on the first sentence of Section 3(5), which authorizes the establishment, construction, operation, and maintenance of such hospitals "as are necessary." It points out that this sentence contains no geographic limitation as to where such a hospital may be located, and notes that by contrast, the Enabling Act expressly limits the District's power of

eminent domain and ad valorem taxation to property within its geographic boundaries. *See* Enabling Act, §§ 3(6), (9).[6] It reasons that because the first sentence of Section 3(5) allows it to establish, construct, and operate such hospitals "as are necessary" without an express geographic limitation, it is free to locate those facilities wherever it wishes. The Court disagrees.

The basic tenets of statutory interpretation outlined above prohibit the Court from considering the first sentence of Section 3(5) in isolation. Instead, the Court must read it in conjunction with the remainder of the section, and indeed in conjunction with the remainder of the Enabling Act. To say merely that the District may establish or construct such hospitals "as are necessary" leaves unanswered the question of what "necessity" the newly-established hospital is intended to meet.

The remainder of Section 3(5) answers that question. The next sentence of that section states that the District "shall" establish, construct, operate, and maintain the hospitals and other facilities "for the preservation of the public health, for the public good, ***and*** for the use of the public ***of the district.***" Enabling Act, § 3(5) (emphasis added). The word "shall" is typically mandatory in nature. *See, e.g., Concerned Citizens of Putnam County for Responsive Government, Inc. v. St. Johns River Water Mgmt. Dist.*, 622 So. 2d 520, 523 (Fla. 5th DCA 1993). Further, the use of the conjunctive "and", rather than the disjunctive "or", means that a District hospital must satisfy all three conditions set forth in the second sentence of Section 3(5). It logically follows that the phrase "of the district" in the third clause of the second sentence also modifies the first two clauses. Stated differently, a hospital built or operated for the use of the public of the district by necessity also preserves the public health of the district and serves the

[6] Section 3(6) of the Enabling Act provides that the District "may condemn and acquire any real or personal property ***within the district*** which the board may deem necessary for the use of the district" (emphasis added). Section 3(9)(1) allows the District to levy and collect "a sufficient tax upon all the taxable property ***in the district***.... (emphasis added)".

public good of the district.

The third sentence of Section 3(5) makes even clearer that the hospitals contemplated by the Enabling Act must be located within the District: "Maintenance of ***such hospitals, medical facilities, and other health care facilities and services in the district*** is hereby found and declared to be a public purpose and necessary for the general welfare of the residents ***of the district.***" *See* Enabling Act, § 3(5) (emphasis added). The emphasized language explicitly and unambiguously refers to hospitals and facilities within the geographic boundaries of the District. In addition, the word "'[s]uch' is used in statutes to make clear that the second reference is to exactly the same concept mentioned previously." *People v. Clark*, 10 Cal.App.4th 1259, 1264 (Cal. Ct. App. 1992). The Court thus agrees with Epps that the clause "such hospitals, medical facilities, and other health care facilities" in the third sentence of Section 3(5) refers to those same hospitals and facilities mentioned in the preceding two sentences. *See* Plaintiff's Motion at p. 14 n.8 (quoting Black's Law Dictionary (10th ed. 2014) (defining "such" as "[t]hat or those; having just been mentioned").[7]

The third sentence of Section 3(5) clearly and unambiguously refers only to hospitals and facilities located within the District. It declares their maintenance to be a public purpose and necessary for the general welfare of the District's residents. Because the third sentence specifically references the hospitals and facilities identified in the previous two sentences, the Court concludes that those latter hospitals and facilities must also be located within the geographic boundaries of the District.

Not only is the District's interpretation of Section 3(5) contradicted by its plain language,

[7] *See also Frix v. State ex rel. Lautz*, 159 Fla. 724, 727, 33 So. 2d 854, 856 (Fla. 1947) (holding that the phrase "such regular election" in a city charter referred to the last antecedent clause "next regular election").

it is at odds with the very nature of a special district. The District contends that it has a "purpose-oriented" Enabling Act, authorizing it to provide "virtually every conceivable type of health care so long as it is necessary 'for the preservation of the public health, for the public good, and for the use of the public of the district.'" *See* Defendant's Motion at p. 22. Without actually using the term, the District seems to characterize its Enabling Act as one granting it "home rule" powers similar to a county operating under a charter form of government. Counties operating under a charter have all powers of self-government not inconsistent with general law. *See* Art. VIII, § 1(g), Fla. Const. But unlike counties, which are constitutionally established, special districts exist only by virtue of statute. As such, they must comply with Chapter 189, and by the plain, unambiguous language of Fla. Stat. § 189.012(6) (2016), they are created for a special purpose and only have jurisdiction to operate within a limited geographic boundary.

The Court finds that the District's reliance on *Scott v. Board of Public Instruction of Alachua County*, 160 Fla. 490, 35 So. 2d 579 (1948) is misplaced. In *Scott*, the Board of Public Instruction of Alachua County ("the School Board") sought a declaratory judgment regarding whether it could purchase a parcel of real property in adjacent Clay County for educational purposes. The School Board wanted to buy the property in order to provide a camp and recreational facilities to aid the educational program of Alachua County. *Id.* at 494, 35 So. 2d at 581. Over the objection of two resident taxpayers of Alachua County, the trial court answered the question in the affirmative. *Id.* at 492, 35 So. 2d at 579.

On appeal, the Florida Supreme Court identified the issue as "whether or not the [School Board] is authorized to purchase and take title to lands outside the geographical limits of the county for the purpose of administering its public school program." *Id.* at 492, 35 So. 2d at 579-80. The appellants noted that the state school code required the School Board to "hold under

proper title all property which may at any time be acquired by the [School Board] for educational purposes ***in the County***." *Id.* at 493, 35 So. 2d at 580 (emphasis added). The *Scott* court rejected the contention that this meant the School Board could not purchase property outside Alachua County:

> It is certain that Alachua County has no authority to interfere with the administration of the schools in Clay County, but if it needs lands in that county to effectuate its school program, we think it may acquire them for that purpose. . . It is not at all clear that the legislature intended the words 'in the county' to limit land purchase to lands in the county. It would be just as reasonable to conclude that the intent was to authorize the purchase of lands anywhere they might aid the county's school program.

Id. at 493-494, 35 So. 2d at 580-81.

The critical distinction between *Scott* and the instant case is apparent. In *Scott*, the School Board intended to purchase land outside the boundaries of Alachua County to construct a facility for the use of its own students. Nothing in the opinion suggests that the camp and recreational facilities were being built for the students of Clay County. By contrast, the District intends for the Deltona Hospital to serve the residents of Deltona and its surrounding environs. None of the service areas the District identified by ZIP code are located within the geographic boundaries of the District. Counsel for the District conceded at the March 27 hearing that the Deltona Hospital will not offer any services not otherwise available at the Halifax Hospital facilities located within the District's boundaries. Thus, while perhaps a resident of the District might choose for some reason to utilize the Deltona Hospital for services the District already provides within its boundaries, that fact alone does not convert the facility into a hospital "established, constructed, operated, and maintained by the district . . . . for the use of the public of the district." Enabling Act, § 3(5).[8]

[8] Counsel for the District asserted in oral argument that if only one resident of the District used

The District identifies several other provisions of the Enabling Act which it contends reflect its authority to operate outside its geographic boundaries. First, it points to Section 3(12), which was amended in 1991 by Ch. 91-352, Laws of Fla. Section 3(12) provides:

> The district is authorized to pay from the funds of the district all expenses necessarily incurred in the formation of the district and all those expenses of the type normally incurred in the establishment, operation, repair, maintenance, expansion, and diversification of a modern integrated system for the delivery of health care services consisting of hospitals, clinics, health maintenance organizations, ambulatory care facilities, managed care facilities, other alternative delivery systems, self-insurance, risk retention programs, captive insurance companies, and support organizations.

The District also points to Section 3(7) of the Enabling Act, which permits it to form both not-for-profit and for-profit corporations. While the for-profit corporations may only engage in health care-related activities, there is no such restriction on the not-for-profit entities. *See* Enabling Act, § 3(7).

The District emphasizes these sections of the Enabling Act for two reasons. First, the District argues that a "modern integrated system for the delivery of health care services" that includes such things as health maintenance organizations can only be one that operates unfettered by geographic boundaries. It contends that such a system is inconsistent with the "bricks and mortar" concept of medical care reflected in the original 1925 enabling act. Further, the District contends that the ability to establish not-for-profit corporations comports with the Legislature's general recognition in the 1990s that public hospitals needed to remain competitive with private hospitals in order to remain economically viable. *See* Defendant's Motion at p. 6 (citing *Indian River County Hosp. Dist. v. Indian River Mem. Hosp., Inc.*, 766 So. 2d 233, 238 (Fla. 4th DCA 2000)).

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the Deltona Hospital, and it was available for District residents to use, then it would satisfy Section 3(5). The Court rejects this argument without further comment.

Sections 3(7) and 3(12) of the Enabling Act may set forth a more expansive menu of powers than the District had prior to 1991. But *whether* an amendment to the Enabling Act grants the District new powers is a separate and distinct question from *where* the District can exercise those powers. Absent some express language to the contrary, the District "has jurisdiction to operate within a limited geographic boundary" as identified in Section 3(1) of the Enabling Act. *See* Fla. Stat. § 189.012(6) (2016). Nothing in the Enabling Act expresses such a contrary legislative intent.

The District next argues that Section 3(14) of its Enabling Act, dealing with its obligation to provide indigent care, evidences its authority to operate outside the District boundaries. Section 3(14) provides as follows:

> The hospitals, medical facilities, clinics, and outpatient facilities established under this act or by a not-for-profit corporation formed by the district shall provide either independently or in cooperation with each other and/or in cooperation with the Volusia County Public Health Care Unit an appropriate location or locations for the delivery of quality hospital care and related services and treatment to patients who are determined according to criteria established by the board to be medically indigent. Persons so determined to be medically indigent shall receive such services at the locations established by the district or by a not-for-profit corporation formed by the district either for no charge or alternatively for a reduced charge according to the same sliding scale used by the Volusia County Health Department. Each hospital, medical facility, clinic, and outpatient facility established under this act shall collect such charges as the district may from time to time establish for hospital care, outpatient care, and related services and treatment. Except as is otherwise required by law or by agreement with the Volusia County Health Department, the district's ad valorem tax revenues shall be used to fund medical services to indigent persons only if such services are provided at facilities owned by the district or at facilities in which the district or a corporation established by the district holds an ownership interest. The district may extend the use of hospitals, clinics, and medical facilities of the district to nonresidents upon such terms and conditions as the district may from time to time by its rules provide. ***The medically indigent residents of the district wherein such hospital and clinic are located shall have priority to admission and outpatient services.*** (Emphasis added).

Focusing on the final emphasized sentence of Section 3(14), the District asserts that "if all hospitals and clinics were required to be within Halifax's geographic taxing boundaries, the emphasized language connecting the residency of the indigent to the location of the hospital or clinic would not be necessary. The language would simply read that medically indigent residents of the district shall have priority of admission. The phrase 'wherein such hospital and clinic are located' would have no meaning." Defendant's Response in Opposition to Plaintiff's Motion, pp. 11-12.

The Court disagrees with the District's interpretation of Section 3(14). The only grant of authority in the Enabling Act to establish, construct, operate, or maintain a hospital is found in Section 3(5). The Court has already determined that the plain language of Section 3(5) only authorizes such hospitals or other facilities to be built within the geographic boundaries of the District. Nothing in Section 3(14) expands that authority, and had the Legislature intended such an expansion, it would not have done so in such an oblique fashion. Reading the emphasized language of Section 3(14) together with the preceding sentence, which allows the District to extend use of its facilities to nonresidents, makes clear that the clause "residents of the district wherein such hospital and clinic are located" refers to residents of the Defendant District.

The Court finds further support for this conclusion by reviewing the District's original 1925 enabling act. Section 5 of the 1925 act authorized the District's commissioners "to establish, construct, operate and maintain such hospital or hospitals as in their opinion shall be necessary for the use of the people of said district." Ch. 11272, § 5, Laws of Fla. (1925).[9]

[9] As discussed in detail above, the current Enabling Act does not contain the language "for the use of the people of said district" in the first sentence of Section 3(5). Other than that, however, Section 5 of the 1925 act is substantially identical to the current Section 3(5). Importantly, much like the current version, the 1925 version of Section 5 states that the "***maintenance of such hospital or hospitals within said district*** are hereby found and declared to be a public purpose and necessary for the preservation of the public health and for the public use and for the welfare

Section 19 of the 1925 act stated that each of the hospitals and clinics established thereunder were for the use and benefit of the indigent sick who had resided in Volusia County for at least one year. It authorized the provision of medical services "to the homes of the indigent residents of such County. *See id.*, § 19. Section 19 then concluded as follows:

> Said Board of Commissioners may extend the privileges and use of such hospitals and clinics to non-residents of such district upon such terms and conditions as the said Board may from time to time by its rules and regulations provide, provided, however, ***that the indigent residents of the district wherein such hospital and clinic are located, shall have the first claim to admission.*** (Emphasis added).

The emphasized language from Section 19 of the 1925 enabling act is identical in meaning, and virtually identical in language, to the last sentence of the current Section 3(14). The 1925 enabling act authorized the District to make its facilities available to residents of the entire county, indigent and non-indigent alike. It did so, however, with the proviso that "indigent residents of the district wherein such hospital and clinic are located" had priority of admission. Ch. 11272, §19, Laws of Fla. (1925). Because the act did not authorize the District to build or operate a hospital or clinic outside its boundaries, however, the "indigent residents of the district wherein such hospital and clinic are located" could refer to nothing other than the indigent residents of the Defendant District. Likewise, because nothing in Section 3(5) (or any other provision of the current Enabling Act) expressly authorizes Halifax to construct or operate a hospital outside its geographic boundaries, the reference in Section 3(14) to "medically indigent residents of the district wherein such hospital and clinic are located" can also refer only to the indigent residents of the Defendant District.[10]

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of said district and inhabitants thereof." Ch. 11272, § 5, Laws of Fla. (1925) (emphasis added).

[10] The penultimate sentence of Section 3(14) authorizes the District to permit nonresidents to use its hospitals and clinics. The clause in the next sentence identifying "medically indigent residents of the district wherein *such* hospital and clinic are located" describes those hospitals and clinics identified in the preceding sentence. *See Frix*, 159 Fla. at 727, 33 So. 2d at 856; *Clark*, 10 Cal.App.4th at 1264 (explaining the meaning of "such" when used in a statute).

As both parties have pointed out, the enabling acts of some hospital taxing districts contain language specifically allowing them to operate for certain purposes outside what would otherwise be a fixed geographic boundary. By including such express language, the Legislature in effect expands the geographic boundary of those districts for those particular purposes. For example, the 2003 enabling act for the Sarasota County Public Hospital District did not originally authorize it to operate outside of Sarasota County; it could provide hospital and health care services within the facilities it owned or operated, or outside of those facilities if they were within the boundaries of the district. *See* Ch. 2003-359, § 12, Laws of Fla. However, in 2005, the Legislature amended the Sarasota district's enabling act, authorizing and empowering it to establish, construct, equip, operate and maintain, "***both within and beyond the boundaries of the District,***" hospitals and "all manner of other health care facilities and all manner of other health care services. . . ." *See* Ch. 2005-304, § 20, Laws of Fla. (emphasis added). Similarly, the enunciated purpose of the Cape Canaveral Hospital District is to "support the health and welfare of all those in the District's boundaries ***and the surrounding communities***", and the district is specifically authorized to acquire real or personal property "within or without the Hospital District". Ch. 2003-337, Laws of Fla. (emphasis added). The Bay Medical Center District is likewise authorized to establish and operate hospitals and other facilities not only in Bay County, but in three other health planning districts as well. *See* Ch. 2005-343, Laws of Fla.

As these other enabling acts readily demonstrate, when the Legislature intends for a hospital district to have extra-territorial powers, it knows exactly how to say so. The Legislature can grant such powers without violating the statutory definition of a special district in Fla. Stat. §

Because Section 3(5) of the Enabling Act only authorizes the construction and operation of hospitals and facilities within the District's boundaries, then Section 3(14) can only be referring to those same hospitals and facilities.

189.012(6) (2016), because when a general act and a special act of the Legislature conflict, the special act prevails. *See Rowe v. Pinellas Sports Authority*, 461 So. 2d 72, 77 (Fla. 1984); *State v. Vizzini*, 227 So. 2d 205, 207 (Fla. 1969).[11] That the Legislature could have specifically vested the District with the power to establish, construct, operate, and maintain hospitals outside its geographic boundaries, yet chose not to do so, is therefore quite telling.

The District views this situation in reverse. It states that "[w]here the Legislature intended to ***limit*** a hospital board's authority to the confines of its geographic boundaries, the Legislature has done so with express language." Defendant's Motion at p. 19 (emphasis added). It reasons that in the absence of an express prohibition, it is free to operate where it pleases. But that is not the law. A special district does not have home rule powers. By definition, a special district exists for a special purpose and "has jurisdiction to operate within a limited geographic boundary". Fla. Stat. § 189.012(6) (2016). An enabling act need not expressly prohibit operation outside a special district's geographic boundary in order to comply with general law. Conversely, however, if the Legislature intends for a special district to operate beyond its boundaries, it must include that expanded power in a special law such as an enabling act. The special law will then prevail over the general law. *See Rowe, supra; Vizzini, supra.* The District's attempt to characterize its Enabling Act as "purpose-oriented," thereby presumably distinguishing it from those which are geographically-oriented, is a false dichotomy. *See* Defendant's Motion at pp. 21-22. By their very definition, all special districts have a special purpose. Likewise, all special districts have jurisdiction to operate within a limited geographic boundary. Both must be set forth in their enabling acts. The distinction the District seeks to

[11] *See also McKendry v. State*, 641 So. 2d 45, 47 (Fla. 1994) ("[A] specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.").

draw simply does not exist.[12]

The District argues in response to Epps's Motion that the Florida Interlocal Cooperation Act of 1969 makes clear that special districts are not confined to operating within their geographic boundaries. The District did not raise this issue in its Answer and Affirmative Defenses, and it is therefore procedurally improper for the District to raise it in opposition to Epps's Motion. Presumably, it addresses Chapter 163 as a predicate for arguing that the January 4, 2016 Interlocal Agreement between Deltona and the District vested the latter with authority to establish and operate the Deltona Hospital.[13] Fla. Stat. § 163.01(4) (2016) provides:

> A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and ***which each might exercise separately***. (Emphasis added).

Even if the District had properly raised this issue, it would be to no avail. This is so because "no interlocal agreement entered into pursuant to section 163.01(4) may confer any greater or additional power, privilege, or authority than is possessed by each of the contracting

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[12] Likewise, the District's suggestion that the Supreme Court's decision in *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) has somehow placed that Court's implied imprimatur on the District's ability to act outside its boundaries is meritless. The case revolved around the propriety under the Sunshine Law of conducting closed meetings in which the District and the Southeast Volusia Hospital District were discussing an interagency agreement. The substance of the entities' activities was not at issue; rather, the question was whether the entities could constitutionally close their meetings to the public. The Court's general reference to the subject matter of the meetings is mere background information, and cannot be considered an approval thereof because there is nothing to indicate that the Supreme Court was asked to determine the propriety of the two districts' contemplated actions. "It is a long-standing rule of appellate jurisprudence that the appellate court should not undertake to resolve issues which, though of interest to the bench and bar, are not dispositive of the particular case before the court." *Pagan v. Sarasota County Pub. Hosp. Board.*, 884 So. 2d 257, 264 (Fla. 2nd DCA 2004), *rev. denied* 894 So. 2d 971 (Fla. 2005) (citing *Marion County Hosp. Dist. v. Atkins*, 435 So. 2d 272 (Fla. 1st DCA 1983)).

[13]The District's Motion to Amend its Answer and Affirmative Defenses so as to assert the January 4, 2016 Interlocal Agreement with Deltona as an additional source of its authority is currently pending before the Court [Doc. 125].

agencies or permit the exercise of powers not shared in common and not separately exercisable by each such agency." Op. Att'y Gen. Fla. 03-03 (2003) (a town may not use an interlocal agreement to conduct city commission meetings at a location outside its boundaries; it must seek enactment of a special law to authorize such action); *see also* Op. Att'y Gen. Fla. 84-86 (1984) (a city is not vested with, and does not share any power with the county or its sheriff, and therefore cannot enter into an interlocal agreement to enforce traffic laws on roads outside the municipal boundaries of the city). Therefore, assuming that Deltona has the authority to establish and operate a hospital within its city limits, entering into an interlocal agreement with the District does not vest the District with the power to act outside its own jurisdictional boundaries.

Finally, the Court must address the District's argument, articulated throughout its Motion and memoranda, that the Enabling Act must be construed liberally so as to permit construction of the Deltona Hospital. The foundation of this argument lies in Section 3(15) of the Enabling Act, which states:

> It is intended that the provisions of this act shall be liberally construed in order to accomplish the purposes of the act. Where strict construction of this act would result in the defeat of the accomplishment of any of the purposes of this act, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

Virtually identical language appears in the original 1925 version of the enabling act. *See* Ch. 11272, Laws of Fla., § 20 (1925). The District argues that Epps's interpretation of the Enabling Act "is wholly inconsistent with the Act's interpretive directions that Halifax's powers are to be liberally construed and strict constructions that defeat Halifax's essential purposes are to be rejected." Defendant's Motion at p. 28.

The plain text of Section 3(15) does not authorize the Court to liberally construe the enabling act in order to divine its purposes. The purposes of the enabling act are instead to be

found in the text of the act itself. The Court agrees with Epps that "the scope of Halifax's *purpose* is not to be liberally construed." *See* Plaintiff's Reply to Defendant's Motion, pp. 6-7. Not until the Court identifies the District's purposes from the language of the Enabling Act itself can the Enabling Act be "liberally construed" to accomplish those purposes. That is the plain and unambiguous meaning of Section 3(15).

The Enabling Act identifies two purposes for the District's existence, as its counsel acknowledged at the March 27 hearing on the instant motions. The first is found in Section 3(5), which authorizes the District to "establish, construct, operate, and maintain such hospitals, medical facilities, and other health care facilities and services as are necessary." Those facilities "shall be established, constructed, operated and maintained by the district for the preservation of the public health, for the public good, and for the use of the public of the district. *See* Ch. 2003-374, § 3(5), Laws of Fla. The second purpose is found in Section 3(14), which addresses the District's obligation to provide indigent care. Conspicuously absent from the Enabling Act, however, is any express statement of purpose or grant of authority to operate outside the geographic boundaries of the District. It is not the province of this Court, or any court, to imply such a grant of authority under the guise of a "liberal construction." Stated differently, the Court is simply without the authority to rewrite the Enabling Act to create powers that the Legislature did not grant.

The Court's ruling does not leave the District without a remedy. If the District's absence of authority is to be remedied, however, it is the Legislature that must do so. As noted above, the Legislature amended the enabling act of the Sarasota County Public Hospital District to expressly grant it the power to establish, operate and maintain hospitals and other health care facilities and services "within and beyond the boundaries of the District". *See* Ch. 2005-304, §

20, Laws of Fla.[14] The District has not offered any reason why the same process would not be viable here.[15]

RULING

In light of all the foregoing, it is now ORDERED AND ADJUDGED as follows:

1. Plaintiff, NANCY EPPS's, Motion for Partial Summary Judgment shall be, and the same is hereby GRANTED. The Court finds and declares that neither Chapter 189, Florida Statutes, nor the District's Enabling Act authorizes the District to establish, construct, operate, or maintain hospitals, medical facilities, or other health care facilities or services outside the geographic boundaries of the District. The Court further finds and declares that the District's Enabling Act only authorizes it to establish, construct, operate, or maintain hospitals, medical facilities, and other health care facilities and services if the same are located within the geographic boundaries of the District.

2. The Court makes no ruling at this time as to the nature or scope of any other relief to which Epps may be entitled in this action.

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[14] Another example of corrective legislative action occurred after the Attorney General released Op. Att'y Gen. Fla. 80-18 (1980), which stated that Halifax Hospital Medical Center's then-existing enabling act did not grant it the power to lease its assets and operations to a not-for-profit corporation. In response, the Legislature enacted Fla. Stat. § 155.40 (1983) which permitted such lease arrangements. *See Memorial Hospital West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999).

[15] For reasons unknown to the Court, although the enabling act of a special district is required to describe the manner by which it can be amended, *see* Fla. Stat. § 189.031(3) (2016), the District's Enabling Act does not do so. Absent any direction to the contrary, however, it would seem that if the Legislature can enact the Enabling Act in the first instance, so too can it amend it.

3. Defendant, HALIFAX HOSPITAL MEDICAL CENTER's, Amended Motion for Final Summary Judgment shall be, and the same is hereby DENIED.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida this 25 day of April, 2018.

4/25/2018 11:33 AM 2016 30830 CICI

e-Signed 4/25/2018 11:33 AM 2016 30830 CICI

Michael S. Orfinger, Circuit Judge

Copies furnished via eService to:

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Judge: Halifax can't build hospital

HALIFAX

Ruling cites state law saying Deltona facility can't be constructed outside taxing district

By Michael Finch II

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A Volusia County judge delivered another blow Wednesday to Halifax Health's plans to build a hospital in Deltona, when he ruled that state law does not give the public hospital the power to build facilities outside of its taxing district.

In a written order Volusia County Circuit Court Judge Michael Orfinger agreed with former Ponce Inlet Mayor Nancy Epps that Halifax Health lacks the authority to build or operate the Deltona hospital currently under construction. Halifax already operates an emergency room in that city.

The ruling does not spell the end for Epps' lawsuit first filed in June 2016 but it answers a question that has been the linchpin of the legal battle. Orfinger still has to decide what kind — if any — relief to reward Epps.

She asked the judge to issue an injunction which would effectively halt the project and to force the hospital to sell the 30-acres of land it purchased for $4.5 million in 2013.

Halifax Health spokesman John Guthrie responded to the ruling in an email, saying, "Our objective is to be in Deltona and we have options and alternatives available to us. We will continue to explore the most efficient path possible."

As of Wednesday evening, **See HALIFAX, A7**

Judge: Halifax can't build hospital

HALIFAX

From Page A1

Halifax Health CEO Jeff Feasel could not be reached for comment.

Halifax Health has been busy constructing what hospital officials are calling a medical village on the land which borders Interstate 4 and State Road 472. The hospital after Volusia County Circuit Judge Christopher France, in a separate case, decided this month that the hospital did not have the authority to issue $115 million in bonds to pay for the Deltona hospital. That ruling, experts said, would serve as a blueprint for judges who decide future cases involving the same issues.

"Another judge in the same circuit is bound by what this judge said. Another judge can't turn around and say 'no' and disagree," said Dr. boundaries of the district."

That's what allows Sarasota Memorial Health Care System to operate a urgent care center in neighboring Manatee County.

"The (Halifax Hospital) District has not offered any reason why the same process would not be viable here," Orfinger said.

Public attitudes about special taxing districts have waned in recent years. Florida Gov. Rick Scott has long

opened the county's first freestanding emergency room in May 2016 and a 95-bed hospital tower and medical office building is slated to open in December 2019.

The Halifax Hospital District is one of three special taxing district in Volusia County created to serve the public's health care needs. Halifax Health Medical Center first opened its doors in 1928 and the taxing district was created to serve indigent patients within its boundaries, between Ormond Beach and Port Orange.

Halifax Health officials made pleas in public and told health care regulators that the Deltona hospital would provide a needed financial boost as it fends off competition in a market surrounded by Florida Hospital. The hospital's lawyers argued in court that state law permitted the hospital to build facilities anywhere as long as it was for the "general welfare of the residents of the district."

Orfinger disagreed. He said that interpretation would have been too broad and that the Florida "statute must be given its plain and obvious meaning."

The decision did not surprise some legal experts

Adam Levine, a health and administrative law professor at the Stetson University College of Law Epps, in a prepared statement, said the decisions supported her position.

"As I have previously stated, I support Halifax Health's many services to the community. However, I and all taxpayers of a taxing district deserve and expect to have our tax dollars spent in our community," Epps said. "Two well-respected judges have concluded that building a hospital in another taxing district is a violation of law and I urge Halifax to respond appropriately."

It's unclear if the decision spells the end of the hospital's Deltona venture. The hospital has already spent $12.7 million to open the freestanding emergency room and the Halifax Health Board of Commissioners agreed last November to spend $105 million to kickstart construction of the hospital.

In his ruling Orfinger said Halifax Health could ultimately find a solution in the Legislature. He cited the Sarasota County Public Hospital District as an example of a special taxing district that successfully asked state lawmakers to allow them to operate health care facilities "within and beyond the

been skeptical of them and launched a commission to study their effectiveness in 2011.

But Halifax Health has long owned and operated various smaller facilities outside of the boundaries of its district, tax records show. The health system's hospice services extend as far north as Palm Coast and as far south as Orange County.

"Judge Orfinger's ruling combined with Judge France's decision only eight days ago, makes clear that special taxing districts like Halifax are constrained to operate within their defined geographic boundaries unless granted express permission from the Florida Legislature to do otherwise," said Martin Goldberg, one of Epps' attorneys.

"Should Halifax or other special districts desire to seek out other sources of revenue not tied to providing medical services to their own residents, it should take those strategies to the Legislature."

Residents suing Halifax to recoup taxes

TAXES

Filing also seeks payment from any revenue generated by Deltona medical facility

By Michael Finch II

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A class action lawsuit filed Thursday accuses Halifax Health of misappropriating public funds and unjust enrichment when the public hospital moved to build its suite of medical facilities in Deltona.

The five residents named in the suit, who live in the Halifax Hospital District, asked a judge to be repaid any property taxes that supported Halifax Health's now-illegal business venture in the West Volusia city.

The suit comes one day after the hospital lost a court battle that has lasted almost two years over a $120 million plan to build a so-called "medical village" outside of its taxing district.

Volusia County Circuit Court Judge Michael Orfinger agreed Wednesday with former Ponce Inlet Mayor Nancy Epps who sued the public hospital arguing that state law does not allow Halifax Health to build medical facilities outside of its taxing district.

See TAXES, A11

Residents suing Halifax to recoup taxes

TAXES

From Page A1

The hospital is controlled by one of three such districts that cover different regions of Volusia County.

A freestanding emergency room opened on the Deltona site last May and a 95-bed hospital, currently under construction, was expected to open in December 2019.

Halifax Health spokesman John Guthrie declined to comment on the lawsuit.

In addition to recovering tax dollars, the five plaintiffs want the hospital to pay them from any revenue generated from the Deltona facility. A judge will have to first decide if the lawsuit can be certified as a class action which could result Halifax Health officials have long said that no taxpayer funds have been or will be used to fund the project. But it remains an important issue that Orfinger may still need to decide before forcing Halifax Health to divest from the project in Deltona.

Harr, who practices law in Daytona Beach, said Orfinger's decision is enough grounds for the plaintiffs to recover damages.

"Because the hospital in Deltona was outside the taxing district," Harr said, "the people who are inside the taxing district could not be made to pay for any portion of that hospital, including the operation, the land — anything."

The group suing the hospital include:

•Ari Morse, who is listed as a vice president of Locators International, Morse and Pagano, when reached, declined to comment. Attempts to reach Racki and the Snipes were unsuccessful.

Construction continues on Halifax Health's 95-bed hospital in Deltona on Wednesday. A Vo lusia County judge ruled Wednesday that state law prohibits Halifax from building outside of its special taxing district. And Thursday, a group of residents filed a lawsuit againt

in higher damages if more residents are allowed to join.

"We're saying sell the property but if tax money was used,reimburse the people who paid those taxes," said attorney Jason Harr, who is representing the plaintiffs. "What we fear is Halifax will sell the property and just keep the revenue from the sale."

The class action lawsuit touches on a question that remains unresolved in the Nancy Epps case: Were taxpayer funds used to pay for any part of the Deltona project?

a private investigator based in Daytona Beach.

•Michael Pagano,who is part owner of Pagano's Pizzeria restaurants in South Daytona and Ormond Beach.

•Sean Racki, who owns Unified Tae Kwon Do & Academy of Martial Arts in Ormond Beach.

•Port Orange residents John W. Snipes and his son Michael Todd Snipes, a former Volusia County beach officer who lost his job two years ago after using a racial slur in communications while on the job.

Halifax seeking to recoup any tax dollars used on the project.

[NEWS-JOURNAL/JIM TILLER]