

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

In re: Petition for a rule )  
establishing a community )  
development district known ) CASE NO. 93-3645  
as Circle Square Woods in )  
Marion County, Florida. )  
\_\_\_\_\_ )

REPORT AND CONCLUSIONS  
Preliminary Matters

As envisioned by Section 190.005(1)(d), Florida Statutes, and Rule 42-1.012, Florida Administrative Code, a local public hearing was conducted on May 5, 1994 before David M. Maloney, Hearing Officer. The hearing was held in the County Administration Building, 601 S.E. 25th Avenue, Ocala, Florida, commencing at 9:00 a.m. A copy of the Hearing officer's Second Notice of Local Public Hearing is included in the record.

In the course of these proceedings On Top of the World, Inc. was represented by Michael J. Glazer, of Macfarlane Ausley Ferguson & McMullen, 227 S. Calhoun Street, Tallahassee, Florida 32301; Landis V. Curry, Jr., of Ayres, Cluster, Curry, McCall & Briggs, P.A., 21 N.E. First Avenue, Ocala, Florida 32678; Vincent L. Nuccio, Jr., of Macfarlane Ausley Ferguson & McMullen, 111 Madison Street, Tampa, Florida 33601; and Charles A. Simmons, of Schreiber, Simmons, MacKnight & Tweedy, 520 Madison Avenue, New York, New York 10022.

At the local public hearing the Petitioner, On Top Of The World, Inc., presented witnesses and exhibits to support its request for recognition of the proposed Circle Square Woods Community Development District. Public comment was also received. In the transcript of the local public hearing, provided with this Report and Conclusions, the court reporter has set forth an index identifying the page at which examination of the various witnesses commenced. Witnesses for the Petitioner were: Kenneth D. Colen, President of On Top of the World, Inc., 8700 S.W. 99th Street, Ocala, Florida 34481; Gary L. Moyer, 10300 N.W. 11 Manor, Coral Springs, Florida 33071, manager of special purpose taxing districts, including community development districts. Mr. Moyer was accepted as an expert in community development district management and other forms of special district management; David M. Mechanik, an attorney with Macfarlane Ausley Ferguson & McMullen, 111 Madison Street, 2300 First Florida Tower, Tampa, Florida 33602; Lee Mills, President of Mills Engineering Company, P. O. Box 778, Bronson, Florida 32621, licensed as a land surveyor and civil engineer. Mr. Mills was accepted as an expert in land surveying and civil engineering; William J. Rizzetta, President of Rizzetta & Company, Inc., 2701 W. Busch Boulevard, Tampa, Florida 33618, which provides financial consulting to the real estate industry including community development districts. Mr. Rizzetta was accepted as an expert in preparation of economic impact statements for community development districts; and, Avis M. Craig-Ayotte who is employed as a Principal of Henigar & Ray, Inc., 640 E. Highway 44, Crystal River, Florida 34429, and is a Private Planning Department Manager within the Community Design Division of Henigar & Ray in Crystal River, Florida providing planning services primarily within Marion and Citrus Counties. Ms. Craig-Ayotte was accepted as an expert in land use planning. In addition to the testimony at hearing,

prepared testimony was submitted by Kenneth D. Colen (PT 1-20), Gary L. Moyer (PT 21-45), David M. Mechanik (PT 46-53), Lee Mills (PT 54-72), William J. Rizzetta (PT 73-88) and Avis M. Craig-Ayotte (PT 89-132). That prepared testimony is submitted with this Report and Conclusions.

Public comment at the local public hearing was received from Gus LaSala.

The exhibits submitted by the Petitioner are: Exhibit A, Amended Petition to Establish Circle Square Woods Community Development District; Exhibit B, January 20, 1994 letter to David K. Coburn forwarding copies of the Amended Petition; Exhibit C, Florida Land and Water Adjudicatory Commission Notice of Receipt of Petition; Exhibit D, copy of check in the amount of \$15,000 to the Marion County Commission; Exhibit E, February 3, 1994 letter to Sharyn Smith, Division of Administrative Hearings forwarding the Amended Petition for assignment to a Hearing Officer; Exhibit F, Notice of Receipt of Petition filed in Volume 20, Number 11, Florida Administrative Weekly, March 18, 1994; Exhibit G, March 23, 1994 letter to David K. Coburn forwarding a copy of the Notice of Local Hearing; Exhibit H, ad from the Ocala Star Banner, including proof of publication; Exhibit I, Second Notice of Local Public Hearing; Exhibit J, Chapter 190, Florida Statutes (1993); Exhibit K, Chapter 42-1, Florida Administrative Code; Exhibit L, Chapter 187, Florida Statutes (1993); Exhibit M, Section 120.54, Florida Statutes (1993); Exhibit N, February 16, 1994 letter to David K. Coburn from Withlacoochee Regional Planning Council commenting on the Amended Petition; Exhibit O, Certified Copy of the Resolution of the Board of County Commissioners of Marion County Expressing its Support of the Amended Petition dated March 23, 1994; Exhibit P, Chart regarding districts managed by Gary Moyer; Exhibit Q, March 12, 1993 letter to On Top of the World, Inc. regarding review of the Vesting Application; Exhibit R, Final Order dated December 5, 1983 In Re: On Top of the World, Central, a proposed development of regional impact in Marion County, Florida, Case No. 83-3283; Exhibit S, March 1994 letter to David K. Coburn from the Department of Community Affairs; Exhibit T, April 22, 1994 letter to J. Alex Magee, Florida Department of Community Affairs regarding summary of vested rights; Exhibit U, Company Profile, Rizzetta & Company; Exhibit V, Resume of Avis M. Craig-Ayotte, AICP; Exhibit W, Circle Square Woods Boundary Map; and Exhibit X, Circle Square Woods Development Map. Exhibits A-V were submitted with the prepared testimony. Exhibits W and X were submitted at the public hearing.

Throughout this Report, the following abbreviations will be used:

"CDD" means community development distr

"CSW" means Circle Square Woods.

"FLWAC" means the Florida Land and Water Adjudicatory Commission.

"OTOW" means On Top Of The World, Inc..

References to the prepared testimony will be "PT \_\_\_\_."

References to the transcript of the testimony at the public hearing will be "T \_\_\_\_."

References to exhibits submitted at the public hearing will be "Exhibit \_\_\_\_."

## The Process

1. On or about June 14, 1993, OTOW filed a Petition with the Florida Land and Water Adjudicatory Commission to promulgate a rule to establish the proposed Circle Square Woods Community Development District. As required by Section 190.005(1)(b)1, Petitioner submitted a \$15,000 filing fee to Marion County. See Exhibit D.

2. The original Petition was superseded by an Amended Petition filed on or about January 20, 1994 with FLWAC. See Exhibits A & B. FLWAC prepared a Notice of Receipt of the Amended Petition which included a Notice of the public hearing scheduled for May 5, 1994. See Exhibit C.

3. This proposed CDD is located in Marion County and is not in or adjacent to any cities. The property within the external boundaries of the proposed district is approximately 2,489 acres. PT 3-4.

4. Infrastructure needs which would be addressed by the CDD would include surface water management, roads, drainage, water distribution and waste water treatment. The Amended Petition includes a location map; a map of the proposed district showing current and proposed major trunk water mains and sewer interceptors and outfalls; a metes and bounds description of the external boundaries of the district; written consent to the establishment of the community development district from On Top Of The World, Inc. which is the owner of 100 percent of the real property to be included in the district; designation of five persons to be the initial members of the Board of Supervisors, all of whom are residents of the State of Florida and citizens of the United States; an indication of the proposed name of the district; a proposed timetable for construction of district services and the estimated costs of construction; a designation of the future general distribution, location and extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan; and an economic impact statement prepared in accordance with the requirements of Section 120.54(2), Florida Statutes. See Exhibit A.

5. After receiving the Amended Petition, the Secretary of FLWAC conducted the review which is required by Rule 42-1.009(1), Florida Administrative Code. The Amended Petition was transmitted to the Director of the Division of Administrative Hearings for assignment to a hearing officer to conduct a local public hearing. This action took place on February 3, 1994. Through the letter of transmittal, the Secretary of FLWAC, by his designee, Teresa B. Tinker, certified that all required elements, as defined in Section 190.005(1)(a), Florida Statutes, are contained in the Amended Petition. The Secretary called upon the Division Director to see that the public hearing contemplated by Section 190.005(1)(d), Florida Statutes, was conducted.

6. Charles C. Adams was initially assigned to conduct the local public hearing and render this Report and Conclusions. The matter was later reassigned to David M. Maloney, Hearing Officer, who conducted the local public hearing and rendered this Report and Conclusions.

7. Pursuant to Rule 42-1.010, Florida Administrative Code, FLWAC caused the publication in Volume 20, No. 11, Florida Administrative Weekly (March 18, 1994), of its Notice of Receipt of the Amended Petition which sets forth a summary of the contents of the Amended Petition and general description of the land area affected; a summary and estimate of the economic impact of the

proposed rule on the Agency; the time, date and place of the scheduled local public hearing; and a reference to where the full text of the Petition might be obtained. See Exhibit F.

8. Copies of the Notice of Public Hearing were provided by the Petitioner to FLWAC, the Department of Community Affairs and various Marion County officials. See Exhibit G.

9. Following the publication of the Notice of Receipt of the Amended Petition, Petitioners caused to be published in the Ocala Star Banner, a newspaper of general paid circulation in Marion County and a newspaper of general interest and readership in the community, a notice of the local hearing. This publication was called for in Section 190.005(1)(d), Florida Statutes, and Rule 42-1.011, Florida Administrative Code. The newspaper publication occurred on April 8, 15, 22 and 29, 1994. The format of the notices published in the newspaper complies with the requirements of Rule 42-1.011, Florida Administrative Code. Petitioner provided copies of each of the advertisements and proof of publication from the Ocala Star Banner. See Exhibit H.

10. On May 5, 1994, the local public hearing was conducted in accordance with Section 190.005(1)(d), Florida Statutes, and Rule 42-1.012, Florida Administrative Code.

11. The Withlacoochee Regional Planning Council, while not a government with jurisdiction over the CDD, reviewed the Amended Petition, "as to its consistency with the Comprehensive Regional Policy Plan." Finding establishment of the CDD to adequately address Regional Policies 5.1.1.7 and 5.1.1.9 as to "affordable housing needs," and development of public, private and user sectors of the housing market to address the problems of housing availability and affordability, respectively, the Council's comments supported establishment of the CDD. Exhibit N.

12. The Amended Petition was also reviewed by the Florida Department of Community Affairs. The Department commented that it did not believe the establishment of the CDD to be incompatible with the Marion County Comprehensive Plan even though the plan had not been found to be in compliance with Local Government Comprehensive Planning and Land Development Regulation Act. The comment was made because none of the lands with which the Department believed the County to be out of compliance were within the proposed boundaries of the CDD. The Department found the proposed CDD to meet the requirements for its establishment in Section 190.005(1)(e), Florida Statutes. But the Department was unable initially to evaluate the effect the establishment of the CDD would have on the performance of its duties because of a number of uncertainties. See Exhibit S. These uncertainties were promptly addressed by attorneys for petitioner. See Exhibit T. David M. Mechanick, attorney for petitioner, testified that he spoke with Department personnel and his explanations, both written and verbal, were satisfactory to the Department. Tr. 45-47. Mr. Mechanick's conclusion is bolstered by the lack of further objection in the record from the Department and the Department's lack of participation at the final hearing. In any event, the Department's concerns do not appear to relate to any of the six criteria contained in Section 190.005(1)(e), Florida Statutes, for the establishment of the CDD. Most importantly, the Department did not find that establishment created any inconsistency with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.

13. On March 23, 1994, the Board of County Commissioners of Marion County conducted a public hearing pursuant to the provisions of Section 190.005(1)(c), Florida Statutes, regarding the proposed district. Following the public hearing, the Board, by resolution, expressed to FLWAC its support of the establishment of the Circle Square Woods Community Development District. Exhibit O.

#### Petitioner's Witnesses

14. Kenneth D. Colen is President of Petitioner, On Top Of The World, Inc. He has been with OTOW since 1976 and served as its President since 1985. Among his many responsibilities, he has been intimately involved in the planning, financing, staffing and overall management of the development. He has been directly responsible for the infrastructure improvements for that portion of OTOW which is developed. PT 1-2; T 32-33.

15. OTOW is approximately 12,900 acres located southwest of the city of Ocala in Marion County, west of State Road 200 and North of County Road 484. Ultimately, it is expected that OTOW will construct approximately 36,000 residential units and as much as 490 acres of commercial property. PT 1-2; T 33-34.

16. The proposed district encompasses a tract of approximately 2,489 acres which is a part of the OTOW property. The CDD will be an independent unit of special purpose government authorized under Chapter 190, Florida Statutes. The district, as contemplated, will have all powers set forth in Chapter 190 including the power to manage and finance basic infrastructure and services set forth in that Chapter. The CDD will serve predominantly residential land uses although approximately 200 acres is authorized for commercial use. PT 3-4.

17. Mr. Colen described Exhibit X which is a chart showing the proposed district. The chart shows the golf course, commercial areas and areas under development. References are also made to the water treatment plant and wastewater treatment plant. T 34-36; Exhibit X.

18. It was Mr. Colen who directed the filing of the Amended Petition to Establish the Circle Square Woods Community Development District. He had several reasons for pursuing this project. The level of development covers an area of land that is approximately six times greater than that which is currently developed at OTOW and will entail approximately four times as many units. The best mechanism for funding the infrastructure that will be necessary is the CDD. Additionally, Mr. Colen believes there is an efficiency of operation that the CDD brings as well as a level of stability for the future, even in the absence of the developer. T 37-38, 80-81.

19. Mr. Colen identified the Amended Petition and all of the exhibits attached thereto. PT 4-11.

20. Mr. Colen described an area designated as the "developed area" which is the currently developed portion of OTOW. It is an area of approximately 395 acres which is essentially a peninsula in the district. The developed area is not included in the proposed CDD because it is presently developed and already has the requisite infrastructure. There are approximately 1,900 residences in the developed area. PT 6; T 37.

21. All of the property in the proposed district is owned by On Top Of The World, Inc. and OTOW has consented to the establishment of the CDD. PT 6-7; Exhibit A-4.

22. Mr. Colen described Exhibit A-2, which is a map of the proposed district showing major trunk water mains, sewer interceptors and outfalls in existence or proposed in the future. It also shows the golf course, existing and proposed wastewater treatment plants, lift stations, water mains, etc. PT 5. Mr. Colen also discussed Exhibit A-5, which is a proposed timetable for construction of district services and the estimated costs of constructing those services. This exhibit was based on available data and is submitted in a good faith attempt to illustrate the anticipated timetable for construction and estimated costs. PT 7-10. Based on the information presented by Mr. Colen and Lee Mills, the engineer, Exhibit A-5 appears to be a reasonable proposed timetable for construction and estimate of costs.

23. The exclusion of the developed area will not affect the district's ability to provide infrastructure in a cost effective manner. PT 14-15.

24. Mr. Colen also properly identified Exhibits B-O, W and X. PT 11-20.

25. The initial Board of Supervisors for the district are: LaVanna Smith, Philip Faranda, Blaise Bonnaventure, Cynthia K. Ziegler and Morris Dittman. Each of these individuals are residents of the State of Florida and citizens of the United States. PT 13; Exhibit A.

26. Mr. Colen indicated that the property will be developed to contain varying types of land uses so that it will provide housing, employment opportunities, shopping, services, recreation and other opportunities. As such, Mr. Colen believes the district will be a functional interrelated community. PT 15; T 38-39.

27. Mr. Colen discussed various alternatives that were considered with regard to creation of the CDD. A CDD has the ability to obtain long term tax exempt financing which has a cost advantage over any other form of financing available to a private developer. This financing allows the district to minimize its interest expense resulting in a lower cost for infrastructure. Thus, a CDD is more advantageous than the development of infrastructure by a private developer. Additionally, the CDD provides greater continuity than is provided by a private development company. PT 16-17; T 39.

28. Mr. Colen also considered whether Marion County would develop this infrastructure. However, Marion County has made it clear that it is not in a position to provide these community services and facilities and, in fact, has required as an element of the development of a regional impact that affects a portion of the property, that such services be provided by an entity other than Marion County. PT 16-17; T 39.

29. Mr. Colen also indicated that there are no local roads, bridges or street lights that would be inconsistent with facilities to be constructed by the district. PT 17.

30. Likewise, there are no existing regional roads, transportation systems, water supply, or sewer services and facilities that would be inconsistent with those proposed by the district. PT 17-18.

31. Mr. Colen identified the letter from the Withlacoochee Regional Planning Council that he received indicating that the proposed CDD will adequately address some of their policies. PT 19; T 40; Exhibit N.

32. Mr. Colen was also in attendance at the hearing held by the Board of County Commissioners of Marion County on March 23, 1994 at which they voted 5-0 to adopt a resolution favoring the creation of this district. PT 19-20; T 40; Exhibit O.

33. Mr. Colen's prepared testimony and testimony at the local public hearing is accepted.

34. Gary L. Moyer is a manager of special purpose taxing districts and was accepted as an expert in community development district management and other forms of special district management. T 22.

35. Mr. Moyer described his extensive experience in managing special purpose taxing districts including 46 CDDs. His firm provides services that include planning, financing, staffing, purchasing, reporting and intergovernmental coordination functions for these districts. PT 21-24.

36. Mr. Moyer was also involved in the drafting of Chapter 190, Florida Statutes. PT 34; T 22.

37. A listing of the various districts served by Mr. Moyer and the types of infrastructure services provided by each district is included as Exhibit P.

38. Mr. Moyer described a uniform community development district as a unit of local special purpose government created pursuant to Chapter 190, Florida Statutes, which is vested with limited powers to provide for the installation and maintenance of infrastructure facilities to coincide with the development of property within the boundaries of the district. These powers include water management, water supply and sewer, roads, street lighting, bridges and, when authorized by the local general purpose government, may also include parks and recreation, fire prevention and control, security, mosquito control, school building, and waste collection and disposal. The governance of these districts is in accordance with the detailed provisions of Chapter 190, Florida Statutes, as well as various other provisions of Florida law dealing with accountability, disclosure, rulemaking, procurement of goods and services, etc. Mr. Moyer described how a CDD is subject to various checks and balances and political accountability similar to those which apply to city and county governments. These include the Public Records Law and the Government-In-The-Sunshine Law. The district is also required to competitively bid its purchases as well as use the competitive process for hiring certain professionals. PT 26-29; T 22-23.

39. There are also a number of reports to be filed with state agencies such as the Auditor General, State Comptroller, Department of Community Affairs, local general purpose government and Division of Bond Finance. PT 30.

40. A CDD does not avoid zoning and land use laws. It must be consistent and in compliance with local ordinances and development codes and regulations. PT 28; T 23-24.

41. Community Development Districts, as special districts, however, are not encumbered, as are cities and counties, with such burdens and responsibilities as police protection, social services and various other political pressures. CDDS are specialized units of government. They provide community infrastructure and services to a defined district. There are various limitations that safeguard the general public and the residents. PT 30-32.

42. In Mr. Moyer's experience, the CDDs typically have very good working relationships with the applicable general purpose government as well as landowners, developers and residents within a district. PT 32-34.

43. CDDs also have a financial function. In particular, the Legislature has granted districts several ways to finance infrastructure. Most common is the use of special assessment revenue bonds. Chapter 190 identifies processes for establishing these assessments so that the cost is allocated to the benefited properties. CDDs can also use general obligation debt but its use has not been very common. Financing available to CDDs is typically more preferable than is available to private development. As a unit of local government, a CDD can access the tax free municipal bond market. T 24-25.

44. Mr. Moyer is familiar with the Amended Petition and has reviewed it in relationship to various factors set forth in Section 190.005(1)(e), Florida Statutes. PT 35-36.

45. Mr. Moyer believes that approval of the Amended Petition would specifically be consistent with the State Comprehensive Plan goal dealing with governmental efficiency found in Section 187.201(21), Florida Statutes, because of the economic benefits that flow from long term efficient management. PT 36-40; T 27.

46. Mr. Moyer also reviewed the proposed district in relation to Section 190.005(1)(e)3. From his perspective, a "functional interrelated community" has two components: (a) from a planning perspective, he views that term as relating to the use of the land to provide for residential, business and recreational opportunities; (b) the second perspective is from a service delivery standpoint which can be judged based upon the cost to provide district services. PT 40-41.

47. Mr. Moyer believes this proposed district is of sufficient size, is sufficiently contiguous and is sufficiently compact to be developed as a functional interrelated community. PT 41-42; T 27-28.

48. Mr. Moyer also examined other alternatives to a CDD including private sector development utilizing private funds and general purpose government utilizing special assessment or general funds. In his opinion, the establishment of the CDD is the best alternative. Private development does not involve all of the various protections inherent in a CDD. Additionally, the type of financing available is typically far more preferable than available to a private party. The general purpose government is not a good option in this case because the county government is not prepared to provide these facilities and services to the property encompassed by the CDD. PT 42-43; T 28-30.

49. Mr. Moyer also looked at whether the area to be served by the district is amenable to separate special district government. In his view, the proposed Circle Square Woods CDD satisfies that criterion. PT 43-45; T 30.



50. From his perspective, the Amended Petition satisfies the criteria for establishing a community development district. T 30.

51. Mr. Moyer's prepared testimony and testimony at the local public hearing is accepted.

52. Testimony was presented by David M. Mechanik of the Tampa office of Macfarlane Ausley Ferguson & McMullen. Mr. Mechanik is head of the firm's land use department and has represented OTOW with regard to development of regional impact, comprehensive planning and zoning issues since 1982. PT 46-47; T 43-44.

53. Mr. Mechanik had reviewed the Amended Petition and stated that the information contained therein was true and correct with a minor clarification made at the public hearing regarding the Marion County Comprehensive Plan. PT 47; T 42-43.

54. Mr. Mechanik specifically described the designation of the future general distribution, location and extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan for Marion County. He indicated that the area within the proposed district is designated as: "Commercial," "Low Density Residential," "Rural Land," "Development of Regional Impact," "Urban Expansion," and "Medium Density Residential." PT 48-49; T 43.

55. By letter dated March 12, 1993, the Zoning Director for the Division of Zoning of the Marion County Department of Community Development summarized data and findings of fact relative to the vested status of Circle Square Woods under Section 380.06, Florida Statutes. The Zoning Director concluded that Circle Square Woods has vested development rights which makes it exempt from the concurrency requirements of the Marion County Land Development Code. Exhibit Q.

56. Mr. Mechanik also explained that a portion of the property has received a Chapter 380, Florida Statutes, Development Order. PT 51-52; T 44; Exhibit Q.

57. Mr. Mechanik indicated that the vested portion of the OTOW property consists of 12,899 acres. The 2,489 acres contained within the CDD are vested from the requirements of the Comprehensive Plan including the portion subject to a development of regional impact order. Of the total acreage within the CDD, 2,283 acres are designated for residential use and 206 acres are designated for commercial use. This land is approved for 7,804 dwelling units. PT 49-51.

58. Mr. Mechanik's prepared testimony and testimony at the local public hearing are accepted.

59. Lee Mills testified at the local public hearing and through prepared testimony. Mr. Mills is the President of Mills Engineering Company which provides civil engineering and land surveying services. Mr. Mills is both a land surveyor and civil engineer and was accepted as an expert witness in both of those areas. PT 54-56; T 50. Mills Engineering Company has provided services to OTOW since 1985. PT 57; T 50.

60. Mr. Mills indicated that the Amended Petition and its attachments are true and correct. PT 57. Mills Engineering was specifically involved with the preparation of several exhibits to the Amended Petition including Exhibit 2, the Master Service Plan; Exhibit 3 which is a metes and bounds description of the

Circle Square Woods Community Development District boundary and the sketch that accompanies that description; and Exhibit 5 which is the infrastructure time table and estimated costs. PT 58.

61. The metes and bounds description describes the outside boundary of the property by distance and direction. It is based on the recorded subdivision plat of Circle Square Woods, certain leases and declarations, and various surveys of the property. The description was prepared in accordance with the applicable Florida Administrative Code Rule and in accordance with generally accepted land surveying standards. Exhibit 3 to the Amended Petition constitutes an accurate metes and bounds description of the property to be encompassed in the proposed Circle Square Woods Community Development District. PT 58-60; T 51.

62. Mr. Mills also described Exhibit 2 to the Amended Petition which is a Master Service Plan. This diagram shows district boundaries, water wells, water mains, lift stations, and waste water trunk lines. The golf course property is also indicated. Exhibit 2 is a map of the proposed district showing current and proposed major trunk water mains and sewer interceptors and outfalls in existence. PT 60-62; T 51-52.

63. Mr. Mills also discussed the infrastructure time table and estimated cost contained in Exhibit 5 to the Amended Petition. This document is a preliminary cost estimate of the anticipated roads, stormwater, water treatment and wastewater aspects of the CDD as projected to be constructed in the period of 1994 to 1999. The table includes various quantities and costs related to the construction of those items. A number of the cost estimates were based on work that was actually underway at OTOW at the time the table was prepared. PT 62.

64. Roads were divided into arterial and interior roads. The category of "stormwater" is for anticipated drainage facilities. The category of "water" relates to drinking water and is sized based on anticipated density. PT 63.

65. In the category of "wastewater," there is an estimate for two treatment plants. PT 62-63.

66. This exhibit represents a reasonable preliminary projection of roads, stormwater, water treatment and wastewater services for the CDD and the associated costs. PT 63-64; T 52.

67. Mr. Mills also discussed the criterion relating to whether the land within the proposed district is of sufficient size, is sufficiently compact and is sufficiently contiguous to be developable as one functional interrelated community. While there is no specific engineering definition, from his perspective, a functional interrelated community involves various engineering functions such as access, bridges and roads, drainage of stormwater, potable water, wastewater disposal and disposal of solid waste. These functions should be coordinated in a total package to function efficiently. PT 64-65.

68. Mr. Mills believes the area of land is of sufficient size at 2,489 acres to be developable as a functional interrelated community. He also believes it is sufficiently compact and contiguous for that same purpose. There are no specific features that would impede the coordinated development of infrastructure. Neither the "developed area" nor any other portion of the property present any unusual conditions that would require special consideration in the engineering of various systems, facilities and services required for the development of the community. PT 65-68; T 52-53.

69. Mr. Mills also examined the question of whether the district is the best alternative available for delivering community development services and facilities to the area to be served by the district. He confirmed that Marion County, other than with regard to major roadways, does not have any plans to provide the type of infrastructure services that would be developed by the district. Mr. Mills believes the CDD was preferable to having either the county or private developer responsible for these infrastructure services. PT 68-70.

70. Mr. Mills also indicated that the community development services and facilities of the district will not be incompatible with capacity and uses of existing local and regional community development services and facilities because such services simply don't exist. PT 70-71; T 53.

71. Finally, Mr. Mills believes that, from an engineering perspective, the area to be served by the district is amenable to separate special district government based primarily on his review of the other factors discussed above. PT 71-72.

72. Mr. Mills' prepared testimony and his testimony at the local public hearing are accepted.

73. William J. Rizzetta is the President of Rizzetta and Company, a financial consulting firm, which provides services to the real estate industry, including community development districts. Among other responsibilities, Mr. Rizzetta's firm conducts economic and financial feasibility studies for districts and prepares economic impact statements relating to these entities. PT 73-74; T 54. He also serves as the manager of several CDDs. T 55-56. Mr. Rizzetta was accepted as an expert in the preparation of economic impact statements for community development districts. T 56.

74. In preparing his analysis, Mr. Rizzetta has utilized the guidelines set forth in Section 120.54(2)(c), Florida Statutes. PT 76. This analysis includes an examination of: (1) an estimate of costs to the agency responsible for approving the district including the cost of paperwork; (2) the economic impacts on all persons directly affected by the proposed district; (3) the impact of the action on competition and the open market for employment; (4) an analysis of the impact on small business; (5) a comparison of the probable costs and benefits of the rule versus the costs and benefits of not adopting the rule; (6) a determination of whether less costly methods exist for achieving the purpose where reasonable alternative methods exist; (7) a description of reasonable alternative methods that were considered and (8) a statement of the data and methodology used in making the estimates required. T 57; Exhibit A-7.

75. With regard to the estimate of cost to the agency and other state or local government entities, these costs are minimal. The one time cost incurred by Marion County to review the Petition is more than offset by the \$15,000 filing fee submitted by the Petitioner. Additionally, future costs relating to services provided by local government are offset by fees for those services. PT 77-78; T 58-59.

76. In looking at the costs and benefits to persons directly affected by the district, Mr. Rizzetta looked at four categories: (1) residents of the state of Florida; (2) residents of Marion County; (3) current property owners and (4) future property owners and residents. Residents of the state of Florida residing outside of Marion County will receive a benefit from the creation of

the district because the district will facilitate the acquisition and construction of infrastructure which, in turn, facilitates private development thereby stimulating economic activity. PT 79; T 60; Exhibit A-7.

77. Residents of Marion County other than those living in the district are benefitted because they will not be forced to bear the cost of infrastructure constructed within the district. These residents will also benefit from the stimulus to the construction industry. PT 79; Exhibit A-7. Some specific consideration was given to the current residents of OTOW who do not live within the proposed district. These individuals will not be forced to bear the cost of infrastructure. It is also important to note that these residents will continue to be governed and protected by contracts pursuant to the existing covenants, restrictions, easements, charges and liens and the Articles of Incorporation and Bylaws of OTOW and its owners' association. PT 80; T 60.

78. The current property owner (OTOW) is responsible for all of the costs associated with the preparation and processing of this Amended Petition. However, while there are costs associated with the process and the operation of the district, the benefits are significant in the form of financing available through the district that are not otherwise available to the current property owner. PT 81-82; Exhibit A-7; T 60-61.

79. Future property owners and residents within the district will be subject to various taxes, assessments and charges imposed to fund the facilities and services provided by the district. However, the availability of tax exempt financing should result in a net benefit to future property owners and residents through reduced costs of infrastructure. Additionally, through the establishment of a CDD, it is ultimately the residents who will control the district through its board of supervisors. PT 82; T 61; Exhibit A-7.

80. Mr. Rizzetta indicated that he did not believe the proposed CDD would have any adverse affect on competition or the open market for employment. PT 83; Exhibit A-7.

81. Likewise, the creation of the proposed district should not have any negative impact on small business. Because a CDD is primarily a financing and management mechanism, it does not discriminate in terms of the size of a business which can locate within its boundaries. Exhibit A-7.

82. Mr. Rizzetta also examined the probable costs and benefits of the proposed rule when compared to the probable costs and benefits of not adopting the rule. In making this analysis, it was always assumed that the property within the CDD would be developed. The costs associated with adoption of the rule include the one time administrative costs along with the costs of filing various reports and obtaining services from officials such as the property appraiser and tax collector. These costs are relatively minor and are offset by various fees for these services. Additionally, current and future property owners and residents will pay taxes, assessments and charges for their share of infrastructure. However, greater costs would likely be incurred through alternative conventional financing mechanisms. On the benefit side, the district provides an efficient and economical mechanism for financing and managing infrastructure and will fill a gap not met by Marion County. The district also provides future property owners with greater input in the operation of the district. PT 83-85; Exhibit A-7.

83. Mr. Rizzetta examined whether less costly or less intrusive methods exist for achieving the purpose of the proposed rule and also whether there are any reasonable alternative methods for achieving the purpose of the proposed rule. His conclusion was that the CDD was the least costly and least intrusive method for achieving the purpose of the rule which is the subject of the hearing. In conducting that analysis, he considered the overall costs and benefits as summarized in the Economic Impact Statement, fairness to all parties reflected by the proposed rule, the ability to provide infrastructure and services within a reasonable timeframe and the potential for achieving the anticipated benefits. He specifically looked at the alternatives of private conventional financing which is typically more costly and not always readily available and relying on Marion County which, as described by Mr. Rizzetta and other witnesses, is an alternative that is simply not practically available at this time. PT 85-86; T 62; Exhibit A-7.

84. Finally, in preparing the Economic Impact Statement, Mr. Rizzetta outlined the data and methodology used in making the estimates required by Section 120.54. PT 87; Exhibit A-7.

85. The Economic Impact Statement satisfies the requirements of Section 120.54(2)(c), Florida Statutes.

86. Mr. Rizzetta also examined the proposed district in relation to the section of the State Comprehensive Plan pertaining to the economy. He does not believe creation of the district would be inconsistent with that section. PT 87.

87. Also, based on his preparation of the Economic Impact Statement and his experience managing CDDs, he believes the proposed district is of sufficient size, is sufficiently compact and is sufficiently contiguous to be developable as one functional interrelated community. PT 87.

88. Mr. Rizzetta believes the establishment of the CDD is the best alternative available for delivering community development services and facilities to the area to be served by the district. PT 88.

89. Finally, he also believes the area to be served by the district is amenable to separate special district government. PT 88.

90. Based on Mr. Rizzetta's experience in preparing economic impact statements and in managing CDDs, he believes that it is appropriate to establish the Circle Square Woods Community Development District. T 62-63.

91. Mr. Rizzetta's prepared testimony and testimony at hearing are accepted.

92. Avis M. Craig-Ayotte is a principal with the firm of Henigar & Ray in its Crystal River office. Henigar & Ray is a national consulting firm offering planning, engineering, environmental sciences and surveying services. She is a certified planner with extensive experience, particularly in Marion and Citrus Counties. PT 89-92; Exhibit V. She was accepted as an expert in land use planning. T 65.

93. Ms. Craig-Ayotte described two demonstrative exhibits which were aerial photos of the land covered by the proposed CDD. One document was a composite of pictures taken between 1985 and 1989. The other was from 1992. These aerial photos show the development of the OTOW property, particularly in

the "developed area." While this case does not involve development issues per se, it is important to recognize the extent of the growth in the area because the CDD provides the vehicle for supporting the infrastructure necessary for additional development. T 66-67.

94. Ms. Craig-Ayotte is familiar with Chapter 190, Florida Statutes, relating to community development districts as well as the State Comprehensive Plan, the Comprehensive Regional Policy Plan adopted by the Withlacoochee Regional Planning Council and the Marion County Comprehensive Plan. PT 92-94.

95. With regard to the Withlacoochee Regional Planning Council Plan, she does not believe that establishment of the Circle Square Woods CDD would be inconsistent with any aspect of that Plan. PT 93-94; T 73-75.

96. Ms. Craig-Ayotte noted that a local government's comprehensive plan is a document which contains the statements of a local government's long range goals for its future growth and development. The term "infrastructure" is used to describe certain basic facilities and services necessary to meet the common needs of a community such as roads, sewer systems, potable water, stormwater management and solid waste. The term "vested" refers to a property owner's right to continue developing even when that development may not be in compliance with current or new regulations. PT 96-97.

97. Ms. Craig-Ayotte is familiar with the Amended Petition and the area in which the proposed district is to be located. From her perspective, the statements in the Amended Petition are true and correct with the one clarification made by Mr. Mechanik at the public hearing. PT 98; T 64.

98. Ms. Craig-Ayotte examined the Amended Petition to determine whether the proposed district would be inconsistent with any applicable section, element or portion of the State Comprehensive Plan found in Section 187.201, Florida Statutes. In particular, she looked at goal 4 relating to the elderly, goal 6 relating to health, goal 8 relating to water resources, goal 16 relating to land use, goal 18 relating to public facilities, goal 20 relating to transportation, goal 21 relating to governmental efficiency and goal 26 relating to plan implementation. PT 100. 99. Goal 4 contained in Section 187.201 relates to the elderly. The district will provide infrastructure to OTOW which is a project which has been and will continue to be marketed to an older population. By improving and providing the basic infrastructure needs, which includes roads, transportation for the elderly will be benefitted. PT 10-101.

100. Subsection 6 relating to health includes a policy that every Florida resident has a right to breathe clean air, drink pure water and eat nutritious food. Approval of the district is consistent with this goal by providing a high quality central potable water service to residents of the district. Because Marion County does not provide central services of this type, the district will help ensure that residents have pure water to drink. PT 101-102.

101. With regard to land use, the stated goal looks to accommodate growth in an environmentally acceptable manner. Specific policies encourage efficient development, encourage the protection of water supplies that enhance the livability and character of urban areas. Ms. Craig-Ayotte emphasized that it must be remembered that the land within the district is vested for development and the CDD is one of the most efficient means to finance infrastructure for this type of urban development. This district is located in one of the fastest

growing areas in Marion County. Adequate utilities are one of the basic needs to enhance the livability of the urban area and are necessary to support new population and commercial development. PT 102-104.

102. Goal 18 of the State Comprehensive Plan relates to "public facilities." Relevant policies under this goal include the allocation of costs of new facilities on the basis of benefits received by existing and future residents; creating a partnership among government and the private sector; encouraging local governmental financial self-sufficiency; identifying and implementing innovative and fiscally sound and cost-effective techniques for financing public facilities; and using stable revenue sources which are also responsible for growth for financing public facilities. Establishment of this CDD is consistent with all of these policies in that costs are allocated to the users of services; the district provides the kind of partnership contemplated by the State Comprehensive Plan; and the district provides a cost-effective alternative to other forms of financing for the development of this infrastructure. The CDD also provides stability for the infrastructure maintenance and is consistent with this goal. PT 104-108.

103. Goal 20 relates to transportation. The district provides a mechanism for building and maintaining roads and associated drainage. The district ensures that the infrastructure will be in place at or before the time the development occurs and well into the future. PT 108.

104. With regard to goal 21 pertaining to governmental efficiency, the state goal and policies relate to cooperation among all levels of government; allowing the creation of independent special districts; eliminating needless duplication of governmental activities; encouraging competitive bidding in the contracting process; and encouraging joint venture solutions to mutual problems. Marion County has a very limited service delivery system and is seriously constrained in its ability to construct and maintain infrastructure. The County's existing revenue sources are unusually low. A CDD provides for the creation of infrastructure without cost to the county taxpayers. The CDD also has limited powers thereby eliminating unnecessary proliferation and duplication. Also, as a governmental unit, the district will be subject to the Sunshine Laws and competitive bidding requirements. PT 109-113.

105. Goal 26 relating to "plan implementation" has an emphasis on improving intergovernmental coordination and maximizing citizen involvement. The CDD furthers this goal and several of its associated policies because it operates under an elected representative system of government through a board of supervisors. The CDD is a governmental entity subject to various safeguards found in Florida law. The CDD mechanism also provides for greater citizen involvement and accountability. The limited nature of the powers given to CDDs ensure focus and performance regarding those functions. The district is a specific means to accomplish service delivery to the development thereby making possible orderly and economically sound planning for growth. PT 113-116.

106. Ms. Craig-Ayotte opined that creation and establishment of the Circle Square Woods Community Development District is not inconsistent with the State Comprehensive Plan or any of its goals or policies. In fact, she believes the establishment of this district would further many of those stated goals and policies. PT 100, 116; T 69-71.

107. Ms. Craig-Ayotte also reviewed the Amended Petition in relationship to the Marion County Comprehensive Plan. In particular, she reviewed relevant elements related to future land use, housing and the provision of financing of infrastructure. In her view, the establishment of the proposed district is not inconsistent with the Marion County Comprehensive Plan. In fact, establishment of the district is consistent with various elements of that plan because the CDD will provide the infrastructure necessary for a development that is already vested and will occur. The CDD will specifically provide the funding mechanism to construct, operate and maintain the infrastructure before or concurrent with the development of the community. PT 116-121; T 71-73.

108. Ms. Craig-Ayotte provided testimony and input on whether the district is of sufficient size, is sufficiently compact and sufficiently contiguous to be developable as one functional interrelated community. She considers a community to be a combination of people, activities and systems within a specific geographic location. A community contains a mixture of interrelated uses providing people places to work, live, socialize, communicate and pursue leisure activities. A community is functionally interrelated by the juxtaposition of the various uses within the community and the absence of barriers which prohibit access to some of the uses. PT 121-122.

109. She believes the district is of sufficient size at 2,489 acres to operate as a functional interrelated community. There is adequate land to accommodate all of the planned activities. PT 122-123.

110. The term "compact" as used by a land planner, refers to a concentration of land within a given area such that no undeveloped pockets or enclaves exist or are created which are inaccessible. It also means that all elements of the community are close to each other. She believes the proposed district is sufficiently compact to satisfy the statute. The "developed area" is not a problem because it is served by central water and sewer infrastructure which can run through rather than having to run around that area. PT 123-124.

111. With regard to the area being "sufficiently contiguous," she believes that term means that there should be no major barriers or divisions of the property such that residents are prevented from fully associating with each other. Once again, the developed area does not mean the property is not contiguous. In fact, the factors which would allow residents to fully associate are already in place in the existing OTOW community and will be enhanced by the expansion of development onto the district's land. PT 125-126.

112. In sum, she believes the area upon which the proposed Circle Square Woods District is to be established is of sufficient size, is sufficiently compact and is sufficiently contiguous to be developable as one functional interrelated community. T 75.

113. Ms. Craig-Ayotte also examined whether the district is the best alternative available for delivering community development services and facilities to the area to be served. In particular, she looked at Marion County as an option but rejected that as an alternative because Marion County has no services and no plans for providing these services to OTOW. PT 127-129.

114. Another alternative she examined would be for infrastructure to be provided through private means such as the developer or a homeowners association. She indicated that privately financed infrastructure is more costly and does not bring with it the stability associated with a CDD. The district also has safeguards such as competitive bidding, public scrutiny,



accountability, etc. The CDD is focused and operates for the benefit of a select constituency, unlike a typical general government such as a county or city. She believes that a district is the best alternative for the future residents. PT 127-129; T 76-77.

115. The fifth of the six factors to be considered by FLWAC in determining whether to grant or deny a petition for the establishment of a CDD addresses the question of whether the community development services and facilities of the district will be incompatible with the capacity and uses of existing local and regional community development services and facilities. Section 190.005(1)(e)5., F.S. Ms. Craig-Ayotte noted that the only services that exist are privately owned and operated by an affiliate of OTOW. There are no public utilities available in reasonable proximity. Therefore, establishment of the CDD would not be incompatible with the capacity and uses of existing local and regional community development services and facilities. PT 129-131; T 67-68, 77.

116. Finally, as to the question of whether the area to be served by the district is amenable to separate special district government, she pointed out that the CDD has limited powers as specifically set forth in Chapter 190. By examining the other factors set forth in the statute as described above, she concludes that the area to be served by the Circle Square Woods Community Development District is amenable to separate special district government. PT 131-132; T 77-78.

117. Ms. Craig-Ayotte's prepared testimony and testimony at the local public hearing are accepted.

#### Public Participation

118. The only member of the public who spoke was Mr. Gus LaSala, a resident of OTOW (in the "developed area"). Mr. LaSala stated he thought establishment of a CDD would avoid problems such as those experienced at another development. T 79-80.

#### CONCLUSIONS

The Amended Petition contains all of the elements required by Section 190.005(1)(a), Florida Statutes, and Rule 42-1.008, Florida Administrative Code. Having considered the record in this cause, it is concluded pursuant to Section 190.005(1)(e) 1 through 6, Florida Statutes:

1. That all statements contained within the petition have been found to be true and correct.

2. That the creation of this district is not inconsistent with any applicable element or portion of the State Comprehensive Plan or the effective local government comprehensive plan.

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

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

5. That the community development services and facilities of the district will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

6. That the area that will be served by the district is amenable to separate special district government.

DONE AND ENTERED this 15th day of June, 1994 in Tallahassee, Florida.

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DAVID M. MALONEY, 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 15th day of June, 1994.

COPIES FURNISHED:

Michael J. Glazer  
Macfarlane Ausley Ferguson & McMullen  
Post Office Box 391  
227 South Calhoun Street  
Tallahassee, Florida 32302

Landis V. Curry, Jr.  
Ayers, Cluster, Curry McCall  
& Briggs, P.A.  
21 Northeast First Avenue  
Ocala, Florida 32678

Vincent L. Nuccio, Jr.  
Macfarlane Ausley Ferguson & McMullen  
111 Madison Street, Suite 2300  
Tampa, Florida 33602

Charles A. Simmons  
Schreiber, Simmons,  
Mac Knight & Tweedy  
520 Madison Avenue  
New York, New York 10022

Dan R. Stengle, General Counsel  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, Florida 32399

David K. Coburn, Secretary  
Florida Land & Water  
Adjudicatory Commission  
Office of The Governor,  
Office of Planning and Budgeting  
Room 1601, The Capitol  
Tallahassee, Florida 32399-0001

Linda Loomis Shelley, Secretary  
State of Florida,  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, Florida 32399-2100