

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO MERGE THE)
MAIN STREET COMMUNITY)
DEVELOPMENT DISTRICT AND THE) Case No. 10-7940
RIVERS EDGE COMMUNITY)
DEVELOPMENT DISTRICT)
_____)

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

On October 26, 2010, a local public hearing was conducted before J. Lawrence Johnston, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), at the Airport Conference Center, 4730 Casa Cola Way, St. Augustine, Florida.

APPEARANCES

For Petitioners Rivers Edge Community Development District and Main Street Community Development District:

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STATEMENT OF THE ISSUE

The issue before the Florida Land and Water Adjudicatory Commission ("Commission") in this proceeding is whether to grant the Petition of the Rivers Edge Community Development District and the Main Street Community Development District ("Petition"), to merge the boundaries of the Rivers Edge Community Development

District ("Rivers Edge") and the Main Street Community Development District ("Main Street") (collectively, the "Districts" or "Petitioners"). Under Section 190.005(1)(d), Florida Statutes, the local public hearing was conducted for the purpose of taking testimony and public comment and receiving exhibits. This Report of the public hearing and the hearing record is made for the consideration of the Commission in its determination whether to adopt a rule to merge the Districts' boundaries.

PRELIMINARY STATEMENT

The Petition was filed by the Petitioners on July 30, 2010. The Petition seeks to merge Rivers Edge¹ and Main Street into one community development district ("Merged District"). If merged, the proposed Merged District will consist of approximately 4,176.5 acres located in unincorporated St. Johns County. The Petition includes nine (9) exhibits.

The Commission referred the Petition to DOAH on August 16, 2010, to conduct a local public hearing. St. Johns County did not elect to hold an optional local hearing on the Petition and has not objected to the merger.

SUMMARY OF RECORD

A. Petition Contents and Related Matters

1. The Petition was submitted to St. Johns County along with a check in the amount of \$5,532 on July 19, 2010. The Petition was filed with the Commission on July 30, 2010.

2. Petition Exhibit 1 is the Rivers Edge and Main Street resolutions authorizing the merger of the Districts and approving a merger agreement, designated as Resolution No. 2010-07 and 2010-06, respectively.

3. Petition Exhibit 2 is the Limited Offering Memorandum associated with the Main Street Community Development District Capital Improvement Revenue Bonds, Series 2008A and 2008B.

4. Petition Exhibit 3 sets forth the general location of the existing Districts. Main Street currently covers approximately 90 acres of land located entirely within St. Johns County. Rivers Edge currently covers approximately 4,086 acres of land located entirely within St. Johns County.

5. Petition Exhibit 4 is the current metes and bounds descriptions of the external boundaries of the existing Districts.

6. Petition Exhibit 5 is a legal description of the lands within the proposed Merged District.

7. Petition Exhibit 6 designates the existing and future general distribution, location and extent of public and private uses for the proposed Merged District.

8. Petition Exhibit 7 is a map of the proposed Merged District showing the current major trunk water mains, sewer interceptors and outfalls.

9. Petition Exhibit 8 is the estimate of construction costs and timetable for the Master Infrastructure that the proposed Merged District may provide.

10. Petition Exhibit 9 is the Statement of Estimated Regulatory Costs ("SERC") prepared in accordance with the requirements of Section 120.541, Florida Statutes.

11. The Petition alleges that merger of the boundaries of the Districts should be granted for the following reasons:

a. As with the existing Districts, the surviving district, and all land uses and services planned within the surviving district, are not inconsistent with applicable elements or portions of the adopted State Comprehensive Plan or the effective local Comprehensive Plan.

b. As with the existing Districts, the area of land within the surviving district will continue to be of sufficient size, sufficiently compact, and sufficiently contiguous to be developable as one functionally related community.

c. As with the existing Districts, the surviving district will continue to prevent the general body of taxpayers in St. Johns County from bearing the burden for

installation of the infrastructure and the maintenance of the above-described facilities within the surviving district. The surviving district will continue to be the best alternative for delivering community development services and facilities within the applicable district boundaries without imposing an additional burden on the general population of the local general-purpose government. The surviving district will continue to allow for a more efficient use of resources as well as providing the opportunity for new growth to pay for itself.

d. The community development services and facilities of the surviving district will not be incompatible with the capacity and use of existing local and regional community development services and facilities. In addition, the surviving district will serve as a perpetual entity capable of making reasonable provisions for the operation and maintenance of the services and facilities for the district lands.

e. As with the existing Districts, the area of land that will lie in the boundaries of the surviving district is amenable to separate special district government.

B. Summary of the Local Public Hearing Held on October 26, 2010 in St. Johns County

12. The local public hearing on the Petition was noticed and held on October 26, 2010, at 9:00 a.m., at the Airport Conference Center, 4730 Casa Cola Way, St. Augustine, Florida. Notice of the public hearing was advertised on September 28, October 5, October 12, and October 19, 2010, in The St. Augustine Record, a newspaper of general paid circulation in St. Johns County, and of general interest and readership in the

community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. The published notice gave the time and place for the hearings, a description of the area to be included within the Merged District, including a map showing the lands of the proposed Merged District and other relevant information. The advertisement was published as a display advertisement, not in the portion of the newspaper where legal notices and classified advertisements appear.

13. The Petition, including its exhibits, was marked as Hearing Composite Exhibit A and admitted into the record.

14. The Revised SERC was marked as Hearing Exhibit B and admitted into the record. The SERC was revised at the request of St. Johns County. On Page 7, Table 2, the first line item now indicates that included within the improvements described are landscape improvements.

15. Petitioners presented the following witnesses at the hearing: John Grueter, Chairman of Rivers Edge and Main Street; James Perry, District Manager and Financial Advisor for the Districts, with Governmental Management Services, LLC; Michael Kennedy, District Engineer for the Districts, with WilsonMiller, Inc.; and David Tillis, Planner for the Districts, with WilsonMiller, Inc.

16. The Pre-Filed Written Testimony of the witnesses was received as Hearing Exhibits C, D, E, and F.

17. Teresa Bishop, Director of Long Range Planning for St. Johns County attended the public hearing; however, she did not wish to provide any comment.

18. No members of the public provided comment at the hearing. No public comment was filed after the local public hearing.

(i) Evidence Overview

19. The Districts were intended to function as a single, inter-related community; however, two Districts were initially created to meet the differing level of service needs that would exist due to the fact that Rivers Edge was anticipated to be predominantly residential; whereas Main Street was anticipated to be primarily commercial. The conceptual development plan has now changed such that the lands within the District are anticipated to be utilized in a mixed-use capacity. Petitioners are seeking to merge the Districts because it would be more cost effective and efficient to have one district.

20. Rivers Edge Resolution No. 2010-07 and Main Street Resolution No. 2010-06 state the preference of Rivers Edge to remain as the surviving entity (the "Surviving District"). The Main Street board members recognize that their individual tenure as supervisors will come to an end. Having Rivers Edge survive will be less disruptive and confusing.

21. Five persons designated in the Petition to serve as the Board of Supervisors of the Merged District are John Grueter, Chris Kuhn, Rose Bock, Harry Waldron, and Phillip Jones. They are the current board members of Rivers Edge.

(ii) Engineering Perspective

22. The capital facilities being provided by the Districts will not change because of the merger. The proposed Merged District will continue to provide drainage, transportation, utility, landscape, recreation, and neighborhood infrastructure.

23. The cost estimates in Petition Exhibit 8 were based on current construction contracts in place and underway and by using plans and preliminary infrastructure layouts for future costs based on pricing they have seen in the area.

24. Main Street and Rivers Edge have entered into interlocal agreements to avoid duplication of construction activities and disconnection between projects. However, the Engineer for the Districts is required to provide construction updates, requisitions, and other communications to both Boards. While this arrangement has worked, it is not the most efficient or cost effective. Given the state of development and construction, having one district, Rivers Edge, is preferable.

25. Construction costs for the proposed facilities for the Merged District are reasonable based on an analysis of the

proposed improvements and historical costs of similar improvements.

26. The proposed Merged District is of sufficient size, compactness, and contiguity to be developed as a functional interrelated community. The RiverTown Project, a Development of Regional Impact, is intended to operate and develop as one large, multi-use project. Currently, the Districts function reasonably well because of a series of interlocal agreements to ensure there would not be duplicative construction activities or any disconnection between projects. The area to be served is sufficiently contiguous and compact to be served by one district. Given the state of development and construction, it is preferable for Rivers Edge to be the Surviving District.

27. The proposed Merged District is the best available alternative for delivering community services and facilities to the areas that will be served by the proposed Merged District. Having one surviving District provide the services to the land will reduce duplication and potential inconsistency or disconnect in the construction and ultimate maintenance of infrastructure. While two districts can work, the best alternative is to merge the Districts and have Rivers Edge survive.

28. The services and facilities provided by the proposed Merged District are not incompatible with the capacities and

uses of existing local and regional community facilities and services. The Districts are already providing needed and required public infrastructure which is fully consistent with the existing capacity and facilities in the area. The proposed merger will not change the facilities being provided and is not inconsistent with existing facilities.

29. The area being included within the proposed Merged District is amenable to being served by a separate special district government. The area is presently being served by the Districts. Having one separate special district government will serve the area well by streamlining the process for getting District board approval, and it also will allow the long-term maintenance of infrastructure to be provided by a single entity focused on the entire community.

(iii) Consistency with Comprehensive Plans

30. The proposed Merged District is not inconsistent with any portion or element of the State Comprehensive Plan. The proposed merger promotes Subject 20 - Governmental Efficiency. Subject 20 advocates the elimination of needless duplication of governmental activities. A merger in this instance would eliminate the inherent duplication of having two entities serve one project. In addition, Subject 17 - Public Facilities - has a goal to finance new facilities in a timely, orderly and efficient manner. A Merged District will provide the needed

public transportation and other infrastructure in a more orderly and efficient manner.

31. The proposed Merged District is not inconsistent with any applicable element or portion of the St. Johns County Comprehensive Plan. Goal H.1 of the Capital Improvements Element states that the County is to ensure the orderly and efficient provisions of infrastructure facilities and services. The Merged District will continue to serve as an alternative provider of these infrastructure systems and services to meet the needs of the lands within its boundaries.

(iv) SERC and Related Matters

32. The SERC attached to the Petition as Petition Exhibit 9 finds no negative impact on any person or entity as a result of the proposed merger.

33. There will be no adverse impact on the outstanding bonds. Main Street has issued \$33,025,000 in Capital Improvement Revenue Bonds in two series, 2008A and 2008B.

34. Main Street has never defaulted or experienced a delay with respect to meeting its debt service obligations under the Indenture.

35. The bonds will continue to be secured by the assessments on the lands within each District. Rivers Edge, as the Merged District, will certify the assessments on the land for collection and enforce collection, as necessary. The

security for the bonds does not change, and the merger should have no adverse impact on the terms and conditions of the Main Street bonds outstanding under the Indenture or the interests of the holders of the bonds.

36. The proposed Merged District is expected to be financially viable and feasible. The Surviving District will be able to reduce total administrative costs, streamline its operations, and be an overall economic benefit to the residents and landowners of the Merged District.

37. The proposed Merged District is the best available alternative for providing development services and facilities to the area to be served. The Merged District should be able to construct or acquire certain infrastructure and community facilities in a more efficient way with only one board making decisions. This should result in a lower cost per acre or per unit cost than with two independent districts.

38. The debt assessments on the properties will not change after the merger. The assessments on the land within the Merged District will continue to secure Main Street's debt and the assessments. It is expected that operation and maintenance assessments will be lower than they otherwise would have been if the Districts are merged.

39. The land within the proposed Merged District is amenable to being served by a separate special district

government. A Merged District will be a more efficient mechanism to oversee the installation of capital improvements.

40. The purpose of the merger is to become a more effective and more efficient local unit of special-purpose government.

41. There are several benefits from merger for the current residents and landowners within the existing Districts, including administrative cost savings and having to deal with only one entity.

42. The merger will have no effect on the daily field operations, but it will result in a more efficient administrative function. The proposed merger will reduce the Districts' budgets and the assessments.

43. Potential savings in various line items of the Districts' budgets may be realized if the merger is approved, including supervisor salaries, filing fees, legal fees, district management fees, meeting expenses, and insurance costs.

44. Savings are estimated to be \$54,000 based on the fiscal year 2010-2011 budget and are expected to increase over time.

45. The proposed Merged District is the best alternative available to provide the proposed community development services and facilities. The Districts will be able to eliminate numerous administration costs. It would eliminate

administrative duplication and time. The Merged District will provide the highest level of services and facilities in the most cost-effective, efficient, and convenient manner to this project.

46. The proposed Merged District is of sufficient size, is sufficiently compact and sufficiently contiguous to be developable as one functional, interrelated community. The Districts are adjacent, so there are no physical barriers to interfere with the delivery of services and facilities by the Merged District. The Merged District will allow for the successful delivery of improvements, management, and operations to the land.

47. The proposed Merged District will not be incompatible with the uses and existing local and regional facilities and services. The facilities and services within the proposed Merged District will not duplicate any available regional services or facilities and are not intended to be different from the services and facilities currently planned and being provided. The proposed merger will not impact the Merged District's ability to successfully manage its existing services and facilities.

48. Merging the two Districts will not affect their ability to function as a separate special district government. Merging the Districts will streamline decision-making and

levying of assessments for operations and maintenance. Residents within the Districts will benefit from having to deal with only one authority.

APPLICABLE LAW

A. General

49. Section 190.046(3), Florida Statutes, provides the means of merging the boundaries of a community development district pursuant to Section 190.005. In relevant part, it provides:

The government formed by a merger involving a community development district pursuant to this section shall assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property shall not be impaired by such merger. Any claim existing or action or proceeding pending by or against any district that is a party to the merger may be continued as if the merger had not occurred, or the surviving district may be substituted in the proceeding for the district that ceased to exist. Prior to filing the petition, the districts desiring to merge shall enter into a merger agreement and shall provide for the proper allocation of the indebtedness so assumed and the manner in which such debt shall be retired. The approval of the merger agreement and the petition by the board of supervisors of the district shall constitute consent of the landowners within the district.

B. Petition Requirements

50. Section 190.046(3) requires that a petition to merge be filed containing the same elements found in Section 190.005(1) (a). Those elements are:

1. A metes and bounds legal description of the area to be served by the district with a specific description of real property to be excluded from the district, if any.
2. Written consent to the merger of the districts by all landowners whose real property is to be included in the proposed merged district of 100% of the real property to be included in the district.
3. A designation of five persons to be the initial members of the board of supervisors who shall serve in that office until replaced by elected members as provided in Section 190.006, Florida Statutes.
4. The proposed name of the district.
5. A map of the current major trunk water mains and sewer interceptors and outfalls if in existence.
6. The proposed timetable for construction of any district services to the area and the estimated cost of constructing the proposed services.
7. The designation of the future general distribution, location and extent of public and private uses of land proposed for the area by the future land use plan element of the adopted local government local comprehensive plan.
8. A statement of estimated regulatory costs in accordance with the requirements of Section 120.541, Florida Statutes.

C. Applicable Procedures

51. Section 190.046(3) incorporates the procedure of Section 190.005(1) (a) and provides that the Petition shall be filed with the Commission. This requirement was met.

52. Section 190.005(1) (b)1, Florida Statutes, requires that petitioner provide a copy of the petition and the requisite filing fee to the county and to each municipality whose proposed boundary is within or contiguous to the district prior to filing the petition with the Commission. This requirement was met.

53. Section 190.005(1) (c), Florida Statutes, provides that the county containing all or a portion of the lands within the proposed merged districts has the option to hold a public hearing within forty-five (45) days of the filing of a petition.

54. Section 190.005(1) (d), Florida Statutes, requires a local public hearing to be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. Such public hearing is limited to oral and written comments on the petition pertinent to the factors specified in Section 190.005(1) (e), Florida Statutes.

55. Section 190.005(1) (d), Florida Statutes, requires the petitioner to publish notice of the local public hearing once a week for four successive weeks immediately prior to the hearing in a newspaper of general paid circulation in the county and of

general interest and readership in the community. This requirement was met.

56. Florida Administrative Code Rule 42-1.010 requires Notice of Receipt of Petition to be published in the Florida Administrative Weekly.

D. Factors to be Considered for Granting or Denying Petition

57. The Commission must proceed in accordance with Section 190.005(1)(e), Florida Statutes, upon the receipt of the full record of the local public hearing. The Commission's determination is not whether to establish a new district where one did not exist. Instead, its determination is whether to allow two existing districts to merge. If the merger petition was denied, then the two districts would continue to exist.

58. Pursuant to Section 190.005(1)(e)1.-6., Florida Statutes, the Commission must consider the entire record of the local hearing, the transcript of the hearing, any resolutions adopted by local general-purpose governments, and the following factors (altered slightly to reflect the merger petition), to make a determination to grant or deny a petition for the merger of the boundaries of districts:

1. Whether all statements contained within the petition have been found to be true and correct;
2. Whether the merger of the boundaries of the districts is inconsistent with any applicable element or portion of the state

comprehensive plan or of the effective local government comprehensive plans;

3. Whether the merger of the districts will result in a district that is still of sufficient size, is still sufficiently compact, and is still sufficiently contiguous to continue to be developable as one functional interrelated community;

4. Whether the merger of the districts is the best alternative available for delivering community development services and facilities to the area that will be served by the proposed merged district;

5. Whether the community development services and facilities that will continue to be provided by the proposed merged district will be incompatible with the capacity and uses of existing local and regional community development services and facilities; and

6. Whether the area that will continue to be served by the proposed merged district is still amenable to separate special-district government.

COMPARISON OF INFORMATION IN RECORD TO APPLICABLE LAW

A. Procedural Requirements

59. The evidence establishes that Petitioners have satisfied all the procedural requirements for the merger of the Districts by filing the Petition in the proper form with the required attachments, tendering the requisite filing fee to the local governments, arranging for a public hearing to be conducted by an administrative law judge, and publishing statutory notices of the local public hearing.

B. Six Factors of Section 190.005(1)(e)1.-6., Florida Statutes

60. The evidence establishes that the statements in the Petition and its attachments, as revised, are true and correct. In relation to the consents, pursuant to Section 190.046(3), Florida Statutes, "[t]he approval of the merger agreement and the petition by the board of supervisors of the district shall constitute consent of the landowners within the district." Consent for all lands currently included within the Districts was provided as evidenced by Rivers Edge Resolution No. 2010-07 and Main Street Resolution 2010-06.

61. The evidence establishes that the merger of the boundaries of the Districts is not inconsistent with any applicable element or portion of the State and local government comprehensive plan.

62. The evidence establishes that the proposed Merged District is of sufficient size, is still sufficiently compact, and is still sufficiently contiguous to continue to be developable as "one functional interrelated community."

63. The evidence establishes that the proposed Merged District is the best alternative available for delivering community development services and facilities to the area to be included within the boundaries of the proposed Merged District and that will be served by the proposed Merged District.

64. The evidence establishes that the community development services and facilities that will continue to be provided by the proposed Merged District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

65. The evidence establishes that the area that will continue to be served by the proposed Merged District is amenable to separate special-district government.

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, the Petition meets all statutory requirements, and there appears to be no reason not to grant the Petition to Merge the Boundaries of the Main Street Community Development District and the Rivers Edge Community Development District. The record supports having Rivers Edge continue to exist as the "surviving district," with the landowner election schedule to continue as it presently exists and the existing Rivers Edge board members to remain in office.

DONE AND ENTERED this 10th day of December, 2010, in
Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of December, 2010.

ENDNOTE

1/ When the original petition to establish a community development district over the lands currently served by Rivers Edge was filed with the Commission in December of 2005, the proposed name was "Kendall Creek Community Development District." After the local public hearing, the petitioner (in that proceeding) requested a name change from Kendall Creek Community Development District to Rivers Edge Community Development District. See Petitioners' Notice of Filing Affidavit of Jonathan T. Johnson filed with DOAH on November 19, 2010.

COPIES FURNISHED:

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