

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: A RULE TO ESTABLISH THE)
CELEBRATION COMMUNITY DEVELOPMENT) Case No. 92-2360
DISTRICT,)
_____)

REPORT OF FINDINGS AND CONCLUSIONS
ON ESTABLISHMENT OF THE CELEBRATION 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 petitions of the Disney Development Company to establish the Celebration Community Development District ("Celebration CDD" or "CDD") and the Enterprise Community Development District ("Enterprise CDD").

This Report of Findings and Conclusions regarding establishment of the Celebration 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 Celebration 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 2 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 Celebration CDD. DDC requests adoption of a rule by FLWAC, pursuant to Section 190.005(1), Fla. Stat., establishing the Celebration CDD. The land area in the Celebration CDD consists of approximately 6,548 acres located in unincorporated Osceola County and currently included in RCID. The Petition to Establish the

Celebration CDD and attached exhibits 1 through 14 were admitted into evidence at the hearing as Composite Exhibit 2.

On April 13, 1992, FLWAC determined the Celebration 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 Celebration 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 Celebration 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 Celebration CDD was mailed to the Reedy Creek Improvement District, Osceola County, the members of the Board of Supervisors of the Celebration 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 Celebration CDD was received into evidence as part of 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 Celebration 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 Celebration CDD. The Celebration 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 Enterprise 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. A letter regarding the Celebration CDD was submitted to the Hearing Officer by the Kissimmee Valley Audubon Society. DDC submitted a written response to the Hearing Officer on July 30, 1992 concerning the issues raised in the Audubon letter. The Audubon letter and DDC's response thereto are discussed on pages 30-31 of this Report.

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 proposed report is substantially adopted here.

Overview

1. DDC seeks to establish the Celebration CDD, which will be located in unincorporated Osceola County and the Reedy Creek Improvement District. Once established, the Celebration 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 Celebration CDD will serve predominantly residential 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 Celebration 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 CDD. 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), Florida Statutes, 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 Celebration CDD. He identified Composite Exhibit 2, the Petition to Establish the Celebration CDD. At the hearing, Mr. Lewis made one correction to the Petition as filed with FLWAC: the name of the "Celebration East" CDD has been changed to "Celebration" CDD. With this correction, 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 Celebration 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 Celebration CDD and the Enterprise CDD. Concurrent with submittal of the Petition for Establishment of the Celebration CDD, DDC has submitted a Petition for Establishment of the Enterprise CDD (Tr. 11; Composite Ex. 1). 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. Similarly, 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. The CDDs will ensure district residents and businesses 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 Celebration CDD. The Celebration CDD is located in the Reedy Creek Improvement District, south of U.S. 192 and Interstate 4 and west of the Bonnett Creek Canal. (Tr. 11; Composite Ex. 2, attachments 1, 3). Mr. Lewis also described the location of the Celebration CDD in relation to the Enterprise CDD. The Enterprise CDD will be located immediately north of I-4 and is geographically separated from the Celebration CDD by I-4. (Tr. 11; Composite Ex. 2, attachments 1, 3, 11). 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, which includes the land in the Celebration 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 Celebration and Enterprise 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 Celebration 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. 2, attachment 4).

8. There is no real property contained entirely in the Celebration 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 Celebration CDD are listed in the Petition to Establish the Celebration CDD (Composite Ex. 2, 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 Celebration CDD. Currently, the land is vacant, unimproved agricultural land. (Tr. 18). As part of the Celebration DRI, the land area in the Celebration CDD will consist of predominantly residential use, with ancillary commercial and recreational uses. (Tr. 13).

11. Once established, the Celebration 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. (Composite Ex. 2, p. 6; attachment 14, Tables 1, 1a, 2).

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 Celebration 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 Celebration 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 Celebration CDD. Existing drainage for the land to be included in the Celebration CDD consists of a series of culverts which drain Reedy Creek Improvement District land north of I-4. The culverts pass under I-4, directing drainage south over the land in the Celebration CDD. The C-1 Canal also carries drainage south from U.S. 192 along the eastern boundary of the CDD. The drainage ultimately flows into Reedy Creek and exits the Reedy Creek Improvement District through the S-40 water control structure. (Tr. 28-29; Composite Ex. 2, attachment 6). The proposed drainage facilities for the Celebration 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 Celebration CDD, as well as detention in the wetlands in the CDD. (Tr. 29; Composite Ex. 2, attachment 7). Prior to construction of the proposed drainage improvements, the CDD must obtain approval from the Reedy Creek Improvement District. (Tr. 33; Composite Ex. 2, p. 4).

15. Mr. Harris also testified as to the design, location, and operation of the proposed potable water facilities for the Celebration CDD. Two water treatment plants with wells are proposed to be located in the Enterprise CDD. A 20-inch water main will connect the two water treatment plants and will distribute potable water to each parcel in the Celebration CDD. (Tr. 29; Composite Ex. 2, attachment 5).

16. Mr. Harris testified as to the design, location, and operation of the proposed wastewater treatment facilities for the Celebration CDD. The wastewater treatment plant is proposed to be located in the southwest corner of the Enterprise CDD. Wastewater will gravity flow to lift stations, 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. 29-30; Composite Ex. 2, attachment 5). Because the land in the Celebration 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 Celebration CDD will obtain wastewater services from the Enterprise 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 Celebration 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. 30; Composite Ex. 2, attachment 5). The treated effluent will be used to irrigate the lands in the CDD. (Composite Ex. 2, p. 4).

18. Mr. Harris also testified as to the proposed design and location of the roadways, bridges, and related improvements for the Celebration CDD. An arterial road will run parallel to I-4 and the Southern Connector. Local and arterial roads serving the parcels in the CDD also will be provided. (Tr. 30; Composite Ex. 2, attachment 9). All roadways will be constructed to appropriate Florida Department of Transportation (FDOT) and Osceola County standards. Street lights also will be provided. (Tr. 31; Composite Ex. 2, p. 5, attachment 9).

19. Mr. Harris testified regarding the location and types of recreational facilities to be provided by the Celebration 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. 31; Composite Ex. 2, attachment 10).

20. Using Exhibit 8 to the Petition (Tr. 31-32, Composite Ex. 2, attachment 8), 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 Celebration 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. 31-32; Composite Ex. 2, attachment 8). In Mr. Harris's expert engineering opinion, the projected costs and construction timeframes for the Celebration CDD services and facilities are reasonable. (Tr. 32).

21. From Mr. Harris's perspective as an expert in engineering, based on the proposed location, design, and operation of the proposed infrastructure, the Celebration CDD is of sufficient size, compactness, and contiguity to be developable as one functional interrelated community. (Tr. 32-33).

22. Also from Mr. Harris's expert perspective as an engineer, the Celebration CDD's facilities and services will be compatible with the existing local and regional community services and facilities. (Tr. 33). 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 Celebration 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. As previously stated, to ensure compatibility, the Celebration CDD will have to obtain approval from the Reedy Creek Improvement District prior to construction of any drainage facilities in the Celebration CDD. (Tr. 33).

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. He 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. He previously has been qualified as an

expert in planning. At the hearing, he was qualified as an expert in community planning and design. (Tr. 36).

24. In his review of the planning and design of the Celebration 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 Celebration 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. 41). The Future Land Use Element of the RCID Plan designates the land to be included in the Celebration CDD as Mixed-Use and Resource Management/Recreation. The land uses proposed for the Celebration CDD are predominantly residential, with some related complementary mixed uses. From Mr. Whidden's expert perspective as a planner, the land uses in the Celebration CDD are not inconsistent with those in the RCID Plan. (Tr. 40-41).

26. Mr. Whidden also testified as to consistency of the Celebration 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. 41-42). The Osceola Plan does not designate any land uses or provide for any infrastructure or services for the area included in the Celebration 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 Celebration CDD as Mixed-Use. This proposed amendment to the Osceola Plan will be consistent with the predominantly residential land uses planned for the Celebration CDD. The CDD will serve as the vehicle for infrastructure and community services provision to the land area included in the CDD. (Tr. 42). From his expert perspective as a planner, Mr. Whidden opined that creation of the Celebration CDD is not inconsistent with the Osceola Plan. (Tr. 42).

27. Mr. Whidden also testified that the Celebration CDD is not inconsistent with the State Comprehensive Plan, Chapter 187, Fla. Stat. (Tr. 45). In evaluating Celebration 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). Based on his expertise and familiarity with the State Comprehensive Plan, Mr. Whidden concluded that creation of the Celebration CDD is not inconsistent with the State Comprehensive Plan. Specifically, the CDD 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 Celebration CDD residents will pay assessments according to the services and facilities they receive, the CDD 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 Celebration 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).

28. 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).

29. 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. 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 Celebration CDD or the Enterprise CDD. Further, creation of two CDDs does not constitute a "proliferation" of districts discouraged in Governmental Efficiency Goal 21, Policy 2. (Tr. 47).

30. Based on his expertise as a planner, and having reviewed the Celebration CDD Petition and considered the testimony of Mr. Lewis and Mr. Harris, Mr. Whidden testified that the Celebration CDD is of sufficient size, sufficient compactness, and sufficient contiguity to be developable as a functional interrelated community. (Tr. 48). The Celebration CDD will encompass over 6500 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. 47-48).

31. Mr. Whidden also testified that in his opinion, the Celebration 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 Celebration CDD; the CDD will provide these facilities and services. (Tr. 48). CDDs are preferable to homeowners' association 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).

32. From his expert planning perspective, Mr. Whidden testified that the community development services and facilities of the Celebration 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 Celebration CDD will be subject to Osceola County land use planning and regulatory jurisdiction. (Tr. 51-52). Thus, the Celebration CDD is not inconsistent with existing or planned local or regional community development services or facilities. (Tr. 51).

33. 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).

34. Based on Mr. Moyer's review of the Celebration CDD Petition and accompanying economic impact statement, and on his experience and expertise in special district management, it is his opinion that the Celebration CDD is amenable to separate special district governance (Tr. 55), and that the Celebration 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).

35. 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 definitive 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 benefited property. (Tr. 56-57). Also, separate CDDs will enhance and facilitate representation of commercial and residential property owners in district elections. (Tr. 57).

36. Also from Mr. Moyer's perspective as a district management and governance expert, the Celebration 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).

37. 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).

38. Dr. Fishkind prepared the economic impact statement (EIS) for the Celebration CDD. The EIS was prepared to meet the requirements of Sections 190.005(1)(a)8 and 120.54(2), Fla. Stat. (Tr. 64).

39. 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 Celebration CDD's financial feasibility. (Tr. 65).

40. Dr. Fishkind described the services and infrastructure facilities, depicted in Tables 1 and 1a of the EIS, to be provided by the Celebration CDD. (Tr. 65-66, 73; Composite Ex. 2, attachment 14, 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, 73; Composite Ex. 2, attachment 14, 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. 2, attachment 14, 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. 2, attachment 14, 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).

41. Dr. Fishkind described the proposed infrastructure cost estimates and estimated time schedule for services and infrastructure provision by the Celebration 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 Celebration EIS (Composite Ex. 2, attachment 14, Table 2), is consistent with the cost estimates and construction timeframes developed by Mr. Harris. (Tr. 68).

42. Dr. Fishkind described and summarized the costs and benefits to affected parties as projected in the EIS for the Celebration 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 Celebration 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. 2, attachment 14, pp. 3-5.) The CDD will not require subsidies from the state or its citizens. (Composite Ex. 2, pp. 4-5). The Celebration CDD will encourage well-planned, large-scale development in a fashion consistent with Chapter 190 and the State Comprehensive Plan -- a significant benefit to the state. (Tr. 70; Composite Ex. 2, attachment 14, p. 4).

43. 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 Celebration CDD. However, these costs will be fully offset by the \$15,000 filing fees paid by DDC. (Tr. 70; Composite Ex. 2, attachment 14, 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. 2, attachment 14, p. 4-5). There will be no costs resulting from Celebration 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. 2, attachment 14, 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. 2, attachment 14, p. 7).

44. There will be costs and benefits to persons owning land or renting commercial space in the CDD. (Tr. 71; Composite Ex. 2, attachment 14, 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. 2, attachment 14, 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. 2, attachment 14, 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. 2, attachment 14, 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 Celebration CDD. (Tr. 72).

45. Costs and benefits of Celebration 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. 2, attachment 14, 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. 2, attachment 14, p. 9), as well as provide managerial and technical assistance to the CDD in the early stages of CDD operation. (Composite Ex. 2, attachment 14, p. 9). The most important benefit of Celebration 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 Ex. 2, attachment 14, 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. 2, attachment 14, p. 9). The CDD also will have access to tax-exempt financing not available to the developer. (Tr. 73; Composite Ex. 2, attachment 14, pp. 9-10).

46. As part of the EIS, Dr. Fishkind analyzed the effect of Celebration CDD creation on market competition and small business. The CDD will have a modest effect on competition in the market for residential 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. As the residential land uses in the Celebration CDD are developed, there will be a positive impact on employment demand at the local level. (Composite Ex. 2, attachment 14, 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. 2, attachment 14, p. 12).

47. Based on the economic analysis of the Celebration CDD, Dr. Fishkind concluded the Celebration 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).

48. From Dr. Fishkind's perspective as an expert in public finance and economics, the Celebration 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).

49. Also from his perspective as an expert in public finance and economics, Dr. Fishkind stated that the Celebration CDD is not inconsistent with the State Comprehensive Plan. Based on his economic evaluation of the Celebration 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).

50. 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 Celebration and Enterprise 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).

51. Also in Dr. Fishkind's opinion as an expert in public finance and economics, the Celebration 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 Celebration 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).

52. Based on Dr. Fishkind's expertise and experience with other districts of similar size and configuration, it is his opinion that the Celebration 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 Celebration CDD will provide infrastructure specifically keyed to residential development, the CDD will be particularly financially amenable to special district governance. (Tr. 79-80). Moreover, the Celebration and Enterprise 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

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

54. The Kissimmee Valley Audubon Society ("Audubon"), through its President, Ruth B. Clark, submitted a letter on July 15, 1992, for inclusion in the Record of this proceeding, raising several issues. The letter questioned whether there is sufficient contiguity between the portion of the proposed Celebration development located south of Reedy Creek and the rest of the development. This issue is a development planning concern, which, pursuant to Section 190.002(2)(d), Fla. Stat., is not material or relevant to this proceeding. As established by testimony and the exhibits entered into evidence at the hearing, the Celebration CDD is of sufficient size, compactness, and contiguity to be developable as a functional interrelated community, as required by Section 190.005(1)(e)3, Fla. Stat. The Audubon letter raised several other environmental, transportation, planning, and land use issues, none of which are

relevant or material to this proceeding. These issues are being addressed in the appropriate environmental permitting and land use approval processes.

CONCLUSIONS

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 Celebration 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 Celebration 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 Celebration CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

4. The Celebration 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 Celebration 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 Celebration 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
The DeSoto Building
1230 Apalachee Parkway
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

Tom Lewis, Jr.
Vice President of Community Development
Disney Development Company
649 Westwood Boulevard, Suite 300
Orlando, Florida 32821

Joseph E. Harris
Ivey, Harris, & Walls
122 East Colonial Drive
Orlando, Florida 32801

Robert J. Whidden
R.J. Whidden & Associates
22 West Monument Avenue
Kissimmee, Florida 34741

Gary L. Moyer
10300 Northwest Eleventh Manor
Coral Springs, Florida 33065

Henry H. Fishkind, Ph.D.
Fishkind & Associates, Inc.
12424 Research Parkway, Suite 275
Orlando, Florida 32826

APPENDIX B

LIST OF EXHIBITS

Exhibit	Description
Composite 2	Petition to Establish the Celebration Community Development District Attachment 1 -- Location Map Attachment 2 -- Legal Description Attachment 3 -- CDD Boundaries Attachment 4 -- Landowner Consent Attachment 5 -- Map of Proposed Major Trunk Water Mains and Sewer Interceptors for Celebration CDD Attachment 6 -- Map of Existing Utilities and Drainage Outfalls for Celebration CDD Attachment 7 -- Map of Proposed Drainage Facilities in Celebration CDD Attachment 8 -- Estimated Costs and Construction Timetable for Improvements for Celebration CDD Attachment 9 -- Proposed Master Plan Map H1 Attachment 10 -- Proposed Master Plan Map H2

Attachment 11 -- Jurisdictional
Boundaries of RCID After Contraction
and Overlay of Enterprise and
Celebration CDDs
Attachment 12 -- RCID Comprehensive
Plan
Attachment 13 -- Osceola County
Comprehensive Plan
Attachment 14 -- Economic Impact
Statement for Celebration CDD

- Composite 3 Proof of Compliance with Statutory and Rule
Notice Requirements for Enterprise and
Celebration CDDs
- 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

BOARD OF SUPERVISORS OF CELEBRATION CDD

Tom Lewis, Jr.
4521 Windy Acres Road
Winter Garden, Florida 32787
407/877-3631

Don Killoren
8752 Bay Ridge Boulevard
Orlando, Florida 32819
407/876-1329

Ralph Zeigler
2764 Windsor Hill Drive
Windermere, Florida 34786

Hal McIntyre
1942 Hempel Avenue
Windermere, Florida 32786

Bob Shinn
1420 Elizabeth Drive
Winter Park, Florida 32789
407/645-2651

COPIES FURNISHED:

William R. Kynoch, Deputy Director
Florida Land and Water
Adjudicatory Commission
Executive Office of the Governor
311 Carlton Building
Tallahassee, Florida 32301

Robert M. Rhodes, Esquire
Cathy M. Sellers, Esquire
215 S. Monroe Street, Suite 601
Tallahassee, Florida 32301

Steve Pfeiffer, General Counsel
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

John Pate, Chairman
Osceola County Commission
17 S. Vernon Avenue
Kissimmee, Florida 34741