

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: A RULE TO ESTABLISH THE)
ENTERPRISE COMMUNITY DEVELOPMENT) Case No. 92-2359
DISTRICT,)
_____)

REPORT OF FINDINGS AND CONCLUSIONS
ON ESTABLISHMENT OF THE ENTERPRISE CDD

On July 10, 1992, a local public hearing was held pursuant to Section 190.005(1)(d), Fla. Stat., in the above captioned proceeding before Mary Clark, Hearing Officer, Division of Administrative Hearings. The hearing was held in the City Commission Chambers, City Hall, 101 North Church Street, Kissimmee, Florida. The hearing was conducted to take testimony and receive public comment on the petition of the Disney Development Company to establish the Enterprise Community Development District ("Enterprise CDD" or "CDD") and the Celebration Community Development District ("Celebration CDD").

This Report of Findings and Conclusions regarding establishment of the Enterprise CDD is prepared and submitted to the Florida Land and Water Adjudicatory Commission ("FLWAC") in accordance with Section 190.005, Fla. Stat., and Section 42-1.013, Fla. Admin. Code.

APPEARANCES

Petitioner, Disney Development Company ("DDC") was represented by Robert M. Rhodes and Cathy M. Sellers, Steel Hector & Davis, 215 South Monroe Street, Tallahassee, Florida. In support of the Petition for Establishment of the Enterprise CDD, DDC presented the testimony of Tom Lewis, Jr.; Joseph E. Harris; Robert J. Whidden; Gary L. Moyer; and Dr. Henry H. Fishkind, the full names and addresses of whom are attached to this Report as Appendix A. Composite Exhibits 1 and 3 through 5, a list and description of which are attached to this Report as Appendix B, were also proffered and accepted into evidence on behalf of DDC.

Mr. William J. Goaziou, Osceola County Administrator, appeared on behalf of the County. Mr. Goaziou stated that the Osceola County Board of County Commissioners adopted a resolution in support of establishment of the Enterprise and Celebration CDDs. He reiterated the County's strong support for creation of the CDDs. (Tr. 81-82; Composite Ex. 4.). The Reedy Creek Improvement District ("RCID") submitted a letter to FLWAC expressing RCID's support for creation of the Enterprise and Celebration CDDs. This letter was admitted into evidence at the hearing as part of Composite Exhibit 4.

Procedural Background

On April 3, 1992, DDC filed with FLWAC a Petition to Establish the Enterprise CDD. DDC requests adoption of a rule by FLWAC, pursuant to Section 190.005(1), Fla. Stat., establishing the Enterprise CDD. The land area in the Enterprise CDD consists of approximately 1,552 acres located in unincorporated Osceola County and currently included in RCID. The Petition to Establish the Enterprise CDD and attached exhibits A through L were admitted into evidence at the hearing as Composite Exhibit 1.

On April 13, 1992, FLWAC determined the Enterprise CDD Petition complete and forwarded it to the Division of Administrative Hearings.

On April 28, 1992, a local public hearing to address the Petition was scheduled for July 10, 1992, in the City of Kissimmee. DDC was required to publish notice and to provide other such notice as required by Section 190.005, Fla. Stat. and Chapter 42-1, Fla. Admin. Code. Pursuant to Section 42-1.010(1)(b), Fla. Admin. Code, FLWAC published Notice of Receipt of Petition for the Enterprise CDD in the Florida Administrative Weekly on May 22, 1992. Pursuant to Section 190.005(1)(d), Fla. Stat. and Section 42-1.011, Fla. Admin. Code, a Notice of Local Hearing for the Enterprise CDD was published in the Osceola News-Gazette for four consecutive weeks immediately prior to the hearing. A copy of the Notice of Local Hearing for the Enterprise CDD was mailed to the Reedy Creek Improvement District, Osceola County, the members of the Board of Supervisors of the Enterprise CDD, and the Secretary of the Department of Community Affairs, as required by Section 42-1.011(1)(b), Fla. Admin. Code. Additionally, on July 8, 1992, proof of publication of the Notice of Local Hearing in the Osceola News-Gazette was furnished to the Secretary of FLWAC, as required by Section 42-1.011(1)(a), Fla. Admin. Code. Proof that DDC met all notice requirements for the hearing on the Enterprise CDD was received into evidence as Composite Exhibit 3.

Also on April 3, 1992, DDC filed with the Reedy Creek Improvement District and with Osceola County a copy of the Petition to Establish the Enterprise CDD, along with the required \$15,000 filing fee for each Petition. Copies of receipts for the filing fees from the Reedy Creek Improvement District and Osceola County were received into evidence as Composite Exhibit 5.

Section 190.005(1)(c), Fla. Stat., provides that the county and each municipality the boundaries of which are contiguous with, or contain all or a portion of, the land within the external boundaries of the district may conduct a public hearing within 45 days of filing of a petition to create a CDD. There are no municipalities the boundaries of which are contiguous with or contain all or a portion of the land within the external boundaries of the Enterprise CDD. The Enterprise CDD will be located in unincorporated Osceola County. Osceola County did not hold a public hearing pursuant to Section 190.005(1)(c), Fla. Stat.

The local public hearing in this matter was conducted in accordance with Section 190.005(1)(d), Fla. Stat., and Section 42-1.012, Fla. Admin. Code. A transcript was filed with the Hearing Officer on July 28, 1992. A copy of the transcript is transmitted with this proposed Report of Findings and Conclusions. Although two petitions, this and the petition for the celebration CDD, were consolidated for conduct of the public hearing, separate reports are being submitted.

In accordance with Section 42-1.012(3), Fla. Admin. Code, the record in this matter remained open until July 20, 1992 to allow submittal of written statements in support of or opposition to the Petition. No written statements were filed regarding creation of the Enterprise CDD.

DDC was given leave to file a proposed Report of Findings and Conclusions no later than fourteen days after the transcript was filed with the Hearing Officer. (Tr. 84). DDC timely filed the proposed Report of Findings and Conclusions which report is substantially adopted here.

OVERVIEW

1. DDC seeks to establish the Enterprise CDD, which will be located in unincorporated Osceola County and the Reedy Creek Improvement District. Once established, the Enterprise CDD will be an independent special taxing district authorized under Chapter 190, Fla. Stat. The district will have all powers set forth in Chapter 190, Fla. Stat., including, but not limited to, the ability to finance, own, operate, and maintain certain infrastructure and provide certain community services as set forth in Sections 190.011 and 190.012, Fla. Stat.

2. The Enterprise CDD will serve predominantly commercial land uses being developed as part of the mixed-use Celebration Development of Regional Impact ("Celebration DRI") pursuant to the terms and conditions of all applicable land use approvals and environmental permits. The sole purpose of this proceeding is to consider the establishment of the Enterprise CDD, which, pursuant to Section 190.002(2)(d), Fla. Stat., is based only on factors material to managing and financing the service-delivery function of the district. Thus, any matter concerning permitting or planning of the development is not material or relevant to CDD establishment. However, pursuant to Section 190.002(2)(c), Fla. Stat., development within a CDD is subject to all applicable government planning and permitting requirements.

Summary of Evidence and Testimony

3. Testimony of Tom Lewis, Jr.: Mr. Lewis is Vice President of Community Development for the Disney Development Company, Petitioner in this proceeding. (Tr. 7). Mr. Lewis was responsible for selecting and supervising the team of DDC employees, planners, engineers, and other professionals who compiled the information for assembly and filing of the Petition to Establish the Enterprise CDD. He identified Composite Exhibit 1, the Petition to Establish the Enterprise CDD. At the hearing, Mr. Lewis made two corrections to the Petition as filed with FLWAC: (1) the name of the "Celebration West" CDD as provided in the Petition filed with FLWAC, has been changed to "Enterprise" CDD to reflect the commercial nature of the development planned for the land area in the CDD; and (2) the Enterprise CDD will offer security services in addition to the other services authorized by Section 190.012, Fla. Stat., proposed to be offered upon obtaining consent from Osceola County. (Tr. 16). With these corrections, all statements in the Petition and the exhibits attached thereto are true and correct, as required by Section 190.005(1)(e)1, Fla. Stat.

4. Mr. Lewis discussed DDC's objectives in establishing the Enterprise CDD. DDC is in the process of obtaining necessary environmental permits and land use approvals to develop the Celebration DRI, a mixed-use community consisting of commercial, residential, entertainment, and institutional land uses, to be developed on the land area in the Enterprise CDD and another CDD, the Celebration CDD. Concurrent with submittal of the Petition for Establishment of the Enterprise CDD DDC has submitted a Petition for Establishment of the Celebration CDD. (Tr. 11; Composite Ex. 2). The Enterprise CDD is being established to provide a financing vehicle for the construction, operation, and maintenance of infrastructure and the provision of community services to the commercial portion of the Celebration DRI. Similarly, the Celebration CDD is being established to provide a financing vehicle for the construction, operation, and maintenance of infrastructure and the provision of community services to the residential portion of the Celebration DRI. The CDDs will ensure district businesses and residents pay for the services and facilities they

receive, and will ensure additional financial burdens are not imposed on Osceola County residents to pay for infrastructure and services that will serve the Celebration DRI. (Tr. 8-9).

5. Mr. Lewis described the location and boundaries of the Enterprise CDD. The Enterprise CDD is located in the Reedy Creek Improvement District, south of U.S. 192, north of Interstate 4, and west of the Bonnett Creek Canal. A small portion of the Enterprise CDD will be located east of the Southern Connector Extension. (Tr. 11; Composite Ex. 1, attachments A, C). Mr. Lewis also described the location of the Enterprise CDD in relation to the Celebration CDD. The Celebration CDD will be located immediately south of and geographically separated from Enterprise by I-4. (Tr. 11; Composite Ex. 2, attachments A, C, K). Mr. Lewis explained that once a DRI development order has been issued by Osceola County for the Celebration DRI, the land area in the Celebration DRI, including the land in the Enterprise CDD, will be contracted out of the Reedy Creek Improvement District and will come under the jurisdiction of Osceola County. (Tr. 12); Composite Ex. 1, attachment K).

6. DDC seeks to establish two CDDs rather than one for the following reasons: First, the I-4 and Southern Connector Extension corridors geographically separate the land to be included in the Enterprise and Celebration CDDs, imposing a physical barrier to efficient, effective delivery of continuous infrastructure to the two areas. (Tr. 14). Second, the primary land uses proposed for the two CDDs are different and therefore will likely have different infrastructure and service needs. (Tr. 14). Third, creating two CDDs will enhance accountability of the districts through more precise levy of assessments according to the types of land uses being served. (Tr. 14-15). Fourth, creating two CDDs will facilitate more efficient facilities and services provision because each CDD will be specifically keyed to providing infrastructure and services to a particular type of development. (Tr. 15).

7. The owners of the land to be included in the Enterprise CDD are the Madeira Land Company and the Reedy Creek Improvement District, which owns some canal rights-of-way. DDC has obtained the necessary consent from the owners of the lands to be included in the CDD. (Tr. 15; Composite Ex. 1, attachment D).

8. There is no real property contained entirely in the Enterprise CDD which is to be excluded from the CDD. (Tr. 17).

9. The five persons designated to serve on the initial Board of Supervisors for the Enterprise CDD are listed in the Petition to Establish the Enterprise CDD (Composite Ex. 1, pp. 2-3; Tr. 17), and are listed on Appendix C attached hereto. All are citizens of the United States and residents of the state of Florida. (Tr. 17).

10. Mr. Lewis described the existing and proposed land uses for the land area in the Enterprise CDD. Currently, the land is vacant, unimproved agricultural land. (Tr. 18). As part of the Celebration DRI, the land area in the Enterprise CDD will consist of predominantly commercial uses, with ancillary residential and recreational uses. (Tr. 13).

11. Once established, the Enterprise CDD will provide surface water management and potable water, wastewater treatment, and effluent reuse facilities, and roadways and bridges. Once consent has been obtained from Osceola County, the CDD will provide recreational improvements, fire prevention,

mosquito control, and security services. (Tr. 18-19). Upon obtaining consent from the Osceola County School Board, the CDD will provide school buildings. (Tr. 18; Composite Ex. 1, p. 6).

12. Testimony of Joseph E. Harris: Mr. Harris is a civil engineer with Ivey, Harris, & Walls engineering firm. He is a registered professional engineer in the state of Florida and has over fifteen years of engineering experience in design and construction of public and private development projects. (Tr. 22). He previously has been qualified as an expert witness in civil engineering. (Tr. 22). At the hearing, he was qualified as an expert in civil engineering. (Tr. 22).

13. In his review of the engineering design and operation of the Enterprise CDD, Mr. Harris particularly considered two factors in Section 190.005, Fla. Stat.: whether the land area in the CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as a functional interrelated community; and whether the community development services and facilities of the Enterprise CDD will be incompatible with the capacity and uses of existing local and regional community development services and facilities. (Tr. 23).

14. Mr. Harris testified regarding the design, location, and operation of the existing and proposed drainage facilities for the Enterprise CDD. Existing drainage for the land to be included in the Enterprise CDD consists of a series of culverts originating from Reedy Creek Improvement District land north of U.S. 192. The culverts pass under U.S. 192, directing drainage south over the land that will be included in the Enterprise CDD. Some drainage flows into Reedy Creek; the rest flows through culverts passing under I-4. The drainage ultimately flows into Reedy Creek and out of the Reedy Creek Improvement District through the S-40 water control structure. (Tr. 23; Composite Ex. 1, attachment F). The proposed drainage facilities for the Enterprise CDD will consist of the existing facilities, plus a secondary drainage system consisting of on-site retention facilities for each parcel of land in the Enterprise CDD. (Tr. 24; Composite Ex. 1, attachment G). Prior to construction of the proposed drainage improvements, the CDD must obtain approval from the Reedy Creek Improvement District. (Composite Ex. 1, p. 4).

15. Mr. Harris also testified as to the design, location, and operation of the proposed potable water facilities for the Enterprise CDD. Two water treatment plants with wells are proposed to be located in the CDD. A 20-inch water main will connect the two water treatment plants and will distribute potable water to each parcel in the CDD. (Tr. 24; Composite Ex. 1, attachment E).

16. Mr. Harris testified as to the design, location, and operation of the proposed wastewater treatment facilities for the Enterprise CDD. The wastewater treatment plant is proposed to be located in the southwest corner of the CDD. Wastewater is conveyed by gravity from each parcel in the CDD to a lift station, pumped through a 12-inch force main to a 16-inch force main, and through the 16-inch force main to the treatment plant. (Tr. 24-25; Composite Ex. 1, attachment E). Because the land in the Enterprise CDD will be contracted out of the Reedy Creek Improvement District upon issuance of a DRI development order for the Celebration DRI, the development in the Enterprise CDD will obtain wastewater services from the CDD's wastewater treatment plant rather than connecting to the RCID central wastewater system.

17. With regard to the proposed treated effluent reuse facilities for the Enterprise CDD, Mr. Harris testified that treated effluent will be distributed from the wastewater treatment plant through a 12-inch reuse main to the land in the CDD. (Tr. 25; Composite Ex. 1, attachment E). The treated effluent will be used to irrigate the lands in the CDD. (Composite Ex. 1, p. 4).

18. Mr. Harris also testified as to the proposed design and location of the roadways, bridges, and related improvements for the Enterprise CDD. World Drive will be extended south from U.S. 192, and an interchange is proposed to be constructed at the intersection of I-4 and World Drive. Local and arterial roads serving the parcels in the CDD also will be provided. All roadways will be constructed to appropriate Florida Department of Transportation (FDOT) and Osceola County standards. Street lights also will be provided. (Tr. 25-26; Composite Ex. 1, p. 5, attachment I).

19. Mr. Harris testified regarding the location and types of recreational facilities to be provided by the Enterprise CDD. The CDD will provide golf cart paths, bicycle pathways, and pedestrian walkways throughout the CDD. Open space and other recreational amenities also will be provided. (Tr. 26; Composite Ex. 1, attachment J).

20. Using Exhibit H to the Petition (Tr. 26, Composite Ex. 1, attachment H), Mr. Harris testified regarding the estimated costs and construction timeframes projected for the drainage, potable water, wastewater, treated effluent reuse, roadway, and recreational improvements, and mosquito and security services that will be provided by the Enterprise CDD. He explained that construction timeframes were determined matching the services and facilities to be provided by the CDD to the years when they would be needed. Drawings were produced depicting the facilities the CDD will provide. Needed infrastructure quantities were projected using the drawings. Unit prices were determined from previous Disney projects and other projects in the area. The estimated unit prices were applied to the projected quantities to produce the estimated cost schedule. (Tr. 27; Composite Ex. 1, attachment H). In Mr. Harris's opinion as an expert in engineering, the projected costs and construction timeframes for the Enterprise CDD services and facilities are reasonable. (Tr. 27).

21. From Mr. Harris's perspective as an expert in engineering, based on the proposed location, design, and operation of the proposed infrastructure, it is his opinion the Enterprise CDD is of sufficient size, compactness, and contiguity to be developable as one functional interrelated community. (Tr. 27-28).

22. Also from Mr. Harris's expert perspective as an engineer, it is his opinion the Enterprise CDD's facilities and services will be compatible with the existing local and regional community services and facilities. (Tr. 28). In reaching that conclusion, Mr. Harris noted that other than existing drainage facilities currently provided by the Reedy Creek Improvement District, there are no existing public services or facilities present or planned for the area to be included in the Enterprise CDD. The CDD will provide these services and facilities to the area. With respect to the drainage infrastructure, the existing and proposed facilities will be functionally compatible. (Tr. 28). As previously stated, to ensure compatibility, the Enterprise CDD will have to obtain approval from the Reedy Creek Improvement District prior to construction of any drainage facilities in the Enterprise CDD. (Tr. 28).

23. Testimony of Robert J. Whidden: Mr. Whidden is a planner and a principal in the firm of R.J. Whidden & Associates, a planning and consulting firm located in Kissimmee, Florida. Mr. Whidden has approximately twenty years' experience in planning, including master planning, site planning, pre-development site analysis, and obtaining state and local environmental and land use approvals for DRI-scale communities. Mr. Whidden previously has been qualified as an expert in planning. At the hearing, Mr. Whidden was qualified as an expert in community planning and design. (Tr. 36).

24. In his review of the planning and design of the Enterprise CDD, Mr. Whidden particularly considered four factors in Section 190.005(1)(e), Fla. Stat.: consistency of the CDD with the State Comprehensive Plan and the effective local comprehensive plan; sufficiency of CDD size, compactness, and contiguity to be developable as a functional interrelated community; whether the CDD is the best alternative for delivering community services and facilities to the land area that will be served by the CDD; and whether the CDD services and facilities will be incompatible with existing local and regional services and facilities. (Tr. 37).

25. Mr. Whidden testified regarding consistency of the Enterprise CDD with the Reedy Creek Improvement District Comprehensive Plan ("RCID Plan"). Based on his review of the RCID Plan, he stated the RCID Plan did not contain any provisions prohibiting or discouraging creation of CDDs. (Tr. 37). The Future Land Use Element of the RCID Plan designates the land to be included in the Enterprise CDD as Mixed-Use and Resource Management/Recreation. The land uses proposed for the Enterprise CDD are predominantly commercial, with some related complementary mixed uses. From Mr. Whidden's expert perspective as a planner, the land uses in the Enterprise CDD are not inconsistent with those in the RCID Plan. (Tr. 37-38).

26. Mr. Whidden also testified as to consistency of the Enterprise CDD with the Osceola County Comprehensive Plan (hereafter "Osceola Plan"). Based on his review of the Osceola Plan, Mr. Whidden stated it does not contain any provisions prohibiting or discouraging creation of CDDs. (Tr. 38). The Osceola Plan does not designate any land uses or provide for any infrastructure or services for the area included in the Enterprise CDD because the land currently is in RCID and therefore not under Osceola County's jurisdiction. In anticipation of contraction of the Celebration DRI lands out of RCID into Osceola County, DDC has submitted a plan amendment to Osceola County for designation of the land in the Enterprise CDD as Mixed-Use. This proposed amendment to the Osceola Plan will be consistent with the predominantly commercial land uses planned for the Enterprise CDD. The CDD will serve as the vehicle for infrastructure and community services provision to the land area included in the CDD. (Tr. 38-39). From his expert perspective as a planner, Mr. Whidden opined that creation of the Enterprise CDD is not inconsistent with the Osceola Plan. (Tr. 39-40).

27. Mr. Whidden also testified that the Enterprise CDD is not inconsistent with the State Comprehensive Plan, Chapter 187, Fla. Stat. (Tr. 45). In evaluating Enterprise CDD consistency with the State Comprehensive Plan, he considered several policies in the State Comprehensive Plan: Governmental Efficiency Goal 21, Policy 2, regarding creation of independent special taxing districts; Land Use Goal 16, Policy 1, encouraging development in areas which will have the capacity to service new population and commerce; Public Facilities Goal 18, Policy 3, allocating the cost of new public facilities on the basis of benefits received by existing and future residents; Public Facilities Goal 18, Policy 5, encouraging local government financial self-sufficiency in providing

public facilities; and Public Facilities Goal 18, Policy 6, implementing innovative, fiscally-sound and cost-effective techniques for financing public facilities. (Tr. 45-47).

28. Based on Mr. Whidden's planning expertise and familiarity with the State Comprehensive Plan, he concluded that creation of the Enterprise CDD is not inconsistent with the State Comprehensive Plan. Specifically, both CDDs will be created pursuant to Chapter 190, Fla. Stat., and FLWAC procedural rules in Chapter 42-1, Fla. Admin. Code, and, thus, will meet the uniform general law and procedure standards in Governmental Efficiency Goal 21, Policy 2, regarding creation of independent special taxing districts. Moreover, because the residents and businesses in the Enterprise CDD will pay assessments according to the services and facilities they receive, the Enterprise CDD creation will not overburden taxpayers in Osceola County or any other government entity. Since Osceola County will not provide any services or facilities to the land area in either CDD, CDD residents and businesses will not be assessed by the County for these services and facilities, nor will Osceola County residents not living in the CDD have to pay for services and facilities in the CDD. (Tr. 46). Based on these considerations, in Mr. Whidden's expert opinion, the Enterprise CDD meets the standards in Governmental Efficiency Goal 21, Policy 2 (Tr. 46-47), and is not inconsistent with any other applicable State Comprehensive Plan policies. (Tr. 45-46).

29. From his expert perspective as a planner, Mr. Whidden testified that creation of two separate CDDs is not inconsistent with the RCID Plan or the Osceola County Plan. (Tr. 42-43). He noted that neither plan contains any provisions prohibiting or discouraging CDD creation or limiting their numbers. Moreover, there is no indication in either plan that creation of two CDDs will hamper intergovernmental coordination with Osceola County or RCID, interfere with or detract from facilities and services provision by Osceola County or RCID, or burden residents of Osceola County or RCID. (Tr. 43).

30. Also in Mr. Whidden's expert opinion, creation of two CDDs is not inconsistent with any provisions of the State Comprehensive Plan. (Tr. 46-47). The CDDs are being created pursuant to uniform general law standards in Chapter 190, Fla. Stat., consistent with Governmental Efficiency Goal 21, Policy 2. Further, because each CDD will provide its own infrastructure and services to serve its land area, there will not be any "double assessment" of taxpayers in either the Enterprise CDD or the Celebration CDD. Further, creation of two CDDs does not constitute a "proliferation" of districts discouraged in Governmental Efficiency Goal 21, Policy 2. (Tr. 47).

31. Based on his expertise as a planner, and having reviewed the Enterprise CDD Petition and considered the testimony of Mr. Lewis and Mr. Harris, Mr. Whidden testified that the Enterprise CDD is of sufficient size, sufficient compactness, and sufficient contiguity to be developable as a functional interrelated community. (Tr. 48). The Enterprise CDD will encompass approximately 1600 acres, will not contain any enclaves or finger projections that would render infrastructure and services provision difficult, and has an efficient land use arrangement to facilitate resident mobility and services and facilities provision. (Tr. 48).

32. Mr. Whidden also testified that in his opinion, the Enterprise CDD is the best alternative for services and infrastructure provision for the area to be served by the CDD. (Tr. 48). The Osceola County Plan does not provide for infrastructure or services provision to the area included in the Enterprise CDD; the CDD will provide these facilities and services. (Tr. 48). CDDs are

preferable to homeowners' associations for services and facilities provision because CDDs have taxing authority and thus can enforce liens to ensure available funds for construction, operation, and maintenance of infrastructure and services. Moreover, because CDDs can borrow at tax exempt interest rates and because CDD assessments do not include developer profits, CDDs can provide significant savings to residents in the infrastructure costs. (Tr. 48-49). CDD provision of community services and infrastructure also is preferable to provision by a general purpose local government, municipal services taxing unit (MSTU), or municipal services benefit unit (MSBU) from an accountability and efficiency standpoint. This is because the CDD's activities are specifically keyed to infrastructure and services provision for the land area in the CDD, whereas the general purpose local government's responsibilities are much broader, and therefore less focused on the specific mission of providing community infrastructure and services. (Tr. 49-50).

33. From his expert planning perspective, Mr. Whidden testified that the community development services and facilities of the Enterprise CDD will not be incompatible with the capacity and uses of existing local and regional community development services and facilities. (Tr. 51). Osceola County does not contemplate any services or infrastructure provision to the land included in the CDD, so the CDD will provide infrastructure and services that would not otherwise be provided by local government. Upon contraction of the land out of RCID into Osceola County, the lands in the Enterprise CDD will be subject to Osceola County land use planning and regulatory jurisdiction. (Tr. 51-52). Thus, the Enterprise CDD is not inconsistent with existing or planned local or regional community development services or facilities. (Tr. 51).

34. Testimony of Gary L. Moyer: Mr. Moyer is President and Chief Executive Officer of Gary L. Moyer, P.A., a firm engaged in the management of special purpose taxing districts. He has 15 years' experience in providing a range of district management services, including budgeting, accounting, reporting, operations, maintenance of facilities, and relations with other governmental entities, and currently provides these services to thirty-two special taxing districts in the state. At the hearing, Mr. Moyer was qualified as an expert in special district management. (Tr. 53-54).

35. Based on Mr. Moyer's review of the Enterprise CDD Petition and accompanying economic impact statement, and on his experience and expertise in special district management, it is his opinion that the Enterprise CDD is amenable to separate special district governance (Tr. 55), and that the Enterprise CDD meets the statutory requirements in Chapter 190, Fla. Stat., with respect to sufficient size, compactness, and contiguity to be developable as a functional interrelated community. (Tr. 55).

36. In Mr. Moyer's expert opinion, creation of two CDDs is not inconsistent with any provisions of the State Comprehensive Plan (Tr. 58), and, in fact, has definite advantages over one CDD when a development will contain different land uses. (Tr. 55-57). Creation of separate CDDs to provide community services and infrastructure to the commercial and residential land uses in the Celebration DRI will result in simpler, more accurate assessments levied on benefitted property. (Tr. 56-57). Also, separate CDDs will enhance and facilitate representation of commercial and residential property owners in district elections. (Tr. 57).

37. Also from Mr. Moyer's perspective as a district management and governance expert, the Enterprise CDD is the best alternative to provide infrastructure and services to the land area included in the CDD. (Tr. 58-60).

As grounds for this opinion, Mr. Moyer explained that CDDs incorporate the best aspects of public sector and private sector infrastructure and services provision. From a public access and accountability standpoint, CDDs are subject to the public records, sunshine, ethics, and reporting and auditing laws applicable to government entities. The safeguards under these laws inure to the persons who buy property in the CDD. (Tr. 59). Mr. Moyer also concurred in Mr. Whidden's statement that CDDs provide the least cost alternative for community infrastructure and services provision because they are eligible for tax-exempt financing not available to private developers. (Tr. 58). In this way, CDDs are preferable to private entities, such as homeowners' associations, for infrastructure and services provision. (Tr. 58- 59). On the other hand, because CDDs' purpose is specifically to provide community infrastructure and services, their activities in this regard are more focused and efficient than those by general purpose local government. (Tr. 59-60).

38. Testimony of Dr. Henry H. Fishkind: Dr. Henry H. Fishkind is President and Chief Economic Forecaster for Fishkind & Associates, an economic consulting firm. In addition to providing economic forecasting services, the firm also provides financial services and advice and counsel to both private and public entities, including special taxing districts. Dr. Fishkind holds a Bachelor of Science and a Ph.D. in economics. His specialty is econometrics, which involves economic and statistical evaluation of urban and regional developments. Dr. Fishkind has approximately 10 years' experience in providing economic forecasting and financial services, and has provided these services to over 20 CDDs in Florida. (Tr. 62-63). Dr. Fishkind previously has been qualified as an expert witness and has testified both in favor of and in opposition to creation of CDDs. At the hearing, Dr. Fishkind was qualified as an expert in economics and public finance. (Tr. 63).

39. Dr. Fishkind prepared the economic impact statement (EIS) for the Enterprise CDD. The EIS was prepared to meet the requirements of Sections 190.005(1)(a)8 and 120.54(2), Fla. Stat., and analyze the CDD's financial structure to ensure creation of a district that meets DDC's needs for development and management of the portion of the Celebration DRI located in the Enterprise CDD. (Tr. 64).

40. The data used to prepare the EIS was provided by Disney Development Company. The cost estimates and construction timeframes used in EIS preparation were developed by Mr. Joe Harris and other engineers. (Tr. 65). In addition, Dr. Fishkind analyzed the CDD's financial design and the costs and benefits of CDD creation on affected parties. (Tr. 65). In preparing this analysis, he relied on research regarding user fees, charges, and other readily quantifiable exactions to generate cash flow models. These models were used to evaluate the Enterprise CDD's financial feasibility. (Tr. 65).

41. Dr. Fishkind described the services and infrastructure facilities, depicted in Tables 1 and 1a of the EIS, to be provided by the Enterprise CDD. (Tr. 65-66; Composite Ex. 1, attachment L, Tables 1 and 1a). The capital costs for the drainage, potable water, wastewater, and treated effluent reuse facilities, and the roadways, bridges, and recreational facilities will be paid by the CDD. (Tr. 67; Composite Ex. 1, attachment L, p. 3, Tables 1 and 1a). It is expected the CDD will issue bonds to cover the capital costs of these facilities. Capital costs will be paid off through the levy of non-ad valorem assessments on all benefitted property in the CDD. Bonds will be repaid from the proceeds of the non-ad valorem assessments or user fees. (Composite Ex. 1, attachment L, p. 3). Maintenance and operation costs for the potable, wastewater, and treated effluent reuse facilities will be financed by user fees.

Maintenance and operation costs for the drainage, roadway, and recreational facilities will be financed by non-ad valorem assessments on benefitted property. Mosquito control, fire, and security services will be financed using a combination of user fees and non-ad valorem assessments. (Tr. 67; Composite Ex. 1, attachment L, p. 3, Tables 1 and 1a). Upon obtaining consent from the Osceola County School Board, the CDD will finance the capital costs of school facilities, likely through bond issuance, and the capital costs will be paid off through non-ad valorem assessments and user fees. (Tr. 68).

42. Dr. Fishkind described the proposed infrastructure cost estimates and estimated time schedule for services and infrastructure provision by the Enterprise CDD. The projected costs and timeframes are reasonable and competitive with other CDDs providing similar infrastructure. (Tr. 74). The projected cost and timeframe information, depicted in Table 2 of the Enterprise EIS (Composite Exhibit 1, attachment L, Table 2), is consistent with the cost estimates and construction timeframes developed by Mr. Harris (Tr. 68).

43. Dr. Fishkind described and summarized the costs and benefits to affected parties as projected in the EIS for the Enterprise CDD. With respect to costs and benefits to the state of Florida, the state will incur some administrative costs associated with review of the Petition to Establish the Enterprise CDD. Additionally, there will be administrative costs incurred by the Department of Community Affairs ("DCA") for review of annual special district reports submitted by the CDD as required by Chapter 189, Fla. Stat. These costs will be offset by annual reporting fees paid by the CDD to DCA. Administrative costs will also be incurred by the Bureau of Local Government Finance, Office of the Comptroller for annual district budget review. However, these costs are negligible. (Tr. 69-70; Composite Ex. 1, attachment L, pp. 3-5.) The CDD will not require subsidies from the state or its citizens. (Composite Ex. 1, pp. 4-5). The Enterprise CDD will encourage large-scale development in a planned fashion consistent with Chapter 190 and the State Comprehensive Plan -- a significant benefit to the state. (Tr. 70; Composite Ex. 1, attachment L, p. 4).

44. With respect to costs and benefits of CDD creation to local general-purpose government, Osceola County and RCID will incur some administrative costs in reviewing the Petition to Establish the Enterprise CDD. However, these costs will be fully offset by the \$15,000 filing fees paid by DDC. (Tr. 70; Composite Ex. 1, attachment L, p. 4-5). Moreover, Chapter 190 specifically provides that the debts and obligations of the CDD are not obligations of the local general-purpose government. (Tr. 70; Composite Ex. 1, attachment L, p. 4-5). There will be no costs resulting from Enterprise creation to citizens of Osceola County who do not live in the CDD. (Tr. 70). In terms of benefits to Osceola County, the district will provide substantial amounts of infrastructure at no cost to the County. Moreover, the County may rely on the CDD infrastructure in meeting the concurrency requirement in Chapter 163, Fla. Stat. This constitutes a significant benefit to Osceola County. (Tr. 70; Composite Ex. 1, attachment L, pp. 4-5). CDD encouragement of well-planned, well-financed, large-scale development consistent with law also is a significant benefit to the County. (Tr. 70; Composite Ex. 1, attachment L, p. 7).

45. There will be costs and benefits to persons owning land or renting commercial space in the CDD. (Tr. 71; Composite Ex. 1, attachment L, p. 10). The CDD may issue bonds to finance the construction and/or acquisition of CDD infrastructure. The annual debt service on the bonds will be paid by non-ad valorem assessments levied on district landowners. To defray the capital costs of the potable water, wastewater, and treated effluent reuse facilities, users will be charged connection charges and monthly service fees. Owners of lands

served for which there are not customers will be charged reservation or stand-by charges. (Tr. 75; Composite Ex. 1, attachment L, p. 10). The CDD can provide these services at lower cost than can a private developer, resulting in lower user charges. (Tr. 71). For the roadways, drainage facilities, recreation facilities, schools, mosquito control, security, and fire protection services, capital costs will be paid off and operating and maintenance costs will be financed through the assessment of non-ad valorem special assessments or benefit special assessments on benefitted property. (Tr. 75-76; Composite Ex. 1, attachment L, pp. 10-11). With respect to benefits of CDD creation to landowners, CDDs are reliable, efficient entities for construction, operation, and maintenance of well-managed, high-quality community infrastructure and services. (Tr. 72; Composite Ex. 1, attachment L, p. 11). Also, because CDDs are eligible for tax-exempt financing (Tr. 73; Tr. 79, citing Tr. 49, Tr. 58), and because CDD infrastructure construction programs are publicly bid, there is no developer markup for infrastructure costs (Tr. 72), reflected in lower assessments on benefitted properties. (Tr. 71- 72). These are significant benefits to landowners in the Enterprise CDD. (Tr. 72).

46. Costs and benefits of Enterprise CDD creation to Disney Development Company were analyzed. DDC's costs include those incurred in petitioning to create the CDD, including filing fees and expert planning, legal, engineering, financial, and other professional services required for petition preparation. (Composite Ex. 1, attachment L, pp. 8-9). Additionally, DDC will be the largest initial landowner in the CDD, and, therefore, initially will be the CDD's largest payer of taxes and special assessments. DDC also will likely provide certain rights-of-way and easements to the CDD. (Composite Ex. 1, attachment L, p. 9), as well as provide managerial and technical assistance to the CDD in the early stages of CDD operation. (Composite Ex. 1, attachment L, p. 9). The most important benefit of Enterprise CDD creation to DDC is that the CDD will provide a mechanism for the comprehensive provision, operation, and maintenance of the Celebration DRI infrastructure. (Tr. 73; Composite Exhibit 1, attachment L, p. 9). This will accord DDC flexibility in meeting marketplace demands and provide permitting agencies assurance there is be a stable, long-term entity in existence for maintenance of certain types of infrastructure. (Tr. 73; Composite Ex. 1, attachment L, p. 9). The CDD also will have access to tax-exempt financing not available to the developer. (Tr. 73; Composite Ex. 1, attachment L, pp. 9-10).

47. As part of the EIS, Dr. Fishkind analyzed the effect of Enterprise CDD creation on market competition and small business. The CDD will have a modest effect on competition in the market for commercial real estate in Osceola County and in areas having development similar to the proposed Celebration DRI. However, the CDD does not have a unique competitive advantage over other entities competing in the same market. Development planned for the Enterprise CDD will have a significant positive impact on area employment. (Composite Ex. 1, attachment L, p. 12). CDD creation will have no adverse impacts on small business. In fact, because the CDD is required under Chapter 190 to seek competitive bids for certain services, small businesses may be better able to compete for provision of these services to the CDD. (Composite Ex. 1, attachment L, p. 12).

48. Based on the economic analysis of the Enterprise CDD, Dr. Fishkind concluded the Enterprise CDD will be financially sound and successful. (Tr. 74). The assessments levied by the CDD are reasonable and will be competitive in the development market. (Tr. 74-75).

49. From Dr. Fishkind's perspective as an expert in public finance and economics, the Enterprise CDD is not inconsistent with the Reedy Creek Improvement District or Osceola County comprehensive plans. The CDD will enable the Celebration DRI to provide and fund the infrastructure it will require, thus meeting the concurrency requirement. (Tr. 77).

50. Also from his perspective as an expert in public finance and economics, Dr. Fishkind stated that the Enterprise CDD is not inconsistent with the State Comprehensive Plan. Based on his economic evaluation of the Enterprise CDD, it is his expert opinion that the CDD is consistent from an economic standpoint with each of the State Comprehensive Plan goals and policies applicable to special tax districts previously addressed in Mr. Whidden's and Mr. Moyer's testimony. (Tr. 77).

51. Dr. Fishkind testified that from his expert financial perspective, creation of two CDDs is not inconsistent with the RCID or Osceola County local comprehensive plans or the State Comprehensive Plan. (Tr. 77-78). Because the capital infrastructure costs will likely be different for the Enterprise and Celebration CDDs due to the different land uses, creation of separate CDDs simplifies assessments, enhances accountability, and promotes economic efficiency. For these reasons, the trend for large developments that will have different land uses is to create separate CDDs to finance the infrastructure and services for the different land uses. (Tr. 78).

52. Also in Dr. Fishkind's opinion as an expert in public finance and economics, the Enterprise CDD is the best alternative to provide community services and infrastructure to the land area included in the CDD. He noted that state policy established in Chapter 190, Fla. Stat., encourages well-planned large-scale community development, such as that proposed for the land in the Enterprise CDD (Tr. 70). CDDs help ensure growth pays for itself and that those who receive growth benefits pay the costs. (Tr. 70). Dr. Fishkind concurred with Mr. Whidden's and Mr. Moyer's testimony as to why CDDs are preferable to homeowners' associations, general-purpose local government, or MSTU/MSBU provision of community services and infrastructure. It is also his opinion that the CDD is the least cost alternative for provision of these services and facilities. (Tr. 78-79).

53. Based on Dr. Fishkind's expertise and experience with other districts of similar size and configuration, it is his opinion that the Enterprise CDD is of sufficient size, compactness, and contiguity to operate as a functional economic entity amenable to special district governance. In this regard, he emphasized the importance of creating separate CDDs for the different land uses proposed for the Celebration DRI. Because the Enterprise CDD will provide infrastructure specifically keyed to commercial development, the CDD will be particularly financially amenable to special district governance. (Tr. 79-80). Moreover, the Enterprise and Celebration CDDs will be financially independent entities, so the economic success of one CDD is not dependent on the economic success of the other. If one CDD is not developed, the other can still be developed. (Tr. 80).

Public Participation

54. Several members of the public attended the hearing; however, none commented or asked questions regarding creation of the Enterprise CDD.

Conclusions

55. Based on the entire record in this proceeding, including the evidence received at the local public hearing, it is concluded that the Petition for Establishment of the Enterprise CDD meets each of the following criteria in Section 190.005(1)(e)5, Fla. Stat.:

1. All statements contained in the Petition as corrected at the hearing are true and correct.

2. Creation of the Enterprise CDD is not inconsistent with any applicable elements of the State Comprehensive Plan, the Reedy Creek Improvement District Comprehensive Plan, and the Osceola County Comprehensive Plan.

3. The area of land within the proposed Enterprise CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

4. The Enterprise CDD is the best alternative available for delivering community services and facilities to the area that will be served by the district.

5. The community development services and facilities of the Enterprise CDD will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

6. The area to be served by the Enterprise CDD is amenable to separate special district government.

DONE AND ENTERED this 16th day of September, 1992, in Tallahassee, Leon County, Florida.

MARY CLARK
Hearing Officer
Division of Administrative Hearings
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Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of September, 1992.

APPENDIX A

PETITIONER'S WITNESSES

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APPENDIX B

LIST OF EXHIBITS

Exhibit	Description
Composite 1	Petition to Establish the Enterprise Community Development District Attachment A -- Location Map Attachment B -- Legal Description Attachment C -- CDD Boundaries Attachment D -- Landowner Consent Attachment E -- Map of Proposed Major Trunk Water Mains and Sewer Interceptors for Enterprise CDD Attachment F -- Map of Existing Utilities and Drainage Outfalls for Enterprise CDD Attachment G -- Map of Proposed Drainage Facilities in Enterprise CDD Attachment H -- Estimated Costs and Construction Timetable for Improvements for Enterprise CDD Attachment I -- Proposed Master Plan Map H1 Attachment J -- Proposed Master Plan Map H2 Attachment K -- Jurisdictional Boundaries of RCID After Contraction and Overlay of Celebration and Enterprise CDDs

Attachment 12 -- RCID Comprehensive
Plan
Attachment 13 -- Osceola County
Comprehensive Plan
Attachment L -- Economic Impact
Statement for Enterprise CDD

Composite 3 Proof of Compliance with Statutory and Rule
Notice Requirements

Composite 4 Osceola County Board of County Commissioners
Resolution of Support for Creation of the
Enterprise and Celebration CDDs

Letter of Support from Reedy Creek Improvement
District for Establishment of Celebration and
Enterprise CDDs

Composite 5 Receipt from Osceola County for Payment of
\$15,000 Fee for Filing Petition to Establish
Enterprise CDD

Receipt from Osceola County for Payment of
\$15,000 Fee for Filing Petition to Establish
Celebration CDD

Receipt from the Reedy Creek Improvement District
for Payment of \$15,000 Fee for Filing Petition to
Establish Enterprise CDD

Receipt from the Reedy Creek Improvement District
for Payment of \$15,000 Fee for Filing Petition to
Establish Celebration CDD

APPENDIX C

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