

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO CONTRACT)
THE CIRCLE SQUARE WOODS) Case No. 02-1118
COMMUNITY DEVELOPMENT)
DISTRICT.)
_____)

REPORT TO THE FLORIDA LAND AND WATER
ADJUDICATORY COMMISSION

Pursuant to Section 190.005(1)(d), Florida Statutes,
Donald R. Alexander, Administrative Law Judge, conducted a
public hearing on May 20, 2002, in Ocala, Florida, for the
purpose of taking testimony and public comment and receiving
exhibits on the Petition of Circle Square Woods Community
Development District to delete certain lands from its
territory.

APPEARANCES

For Petitioner: Reginald L. Bouthillier, Jr., Esquire
Fred F. Harris, Jr., Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, Florida 32301

Landis V. Curry, Jr., Esquire
Ayres, Cluster, Curry, McCall, Collins
& Fuller, P.A.
21 Northeast 1st Avenue
Ocala, Florida 34470

STATEMENT OF THE ISSUE

The issue is whether the deletion of 1,737.03 acres of
land from the Circle Square Woods Community Development

District meets the applicable criteria set forth in Chapter 190, Florida Statutes.

PRELIMINARY STATEMENT

This case began on February 15, 2002, when Petitioner, Circle Square Woods Community Development District, requested the Florida Land and Water Adjudicatory Commission to adopt an amendment to Rule 42S-1.002, Florida Administrative Code, to delete 1737.03 acres of land from its boundaries. The proposed amended rule is attached to this Report as Appendix C. The matter was forwarded to the Division of Administrative Hearings on March 18 2002, with a request that an Administrative Law Judge conduct a public hearing. By Notice of Hearing dated March 25, 2002, a public hearing was scheduled in Ocala, Florida, on May 20, 2002.

Petitioner presented five witnesses and offered into evidence Petitioner's Composite Exhibits 1-5, consisting of 36 separate items, which were admitted without objection. The names and addresses of the witnesses are listed in Appendix A attached to this Report, and the exhibits are listed in Appendix B. No other persons or entity presented any witnesses or exhibits. No members of the public provided any comments.

The Transcript of the local public hearing was filed with the Division of Administrative Hearings on May 30, 2002. The

original Transcript and hearing exhibits are transmitted with this Report.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

A. Overview

1. Petitioner, Circle Square Woods Community Development District (the District), an established community development district, is seeking the adoption of an amendment to Rule 42S-1.002, Florida Administrative Code, by the Florida Land and Water Adjudicatory Commission (Commission) to delete 1,737,03 acres. The District is located southwest of the City of Ocala in Marion County, Florida (County).

2. The sole purpose of this proceeding is to consider whether the proposed contraction of territory meets the criteria established in Chapter 190, Florida Statutes, as proposed by Petitioner.

B. Summary of Evidence and Testimony

a. Whether all statements contained within the Petition have been found to be true and correct.

3. Exhibit 1a was identified for the record as a copy of the Petition with its attached exhibits, as filed with the Commission. Witnesses Colen, Faranda, Fishkind, Bahlke, and Ganoe each confirmed that they had reviewed the Petition and

Petition Exhibits and found the findings to be true and correct. They also described particular elements of the Petition and the Exhibits attached thereto.

4. Mr. Colen testified that Petitioner had obtained written consent to contract the boundaries of the District from the owners of 100 percent of the real property located within the lands to be removed from the District (Contraction Area or Contraction Parcel).

5. The Petition showed the Contraction Area to be 1,737.03 acres and the proposed amended District to be approximately 718.75 acres after the contraction.

6. The testimony and evidence indicate that the Petition and its attached Petition Exhibits are true and correct.

b. Whether the contraction of the district is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.

7. Mr. Ganoe, Dr. Fishkind, and Mr. Bahlke reviewed the proposed contracted District in light of the requirements of the State Comprehensive Plan as found in Chapter 187, Florida Statutes, and the Marion County Comprehensive Plan. Each witness concluded that the District as contracted will not be inconsistent with the State and Marion County Comprehensive Plans. Mr. Ganoe, the Marion County Planning Director, was accepted as an expert planner, specifically regarding the

State and Marion County Comprehensive Plans and Marion County Land Development Regulations.

8. From a planning perspective, four subjects (16, 18, 21, and 26) of the State Comprehensive Plan relate to community development districts (CDDs), specifically to the proposed amended District. Mr. Ganoe, Dr. Fishkind, and Mr. Bahlke addressed these subjects in their pre-filed testimony.

9. Subject 16, Land Use, recognizes the importance of locating development in areas that have the fiscal abilities and service capacities to accommodate growth. It is relevant because CDDs are to be designed to provide infrastructure services and facilities in a fiscally responsible manner to the areas that can accommodate development. The contraction of the District will not be inconsistent with this goal because the District will continue to have the fiscal capability to provide the specified services and facilities within its boundaries. The Contraction Area is currently raw land without any development. At this time, the landowners intend to form one or more CDDs to provide the Contraction Area with infrastructure and community services in the future.

8. Subject 18, Public Facilities, provides for: (a) protecting investments in existing public facilities; (b) financing for new facilities; (c) allocating the costs of new public facilities on the basis of the benefits received by

future residents; (d) implementing innovative but fiscally sound techniques for financing public facilities; and (e) identifying and using stable revenue sources for financing public facilities. The contraction of the District to eliminate the Contraction Area will further these State Comprehensive Plan goals and policies.

9. Subject 21, Governmental Efficiency, provides that governments shall economically and efficiently provide the amount and quality of services required by the public. The proposed District as contracted will be consistent with this element because the amended District will continue to: (a) cooperate with other levels of Florida government; (b) be established under uniform general law standards as specified in Chapter 190, Florida Statutes; (c) be professionally managed, financed, and governed by those whose property directly receives the benefits; (d) not burden the general taxpayer with costs for services or facilities inside the District; and (e) plan and implement cost-efficient solutions for the required public infrastructure and assure delivery of selected services to residents.

10. Subject 26, Plan Implementation, calls for systematic planning capabilities to be integrated into all levels of government throughout the state, with particular emphasis on improving intergovernmental coordination and

maximizing citizen involvement. The proposed District as contracted will be consistent with this element of the State Comprehensive Plan because: (a) the proposed District will systematically plan for the construction, operation, and maintenance of the public improvements and the community facilities authorized under Chapter 190, Florida Statutes, subject to and not inconsistent with the local government comprehensive plan and development regulations; (b) the District meetings are publicly advertised and are open to the public so that all District property owners and residents can be involved in planning for improvements; (c) Section 189.415, Florida Statutes, requires the District to file and update public facilities reports with the County, which the County may rely upon in any revisions to the local comprehensive plan; and (d) removing the Contraction Area will improve the ability of the District to coordinate the provision of facilities and services within the District without the unneeded overlap to the Contraction Area which will be the subject of separate and distinct CDDs in the future.

11. With regard to the Marion County Comprehensive Plan, Mr. Ganoë testified that the Plan includes goals that: (a) ensure the character and location of land uses maximize the potential for economic benefit while protecting the current unique character of urban, rural, and environmentally

sensitive areas; and (b) discourage urban sprawl and incompatible land uses while encouraging compact urban development patterns and facilities' central services. Petition Exhibits 6A and 6B, the Future Land Use Map for the County and the On Top Of The World, Inc. Master Development Plan Revised Map H (OTOW Map H) describe the proposed distribution of land uses within the District after contraction. By Marion County Resolution No: 2001-R-290 (DRI Resolution), the Marion County Board of County Commissioners adopted a Third Amendment to the Amended Development Order for On Top Of The World - Central, a Development of Regional Impact. The DRI Resolution determined that the proposed distribution of land uses within the OTOW Map H are consistent with the State Comprehensive Plan and the Marion County Comprehensive Plan, and approved the OTOW Map H in DRI Resolution as Exhibit C. In addition, the Department of Community Affairs issued a Binding Letter of Modification to a DRI with Vested Rights on November 29, 2001. Mr. Ganoe concluded that the development and land uses within the District as contracted are consistent with OTOW Map H, and therefore consistent with the State and Marion County Comprehensive Plans.

12. The testimony and exhibits in the record indicate that the proposed amended District will not be inconsistent

with any applicable element or portion of the State Comprehensive Plan.

13. The evidence in the record indicates that the proposed amended District will not be inconsistent with any applicable element or portion of the Marion County Comprehensive Plan.

c. Whether 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.

14. After the proposed contraction, the size of the amended District will be 718.75 acres.

15. Mr. Ganoë, an expert planner, concluded that the District, as contracted, is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as one functional interrelated community. He also concluded that, from a planning perspective, the amended District will continue to succeed as a functional, interrelated community. In addition, Mr. Ganoë emphasized that the services and facilities in the amended District will not be hampered by significant barriers or spatial problems.

16. The amended District is sufficiently contiguous; all parts of the amended District are either in actual contact or are close enough to allow the efficient design and use of infrastructure.

17. Dr. Fishkind was accepted without objection as an expert in: (1) economic analysis and forecasting, particularly with regard to CDDs, and (2) the operation and management of CDDs. Dr. Fishkind concluded that the amended District is of sufficient size, sufficient compactness, and sufficient contiguity to be developed as one functional interrelated community. The amended District is compact with land use typical of a planned community. The development of the land within the amended District has been planned to be a functional interrelated community.

18. Mr. Bahlke was accepted without objection as an expert in civil engineering and surveying regarding CDDs and infrastructure. Mr. Bahlke concluded that the amended District is of sufficient size, sufficient compactness, and sufficient contiguity to be developed as one functional interrelated community.

19. From a planning, engineering, economic, and management and operation perspective, the area of land to be included in the proposed amended District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to continue to be developed as a single functionally interrelated community.

d. Whether the proposed amended district is the best alternative available for delivering community development services and facilities to the area that will be served by the proposed amended district.

20. Dr. Fishkind, Mr. Bahlke, and Mr. Ganoe each concluded that the amended District is the best alternative available for providing community development facilities and services to the area that will be served by the District.

21. Dr. Fishkind also concluded that from the perspective of current and future property owners in the amended District, the CDD is the best alternative for providing community facilities, infrastructure, and services. The land development envisioned for the area in the CDD will require substantial provision of infrastructure, facilities, and services. The CDD is an alternative method to provide these necessary services. The CDD can access the tax-exempt public capital markets and thereby fund these facilities and services at a lower cost than the alternative of developer funding. Furthermore, unlike a homeowners association (HOA), the CDD has the power to assess property and collect those assessments along with other property taxes. Therefore, a CDD can fund large capital improvement programs that an HOA cannot.

22. Dr. Fishkind also concluded that with regard to the operations and maintenance of community facilities and

services the CDD is also the best alternative. The CDD is preferable to an HOA or property owners association to future landowners for the following reasons. First, unlike an HOA, the CDD collects funds for operations and maintenance directly from assessments collected along with all other property taxes, a more assured income stream. Unlike an HOA, a CDD is a unit of local government, and it must hold its meetings in the sunshine and bid out its contracts. A CDD provides control to the landowners much sooner in time than an HOA. A CDD is focused on providing the community with services, facilities, and their maintenance in a way the general purpose government, with its competing interests and broad responsibilities, is not. This level of local control serves the best interests of property owners in the CDD.

23. According to Dr. Fishkind, from the perspective of the State, the County, and the St. Johns River Water Management District, a CDD is the best alternative for providing community facilities and their operation and maintenance for a variety of reasons. First, as noted above, compared to an HOA a CDD is a more powerful and more responsive organization for providing and maintaining infrastructure and services. Second, with an HOA, the County would have to assume some responsibility for construction, operations, and maintenance of community facilities and

services. Even if the County formed a dependent district to provide community facilities and services to the area to be served by the District, and charged appropriately for these services, the County would be enmeshed in the responsibilities and management. Furthermore, without a CDD the County cannot be assured that only residents of the area to be served by the CDD would bear the full costs of the needed facilities and services.

24. Only a CDD allows for the independent financing, administration, operation, and maintenance of the land within such a district. Only a CDD allows district residents to completely control the district. None of the other alternatives have all of these characteristics.

25. From planning, engineering, economic, and special district management perspectives, the proposed amended District is the best alternative available for delivering community development services and facilities to the area that will be served by the District.

26. Dr. Fishkind also indicated that the District is not the best alternative to provide such services to the lands within the Contraction Area. The Contraction Area is undeveloped, raw land which will be developed in the future as independent CDDs. The purpose of this boundary amendment is to remove the Contraction Area from the District so that the

Contraction Area can be developed independently of the District and form multiple CDDs in the future. Further, this boundary amendment will provide for a more efficient use of resources. Currently, the District provides no services or facilities to the Contraction Area and holds no title to property located within the Contraction Area. That area will be the subject of future, independent development.

e. Whether the community development services and facilities of the proposed amended district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

27. Dr. Fishkind, Mr. Ganoe, and Mr. Bahlke concluded that the services and facilities proposed to be provided by the amended District are not incompatible with the capacity and uses of existing local and regional facilities and services. Dr. Fishkind and Mr. Bahlke stated that the amended District's facilities and services within the proposed amended boundaries will not duplicate any available regional services or facilities within the Contraction Area. Dr. Fishkind also concluded that the District will provide infrastructure services and facilities that do not overlap with those provided by others and are required under the development agreements governing the property.

28. The evidence indicates that the community development services and facilities of the proposed amended

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

f. Whether the area that will be served by the proposed amended district is amenable to separate special district government.

29. Dr. Fishkind, Mr. Ganoe, and Mr. Bahlke concluded that the area to be served by the amended District is amenable to separate special district government.

30. Dr. Fishkind and Mr. Bahlke stated that the lands remaining in the District as amended will continue to need basic infrastructure. Dr. Fishkind and Mr. Bahlke also concluded that the existing District has shown the ability to provide facilities and services to the benefit of its owners and residents, and the size and compactness of the amended District will not be inconsistent with the District's capability to continue those services.

31. Therefore, the area that will be served by the proposed amended District is amenable to separate special district government.

g. Whether the petition complies with Chapter 190.005 (1)(a), Florida Statutes.

32. The District is located in Marion County. A location map, sketch, and metes and bounds legal description of the existing boundaries of the District and the Contraction

Parcel are attached to the Petition. Also, a map showing the location of the land area to be serviced by the District after the contraction was attached to the Petition.

33. The Petition contains a written consent by the owners of 100 percent of the real property to be contracted from the District.

34. The current members of the District's Board of Supervisors are listed in paragraph 7 of the Petition. The name of the District will continue to be the Circle Square Woods Community Development District.

35. The Petition contains a map of the current major trunk water mains and sewer interceptors and outfalls within the District. The services and facilities currently provided to the District as amended are water treatment and distribution, wastewater collection, treatment, and residual disposal.

36. As required by Section 190.005(1)(a), the Petition contains a statement of estimated regulatory costs (SERC). The SERC contains an estimate of the costs and benefits to all persons directly affected by the proposed rule amendment to contract the District. According to Dr. Fishkind, the SERC was prepared in accordance with the requirements of Chapters 120 and 190, Florida Statutes.

37. The change in the boundaries of the District will have no cost impact on State or County governments beyond the processing of the Petition. The processing costs are modest and will largely be offset by the filing fees charged for the formation of other CDD's in the future. The evidence further indicates that the change in the boundaries will have no negative economic impacts on future residents of the District or on small businesses.

h. Whether the petition complies with Sections 190.005 (1)(b),(c), and (d).

38. Section 190.005(1)(d) requires the Petitioner to publish notice of the public hearing in a newspaper of general circulation in Marion County for four consecutive weeks prior to the hearing. The notice was published in the Ocala Star-Banner, a newspaper of general circulation in the County for four consecutive weeks on April 22, April 29, May 6, and May 13, 2002. A copy of the advertisement and the affidavit of Connie Heath, an authorized employee of the newspaper, verifying the above-cited publication dates was entered into evidence at the public hearing.

39. The Petition also contains the Master Development Plan Revised Map H and County Future Land Use Map. As noted on the Exhibit List attached as Appendix B to this Report, Resolution No. 2001-R-290, the Marion County Comprehensive

Plan, and the Binding Letter of Modification to a DRI with Vested Rights dated November 29, 2001, were entered into evidence at the public hearing as Exhibits 2h, 2i, and 4k, respectively.

40. Section 190.005(1)(b) requires the Petitioner to pay a filing fee of \$15,000 to the county and to 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. The County, the only such entity, waived the filing fee. The County also waived their right to conduct a public hearing pursuant to Section 190.005(1)(c).

CONCLUSIONS OF LAW

41. This proceeding is governed by Chapters 120 and 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code.

42. Section 190.046(1)(d)1., Florida Statutes (2001), specifies the procedures for contracting an existing CDD initially established by administrative rule. In doing so, subparagraph (1)(f)1. provides a general limitation that

[d]uring the existence of a district initially established by administrative rule, petitions to amend the boundaries of the district . . . shall be limited to a cumulative total of not more than 10 percent of the land of the initial district, and in no event shall all such petitions ever encompass more than a total of 250 acres."

43. However, paragraph (1)(g) provides an exception to that limitation and states that

[p]etitions to amend the boundaries of the district which exceed the amount of land specified in paragraph (f) shall be considered petitions to establish a new district and shall follow all of the procedures specified in s. 190.005.

Because the proposed contraction here exceeds the 250-acre threshold in subparagraph (1)(f)1., Petitioner must satisfy all of the requirements found in Section 190.005, Florida Statutes.

44. The proceeding was properly noticed pursuant to Section 190.005, Florida Statutes, by publication of an advertisement in a newspaper of general paid circulation in Marion County once each week for the four consecutive weeks immediately prior to the hearing.

45. Petitioner has met the requirements of Section 190.005, Florida Statutes, regarding the submission of a petition and satisfaction of filing fee requirements.

46. Petitioner bears the burden of establishing that the petition meets the relevant statutory criteria set forth in Section 190.005(1)(e), Florida Statutes.

47. All portions of the Petition and other submittals have been completed and filed as required by law.

48. All statements contained within the Petition are true and correct.

49. The proposed contraction of the boundaries of the District is not inconsistent with any applicable element or portion of the State or County Comprehensive Plans.

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

51. The proposed amended District is the best alternative available for delivering community development services and facilities to the area that will be served by the District.

52. The community development services and facilities of the amended District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

53. The area to be served by the amended District is amenable to separate special district government.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Land and Water Adjudicatory Commission, pursuant to Chapters 120 and 190, Florida Statutes, and Chapter 42-1, Florida Administrative Code, grant the Petition of Circle Square Woods Community Development District to amend Rule 42S-1.002, Florida Administrative Code, to contract certain lands specified herein from the Circle Square Woods Community Development District, as reflected on Appendix C attached to this Report.

DONE AND ENTERED this 24th day of June, 2002, in Tallahassee, Leon County, Florida.

DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of June, 2002.

COPIES FURNISHED:

Reginald L. Bouthillier, Jr., Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, Florida 32301

Charles Canady, General Counsel
Office of the Governor
The Capitol, Room 209
Tallahassee, Florida 32399-0001

Donna Arduin, Secretary
Florida Land and Water
Adjudicatory Commission
Office of the Governor
The Capitol, Room 2105
Tallahassee, Florida 32399-0001

Barbara Leighty, Clerk
Growth Management and Strategic Planning
The Capitol, Room 2105
Tallahassee, Florida 32399-0001

Gregory M. Munson, Esquire
Florida Land and Water Adjudicatory Commission
The Capitol, Suite 029
Tallahassee, Florida 32399-0001

APPENDIX A

Petitioner's Witnesses at Hearing

Kenneth D. Colen, President
On Top of the World, Inc.
8447 Southwest 99th Street
Ocala, Florida 34481

Philip Faranda, Vice-Chairman
On Top of the World, Inc.
8447 Southwest 99th Street
Ocala, Florida 34481

Dr. Henry H. Fishkind, President
Fishkind & Associates, Inc.
11869 High Tech Drive
Orlando, Florida 32817

William P. Bahlke, President
Heidt & Associates, Inc.
2212 Swann Drive
Tampa, Florida 33606

Dwight D. Gano
Planning Director, Marion County
2631 S.E. 3rd Street
Ocala, Florida 34471-9101

APPENDIX B

List of Petitioner's Exhibits

1. Petition with Exhibits:

a. Petition to Contract the Circle Square Woods
Community Development District and Exhibits 1-7

Petition Exhibit "1" - Location of Land Area to be
Serviced

Petition Exhibit "2" - Metes and Bound Legal
Description

Petition Exhibit "3" - Documentation of Consent of
100% of Landowners to Establishment of District

Petition Exhibit "4" - Documentation of Proposed
Timetables for Construction of District Services
and Estimated Cost of Constructing the Proposed
Services

Petition Exhibit "5" - Designation of the Future
General Distribution, Location and Extent of
Public and Private Uses of Land Within the
District

Petition Exhibit "6A" - Future Land Use Map of the
Marion County Comprehensive Plan

Petition Exhibit "6B" - Master Development Plan
Revised Map H

Petition Exhibit "7" - Statement of Estimated
Regulatory Costs (including Appendix A)

b. Initial Order

c. Response to Initial Order

d. Notice of Hearing

e. Petitioner's Notice of Filing Direct Testimony

2. Florida Statutes, Florida Administrative Code, and Marion County Code, Ordinances, and Resolutions.

a. Chapter 190, Florida Statutes

b. Chapter 120, Florida Statutes

c. Chapter 187, Florida Statutes

d. Chapter 28-106, Florida Administrative Code

e. Chapter 42-1, Florida Administrative Code

f. Chapter 42S-1, Florida Administrative Code

g. Marion County Code Article III: Community Development Districts

h. Marion County Resolution No. 2001-R-290

i. Marion County Comprehensive Plan and Future and Land Use Map

3. Public Notice and Related Documents

a. Affidavit of Publication of Notice in Star-Banner on April 22, April 29, May 6, and May 13, 2002 with attached example

b. Public Notice in Florida Administrative Weekly dated May 3, 2002

4. Correspondence, Reports, Agencas, and other documents relevant to the proceeding

a. Letter to Florida Land & Water Adjudicating Commission dated February 15, 2002 enclosing 12 copies of the Petition

b. Letter to Marion County dated February 13, 2002 enclosing 6 copies of the Petition

c. Letter to Barbara Leighty, Governor's Office of Policy and Budget dated March 15, 2002 enclosing original, executed, signature page for Petition

d. Letter from Office of Governor to Withlacoochee Regional Planning Council dated March 18, 2002 requesting comments on Petition

e. Letter to Dwight Ganoë, Director of Planning, Marion County dated March 20, 2002

f. Letter dated April 1, 2002 to Florida Land and Water Adjudicating Commission from Withlacoochee Regional Planning Council with comments concluding that the change to CDD "is not expected to create adverse effects on regional resources, facilities or other jurisdictions" and that the "area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as one functional interrelated community"

g. Letter dated March 18, 2002, from FLAWAC transmitting Petition to DOAH

h. Letter dated March 18, 2002, from FLAWAC to the Department of Community Affairs requesting comments on Petition

i. Marion County Staff Report and Recommendations dated April 2, 2002

j. Marion County Agenda "After" dated April 2, 2002 confirming County Commission's decision not to hold the optional public hearing and waiving the \$15,000 filing fee, and certified copy of minutes confirming same (at p. 784)

k. Binding Letter of Modification to a Development of Regional Impact with Vested Rights dated November 29, 2001

5. Witness Exhibits and Prefiled Testimony

a. Prefiled Testimony of Kenneth D. Colen

b. Prefiled Testimony of Philip Faranda

c. Prefiled Testimony of Henry Fishkind, Ph.D.

d. Resume of Henry Fishkind, Ph.D.

e. Company Profile of Fishkind & Associates

f. Prefiled Testimony of Bill Bahlke

g. Resume of Bill Bahlke

h. Prefiled Testimony of Dwight Gano

i. Resume of Dwight Gano

APPENDIX C

TEXT OF PROPOSED RULE AMENDMENT

42S-1.002 Boundary. The boundaries of the District are as follows:

DESCRIPTION: A parcel of land lying in Sections 13, 14, 22, 23 and 24, Township 16 South, Range 20 East, Marion County, Florida, being more particularly described as follows:

COMMENCING from the Southwest corner of said Section 24, also being the Southwest corner of TRACT 9, CIRCLE SQUARE WOODS, according to the map or plat thereof as recorded in Plat Book "P", Pages 30 through 103, inclusive, Public Records of Marion County, Florida; run thence along the South boundary of said Section 24 and TRACT 9, N.89°32'55"E., 1575.99 feet to the Southeast corner of said TRACT 9, also being the POINT OF BEGINNING; run thence along the Easterly line of said TRACT 9, N.42°02'30"E., 1698.08 feet to the Southwest corner of TRACT 1, "CIRCLE SQUARE WOODS FIRST REPLAT", according to the map or plat hereof as recorded in Plat Book "Y", Page 88, Public Records of Marion County, Florida, said point being on the Northerly Right-of-Way Line of SW 99th STREET, of said plat; thence along said Northerly Right-of-Way Line of SW 99th STREET, S.64°41'13"E., 17.77 feet; thence N.42°02'30"E., 2299.38 feet; thence N.47°57'30"W., 677.91 feet; thence N.42°02'30"E., 477.74 feet; thence N.01°07'31"E., 1679.81 feet; thence N.88°53'20"W., 582.03 feet; thence N.81°02'45"W., 382.09 feet; thence N.88°53'20"W., 1394.92 feet; thence S.71°47'20"W., 341.94 feet; thence S.00°00'35"E., 147.11 feet to a point on a curve, said point being on the centerline of SW 90th STREET, of aforesaid CIRCLE SQUARE WOODS; thence along said centerline of SW 90th STREET the following three (3) courses: 1) Westerly, 302.36 feet along the arc of a curve to the right having a radius of 995.00 feet and a central angle of 17°24'40" (chord bearing S.82°24'23"W., 301.20 feet) to a point of reverse curvature; 2) Westerly, 161.46 feet along the arc of a curve to the left having a radius of 1005.00 feet and a central angle of 09°12'17" (chord bearing S.86°30'35"W., 161.28 feet) to a point of tangency; 3) S.81°54'26"W., 623.63 feet to a point on the Easterly Right-of-Way Line of CIRCLE SQUARE RANCH ROAD, of said plat; thence along said Easterly Right-of-Way Line of CIRCLE SQUARE RANCH ROAD the following four (4) courses: 1) S.08°05'54"E., 234.69 feet to a point of curvature; 2) Southerly, 1338.26 feet along the arc of a curve to the right having a radius of 1469.04 feet and a central

angle of $52^{\circ}11'42''$ (chord bearing $S.17^{\circ}59'57''W.$, 1292.46 feet) to a point of tangency; 3) $S.44^{\circ}05'48''W.$, 440.00 feet to a point of curvature;

4) Southwesterly, 449.73 feet along the arc of a curve to the left having a radius of 1198.84 feet and a central angle of $21^{\circ}29'38''$ (chord bearing $S.33^{\circ}20'59''W.$, 447.10 feet); thence $S.88^{\circ}53'29''E.$, 1033.73 feet; thence $S.01^{\circ}06'20''W.$, 1720.09 feet to a point on a curve, said point being on the Southerly Right-of-Way Line of said CIRCLE SQUARE RANCH ROAD; thence along said Southerly Right-of-Way Line of CIRCLE SQUARE RANCH ROAD, Westerly, 664.73 feet along the arc of a curve to the right having a radius of 1297.37 feet and a central angle of $29^{\circ}21'24''$ (chord bearing $N.70^{\circ}02'39''W.$, 657.49 feet) to a point on the Southerly Right-of-Way Line of STILL HOUSE HOLLOW ROAD SOUTH, of said plat; thence along said Southerly Right-of-Way Line of STILL HOUSE HOLLOW ROAD SOUTH the following eight (8) courses:

1) $S.36^{\circ}24'03''W.$, 29.15 feet to a point on a curve; 2) Westerly, 2413.15 feet along the arc of a curve to the right having a radius of 1986.02 feet and a central angle of $69^{\circ}37'06''$ (chord bearing $S.71^{\circ}05'30''W.$, 2267.42 feet) to a point of tangency; 3) $N.74^{\circ}05'57''W.$, 330.00 feet to a point of curvature; 4) Westerly, 954.98 feet along the arc of a curve to the left having a radius of 1793.98 feet and a central angle of $30^{\circ}30'00''$ (chord bearing $N.89^{\circ}20'57''W.$, 943.75 feet) to a point of tangency; 5) $S.75^{\circ}24'03''W.$, 534.02 feet to a point of curvature; 6) Westerly, 1677.34 feet along the arc of a curve to the right having a radius of 1731.61 feet and a central angle of $55^{\circ}30'00''$ (chord bearing $N.76^{\circ}50'57''W.$, 1612.53 feet) to a point of tangency; 7) $N.49^{\circ}05'57''W.$, 308.29 feet; 8) $N.50^{\circ}45'00''W.$, 101.66 feet to a point of intersection with the Southerly extension of the West line of Lot 12, Block 98, of said plat; thence along said West line of Lot 12, Block 98 and the Southerly extension thereof, $N.24^{\circ}20'57''E.$, 1264.73 feet to a point on a curve, said point being the Northwest corner of said Lot 12, Block 98; thence along the North line of said Block 98, also being the Southerly line of Block 96, of said plat the following thirteen (13) courses: 1) Easterly, 291.44 feet along the arc of a curve to the left having a radius of 1563.76 feet and a central angle of $10^{\circ}40'42''$ (chord bearing $S.88^{\circ}05'33''E.$, 291.02 feet) to a point of tangency; 2) $N.86^{\circ}34'06''E.$, 240.00 feet to a point of curvature; 3) Easterly, 478.65 feet along the arc of a curve to the right having a radius of 671.63 feet and a central angle of $40^{\circ}50'00''$ (chord bearing $S.73^{\circ}00'54''E.$, 468.59 feet) to a point of tangency; 4) $S.52^{\circ}35'54''E.$, 185.00 feet to a point of curvature; 5) Easterly, 471.24 feet along the arc of a curve

to the left having a radius of 570.42 feet and a central angle of 47°20'00" (chord bearing S.76°15'54"E., 457.95 feet) to a point of tangency;

6) N.80°04'06"E., 475.00 feet to a point of curvature; 7) Easterly, 299.34 feet along the arc of a curve to the right having a radius of 1837.58 feet and a central angle of 09°20'00" (chord bearing N.84°44'06"E., 299.01 feet) to a point of tangency; 8) N.89°24'06"E., 515.00 feet to a point of curvature; 9) Easterly, 199.65 feet along the arc of a curve to the right having a radius of 1372.67 feet and a central angle of 08°20'00" (chord bearing S.86°25'54"E., 199.47 feet) to a point of tangency; 10) S.82°15'54"E., 410.04 feet to a point on a curve; 11) Easterly, 298.98 feet along the arc of a curve to the right having a radius of 1511.70 feet and a central angle of 11°19'55" (chord bearing S.76°35'52"E., 298.50 feet) to a point of tangency; 12) S.70°55'54"E., 316.37 feet to a point of curvature; 13) Easterly, 710.93 feet along the arc of a curve to the left having a radius of 838.60 feet and a central angle of 48°34'24" (chord bearing N.84°46'54"E., 689.84 feet) to a point on a curve, said point being on the Westerly Right-of-Way Line of aforesaid CIRCLE SQUARE RANCH ROAD; thence along said Westerly Right-of-Way Line of CIRCLE SQUARE RANCH ROAD the following three (3) courses: 1) Northerly, 432.21 feet along the arc of a curve to the right having a radius of 556.59 feet and a central angle of 44°29'32" (chord bearing N.06°52'05"W., 421.43 feet) to a point of tangency; 2) N.15°22'41"E., 412.44 feet to a point on a curve; 3) Northerly, 37.33 feet along the arc of a curve to the right having a radius of 1278.84 feet and a central angle of 01°40'21" (chord bearing N.16°45'27"E., 37.33 feet) to a point on a curve, said point being on the Southerly Right-of-Way Line of HAPPY VALLEY RANCH ROAD SOUTH, of said plat; thence along said Southerly Right-of-Way Line of HAPPY VALLEY RANCH ROAD SOUTH the following ten (10) courses: 1) Northwesterly, 38.02 feet along the arc of a curve to the left having a radius of 25.00 feet and a central angle of 87°08'33" (chord bearing N.26°31'37"W., 34.46 feet) to a point of tangency; 2) N.70°05'54"W., 247.78 feet to a point of curvature; 3) Northwesterly, 604.38 feet along the arc of a curve to the right having a radius of 4617.12 feet and a central angle of 07°30'00" (chord bearing N.66°20'54"W., 603.95 feet) to a point of tangency; 4) N.62°35'54"W., 235.00 feet to a point of curvature; 5) Westerly, 1126.08 feet along the arc of a curve to the left having a radius of 1654.35 feet and a central angle of 39°00'00" (chord bearing N.82°05'54"W., 1104.47 feet) to a point of tangency; 6) S.78°24'06"W., 130.00 feet to a point of curvature; 7) Westerly, 1203.17 feet along

the arc of a curve to the right having a radius of 2297.89 feet and a central angle of 30°00'00" (chord bearing N.86°35'54"W., 1189.48 feet) to a point of tangency; 8) N.71°35'54"W., 100.00 feet to a point of curvature; 9) Westerly, 672.41 feet along the arc of a curve to the left having a radius of 2201.50 feet and a central angle of 17°30'00" (chord bearing N.80°20'54"W., 669.80 feet) to a point of tangency; 10) N.89°05'54"W., 345.39 feet to the Northwest corner of Lot 12, of aforesaid Block 96; thence along the Northerly extension of the West line of said Lot 12, Block 96, N.08°06'05"E., 80.51 feet to a point of intersection with the Northerly Right-of-Way Line of said HAPPY VALLEY RANCH ROAD SOUTH of said plat; thence N.01°26'12"W., 2929.35 feet to a point on a curve, said point being on the North line of Block 85, of said plat; thence along said North line of Block 85 the following five (5) courses: 1) Easterly, 581.10 feet along the arc of a curve to the left having a radius of 1045.43 feet and a central angle of 31°50'52" (chord bearing N.68°49'32"E., 573.65 feet) to a point of tangency; 2) N.52°54'06"E., 270.00 feet to a point of curvature; 3) Northeasterly, 338.18 feet along the arc of a curve to the left having a radius of 1336.31 feet and a central angle of 14°30'00" (chord bearing N.45°39'06"E., 337.28 feet) to a point of reverse curvature; 4) Northeasterly, 530.91 feet along the arc of a curve to the right having a radius of 675.98 feet and a central angle of 45°00'00" (chord bearing N.60°54'06"E., 517.37 feet) to a point of tangency; 5) N.83°24'06"E., 177.00 feet to the Northwest corner of said Block 85, said point being on the Southerly Right-of-Way Line of STILL HOUSE HOLLOW ROAD NORTH of said plat; thence along said Southerly Right-of-Way Line of STILL HOUSE HOLLOW ROAD NORTH the following eight (8) courses: 1) S.12°05'54"E., 133.30 feet to a point of curvature; 2) Southeasterly, 1318.84 feet along the arc of a curve to the left having a radius of 1302.83 feet and a central angle of 58°00'00" (chord bearing S.41°05'54"E., 1263.25 feet) to a point of tangency; 3) S.70°05'54"E., 536.03 feet to a point of curvature; 4) Southeasterly, 664.75 feet along the arc of a curve to the right having a radius of 1313.35 feet and a central angle of 29°00'00" (chord bearing S.55°35'54"E., 657.67 feet) to a point of tangency; 5) S.41°05'54"E., 310.00 feet to a point of curvature; 6) Easterly, 1334.11 feet along the arc of a curve to the left having a radius of 1428.77 feet and a central angle of 53°30'00" (chord bearing S.67°50'54"E., 1286.17 feet) to a point on the Northerly boundary of ON TOP OF THE WORLD PHASE 1-A, SECTION 1, according to the map or plat thereof as recorded in Plat Book 3, Pages 70 through 76, inclusive,

Public Records of Marion County, Florida; 7) N.85°24'07"E., 572.33 feet to a point on a curve; 8) Southeasterly, 38.06 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 87°13'41" (chord bearing S.50°59'03"E., 34.49 feet) to a point of reverse curvature, said point being on the Easterly boundary of said ON TOP OF THE WORLD PHASE 1-A, SECTION 1, also being the Westerly Right-of-Way Line of aforesaid CIRCLE SQUARE RANCH ROAD; thence along said Easterly boundary of ON TOP OF THE WORLD PHASE 1-A, SECTION 1 and the Westerly Right-of-Way Line of CIRCLE SQUARE RANCH ROAD, Southerly, 16.77 feet along the arc of a curve to the left having a radius of 1319.24 feet and a central angle of 00°43'42" (chord bearing S.07°44'03"E., 16.77 feet); thence N.81°54'06"E., 80.00 feet to a point on the Easterly Right-of-Way Line of said CIRCLE SQUARE RANCH ROAD; thence along said Easterly Right-of-Way Line of CIRCLE SQUARE RANCH ROAD, S.08°05'54"E., 115.31 feet; thence N.81°54'26"E., 623.63 feet to a point of curvature; thence Easterly, 163.06 feet along the arc of a curve to the right having a radius of 1015.00 feet and a central angle of 09°12'17" (chord bearing N.86°30'35"E., 162.89 feet) to a point of reverse curvature; thence Easterly, 291.84 feet along the arc of a curve to the left having a radius of 985.00 feet and a central angle of 16°58'32" (chord bearing N.82°37'27"E., 290.77 feet); thence N.00°00'35"W., 146.82 feet; thence N.71°47'20"E., 350.88 feet; thence S.88°53'20"E., 1397.31 feet; thence S.81°02'45"E., 382.09 feet; thence S.88°53'20"E., 591.35 feet; thence S.01°07'31"W., 132.04 feet to a point on the aforesaid centerline of SW 90th STREET; thence along said centerline of SW 90th STREET, S.88°53'16"E., 1008.63 feet to a point on a curve, said point being a point of intersection with the Westerly Right-of-Way Line of SW 80th AVENUE; thence along said Westerly Right-of-Way Line of SW 80th AVENUE the following four (4) courses: 1) Southerly, 414.32 feet along the arc of a curve to the right having a radius of 3550.00 feet and a central angle of 06°41'13" (chord bearing S.07°52'03"W., 414.09 feet) to a point of tangency; 2) S.11°12'40"W., 1246.58 feet to a point on a curve; 3) Southerly, 911.46 feet along the arc of a curve to the left having a radius of 1141.00 feet and a central angle of 45°46'09" (chord bearing S.10°23'50"E., 887.42 feet) to a point of tangency; 4) S.33°16'55"E., 423.46 feet to a point on the Northwesterly Right-of-Way Line of STATE ROAD NO. 200; thence along said Northwesterly Right-of-Way Line of STATE ROAD NO. 200 the following thirteen (13) courses: 1) S.42°02'30"W., 198.60 feet; 2) N.47°57'30"W., 3.00 feet; 3) S.42°02'30"W., 225.00 feet; 4) S.47°57'30"E., 3.00 feet; 5)

S.42°02'30"W., 600.00 feet; 6) N.47°57'30"W., 7.00 feet; 7) S.42°02'30"W., 400.00 feet; 8) S.47°57'30"E., 10.00 feet; 9) S.42°02'30"W., 953.67 feet; 10) S.89°59'10"W., 29.67 feet; 11) S.42°02'30"W., 96.00 feet; 12) S.05°07'22"E., 30.04 feet; 13) S.42°02'30"W., 761.51 feet to a point on the aforesaid South boundary of Section 24; thence along said South boundary of Section 24 the following two (2) courses: 1) S.89°15'29"W., 396.42 feet to the Southeast corner of the Southwest ¼ of said Section 24; 2) S.89°32'55"W., 1064.70 feet to the POINT OF BEGINNING.

Containing 718.766 acres, more or less.

Specific Authority 120.53(1), 190.005 F.S. Law Implemented
190.004, 190.005 F.S. History-New