

**FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
AGENDA**

August 2, 2011

Attachments to the agenda items below can be viewed at the following link:
http://www.myflorida.com/myflorida/cabinet/flwac/20110802_index.html

1. **Approval of the minutes of the June 16, 2011, meeting.**

2. **Approval and authorization to finalize rulemaking to amend Rule 42FFF-1.002, Florida Administrative Code, to reflect the merger of the Main Street Community Development District and the Rivers Edge Community Development District. (FLWAC Case No. CDD-10-011).**

The Commission previously considered amendment of Rule 42FFF-1.002, Florida Administrative Code (FAC), at the May 3, 2011, Cabinet meeting. At that time, staff requested authorization to begin rulemaking to amend Rule 42FFF-1.002, FAC, to merge the Main Street Community Development District ("Main Street CDD") and the Rivers Edge Community Development District ("Rivers Edge CDD"). The Commission granted authorization and staff moved forward with publishing the appropriate rule amendment notices in the Florida Administrative Weekly on May 13, and June 20, 2011. No public hearings were requested and no public comments were received in response to the rulemaking notices. Rule amendment noticing and review requirements have concluded and the item is back before the Commission seeking approval and authorization to file the rule certification package finalizing amendment of Rule 42FFF-1.002, FAC, for adoption.

Background: (From the May 3, 2011, agenda.)

The merger of community development districts is authorized by subsection 190.046(3), FS.

The Rivers Edge CDD was originally created by the Commission in 2006 through adoption of Rule Chapter 42FFF-1 setting forth the name, boundaries, and initial board of supervisors of the District. The Rivers Edge CDD consists of approximately 4,086.6 acres of land located within St. Johns County and is generally located in the RiverTown Development of Regional Impact. The lands within the Rivers Edge CDD are primarily residential in character.

The Main Street CDD was created in 2006 by the Board of Commissioners of St. Johns County through adoption of Ordinance No. 2006-40. Main Street CDD currently covers approximately 89.9 acres of land located within St. Johns County and is generally located in the RiverTown Development of Regional Impact. The lands within the Main Street CDD are primarily non-residential in character.

The Petition was filed with the Commission on July 28, 2010, and requests approval of amendments to Rule 42FFF-1.002, FAC, to provide for the merger of the Main Street CDD and the Rivers Edge CDD. As a result of the proposed merger, the Main Street CDD would cease to exist and the Rivers Edge CDD would continue as the surviving entity, with amended boundaries. If approved, the surviving Rivers Edge CDD will contain approximately 4,176.5 acres.

The Petitioners indicate that the merger of the Main Street CDD and the Rivers Edge CDD is in the best interest of both Districts as the proposed merger would:

- Eliminate redundant overhead costs and other expenses;
- Promote greater efficiency in the Districts' existing joint projects;
- Reduce commercial and residential assessments; and
- Better achieve the original public infrastructure delivery and maintenance plan for the two Districts.

The Boards of Supervisors of the Rivers Edge CDD and the Main Street CDD adopted Resolutions 2010-07 and 2010-06, respectively, which approved the Merger Agreement and authorized the preparation and filing of the Petition. Pursuant to Section 190.046(3), FS, the approval of the Merger Agreement and the Petition constitute consent of all landowners within the Districts. The Board of Supervisors of Rivers Edge CDD will continue to serve on the same terms, in the same positions, and with the same election timetable.

The Merger Agreement provides that all existing bond indebtedness will continue to be secured by the existing debt assessment liens. Rivers Edge CDD currently has no bond indebtedness and, as of July 2010, the current bond indebtedness for Main Street CDD was:

Main Street CDD Bond Indebtedness

- \$13,675,000 (Bond Issue - \$13,980,000 Capital Improvement Revenue Bonds, Series 2008A)
- \$19,350,000 (Bond Issue - \$19,350,000 Capital Improvement Revenue Bonds, Series 2008B)

The Merger Agreement provides that the merger will not adversely affect the rights of creditors of either district or other parties with whom either district has entered into a contractual relationship.

Upon request of the Secretary, the Department of Community Affairs (DCA) reviewed the petition from the standpoint of their programs and responsibilities, and the requirements of Chapter 190, F.S. The DCA submitted a comment letter on October 15, 2010, indicating that no potential inconsistencies were identified with Florida's growth management laws or with St. Johns County's comprehensive plan.

Pursuant to Chapter 190, F.S., the Petition was forwarded to the Division of Administrative Hearings (DOAH) for a local public hearing. DOAH Administrative Law Judge Johnston conducted a public hearing on October 26, 2010, and submitted a Report to the Commission on December 10, 2010. Judge Johnston concluded, "there appears 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." Petitioner revised the Statement of Estimated Regulatory Cost (SERC) during the DOAH hearing at the request of St. Johns County to provide that landscape improvements are included within the improvements described. Petitioner also submitted an addendum and a revised addendum to the SERC, as revised, to address recent statutory changes.

Staff Recommendation:

Approve and authorize the Secretary to file the rule certification documents finalizing amendment of Rule 42FFF-1.002, FAC, for final adoption.

Back-Up: (Refer to the May 3, 2011, agenda materials for previously distributed background documents.)

Final Rulemaking Certification Package amending Rule 42FFF-1.002, FAC.

3. Consideration of a Recommended Order issued by the Division of Administrative Hearings in the proceeding of Ginn-LA Marina, LLLP, Ltd, Northshore Hammock Ltd, LLLP, and Northshore Ocean Hammock Investment, Ltd, LLLP vs. Flagler County and Ocean Hammock Property Owners Association, Inc., The Hammock Beach Club Condominium Association, Inc., Michael M. Hewson, and Admiral Corporation. (FLWAC Case No. APP-10-007).

This item is before the Commission for final action in response to a Recommended Order issued by the Division of Administrative Hearings (DOAH) pursuant to 380.07, Florida Statutes (FS). The Recommended Order addresses an appeal of Flagler County's denial of certain amendments to the Hammock Dunes Development of Regional Impact (DRI) Development Order (DO).

Background:

In March of 1984, Flagler County approved the Hammock Dunes DRI by County Resolution 84-7. The Hammock Dunes DRI DO covered 2,258 acres of land and entitled the developer to construct a maximum of 6,670 dwelling units and related commercial, institutional, recreational, and other uses in 42 separate geographic areas referred to

as “Clusters” covering 893 acres. The property is located in Flagler County adjacent to the Atlantic Ocean with approximately five miles of beach bordering the DRI. The Hammock Dunes DRI DO has been amended several times in approximately 26 years.

Through a Notice of Proposed Change (NOPC) Application submitted on March 2, 2009, and twice revised, Petitioners sought to amend the DO to: extend of the DRI build-out date for three years; reduce the number of approved dwelling units in the DRI; create a new residential Cluster 35 within the DRI boundaries and reallocating previously-approved, but un-built, dwelling units from other Clusters to the new Cluster 35; agreeing to a further Planned Unit Development-like review process before development permits were issued; and realigning a roadway at its own expense. The Flagler County Board of County Commissioners adopted Resolution 2010-22 on April 5, 2010, finding that the changes requested did not constitute a substantial deviation of the DO; finding that the revisions were consistent with the County’s Comprehensive Plan; recognizing the legislative extension of time that extended the expiration date of the DO to February 28, 2012; approving the request to reduce the total number of approved residential dwelling units from 4,400 to 3,800; and denying the request to create a new Cluster 35 with a transfer of 561 residential units to that Cluster on the ground that such transfer was inconsistent with certain provisions of the County’s Land Development Code (LDC).

On May 26, 2010, Petitioners (Ginn-LA Marina, LLLP, Ltd, Northshore Hammock Ltd, LLLP, and Northshore Ocean Hammock Investment, Ltd, LLLP) filed a Notice and Petition for Appeal with the Commission appealing Flagler County’s denial of certain amendments to the Hammock Dunes DRI DO.

At the September 14, 2010, Cabinet meeting, the Commission considered and approved a draft order of transmittal forwarding the subject appeal and all pleadings to the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge and further proceedings. The Commission’s order of transmittal was entered on September 17, 2010.

The subject appeal was received by DOAH on September 19, 2010, and assigned to DOAH Judge D. R. Alexander. Prior to conducting an administrative hearing, Judge Alexander granted Admiral Corporation, Ocean Hammock Property Owners Association, Inc., The Hammock Beach Club Condominium Association, Inc., and Michael M. Hewson authorization to intervene in the proceeding. Additionally, Flagler County’s pending Motion to Dismiss was withdrawn prior to the administrative hearing.

On December 15-17, 2010, Judge Alexander conducted an administrative hearing and subsequently issued a Recommended Order on April 6, 2011. Judge Alexander recommends that the Commission enter a final order determining that the NOPC is not a substantial deviation; extending the expiration of the DO to February 28, 2012, by virtue of legislative action in 2007; approving the reduction in residential units from 4,400 to 3,800; determining that the proposed revisions in the NOPC to create a new Cluster 35

and transfer 561 dwelling units to that Cluster are inconsistent with one objective and two policies of the County Comprehensive Plan; determining that the new Master Development Plan (which creates a new Cluster 35 and transfers 541 units) is inconsistent with criteria in LDC sections 03.02.04.F.1. and 2.; and determining that Petitioners have no vested right to construct up to 561 dwelling units on 12 acres of land located in the Ocean Hammock Golf Course that is now platted and restricted in perpetuity for golf course purposes only.

The DOAH Recommended Order was submitted to the Commission for final action on April 7, 2011. In response to the Recommended Order, exceptions were filed by Petitioners on April 21, 2011. Flagler County filed a Response to Petitioners' Exceptions to Recommended Order on May 2, 2011, and filed a Notice of Supplemental Authority on July 6, 2011.

Judge Alexander's Recommended Order provides a detailed history of the Hammock Dunes DRI DO; the contents of the DRI Master Development Plan; the amendments to the DO adopted over a period of 26 years; and the details of the NOPC Application, the subject of this proceeding. Please refer to pages 8-20 of the DOAH Recommended Order for this information.

Recommendation:

Approve and authorize the Secretary to enter the Draft Final Order.

Back-Up: (Refer to the September 14, 2010, agenda materials for previously distributed documents.)

DOAH's Recommended Order issued on April 6, 2011.

Petitioners' Exceptions to the Recommended Order received on April 21, 2011.

Flagler County's Response to Exceptions to Recommended Order received on May 2, 2011.

Flagler County's Notice of Supplemental Authority received on July 6, 2011.

Draft Final Order.